Description of document:	A copy of each response to a Question for the Record (QFR) provided to Congress by the Department of the Interior (DOI) and its components, 2012-2013
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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

IN REPLY REFER TO:
7202.4-OS-2015-00333

September 24, 2015

Via email

On June 4, 2015, you filed a Freedom of Information Act (FOIA) request seeking the following information:

> A copy of each response to a Question for the Record (QFR) provided to Congress by the Department of the Interior or its components during the dates January 1, 2012 through December 31, 2013.

On June 4, 2015, we acknowledged your request and advised you of your fee status under the FOIA. We are writing today to respond to your request on behalf of the office of the Secretary. Please find enclosed 1 file consisting of 1216 pages, which are being released to you in their entirety. This completes our response to your request.

As a matter of policy, the Department of the Interior does not bill requesters for FOIA fees incurred in processing requests when their fees do not exceed $50.00, because the cost of collection would be greater than the fee collected. See 43 C.F.R. §2.49(a)(1). Therefore, there is no billable fee for the processing of this request.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S. 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

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Please note that using OGIS does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer.

If you have any questions about our response to your request, you may contact Kevin Lynch by phone at 202-513-0765, by fax at 202-219-2374, by email at os_foia@ios.doi.gov, or by mail at U.S. Department of the Interior, 1849 C St, N.W., MS-7328 MIB, Washington, D.C. 20240.

Sincerely,

Clarice Julka
Office of the Secretary
FOIA Officer

Electronic Enclosure

Hearing Questions for the Record (QFR) Prepared for the Department of Interior, Bureau of Land Management

Hearing: Bureau of Land Management FY 13 Budget Oversight Tuesday, March 6, 9:30am Rayburn B308

Questions for the Record from Chairman Simpson

Range Management

Simpson Q1: The proposed $1 fee per AUM is a 74% increase on grazing permittees. How did the BLM come up with this number?

Answer: The BLM analyzed several options to recover some of the costs of processing grazing permits/leases from the permittees who are economically benefitting by their use of the public lands. The BLM evaluated the proposed Permit Administration Fee based on a standard fee scenario, an actual permit-processing cost, and a fee based on amount of grazing use. The "standard fee" puts a disproportionate burden on the small permittees; an "actual cost of processing" fee would often be based on issues outside of the permittees' control; so a fee based on actual usage seems most appropriate. The fee, as proposed, would allow BLM to recover a portion of the costs of issuing grazing permits/leases on BLM lands that are tied to resource use.

The fees are proposed to assist the BLM in processing its backlog of pending applications for grazing permit renewals and to cover other costs related to administering grazing permit-related activities, such as monitoring and land health evaluations. There is a wide variability in costs to process a permit depending on location, intensity of public interest, and complexity of issues rather than on the amount of resources used. Some permittees have multiple permits in high-cost areas. Consequently, the average cost of processing permits in each State currently ranges from $900 to $40,000. The proposed fee spreads out the costs over the life of the permit and charging a fee based on AUMs ties the fee to the actual use of the resource and would be more equitable for all permittees.

There is an average of 8.5 million AUMs permitted each year. A $1-per-AUM fee, which would generate $8.5 million, would cover about one-third of what BLM expends each year for processing grazing permits. A "standard" fee to cover one-third of the cost of processing permits would be about $4,000 per permit. For a large permit, this would be less than the $1 per AUM fee. For a small permit, it would be around $4 per AUM or more. On an "actual cost" basis, a small permit (less than 100 AUMs) in a high cost area could cost as much as $40 per AUM per year. To cover one-third of the actual cost would be as much as $13 per AUM per year for a small permit. There are advantages and disadvantages to either a "one time" processing charge or an "actual use" fee, but an "actual-use-based fee" appears most equitable for all permitees.

The pilot period and development of regulations with participation by permittees and interested public gives us an opportunity to assess that the proposed "per AUM" basis of the fee is the most equitable.

Simpson Q2: The BLM states it would like the authority to collect an additional $1 per AUM for three years until it can complete cost recovery regulations. Do you have a current estimate of what the cost recovery fee might be?

Answer: No. During the period of the pilot, the BLM will develop regulations for cost recovery.

Simpson Q3: Why does the BLM's proposed grazing fee charge per AUM rather than per permit when the fee is supposed to offset the cost of permits (similar to oil and gas permits)?

Answer: The proposed Permit Administration Fee would allow BLM to recover a portion of the costs of issuing grazing permits/leases on BLM lands. These fees will assist the BLM in processing pending applications for grazing permit renewals and cover other costs related to administering grazing permit-related activities, such as monitoring and land health evaluations.

The Federal grazing fee for 2012 is $1.35 per animal unit month (AUM) for public lands administered by the BLM. The annually-determined grazing fee is computed by using a 1966 base value of $1.23 per AUM for livestock grazing on public lands in Western states. The figure is then calculated according to three factors – current private grazing-land lease rates, beef cattle prices, and the cost of livestock production. In effect, the fee is tied to market conditions; livestock operators pay more when the market is up and less when it's down.

To calculate the proposed permit administration fee, the BLM analyzed several fee proposals. There are advantages and disadvantages to either a one-time processing charge or an "actual use" fee, but a fee charged on the basis of AUMs ("actual use") is the most equitable for permittees. A one-time "standard fee" charges every permittee the same amount for each permit processed. This puts a disproportionate burden on small-AUM permits. A one-time fee based on "actual cost" to process a permit is based on issues outside of the permittees' control. There is wide variability in costs to process a permit, and charging a fee based on AUMs ties the fee to the actual use of the resource. In addition, the proposed fee spreads out permitting costs over the life of each permit. If fees were charged on an "actual cost" basis, the costs would range from $900 to $40,000, which is the range of costs for processing permits. The costs depend on location, intensity of public interest, and complexity of issues, rather than on the amounts of resources used.

On an "actual cost" basis, a small permit (less than 100 AUMs) in a high cost area could cost as much as $40 per AUM per year. There is an average of 8.5 million AUMs used each year, and a $1 per AUM fee would cover about one-third of what BLM expends each year for processing grazing permits. To cover one-third of the actual cost would thus be as much as $13 per AUM per year for a small permit. A "standard" fee to cover one-third of the cost of processing permits would be about $4,000 per permit. For a large permit, this would be less than the $1 per AUM fee. For a small permit, it would be about $4 per AUM.

The pilot period and development of regulations with participation by permittees and the interested public provides the BLM opportunities to assess whether the proposed "per AUM" basis of the fee is the preferred alternative.

Simpson Q4: The BLM budget request recommends a reduction for range management and only plans to complete 33% of grazing permit renewals. How is the funding increase for FY12 is being utilized?

Answer: The BLM is using the $15.8 million increase provided in FY 2012 to address numerous challenges, including continuing to reduce the backlog of grazing permit renewals; monitoring of grazing allotments; and strengthening the BLM's environmental documents. In FY 2012, BLM will focus on the most environmentally sensitive grazing permits, using the authorities provided in the FY 2012 Appropriations Act concerning grazing permit renewals and transfers. These authorities, and the $15.8 million increase, will allow the BLM to renew an estimated 2,396 permits, compared to 1,945 in FY 2011.

Simpson Q5: How much funding would it take to catch up on the permit backlog?

Answer: The needs of the program are articulated in the President's FY 2013 Budget Request. The renewal of livestock grazing permits and leases (permits) is the highest priority for the BLM's Rangeland Management program, and the agency is working diligently to process grazing permits as they expire and after a transfer of grazing preference. The BLM is continuing to improve permit renewal procedures by prioritizing allotments in environmentally sensitive areas. However, the BLM is facing several challenges that are impacting the agency's ability to reduce the number of unprocessed permits. The processing of permits for allotments with land health concerns or resource conflicts is time intensive and often requires land health evaluations, Endangered Species Act Section 7 consultations, and possible administrative appeals and litigation. Additionally, court decisions affect the time BLM allocates to process permits and complete other work.

Sage Grouse

Simpson Q6: The BLM has $15 million in its proposed FY13 budget for the new sage-grouse conservation initiative. Can you outline your plans for this funding?

Answer: The BLM will use $10 million for land use planning. The BLM will put in place the necessary mechanisms, through the land use planning process, to address conservation of sage-grouse before the U.S. Fish and Wildlife Service's (FWS) 2015 deadline to make a final decision on whether or not to list the greater sage-grouse. This will require the amendment or revision of 98 land use plans in 68 planning areas within the range of sage-grouse to designate priority sage-grouse habitat.

Within these priority areas BLM will set disturbance thresholds for energy and minerals development, develop and implement specific best management practices for livestock grazing, establish restrictions for OHV use, and other recreational activities, and implement aggressive fire suppression and post-fire restoration tactics. The $10.0 million for land use planning-related

activities to provide the regulatory certainty requested by FWS includes $6.5 million to amend 98 land use plans, $2.0 million to conduct landscape-level project environmental assessments, $1.0 million for travel management planning and $500,000 for developing Candidate Conservation Agreements.

Of the remaining $5.0 million, BLM will use $2.5 million to conduct on-the-ground projects to restore and improve key sage-grouse habitat.

An additional $2.5 million will be used for habitat mapping, assessment, and monitoring. In 2013, the BLM plans to continue the intensification of data collection across thirty populations of greater sage-grouse in the West to begin to understand the impacts of use authorizations across sage-grouse habitats.

Simpson Q7: Amending resource management plans will require buy-in from states—many of which are also facing budgetary challenges. What kind of incentives or assistance are you able to provide states to implement their own plans?

Answer: The BLM's objective is to work together with State governments on our respective State and Federal processes for the greatest degree of consistency possible while ensuring the conservation of Greater Sage-Grouse in order to avoid listing under the Endangered Species Act. The western States, through the Western Governors' Association and the Western Association of Fish and Wildlife Agencies, have worked for decades to collaboratively address challenges to sage-grouse and their habitat. Partnerships established through local working groups, with BLM representation, have been operating to accomplish conservation objectives throughout the sage-grouse range. Governors Meade and Hickenlooper, at the Secretary's request, are chairing a task force that continues and expands this partnership. The BLM understands that States have substantial budgetary constraints and has worked with the Western Association of Wildlife Agencies to fund some State fish and wildlife agency travel to engage in the planning process.

Simpson Q8: How is BLM coordinating with the FWS and the states to address resource management plan amendments?

Answer: The BLM is working with the FWS and the States in all levels of its Greater Sage-Grouse planning strategy and realizes this coordination is critical for the success of this effort. The States, Forest Service and FWS actively participate in sub-regional interdisciplinary teams, two regional teams, and a national policy team. The purpose of these teams is to ensure consistent interim policy on conservation measures to protect habitat across the range of Greater Sage Grouse and the timely revision of land use plans on BLM and Forest Service lands that contain conservation measures sufficient to protect sage-grouse habitat over the long term with the goal of precluding the need for listing under ESA. The BLM also conducted a webinar with the Forest Service, FWS, and the States aimed at fostering collaborative partnership throughout this effort.

Grazing and Administrative Review Process

Simpson Q9: The FY12 Omnibus Appropriations Act included a provision requiring would-be litigants to first exhaust the administrative review process before litigating on grazing decisions. Has BLM implemented this provision yet?

Answer: In the time since this provision took effect, the BLM is not aware of any instances where a person has attempted to bring a civil action challenging a BLM grazing decision without first exhausting the administrative hearings and appeals procedures.

Wild Horse & Burros

BLM's budget justification shows that the BLM continues to lose ground on keeping wild horse and burro herds at the Appropriate Management Levels (AML). In 2008, 55% of the Herd Management Areas were at the AML level. In 2011, only 39% were at the AML and the projection for 2013 reduces that percentage to 31%.

Simpson Q10: BLM has stated this new strategy will contain costs--but what cost will it have to the rangeland managed by BLM?

Answer: The overarching goal of the BLM's Wild Horse and Burro Management program is to manage wild horse and burros in a way that achieves and maintains a thriving natural ecological balance and allows for multiple uses of the public lands. Achieving and maintaining AML is essential to the BLM's multiple-use mandate in the semi-arid lands where wild horses and burros are found. In recent years the cost to remove and care for excess horses has become unsustainable. The BLM acknowledges that it must make major changes in the management of the program. To that end, the BLM has contracted with the National Academy of Sciences to provide recommendations for improving management of the wild horses and burros and the need for more research, and is finalizing the development of a new strategy to manage the program in the interim. At the 2013 request level, BLM would continue a plan to temporarily reduce removals which began in FY 2012, so as to have the resources to apply population growth suppression methods to an increased number of animals.

The BLM will temporarily reduce the number of wild horses and burros removed from the range from an average of 10,000 to 7,600 per year beginning in FY 2012, a level that will maintain the current number of animals on the range and that is compatible with enacted funding and available holding space. Removals will continue to be conducted in areas of highest ecological priority and where safety concerns exist. The BLM believes that we must temporarily reduce gathers while assessing new methods of population growth suppression, so that we can obtain information to keep wild horse and burro numbers at an acceptable level in the future. The BLM is confident that land and ecological health will benefit in the long run from this approach.

Simpson Q11: If wild horses are over-grazing the range, how can BLM say it's achieving its duty to keep rangelands healthy?

Answer: If rangeland monitoring, assessments, and/or a land health evaluation indicate that land-health standards are not met or over-grazing is occurring due to AML not being achieved on a broad basis within an allotment, then the BLM will determine the appropriate action to take, which could include planned gathers, an emergency gather if warranted, or making adjustments in livestock grazing authorized use.

Simpson Q12: This strategy could also be adverse to the sage grouse. Wild horses can easily overgraze the range and damage sage grouse habitat. Is the BLM favoring wild horses over other wildlife?

Answer: The BLM's goal is to achieve and maintain appropriate management levels (AML) in all areas. Even though the BLM is temporarily reducing removals from 10,000 to 7,600 annually in FY 2012 and 2013 for the reasons outlined in the answer to question number 10, in FY 2012 and 2013 the BLM will continue to conduct gathers in the highest-priority areas, those that are driven by wild horse over-population, sage-grouse, water and forage availability, and public safety issues. In addition, the BLM is increasing the use of population growth suppression applications which will help reduce annual population growth. Levels of grazing that are within AML are likely to have a neutral impact on sage-grouse habitat, meaning this land use can be compatible with healthy sage-grouse habitat. Achieving horse populations within AML is necessary to maintain a thriving ecological balance within which most species would thrive, including sage-grouse.

Simpson Q13: The BLM is also proposing an increase of $2 million for birth control research on wild horses. While the current vaccine may have some limited success, it certainly doesn't seem to be a reasonable answer to the population explosion. How will the BLM address this issue? Is the $2 million for research grants? Please explain.

Answer: The proposed increase of $2 million would be used for increased research opportunities for all forms of population growth suppression. The BLM will initiate an open request for Request for Proposals (RFPs) to increase the scope and opportunity for research entities to expand the use of existing fertility control agents, develop existing technology into longer-lasting agents, and explore new approaches to population growth suppression through research using established or as yet undeveloped technologies. New research will also be responsive to recommendations that the National Academy of Sciences may provide to the BLM in their June 2013 report.

Simpson Q14: What is the cost to administer the fertility vaccine?

Answer: The BLM has several Herd Management Areas that are being treated with ZonaStat-H, a one-year liquid vaccine, and the cost to administer the vaccine is minimal because these HMAs are being treated with the assistance of volunteer organizations. The cost to administer the PZP-22, the longer-lasting 22-month vaccine, is higher because the animals need to be captured in order to administer the drug. The cost is approximately $850 per horse to gather and $310 per horse for the vaccine. Since mares of the appropriate age for fertility control treatment cannot selectively be gathered, more wild horses (such as stallions and younger-age horses) must be

gathered than are actually treated. The cost to treat one mare during a "Catch, Treat and Release" gather is approximately $2,000 per mare.

Simpson Q15: How much does the vaccine cost per animal?

Answer: The cost of ZonaStat-H, the one-year liquid vaccine is $20 per dose. The cost of PZP-22, the 22-month vaccine, is $310 per dose.

Simpson Q16: How many animals will be treated?

Answer: The goal in FY 2013 is to apply population growth suppression to 2,000 wild horses. This includes fertility control vaccine application and other forms of population growth suppression, including returning geldings and stallions to the range to increase the proportion of males in the population and to reduce the proportion of females in the population.

Simpson Q17: How effective is fertility control in wild horses?

Answer: Research conducted on ZonaStat-H, the one-year liquid, has concluded that foaling rates can often be reduced by approximately 90–95%, but this vaccine requires a yearly application to continue the contraceptive effect. PZP-22, the 22-month vaccine, was initially shown in published research to be 94% effective the first year, 84% effective the second year, and 64% effective the third year. However, in other research, the results have not proven to be as effective.

Simpson Q18: What studies exist to show the efficacy of fertility control?

Answer: The Humane Society of the United States, in cooperation with the BLM, is currently conducting studies on the Cedar Mountain HMA in Utah and the Sand Wash Basin HMA in Colorado. Results of those studies are not yet published. Preliminary results to-date for the same PZP-22 agent have shown efficacy rates much lower than those reported by Turner et al. in 2007. There are additional published papers addressing the effectiveness and potential side effects of fertility control in feral horses. Citations for a few of the publications are as follows:

Gray, M.E., D.S. Thain, E.Z. Cameron, and L.A. Miller. 2010. Multi-year fertility reduction in free-roaming feral horses with single-injection immunocontraceptive formulations. *Wildlife Research* 37:475–481.

Gray, M.E., D.S. Thain, E.Z. Cameron, and L.A. Miller. 2011. Corrigendum: Multi-year fertility reduction in free-roaming feral horses with single-injection immunocontraception formulations. *Wildlife Research* 38:260.

Killian, G., D. Thain, N.K. Diehl, J. Rhyan, and L. Miller. 2008. Four-year contraception rates of mares treated with single-injection porcine zona pellucida and GnRH vaccines and intrauterine devices. *Wildlife Research* 35:531–539.

Kirkpatrick, J.F., and A. Turner. 2008. Achieving population goals in a long-lived species (*Equus caballus*) with contraception. *Wildlife Research* 35:513–519.

Ransom, J.I., J.E. Roelle, B.S. Cade, L. Coates-Markle, and A.J. Kane. 2011. Foaling rates in feral horses treated with the immunocontraceptive porcine zona pellucida. *Wildlife Society Bulletin* 35:343–352.

Turner, J.W., Jr., I.K.M. Liu, D.R. Flanagan, A.T. Rutberg, and J.F. Kirkpatrick. 2007. Immunocontraception in wild horses: one inoculation provides two years of infertility. *Journal of Wildlife Management* 71(2):662–667.

Simpson Q19: When will the National Academy of Sciences study be published? How does the proposed $2 million increase coordinate with this study?

Answer: The National Academy of Sciences review is due to be delivered to the BLM in June of 2013. BLM anticipates that the National Academy of Sciences will recommend that the BLM increase its research into some existing population growth suppression techniques and also expand research into other techniques and fertility control agents.

Simpson Q20: What is the BLM doing to control wild horse populations in the mean time?

Answer: The BLM plans to gather and remove 7,600 wild horses annually in FY 2012 and FY 2013 and administer population growth suppression application to 2,000 animals in FY 2013 to maintain the existing population until the National Academy of Sciences evaluation of the program is completed in 2013. To-date in FY2012, the BLM has been conducting population growth suppression via fertility control in mares and adjusting sex ratios by returning proportionately more males to the range.

These population growth suppression techniques have been applied to 1,042 animals this fiscal year. Population growth suppression techniques however, will not assist the BLM in attaining AML in the short-term because this method does not remove excess animals from the population. Population control techniques are a longer-term solution. Once AML is attained on a particular HMA, population growth suppression techniques will assist in maintaining that AML and reducing future gather, holding, and adoption costs.

The BLM is aggressively pursuing the research required to implement fertility control. In March of 2011, the BLM, in collaboration with research scientists, initiated two separate pen trial studies to evaluate the effectiveness of two potentially longer-acting fertility control agents. Two field locations are being identified for gelding and SpayVac research in conjunction with USGS studies starting this summer. The National Academy of Sciences report to be delivered in 2013 is expected to assist the BLM in developing more effective long-term WHB management strategies.

Landscape Conservation Cooperatives (LCCs):

Simpson Q21: Please explain what the Department's Landscape Conservation Cooperatives do.

Answer: Landscape Conservation Cooperatives (LCCs) are self-directed partnerships focused on conservation at a landscape scale.

LCCs provide science support for management activities that address a variety of broad-scale land use pressures and landscape-scale stressors – including but not limited to climate change – that affect wildlife, water, land, and cultural resources. The LCCs seek to identify best practices, connect efforts, identify gaps, and avoid duplication through improved conservation planning and design. Partner agencies and organizations coordinate with each other through LCCs while working within their existing authorities and jurisdictions.

The 22 LCCs collectively form a national network of land, water, wildlife, and cultural resource managers, scientists, and interested public and private organizations – within the US and across our international borders – that share a common need for scientific information and interest in conservation.

Simpson Q22: How are they funded through BLM's budget?

Answer: The BLM is currently participating in 11 western LCCs and is funding projects through multiple subactivities that directly and indirectly support the work of the LCCs. For example, the BLM is currently funding 10 Rapid Ecoregional Assessments (REAs) covering over 600 million acres of public and non-public lands in 7 separate LCCs. These REAs will synthesize existing information (including non-BLM data) about resource conditions and trends; highlight and map areas of high ecological value; gauge potential risks from stressors such as climate change; and establish landscape-scale baseline ecological data to gauge the effect and effectiveness of future management actions. The BLM is also funding the development of a monitoring framework for the 23-million-acre National Petroleum Reserve - Alaska (NPR-A) that will assist the work of the Arctic LCC.

Simpson Q23: What are their performance measures?

Answer: There are two performance measures for LCCs: The number of LCCs formed within a given quarter in Fiscal Years 2010, 2011, and 2012, and the number of LCCs that have completed a management/operating plan within a given quarter in Fiscal Years 2010, 2011 and 2012.

Simpson Q24: What accomplishments and goals are they meeting?

Answer: The LCCs are helping the Department accomplish its overall climate change high-priority goal: By September 30, 2013, for 50 percent of the Nation, the Department of the Interior will have identified resources that are particularly vulnerable to climate change and will implement coordinated adaptation response actions.

Western Oregon (O&C Lands)

Secretary Salazar recently announced plans to develop new Resource Management Plans for the BLM-managed forests in western Oregon, including the O&C lands. The last resource management plan, completed in 2008 and withdrawn by the Secretary in 2009, took approximately five years and $18 million to develop. The only deficiency identified by the Secretary was a lack of formal ESA Section 7 consultation by the BLM.

Simpson Q25: Why doesn't the BLM initiate consultation on those plans rather than spending tens of millions to develop new plans?

Answer: The BLM Oregon is initiating revisions to its existing resource management plans (RMP) which guide the uses of 2.6 million acres of land in western Oregon administered by the BLM. The purpose of the revisions is to determine how the BLM should manage these lands to accomplish broad policy objectives, which include furthering the recovery of threatened and endangered species; providing clean water; restoring fire adapted ecosystems; producing a sustained yield of timber products; and providing for recreation opportunities. The BLM's revised RMPs address three main issues: the recent U.S Fish and Wildlife Service recovery plan (2011) and proposed critical habitat designation (March 2012) for the Northern Spotted Owl; new science information related to forest health and resiliency; and the socioeconomic needs of western Oregon communities. This new information is best analyzed and used to inform decisions as part of a land use planning process where we can comprehensively examine the mix of land use allocations and planning decisions.

Simpson Q26: Is the Department going to draft a new plan for the O&C lands? If so, does the BLM have the budget to complete this? What is the timeline for a new plan?

Answer: The BLM intends to revise Resource Management Plans for six Western Oregon districts. The Bureau has placed a high priority on working on these plans and is allocating available funds from the appropriated budget. The President's proposed budget for Fiscal Year 2013 includes funds for planning in Western Oregon. The BLM Oregon has initiated the planning effort and anticipates a completion date in late 2015.

Simpson Q27: While the BLM's FY 2013 budget request for the O&C lands includes an increase of $1.5 million for a number of new initiatives, it does not request the funding necessary to develop new resource management plans. How would the BLM develop resource management plans without additional funding while maintaining the critical timber sale program in western Oregon?

Answer: The President's budget for FY2013 proposes an increase in the base of $1.5 million with a corresponding increase in timber production of 4 million board feet (MMBF) in timber sale volume offered, from 193 MMBF in 2012 to a total of 197 MMBF in 2013. At this stage in the planning process, the FY 2013 request accurately reflects the amount required for early plan revision.

Oil & Gas

In the FY13 budget you propose higher inspection fees than proposed in FY12. If Congress approved this, the BLM would have an additional $10 million for inspections.

Simpson Q28: Why did the proposed fee go up and what is the logic behind this?

Answer: The proposed inspection and enforcement fees totaling $48 million would largely replace existing appropriated dollars (approx. $38 million) that currently fund the inspection and enforcement activity while providing an additional funding increment ($10 million) to improve the BLM's I&E capabilities without the need for an increase in appropriated funds.

This proposal mirrors similar fees Congress has enacted for the inspection activities of the Bureau of Safety and Environmental Enforcement (BSEE - formerly part of MMS) for Outer Continental Shelf facilities. The net increase of $10 million is aimed at correcting deficiencies identified by the GAO in its February 2011 report, which designated Federal management of oil and gas resources, including production and revenue collection, as high risk. The BLM will also complete more environmental inspections to ensure requirements are being followed in all phases of development.

Charging inspection fees is consistent with the principle that users of the public lands should pay for the cost of both authorizing and oversight activities. In addition to being comparable to current offshore inspection fees, this proposal is also consistent with cost-recovery fees charged for other uses of Federal lands and resources.

Simpson Q29: Given the numerous proposals in the budget for new oil & gas fees combined with the royalty rate increase, current taxes, bids and bonuses, has BLM analyzed the overall comprehensive impact of an increased royalty on the industry?

Answer: There have been no specific studies of the impacts of an increase in the standard onshore royalty rate (the specifics of which have not yet been determined) as it relates to other oil and gas budget proposals, such as fees for inspecting oil and gas operations and the non-producing oil and gas lease fee.

It is worth noting that the non-producing lease fee is intended to encourage development of oil and gas leases. To the extent it is successful in doing so, the overall economic impacts would be positive, resulting in higher domestic production and increased royalty revenues which are shared with the States and which contribute significantly to Federal government revenue collections. Likewise, the intent of any royalty rate increase would be to improve the return to taxpayers from this activity, so the Administration will carefully consider the various potential impacts from this change as it evaluates specific options.

Simpson Q30: Will this discourage domestic development on public lands?

Answer: The BLM's recent lease sales suggest that there is significant interest in domestic development on public lands. In fiscal year 2011, the BLM held 28 lease sales for onshore parcels, selling 1,253 parcels comprising 880,895 acres and generating nearly $241 million in total revenue for American taxpayers. This figure includes $66 million received in a record lease sale for BLM Montana-Dakotas, the second most successful onshore lease sale in the history of the BLM. The proposed I&E fees are very small compared to the value of oil and gas produced on Federal lands, so the effect of the fees on the incentive for companies to produce these resources is expected to be negligible. As noted in the previous response, the Administration

will carefully consider the various potential impacts from a royalty rate change as it evaluates specific options.

Simpson Q31: Could this lead to the US losing many of the small 'mom and pop' businesses that bid on and develop onshore leases?

Answer: On average, the fees are expected to represent a very small share of the overall cost of producer operations, and will be very small relative to the value of the oil and gas produced from those operations. However, it is also worth noting that the proposed inspection and enforcement fees are tiered in such a way that producers with a smaller number of leases and wells per lease will pay less than producers with a larger number of leases and wells per lease. For example, a producer with one lease with five wells would pay a $1,450 inspection fee, while a producer with one lease with over fifty wells would pay $6,800.

Collection of these fees is consistent with the principle that users of the public lands should pay for the cost of both authorizing and oversight activities. These fees are similar to fees now charged for offshore inspections, and to numerous cost-recovery fees charged for other uses of Federal lands and resources.

Simpson Q32: When will the BLM release its draft fracking regulations?

Answer: The proposed rule was published in the Federal Register on Friday, May 11, 2012, and is available for public comment until July 10, 2012.

Public Domain Forestry

The BLM has proposed to reduce the Public Domain Forest Management program by almost 40%, which will lead to reducing timber FTEs by 40%, reducing timber products offered by 60%, reducing biomass sales by 50%, reducing the number of stewardship contracts by 80%, and reducing the acres treated by 75%.

Simpson Q33: How does the BLM justify those levels of reductions in light of management needs, fire potential, susceptibility to bark beetle epidemics, and the importance to timber outputs to businesses and individuals?

Answer: In order to maintain funding for programs at the constrained request levels, difficult choices were made during the formulation of the FY2013 budget. The BLM is continually exploring ways to achieve efficiencies.

Simpson Q34: Has the BLM evaluated the effect of the proposed reduction on local businesses and local residents in Wyoming or other Public Domain Forestry States?

Answer: Development of the President's FY 2013 Budget Request required many difficult choices and tradeoffs. The Department of the Interior budget continues the third year of aggressive efficiencies to achieve $207 million in administrative savings from 2010 to 2013. The Department's budget also reduced funding for several programs in the BLM, including the

Public Domain Forestry program. We are aware that some of these budget decisions may have some impacts to local economies.

Mining

The Department's proposed 2013 budget includes $86 million "to maintain capacity to review and permit new renewable energy projects on federal lands and waters, with the goal of permitting 11,000 megawatts of new solar, wind and geothermal electricity generation capacity on DOI-managed lands by the end of 2013." Yet, the budget does nothing to encourage the domestic production of minerals that are critical to renewable energy technologies. For example, a single 3MW wind turbine needs 335 tons of steel, 4.7 tons of copper, 3 tons of aluminum, 700+ pounds of rare earths as well as significant amounts of zinc and molybdenum.

Simpson Q35: How do you reconcile the BLMs significant investments in renewable energy on public lands with the failure to address barriers to domestic development of minerals that are the building blocks of wind, solar and other renewable technologies?

Answer: The BLM has a leading role in the Administration's goals for a new energy frontier, based on a rapid and responsible move to large-scale production of solar, wind and geothermal energy. The BLM also manages Federal onshore oil and gas, minerals and coal, including critical minerals needed for many industries. For all of these resources, the BLM has an obligation to ensure that the potential impact to water, air, and other natural resources are analyzed and properly addressed before the resources are developed. Not all lands with energy or mineral potential are appropriate for development, but the BLM works with permittees and applicants to ensure that proposed projects meet all applicable environmental laws and regulations.

For minerals, the Federal agencies have established systems that ensure adequate reviews of proposals to prospect, explore, discover, and develop valuable minerals on Federal mineral rights. Coordination between Federal land management agencies and regulatory and permitting agencies is encouraged to ensure efficient and timely review of any exploration or mining plans, including the analysis of the environmental impacts required by the National Environmental Policy Act and any similar laws.

Simpson Q36: The length of time it takes to get a permit to mine on BLM land in the United States is generally twice as long as in other major mining countries with similar environmental standards. What steps does the BLM intend to take to make permitting more efficient and the US mining industry more competitive?

Answer: The BLM processes a plan of operations for exploration and mining as expeditiously as possible. In 2011 the BLM exploration and mining plan processing time averaged 22 months. In an ongoing effort to increase efficiency the BLM will continue working with State agencies to streamline multiple agency processes and minimize the time necessary to authorize exploration and development activities.

Simpson Q37: Why does the BLM continue to defend the multi-month 14 step Federal Register process for review of notices related initiation and preparation of environmental analyses?

Answer: While the BLM is taking steps to streamline the review and processing of *Federal Register* notices, we remain committed to providing opportunities to involve the public in the NEPA process. In some cases, notices announcing the BLM's intent to prepare environmental analyses or notices announcing the availability of environmental analyses have cleared the Washington Office review process in as little as a few weeks. Recognizing the importance of these notices, we will continue to seek efficiencies in the review process.

Simpson Q38: The budget contains a proposed tax, applicable to mining operations on private and public lands, that goes beyond a tax on the amount of minerals removed from the ground to a tax on dirt, rock and other materials moved during the extraction process. The new proposed tax is estimated to cost the mining industry $180 million/year.

What steps should the Department/BLM take to reduce our reliance on foreign sources of minerals that are critical to renewable energy and could be produced in the United States?

Answer: In general, the Federal government works to foster and encourage private enterprise's development of the Nation's mineral resource endowment. In pursuit of this objective, Federal agencies, including BLM, have established systems that ensure adequate reviews of proposals to prospect, explore, discover, and develop valuable minerals on public lands.

With regard to the introductory statement, the 2013 Budget proposes to address abandoned hardrock mines across the country through a new abandoned mine lands (AML) fee on hardrock production. Hardrock AML sites pose a serious threat to human health and safety and the environment, and as a matter of fairness, the Administration believes that industry, which has benefitted financially from hardrock mining in the United States, should bear the cost of remediating and reclaiming these sites for which it was ultimately responsible for creating. This is the same basis for the existing AML fee that is levied on the coal industry to support the reclamation of abandoned coal sites. The legislative proposal will levy an AML fee on all uranium and metallic mines on both public and private lands. The proposed fee will be charged per volume of material displaced after January 1, 2013. The receipts will be distributed by BLM through a competitive grant program to restore the most hazardous hardrock AML sites on both public and private lands using an advisory council comprised of representatives from Federal agencies, States, Tribes, and nongovernment organizations. The advisory council will recommend objective criteria to rank AML projects to allocate funds for remediation to the sites with the most urgent environmental and safety hazards. The proposed hardrock AML fee and reclamation program would operate in parallel to the coal AML reclamation program as part of a larger effort to ensure the Nation's most dangerous abandoned coal and hardrock AML sites are addressed by the industries that created the problems.

Questions for the Record from Mr. Flake

Increase in Grazing Fees

The BLM budget would enact a pilot program that would impose a 1 dollar per AUM fee on all permittees starting in 2013.

Flake Q1: Was this nearly 75 percent increase in grazing fees carefully contemplated prior to the Fiscal Year 2013 budget submission, or is it merely a spur-of-the-moment plan to backfill the cuts made to BLM's budget for this coming year?

Answer: The current grazing fee remains unchanged. The Budget proposes a Permit Administration Fee by including appropriations language for a three-year pilot project to allow the BLM to recover some of the costs of issuing grazing permits/leases on BLM lands. The BLM would charge a fee of $1 per Animal Unit Month, which would be collected along with current grazing fees. The goal of the Permit Administration Fee is to recover some of the cost of processing grazing permits/leases from the parties (permittees) who are economically benefitting from use of the public lands and resources. This is the same concept as used in the Oil and Gas program and Rights-of-Way program, where the users of the public lands pay a fee for the processing of their permits and related work. The BLM will use collections from the fee to assist in processing pending applications for grazing permit renewals and cover other costs related to administering grazing permit-related activities, such as monitoring and land health evaluations. During the period of the pilot, the BLM would work through the process of promulgating regulations for the continuation of the Permit Administration Fee as a cost recovery fee after the pilot expires.

Flake Q2: During the Fiscal Year 2013 budget hearing, Director Abbey distinguished between the grazing fee currently applied to permittees and the proposed grazing administrative fee. Could you please detail the difference between these two fees (e.g., what are they collected for, who receives them, what are they used for)?

Answer: Consistent with cost recovery fees in the Oil and Gas and Rights-of-Way programs, the proposed Permit Administration Fee would allow the BLM to recover a portion of the cost of issuing grazing permits/leases on BLM lands. This fee will assist the BLM in processing pending applications for grazing permit renewals and capture other costs related to administering grazing permit-related activities.

The current grazing fee, which charges permittees for the use of forage, is $1.35 per AUM. The formula for calculating the fee was established by Congress in the 1978 Public Rangelands Improvement Act, and continued under a presidential Executive Order issued in 1986. The receipts from these fees are distributed according to legislative requirements. The funds are returned in part to the U.S. Treasury, in part to State governments and counties where the grazing takes place, and in part funds a separate BLM-managed program called the Range Improvement Program. Range Improvement funds are used for on-the-ground projects intended to improve land health and resource conditions. Range Improvement funds are not used for renewing or

transferring grazing permits and leases or other administrative activities relating to the grazing program.

Flake Q3: Please detail the authority by which the Department is raising grazing fees.

Answer: The BLM is not raising the current grazing fee. Rather, the BLM is requesting appropriations language that will allow the BLM, beginning in 2013, to collect a Permit Administration Fee, under a pilot program lasting for three years. During the three-year time period, the BLM will develop regulations under its current authorities that will provide for the continuation of this Permit Administration Fee as a cost recovery. The BLM will use collections of the Permit Administration Fee to assist in processing pending applications for grazing permit renewals and cover other costs related to administering grazing permit-related activities, such as monitoring and land health evaluations.

Flake Q4: The testimony provided for the Fiscal Year 2013 budget hearing indicated that the grazing fee will be initially a pilot program during which the "BLM would work through the process of promulgating regulations for the continuation of the grazing administrative fee as a cost recovery fee after the pilot expires."

Please explain the use of the term "pilot project" in connection with the increased grazing fee.

Answer: This "pilot project" is a test or trial period. The BLM requested Congress provide authority to collect this fee for a three year test period. During this time, the BLM will develop regulations for recovery of costs to process grazing permits.

Flake Q5: During the Fiscal Year 2013 budget hearing, Director Abbey said "it takes us entirely too long to issue a permit."

Please detail steps that are being taken to reduce the amount of time grazing permit processing is taking. Is the increased grazing fee associated with any of these steps and, if so, is there an estimated amount of time that permittess can expect the process to be reduced by?

Answer: Processing permits is a multi-year process to collect monitoring data, conduct land health evaluations, conduct NEPA, conduct Section 7 ESA consultation if needed, and issue the permit. The 2012 general provision related to grazing permit renewals specifies that a permit issued as a result of a grazing preference transfer can be issued for the remaining years of the pre-transferred permit, if there is no change in the mandatory terms and conditions required. This will significantly streamline the work process on approximately 10 to 15 percent of BLM's annual permit workload, and allow the BLM to process permits originally scheduled to expire. This will reduce the permit renewal workload in 2013 by about 700 permits. It will also allow the BLM to focus on the most environmentally sensitive allotments.

Focusing on the most environmentally sensitive allotments will increase attention on land health assessments and quantitative data collection; improve the usefulness of both the RMP/EIS and site-specific NEPA analyses; and result in grazing management decisions guiding land health solutions for the future. This strategy will assist in ensuring that the backlog of unprocessed

permits consists of the least environmentally-sensitive allotments that are more custodial in nature and/or are already meeting land health standards.

The goal of the Permit Administration Fee is to recover some of the cost of completing grazing permit renewals, monitoring of grazing allotments, and strengthening the BLM's environmental documents.

Shooting on Federal Lands

The issue of recreational shooting on federal lands, notably at national monuments managed by BLM is one that impacts many Arizonans. Last November, the Secretary issued a directive that made two things very clear: the Department will support recreational shooting as a safe and legitimate use of public land and that the BLM ought to ensure that it facilitates opportunities for that activity in management of public lands.

Flake Q6: The justification for the proposed bans 600,000 acre in two national monuments in the state of Arizona according to land planning documents is that recreational shooting is a danger to every living or inanimate object within the boundaries of these desert monuments. How is one to come away from that with any other than the conclusion that, for some at least, recreational shooting is simply inconsistent with public lands management?

Answer: Through the BLM's land use planning process, management decisions on uses of the public lands are informed by public input and extensive analysis. When lands are closed to recreational shooting, those restrictions are often implemented to comply with State and local public safety laws and ordinances, or are implemented at the request of local communities or adjacent property owners. In extremely limited circumstances, the BLM must restrict recreational shooting to ensure public safety or protect fragile resources. The preferred action in the Ironwood National Monument is to close the area to recreational shooting.

However, in most cases, recreational shooting is consistent with multiple-use activities and management efforts. The BLM recognizes that recreational target shooting is an important recreational resource that, with a comprehensive suite of administrative actions and mitigation measures, can be consistent with the protection of national monument objects as well. In the case of the Sonoran Desert National Monument, a final decision has not been made. However, BLM is looking at developing and implementing stipulations with the Arizona Department of Fish & Game to assure the public's safety without closing the area to recreational shooting.

Flake Q7: An oft cited rational for the proposed ban on recreational shooting on a considerable number of acres in two national monuments in the state of Arizona is the potential for damage to protected species. To what extent are protections afforded by existing laws and regulations taken into account when the Bureau considers closing areas to recreational shooting?

Answer: The BLM considers all applicable laws, regulations, and policies when developing resource management plans. In some instances, legal uses of public lands can inadvertently cause resource damage, depending on the intensity of the use and other factors. One of the

primary reasons the BLM develops allowable use restrictions and other management prescriptions is to avert resource damage.

Solar Power

Your testimony indicated that you are "working to approve additional large-scale solar energy projects and complete a draft Solar Programmatic Environmental Impact Statement to provide for landscape-scale siting of solar energy projects on public lands." Started in December of 2010, nearly a year later the Department issues a supplemental EIS to address some additional issues.

Flake Q8: What is the time from for the Department to finalize the solar programmatic EIS? What will be the practical implications of this endeavor for western states?

Answer: DOI is scheduled to release the Final Solar Programmatic Environmental Impact Statement (Solar PEIS) by late July or early August, 2012 and sign the Record of Decision in September.

The Solar PEIS would establish a solid foundation for long-term, landscape-level planning for solar-energy development on public lands that involves States, local governments, and Tribes. The Solar PEIS will help facilitate better, smarter siting of utility-scale solar projects that would serve to generate clean energy that avoids or minimizes conflicts with important wildlife, cultural and historic resources, while providing economic and employment opportunities to local communities. The preferred alternative in the Solar PEIS identifies and prioritizes development areas called solar energy zones (SEZs) in locations within the six-state study area that are best suited for utility-scale solar energy development (i.e., high resource value and low [or limited] resource and/or environmental conflicts). Under the preferred alternative, BLM would also develop incentives for solar developers who site projects in solar energy zones − offering reduced permitting times – but maintain a sufficiently flexible variance process to allow development of well-sited projects outside of zones.

Hydraulic Fracturing Regulations and Tribal Involvement

The Bureau is moving forward with hydraulic fracturing regulations, which are under review by the Office of Management and Budget.

Flake Q9: Please describe the process by which you have taken to consult with the Tribes on these draft regulations.

Answer: As explained more fully in response to the following question, BLM has undertaken an extensive outreach process with Tribes in the development of the hydraulic fracturing rule. The BLM has engaged and continues to engage Tribes extensively in an ongoing effort designed to provide Tribes with significant opportunities to provide input into the development of the rule. In conducting this outreach process, BLM identified appropriate tribal governing bodies and individuals from whom to seek input. This included all Tribes that are currently receiving oil and gas royalties and also all Tribes that may have had traditional surface use.

Flake Q10: What sort of process did you go about informing the Tribes that you were holding a consultation on a potential rule that could have implications on their ability to produce oil and natural gas on their lands and what feedback have you received since the consultations took place?

Answer: As part of the hydraulic fracturing rulemaking outreach process, BLM identified appropriate tribal governing bodies and individuals from whom to seek input. A broad and inclusive interpretation of appropriate tribal interests was used in order to gain wide-ranging input from many sources that could be affected by the proposed hydraulic fracturing rule. The BLM identified all Tribes that are currently receiving oil and gas royalties and also included all Tribes that may have had traditional surface use.

Earlier this year, BLM conducted regional meetings with Tribes on the hydraulic fracturing proposal and offered to hold follow-up meetings with any Tribe that desires to have an individual meeting. The BLM held four regional tribal meetings, to which over 175 tribal entities were invited. These meetings were held in Tulsa, Oklahoma on January 10, 2012; in Billings, Montana on January 12, 2012; in Salt Lake City, Utah on January 17, 2012; and in Farmington, New Mexico on January 19, 2012. Eighty-four tribal members representing 24 Tribes attended the meetings. BLM participation included both senior policy makers from the Washington Office as well as the local line officers that have built the relationship with the Tribes in the field. These four informational meetings were a starting point for obtaining tribal input. All meetings ended with an emphasis to continue the dialogue, using the established local relations with the BLM field office managers.

In these sessions, tribal representatives were given a discussion draft of the hydraulic fracturing rule to serve as a basis for substantive dialogue about the hydraulic fracturing rulemaking process. The BLM asked the tribal leaders for their views on how a hydraulic fracturing rule proposal might affect Indian activities, practices, or beliefs if it were to be applied to particular locations on Indian and public lands. A variety of issues were discussed, including applicability of tribal laws, validating water sources, inspection and enforcement, wellbore integrity, and water management, among others. One of the outcomes of these meetings is the proposed requirement in this rule that operators certify that operations on tribal lands comply with tribal laws.

Additional individual meetings with tribal representatives have taken place since January. The BLM has met with the United South and Eastern Tribes (USET) to provide information to the 25 assembled member Tribes regarding hydraulic fracturing and the effect that the rule may pose to the way oil and gas activities are authorized on their lands. In March and April the BLM met with the Coalition of Large Tribes (COLT) and the Mandan, Hidatsa and Arikara Nation (MHA Nation) to discuss hydraulic fracturing. In the near future the BLM will be meeting with representatives from several Tribes in Montana including the Blackfeet, Chippewa Cree, Fort Belknap, and Flathead regarding hydraulic fracturing. On May 11, 2012 the BLM sent an invitation for continued outreach and dialogue to exchange information on the development of the hydraulic fracturing rule. These regional meetings are planned for early June in Salt Lake City, Utah; Farmington, New Mexico; Tulsa, Oklahoma; and Billings, Montana. The BLM will

continue to keep multiple lines of communication open during the tribal outreach process.

The information already gathered and that we continue to gather from tribal interests is an important factor in defining the scope of acceptable hydraulic fracturing rule options. The tribal outreach sessions will continue to seek tribal views regarding the potential impacts of hydraulic fracturing on trust assets and traditional tribal activities. Our efforts include outreach to these Tribes through letters, hosting outreach meetings, and encouraging further dialogue as needed, especially using the established local relationships with the resident BLM field office managers.

Questions for the Record from Ms. Lummis

Public Domain Forest Management

According to the BLM Budget Justification (page VIII-45-50), the Public Domain Forest Management program implements forest restoration projects to improve forest health, salvages dead and dying timber, and provides personal use and commercial forest products. Those are all important objectives when so many of our federal forest acres are overstocked and at risk from catastrophic fires and the insect epidemics that are devastating our western forests. I realize the Public Domain Forest Management program is not a large program, but nearly all of the volume offered is sold, and is important to sustaining our forest products companies. So, I am disappointed that the BLM has proposed to heavily cut the Public Domain Forest Management program, by reducing funding by almost 40%, which will lead to reducing timber FTEs by 40%, reducing timber products offered by 60%, reducing biomass sales by 50%, reducing the number of stewardship contracts by 80%, and reducing the acres treated by 75%.

Lummis Q1: Have you evaluated the effect the proposed cuts would have on forest health within your jurisdiction? If so, what are the results? If not, why not?

Answer: The Public Domain Forest Management program conserves, restores, and sustainably manages over 58 million acres of forests and woodlands in 12 western states, including Alaska.

The Public Domain Forest Management program coordinates with other BLM programs and partner organizations to achieve integrated vegetation management at the landscape scale. Foresters prescribe treatments to create species-diverse, multi-aged forests, with proper stocking densities to promote resilience in response to environmental stresses including changes in climate, insect and disease attack, and wildfires.

In 2013 the Public Domain Forest Management program will reduce program capacity and outputs. However, emphasis will remain on using sales contracts to achieve desired future conditions on the 58 million acres of forests and woodlands in the Public Domain. The BLM will offer 12 MMBF of timber and other forest products for sale, offer seven stewardship contracts for sale, restore and treat through sales 5,500 acres, evaluate and treat 4,000 acres of forest and woodlands, and issue 12,000 permits to individuals and small businesses for fuelwood and non-timber forest products.

Lummis Q2: Have you evaluated the effect the proposed cuts would have on local businesses and residents in Wyoming or other Public Domain Forestry States? If so, what are the results? If not, why not?

Answer: Development of the President's FY 2013 Budget Request required many difficult choices and tradeoffs. The Department of the Interior budget continues the third year of aggressive efficiencies to achieve $207 million in administrative savings from 2010 to 2013. The Department's budget also reduced several programs in the BLM, including the Public

Domain Forestry program. We are aware that some of these budget decisions may have some impacts to local economies.

Hydraulic Fracturing Regulations

The BLM's Hydraulic Fracturing regulations, as proposed, would result in lengthy delays in public lands energy development projects. While this is a challenge for public lands states, the proposed regulations are an even bigger burden on Tribes. The proposed regulations would, by some estimates, increase the length of time for approval to drill to as much as 4 years.

Lummis Q3: Did you undergo the statutorily required tribal consultations before promulgating rules that would affect tribes? If so, which tribes did you consult and what were the results? If not. Why not?

Answer: As part of the hydraulic fracturing rulemaking outreach process, BLM identified appropriate tribal governing bodies and individuals from whom to seek input. A broad and inclusive interpretation of appropriate tribal interests was used in order to gain wide-ranging input from many sources that could be affected by the proposed hydraulic fracturing rule. The BLM identified all Tribes that are currently receiving oil and gas royalties and also included all Tribes that may have had traditional surface use.

Earlier this year, the BLM conducted regional meetings with Tribes on the hydraulic fracturing proposal and offered to hold follow-up meetings with any Tribe that desires to have an individual meeting. The BLM held four tribal meetings, to which over 175 tribal entities were invited. These meetings were held in Tulsa, Oklahoma on January 10, 2012; in Billings, Montana on January 12, 2012; in Salt Lake City, Utah on January 17, 2012; and in Farmington, New Mexico on January 19, 2012. Eighty-one tribal members representing 27 Tribes attended the meetings. BLM-participation included both senior policy makers from the Washington Office as well as the local line officers that have built the relationship with the Tribes in the field. These four informational meetings were a starting point for obtaining tribal input. All meetings ended with an emphasis to continue the dialogue, using the established local relations with the BLM field office managers.

In these sessions, tribal representatives were given a discussion draft of the hydraulic fracturing rule to serve as a basis for substantive dialogue about the hydraulic fracturing rulemaking process. The BLM asked the tribal leaders for their views on how a hydraulic fracturing rule proposal might affect Indian activities, practices, or beliefs if it were to be applied to particular locations on Indian and public lands. A variety of issues were discussed, including applicability of tribal laws, validating water sources, inspection and enforcement, wellbore integrity, and water management, among others. One of the outcomes of these meetings is the proposed requirement in this rule that operators certify that operations on tribal lands comply with tribal laws.

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the way oil and gas activities are authorized on their lands. In March and April the BLM met with the Coalition of Large Tribes (COLT) and the Mandan, Hidatsa and Arikara Nation (MHA Nation) to discuss hydraulic fracturing. In the near future the BLM will be meeting with representatives from several Tribes in Montana including the Blackfeet, Chippewa Cree, Fort Belknap, and Flathead regarding hydraulic fracturing. On May 11, 2012 the BLM sent an invitation for continued outreach and dialogue to exchange information on the development of the hydraulic fracturing rule. These regional meetings are planned for early June in Salt Lake City, Utah; Farmington, New Mexico; Tulsa, Oklahoma; and Billings, Montana. The BLM will continue to keep multiple lines of communication open during the tribal outreach process.

The information already gathered and that we continue to gather from tribal interests is an important factor in defining the scope of acceptable hydraulic fracturing rule options. The tribal outreach sessions will continue to seek tribal views regarding the potential impacts of hydraulic fracturing on trust assets and traditional tribal activities. Our efforts include outreach to these Tribes through letters, hosting outreach meetings, and encouraging further dialogue as needed, especially using the established local relationships with the resident BLM field office managers.

Lummis Q4: Delays for energy development on tribal lands are legion because the BIA and the BLM require duplicative approvals. Did you work with the BIA in development of these regulations? What was the outcome of those discussions?

Answer: The BLM worked with the BIA to develop the proposed hydraulic fracturing rule. The resultant effect is more cooperation with BIA in addressing issues that may be of concern to the Tribes. For example, the Tribes wanted the rule to clearly distinguish between Federal and Indian lands. The Tribes also asked that the rule preserve the tribal governing authority. The proposed rule clearly addresses these issues.

On February 15, the BLM submitted draft regulations to OMB for interagency review. The draft regulations were revised following the interagency review and initial tribal consultation. A proposed rule incorporating the feedback received to date was published in the Federal Register on May 11, 2012 and initiated a 60 day comment period, during which feedback from industry, State, local and tribal governments, individual citizens and all other interested parties will be solicited.

Questions for the Record from Mr. Pastor

Bureau of Land Management consultations with Indian Tribes

We are aware that much of the potential for both renewable energy production and energy transmission will include enhanced activities on lands of cultural or spiritual significance to Indian Tribes. There is strong potential that, in the pursuit of such projects, sacred sites or ancient artifacts could be discovered or uncovered.

Pastor Q1: What steps has BLM taken to develop a process by which consultation with Indian Tribal governments occurs at the outset of any such initiative? What is BLM doing to ensure that there is adequate timing necessary for Tribes and the Federal government to have full consultation in this planning process?

Answer: Since conclusion of the first series of renewable energy priority projects in late 2010, the BLM has been working intensively with the Advisory Council on Historic Preservation (ACHP) in developing a new set of Best Practices for satisfying the project review requirements of Section 106 of the National Historic Preservation Act and corresponding tribal consultation to better tailor consultation and assessments to the unique nature of large infrastructure projects. These Best Practices were informed by a series of meetings with tribal leaders in early 2011 and were implemented immediately. These Best Practices were further reassessed for the 2012 projects in recent months. A cornerstone of the Best Practices is the initiation of tribal consultation at the very early stages of an application for project right-of-way by the project proponent.

Pastor Q2: When a project has begun on lands of historic or cultural significance to Tribes and items of significance are discovered, what procedures, processes, or methodology has BLM established to work with the developer and Tribal governments to resolve any findings? What is BLM doing to ensure that there is adequate timing necessary to adjudicate any such issues that arise?

Answer: Both the Section 106 compliance process, as spelled out in the Advisory Council on Historic Preservation's regulations (36CFR800), and the tribal consultation process are designed as deliberative processes. The deliberative approach is based upon iterative exchanges of information allowing for discussion of issues surrounding proposed projects, as tribal concerns become clearer and new discoveries are made through the project review process.

Pastor Q3: Does BLM have adequate funding to establish these procedures? Does BLM have the personnel necessary to oversee the administration of the processes described above?

Answer: The BLM has been readjusting priorities and workforce allocations to better monitor the processes and working with ACHP and others in making improvements.

Hearing Questions for the Record (QFR) Prepared for the Department of Interior, Bureau of Ocean Energy Management/Bureau of Safety & Environmental Enforcement

Hearing: Bureau of Ocean Energy Management/Bureau of Safety & Environmental Enforcement FY 13 Budget Oversight Wednesday, March 7, 1:00pm Rayburn B308

Questions for the Record from Chairman Simpson

Hiring Inspectors & Engineers (BSEE)

Simpson Q1: My understanding is that the Department issues inspection fees regardless of if there are actual inspections. If the agency can't hire all the inspectors needed this year, how are those inspection fees used?

Answer: Pursuant to the FY 2012 Department of the Interior, Environment, and Related Agencies Appropriations Act, inspection fees are collected for all facilities, excluding drilling rigs, above the waterline in place at the start of the Fiscal Year. The Outer Continental Shelf Lands Act requires the bureau to provide for an annual scheduled inspection of all oil and gas operations on the outer continental shelf. The annual inspection examines all safety equipment designed to prevent blowouts, fires, spills, or other major accidents. Inspection fees for drilling rigs are collected on a per-inspection basis.

In addition to hiring inspectors, BSEE is also hiring engineers and other disciplines that will support inspection and permitting activities, primarily in the bureau's district offices. The bureau is applying fees to support initial costs associated with new hires including background investigations, computer equipment, furniture, and vehicles. In addition, as staffing increases, the bureau is funding other requirements such as the leasing of additional helicopters and provision of specialized training.

Simpson Q2: For this fiscal year, BSEE has stated its desired number of engineers is 228. The agency currently has 133.

How will BSEE hire the additional 95 engineers by the end of the fiscal year?

Answer: As of January 2012, BSEE employed 163 engineers across all disciplines. BSEE is committed to continuing its aggressive recruiting strategies with the goal of filling as many current openings as possible with qualified candidates by the end of the Fiscal Year. BSEE and BOEM have jointly initiated a targeted recruiting campaign

nationwide, which will include analyzing methods for recruiting hard-to-fill positions, designing materials in various media to promote employment with the bureaus, and supporting current recruitment activities such as career fairs. Both BOEM and BSEE websites will have an Employment Opportunities feature designed to attract potential candidates. Each bureau has a recruitment team that is targeting entry and mid-level engineers and scientists by visiting universities, their engineering departments, and university-sponsored conferences. Representatives from these teams have participated in various events held at universities and developed professional contacts with the engineering department heads.

Additionally, continued utilization of compensation flexibilities and recruitment strategies has helped to attract engineers and inspectors. These strategies include offering advanced pay grade steps to applicants with superior qualifications, repayment of student loans, relocation payments, exceptional benefits packages, additional training, opportunities for limited telework, and an overall worker and family-friendly culture. Additionally, the bureaus expect the recently implemented special salary rate authority provided by Congress for fiscal years 2012 and 2013 will help attract highly qualified candidates to fill these essential positions. Position advertisements are being placed in petroleum journals, scientific magazines and newspapers in order to increase the applicant pool.

Simpson Q3: BSEE does not state the type of engineers who will be hired—i.e. structural, environmental or petroleum. Why is this?

Answer: BSEE anticipates that approximately 82% of our engineering positions identified through FY 2012 will be petroleum engineers. The remaining 18% are a mix of other engineering categories, including engineering technicians (7%); structural engineers (5%); general engineers (5%); and other engineering disciplines (civil, mechanical, environmental; 1%). These percentages may change as the bureau assesses its performance and future requirements.

Simpson Q4: Has BSEE used the OPM hiring authority that was included in the FY12 Omnibus Appropriations Act yet?

Answer: BSEE has developed the necessary framework to establish the special salary rate and has recently implemented the higher minimum rates of pay for the mission critical occupations of Petroleum Engineers, Geologists, and Geophysicists in the Gulf of Mexico Region. The bureau expects the authority provided by Congress for fiscal years 2012 and 2013 will help attract highly qualified candidates to fill essential positions.

Simpson Q5: If not, when will you use this authority?

Answer: BSEE has developed the necessary framework to establish the special salary rate and has recently implemented the higher minimum rates of pay for the mission critical occupations of Petroleum Engineers, Geologists, and Geophysicists in the Gulf of

Mexico Region. The bureau expects the authority provided by Congress for fiscal years 2012 and 2013 will help attract highly qualified candidates to fill essential positions.

Simpson Q6: Similarly, BSEE states it needs 155 inspectors and currently has 91—needing an additional 64 in fiscal year 2012. In the FY13 budget request, you state the Bureau needs to hire 63 additional inspectors.

In the next two years, the Bureau plans to hire 127 new inspectors (63+64=127)?

Answer: The bureau currently has about 90 inspectors and plans to increase this total to approximately 155 by the end of 2013. Since the 2010 Deepwater Horizon event, the agency has undergone a significant restructuring, while continuing to address both the immediate needs of ensuring the safety of industry operations and planning for future requirements. The 63 additional FTEs requested in the FY13 budget represent a number of diverse disciplines in BSEE. These include instructors for the newly established National Offshore Training and Learning Center, regulatory specialists, environmental specialists, and engineers. Our program reforms and related workforce structure continue to evolve as we look to the future.

The requested resources in the FY 2013 Budget will allow the bureau to:

- develop and implement new performance-based risk assessment and management regulatory programs;
- supplement risk-management programs with rigorous prescriptive safety and pollution-prevention regulations and standards;
- lead the development and adoption of international standards and best practices involving drilling and production;
- provide adequate funding to support safety and environmental oversight, inspection, and enforcement activities; and,
- provide a much better trained response community equipped with better response tools.

Simpson Q7: Does this mean the total number of inspectors needed by BSEE is 218?--Will this number go up again next year?

Answer: The bureau currently has about 90 inspectors and plans to increase this total to approximately 155 by the end of 2013. Since the 2010 Deepwater Horizon event, the agency has undergone a significant restructuring, while continuing to address both the immediate needs of ensuring the safety of industry operations and planning for future requirements. The 63 additional FTEs requested in the FY13 budget represent a number of diverse disciplines in BSEE. These include instructors for the newly established National Offshore Training and Learning Center, regulatory specialists, environmental specialists, and engineers. Our program reforms and related workforce structure continue to evolve as we look to the future.

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Simpson Q8: Can you explain why you need that many inspectors and what they'll be doing?

Answer: The bureau currently has about 90 inspectors and plans to increase this total to approximately 155 by the end of 2013. Since the 2010 Deepwater Horizon event, the agency has undergone a significant restructuring, while continuing to address both the immediate needs of ensuring the safety of industry operations and planning for future requirements. The 63 additional FTEs requested in the FY13 budget represent a number of diverse disciplines in BSEE. These include instructors for the newly established National Offshore Training and Learning Center, regulatory specialists, environmental specialists, and engineers. Our program reforms and related workforce structure continue to evolve as we look to the future.

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Hiring Inspectors & Engineers (BOEM)

According to the FY13 budget request, it seems that BOEM has almost met its goal for hiring engineers—congratulations.

Simpson Q9: Is there additional personnel that needs to be hired by the Bureau?—or are you fully staffed?

Answer: Going into FY 2012, BOEM had a number of vacancies, and it is working diligently to fill as many of those vacancies as possible before the end of the fiscal year.

BOEM anticipates having sufficient staff to carry out activities planned in FY 2013, as identified in the President's Budget Request.

Simpson Q10: What can we expect from the $3 million increase in funding you've requested?

Answer: The budget proposes a modest increase of $3.3 million, or two percent, above the FY 2012 enacted level. The requested increases reflect careful analysis of the resources needed to develop the bureau's capacity and to execute its functions carefully, responsibly and efficiently. The increases will support renewable energy lease auctions, environmental studies, and fixed costs. Specifically, the requested increases are:

Renewable Energy Auction Support Services (+$1,296,000; +0 FTE). In order to achieve the Secretary's renewable energy goal outlined in the "Smart from the Start" initiative, BOEM must accelerate the auction schedule of potential wind leases. Because it is not yet equipped with the technical support or expertise to manage these auctions, BOEM will contract those services and purchase wind resource data.

Environmental Studies (+$700,000; +0 FTE). The requested increase will enable BOEM to initiate high priority baseline characterization and monitoring studies. With the release of the proposed Five-Year Program, establishing baseline information will become an increasing need to ensure a scientific basis for informed and environmentally responsible policy decisions.

Fixed Costs (+$1,453,000; +0 FTE). Fixed costs in the amount of $1,453,000 are fully funded in this request. These costs include increases needed to support employee pay, changes in Federal health benefits and Worker's Compensation, rent to the General Services Administration, and payments to the Department through its Working Capital Fund.

New Fees on Non-producing Leases (BOEM)

The Department has again proposed a fee of $4 per acre on non-producing leases to encourage development of these leases. Most lessees pay rentals on a lease until that lease starts producing (and generating royalties). In deep water (400 feet and deeper), these rentals escalate each year to encourage development.

In BOEM's testimony, you state you increase the minimum rental in deep water from $37 to $100 per acre. You also include other incentives, such as lease extensions, for early development.

Simpson Q11: If lessees are also paying rentals from the time they have leased the parcel until the parcel either enters into production or is relinquished, what is the difference between a non-producing fee and a rental?

Answer: The fee on non-producing oil and gas leases is a legislative proposal that will further encourage energy production on lands and waters leased for development. A $4.00 per acre fee on non-producing Federal leases on lands and waters would provide an added financial incentive for oil and gas companies to either get their leases into production or relinquish them so that the tracts can be leased to and developed by new parties. The proposed $4.00 per acre fee would apply to all new leases and would be indexed annually.

Simpson Q12: Why then, is the $4 fee per acre necessary?

Answer: In October 2008, the Government Accountability Office issued a report critical of past efforts by Interior to ensure that companies diligently develop their Federal leases. Although the report focused on administrative actions that the Department could undertake, this proposal requires legislative action. This proposal is similar to other non-producing fee proposals considered by the Congress in the last several years. The fee is projected to generate revenues to the U.S. Treasury of $13.0 million in FY 2013 and $783.0 million over ten years.

Simpson Q13: Can't BOEM handle this administratively as you explained in your submitted testimony?

Answer: Consistent with the Obama Administration's *Blueprint for a Secure Energy Future*, BOEM has already implemented significant administrative reforms to ensure fair return to taxpayers and encourage diligent development. These measures include:

- **Increasing rental rates to encourage faster exploration and development of leases:** In the Gulf of Mexico, during the initial term of a lease and before the commencement of royalty-bearing production, the lessee pays annual rentals which either step-up by almost half after year 5 – for leases in water 400 meters or deeper – or escalate each year after year 5 – for leases in less than 400 meters of water. The primary use of step-up and escalating rentals is to encourage faster exploration and development of leases, or earlier relinquishment when exploration is unlikely to be undertaken by the current lessee. Rental payments also serve to discourage lessees from purchasing tracts they are unlikely to develop, and provide an incentive for the lessee to drill the lease or to relinquish it, thereby giving other market participants an opportunity to acquire these blocks. In March 2009, in addition to implementing escalating rental rates, BOEM raised the base rental rates for years 1-5.

- **Tiered durational terms to incentivize prompt exploration and development:** Gulf of Mexico leases in certain water depths (400-1600 meters) are now structured to provide for relatively short initial periods, but followed by an additional period under the same lease if the operator drills a well during the initial period. The initial periods are graduated by water depth to account for technical differences in operating at various water depths. In addition, BSEE recently informed lessees of a decision from the Department's Office of Hearings

and Appeals that reaffirms the requirement that lessees demonstrate a commitment to produce oil or gas in order to be eligible for lease expiration suspensions.

- **Increased minimum bid:** In 2011, BOEM increased the minimum bid for tracts in at least 400 meters of water in the Gulf of Mexico to $100 per acre, up from $37.50, to help ensure that taxpayers receive fair market value for offshore resources and to provide leaseholders with additional impetus to invest in leases that they are more likely to develop. Analysis of the last 15 years of lease sales in the Gulf of Mexico showed that deepwater leases that received high bids of less than $100 per acre, adjusted for energy prices at the time of each sale, experienced virtually no exploration and development drilling.

Outer Continental Shelf Resources (BOEM)

In the State of the Union, the President talked about allowing access to 75% of the offshore oil and gas resources. The Outer Continental Shelf is 1.76 billion acres. No one has done geologic seismic studies in the Atlantic in 30 years. The vast majority of the Pacific has not done seismic studies in 30 years and outside of the Arctic Ocean, nobody has a good clue what is off the Alaska coast.

Simpson Q14: While I am not quibbling with the 75% stated by the President, how do we know that we're offering 75% of oil and gas resources?

Answer: The 75% represents the portion of BOEM's estimated total "undiscovered technically recoverable resources" on the Outer Continental Shelf that underlie areas being considered for oil and gas leasing in the Five-Year Oil and Gas Leasing Program for 2012 to 2017. Essentially, undiscovered technically recoverable resources are quantities of oil and gas that are estimated based on comparisons with resources in existing fields that can be produced with current recovery technology and efficiency. By gathering and analyzing geological and geophysical data, BOEM geoscientists and engineers interpret seismic and well data along with other relevant information available in the respective OCS regions. The interpretations are coupled with analyses of reservoir properties from over 1,300 previously discovered OCS oil and gas fields to estimate the volume of undiscovered oil and gas resources.

To accompany the results of the Proposed Five-Year Program, BOEM released the *Assessment of Undiscovered Technically Recoverable Oil and Gas Resources of the Nation's Outer Continental Shelf*. This assessment provides a more detailed description of the methodology and technology used to calculate the estimates as well as an explanation of the results. It can be found at the following internet address: (http://www.boem.gov/uploadedFiles/2011_National_Assessment_Factsheet.pdf).

According to BOEM's findings, the Central Gulf of Mexico is estimated to hold more than 30 billion barrels of oil and 133.9 trillion cubic feet of natural gas of undiscovered resources. This is nearly double the resource potential of even the Chukchi Sea. The

Western Gulf of Mexico is just behind the Chukchi Sea with more than 12 billion barrels of oil and nearly 80 trillion cubic feet of natural gas. BOEM derived the 75 percent figure from an evaluation of the undiscovered technically recoverable resources estimated in the proposed lease areas as a function of this total estimated amount.

It is important to remember that all resource estimates are just that— estimates. All methods of assessing potential quantities of technically recoverable resources are efforts to quantify a value that will not be exactly known until the resource is nearly depleted.

Simpson Q15: Is BOEM investing in geologic seismic studies so the Department has the latest data on recoverable resources?

Answer: BOEM issues permits for pre-lease geological and geophysical (G&G) activity, and has the authority to acquire industry-collected G&G data from the U.S. Outer Continental Shelf (OCS). BOEM thus acquires significant amounts of new OCS seismic data as it becomes available.

BOEM's Resource Evaluation division – funded principally through the Conventional Energy activity – relies heavily on seismic data, which is critical to many aspects of BOEM's resource assessment work, including estimating undiscovered hydrocarbon resources and assessing environmental and operational constraints. The assessment process incorporates specific geologic information, mathematical and statistical analyses, risk and probability theories, economic scenarios, petroleum engineering data, and a variety of additional technical assumptions.

To facilitate these efforts, BOEM invests in the required software, hardware, and expertise necessary to interpret this data through complex computer models and methodologies. Currently, BOEM spends about $3.5 million yearly on seismic data and associated analysis software.

One of the principal uses of this data and software is to ensure the U.S. Government receives fair market value for oil and gas leases on the OCS. U.S. Government income from lease sales often exceeds $1 billion dollars per year. At the moment, BOEM is replacing its legacy fair market value determination software (called MONTCAR) and transitioning to a more dynamic software (called PetroVR) that will enable it to perform more sophisticated analyses and improve fair market value determinations.

Environmental Plans (EPs) (BOEM)

In the past we know there was a lot of delay with the completion of Environmental Plans. By law, the Bureau is supposed to complete these Plans within 30 days of the Plans being 'deemed submitted.' Based on the information in the FY13 budget request, BOEM seems to be falling short of completing these plans in a timely manner. I'm also concerned that only three sentences in your testimony are dedicated to EPs when they are such a large part of what BOEM does.

Simpson Q16: What have you done to speed up this process?

Answer: BOEM is committed to rigorous and efficient review of exploration and development plans—including our current policy of conducting site-specific environmental assessments on all exploration and development plans in deepwater. Consistent with strengthened standards for environmental analysis, BOEM is committed to ensuring that the plan review process is efficient and transparent to industry so that operators are positioned to comply with operational requirements.

BOEM continues to take concrete steps to facilitate this approach. For example, BOEM assigns a designated "plans coordinator" to work with operators and to provide them with a single point of contact throughout the review of each plan. Further, BOEM recently held a technical assistance workshop with industry operators to discuss heightened standards for offshore oil and gas exploration plans, share best practices, and obtain industry feedback regarding the plan review process – with the goal of promoting compliance and further increasing the efficiency of plan review. The program included a specific focus on identifying frequent errors in plan submissions and offering tips for resolution, addressing operator errors in submittals, particularly early on in the plan completion and review process, can increase efficiency by avoiding unnecessary review of incomplete plans, and reduce the need for BOEM to return materials to operators with requests for corrections and additional information

Simpson Q17: When can we expect to see progress?

Answer: BOEM is currently meeting all regulatory timeframes, and we are committed to the ongoing effort to increase efficiency, as described above. The review timeline for exploration plans is increasingly predictable to industry, and BOEM is improving collaboration with industry to improve the quality of plan submissions. We have already begun to see progress in the time it takes to process EPs. Since the beginning of FY 2012, BOEM has reduced by more than 40 percent the average number of days it takes from initial submission of an EP to final approval. From February 2010 to September 2011, it took an average of 192 days to process an EP. Since October 1, 2011, BOEM has reduced that average length to 109 days.

And while we are seeing increased efficiency in the review process, we are also working to improve the quality of the plans submitted by industry. Delays in the review process are often due to the need for revisions to submitted plans. Improving the quality of the initial plan submission enables not just a speedier process, but also a more efficient process. On its website, BOEM provides the status of EPs, as well as Plan development guidelines and a list of the most common problems found during the Plan completeness review. This information, found at http://www.boem.gov/Oil-and-Gas-Energy-Program/Plans/index.aspx, is publicly available so that offshore operators have the tools they need to submit complete and accurate plan applications, which will minimize plan processing delays within BOEM. In addition, several workshops have been held to further facilitate the proper submittal of Plan information. BOEM also routinely meets with individual operators concerning Plan application requirements.

Simpson Q18: What is your current backlog of Environmental Plans?—should you be dedicating more funding to this?

Answer: As described above, we are committed to reviewing exploration plans in a rigorous and efficient manner. As of June 11, 2012, BOEM received 41 shallow water (depths less than or equal to 500 feet) initial exploration plans for new wells since enhanced regulations were put in place on June 8, 2010 of which 32 have been approved. BOEM also received two initial exploration plans prior to June 8, 2010 for a total of 43 initial exploration plans to which the enhanced regulations apply. BOEM has requested modifications for two plans, four plans are pending, three plans have been deemed submitted, and two plans have been withdrawn.

As of June 11, 2012, BOEM received 41 deep water (depths greater than 500 feet) initial exploration plans for new wells since enhanced regulations were put in place on October 12, 2010 of which 38 have been approved. BOEM also received eight initial exploration plans prior to June 8, 2010 for a total of 49 initial exploration plans to which the enhanced regulations apply. BOEM has six plans pending and five plans have been deemed submitted.

On its website, BOEM tracks the progress of all Exploration Plans submitted (http://www.boem.gov/Oil-and-Gas-Energy-Program/Plans/Status-of-Gulf-of-Mexico-Plans.aspx). This chart is updated daily and reflects the most current statistics on the number of exploration plans received and processed by BOEM. Given that BOEM is meeting its regulatory requirements with regard to exploration plan reviews, resources currently dedicated to plan review and approval appear to be sufficient. However, BOEM continues to meet frequently with industry groups and individual operators regarding strategic and operational plans for the Gulf of Mexico over the coming months and years. We do this, in part, to align BOEM's resources with anticipated levels of industry activity.

FY13 Budget Request Increase (BSEE)

The FY13 budget request for BSEE includes a $20 million increase for new staff and inspections.

Simpson Q19: How will these changes and the accompanying budget request create a safer offshore drilling environment that still produces significant revenues?

Answer: All the activities that BSEE undertakes are aimed at creating a safer offshore drilling environment, including development of new regulations, enforcement activities, inspections, and permit application review. Full staffing levels will enable the agency to better perform all of its duties and keep pace with the ever-changing technologies and practices in the offshore oil and gas industry.

BSEE's primary function is ensuring safe and responsible operations on the Outer Continental Shelf. Ensuring safe and responsible operations ultimately benefits workers, the environment, and the industry as a whole, by allowing for safe and uninterrupted operations. While the bureau is not charged with promoting increased oil and gas revenues, it does ensure ultimate recovery and efficient reservoir management of oil and gas discoveries and the prevention of waste in development, such as the excessive or unnecessary flaring of natural gas.

Simpson Q20: Where will you hire the qualified and competent staff needed to implement these changes?

Answer: BSEE currently has a plan to aggressively recruit qualified personnel in all of its units. The Director and senior managers from the Regional offices are directly involved in recruiting at universities and industry-sponsored career fairs. BSEE recruits both experienced professionals and recent college graduates in the fields of engineering, geoscience, and other disciplines. One of the bureau's highest priorities is hiring petroleum engineers in the Gulf of Mexico Region. The Gulf of Mexico Region is currently recruiting at universities with Petroleum Engineering curriculums and is planning a very active recruiting schedule for the fall of 2012. In addition to recruiting entry level Petroleum Engineers, BSEE will also aggressively recruit experienced Petroleum Engineers and other experts by attending a variety of professional conferences. To enhance BSEE's recruiting efforts, position advertisements will appear in oil and gas trade journals and magazines and other appropriate media. BSEE's goal is to establish sustainable recruiting, hiring, and training processes. This will support the ongoing development of employees ready to assume responsibilities as some of the bureau's workforce prepares for retirement.

Simpson Q21: What is the correlation between increased funding and the amount of completed permits issued? What can we expect based on the dollars we appropriate?

Answer: The pace of permit processes depends on many factors, including the submission of a complete application and detailed analysis to determine that the proposed activity is in compliance with regulations and ensures the safety of operations. As industry has improved its permit applications and the bureau has adjusted to the new processes instituted in the aftermath of the *Deepwater Horizon*, there has been a significant increase in the number of permits approved, and a significant decrease in the time needed for approval. However, such gains have required a considerable amount of overtime and exceptional effort by BSEE's personnel. Additional improvements require additional personnel and BSEE is actively recruiting new employees. Furthermore, the permit workload is expected to grow significantly in the coming years. The number of deepwater drilling rigs operating in the Gulf of Mexico is expected to grow to approximately 50 by early 2013, and could grow as high as 60 by the end of 2013. In addition to the nearly 40 deepwater rigs currently operating in the Gulf, there are over 30 rigs operating in the shallow waters of the Gulf of Mexico; more than the number of drillings rigs in operation prior to the *Deepwater Horizon*.

Engineers in the Gulf of Mexico Region (GOMR) and GOMR District offices have reviewed and approved 104 unique deepwater well permits with containment and the new drilling requirements from February 2011 through April 9, 2012. Additionally, 64 deepwater permits have been approved through April 9, 2012 without a requirement for subsea containment. BSEE has also approved 122 new shallow water well permits since the implementation of new safety and environmental standards on June 8, 2010.

Environmental Enforcement (BSEE)

The FY13 budget request doubles the budget for Environmental Enforcement (from $4.1M in 2012 to $8.3M in 2013). The extra $4M will pay for employees and environmental inspections.

Simpson Q22: Knowing that funds are limited, how does BSEE determine where (which platforms or rigs) to conduct environmental inspections?

Answer: BSEE's newly-established Environmental Enforcement Division (EED) is responsible for enforcement of all environmentally-related provisions and regulations, including but not limited to, the Clean Water Act, the Oil Pollution Act, the Clean Air Act, the Endangered Species Act, the Marine Mammals Protection Act, and the National Historic Preservation Act. To ensure the best use of resources, EED concentrates on operations that are not generally overseen by the existing Safety Program, such as seismic surveys, pipeline installations, anchoring activities, decommissioning activities, and artificial-reef emplacements. For these activities, the EED's Environmental Enforcement Officers (EEOs) initially rely upon their review of existing environmental lease stipulations and the hundreds of environmental mitigation measures placed on oil and gas operations each year to narrow their focus to those activities that have the greatest potential for harm to marine species and ecosystems or create possible conflicts with other users of the Outer Continental Shelf. Since EEOs complement BSEE's Safety Program, they also accompany safety inspectors upon request or when assistance is needed for any air or water quality issues or pollution concerns. Additionally, EEOs are tasked with environmental damage assessments and mitigation evaluation work linked to activities where noncompliance was previously-determined through field work and/or office compliance assessments.

Simpson Q23: Is there a method used to ensure that the most risky actors are inspected?

Answer: In addition to concentrating on operators with repeated noncompliance, the EEOs follow leads on risky operations provided to them by safety inspectors, engineers, and other regulatory groups in the same manner as the Safety Program. Additionally, the EED is currently working with the Gulf of Mexico Region's District Field Operations and Regional Field Operations to develop a violation reporting system that will allow offshore workers to anonymously report observed safety or environmental issues and negligent activities. The EEOs will conduct follow-up work based on the input provided and the findings will be tracked and reviewed to determine if patterns exist within a specific company, and/or if additional investigations are required at their other facilities.

Similarly, EED's involvement with audits and reviews under the Safety and Environmental Management Systems program also provide leads regarding the most environmentally problematic operators and activities.

Research and Development for Offshore Drilling Safety (BSEE)

The technology of offshore oil and gas production changes at a very rapid pace. I can understand how difficult it can be for a government agency to keep up with these changes and still appropriately regulate industry.

Simpson Q24: How do your agencies keep up with the constant change in technology?

Answer: BSEE is actively engaged in national and international standards-setting organizations and technical forums, and BSEE employees regularly attend and participate in industry conferences to keep on top of the latest technologies. BSEE provides research funding to support cutting-edge research into a wide variety of topics, allowing BSEE to be a source of many of the latest advancements in technology. In addition, BSEE communicates on technical issues with other U.S. and international regulatory agencies to keep abreast of regulatory practices and new findings worldwide.

Simpson Q25: I assume you must work closely with the industry to understand the latest technology while also ensuring the relationship isn't too cozy. How do you maintain this balance?

Answer: BSEE actively participates in many forums to stay abreast of technology and standard development both domestically and internationally. As required, we do look to third party standard setting bodies in the development of regulations. In doing so, BSEE exercises its statutory responsibility to independently analyze third party standards and whether they are appropriate for inclusion in regulations. BSEE also receives a significant amount of company specific technical information as part of the regulatory review and approval process. This data allows BSEE to evaluate cutting edge technology and independently apply these best practices on an industry-wide basis.

Additionally, BSEE has a strict ethics policy that is intended to remind employees that while industry and government share many common goals, such as protection of the environment while ensuring safe operations, we are operating from different perspectives. We are the regulators. We hold our positions as a matter of public trust, and we take this responsibility very seriously. All BSEE employees receive annual ethics training. They are reminded of their responsibility to avoid conflicts of interest or the appearance of such conflicts. When new Safety Inspectors are hired, they must disclose all of the companies for which they have worked during the preceding two years. They must also list all of their friends and family members who are employed with organizations which we regulate. The assignments of our Inspectors are then structured to avoid even the appearance of a potential conflict.

Simpson Q26: The Department has been an outspoken proponent of renewable energy and your budget request reflects that interest again this year. The administration has outlined very specific goals for domestic renewable energy production.

Does BOEM have similar goals for offshore oil and gas production to ensure that we are making progress toward decreasing our reliance upon foreign sources of oil?

Answer: Offshore renewable and conventional energy resources are key components of the Administration's "all of the above" energy strategy—with a goal of reducing oil imports by a third by 2025. In 2011, American oil production reached the highest level in nearly a decade and natural gas production reached an all-time high. America's dependence on foreign oil has gone down every single year since President Obama took office. Thanks to increasing U.S. oil and gas production, more efficient cars and trucks, and a world-class refining sector that last year was a net exporter for the first time in 60 years, the United States has cut net imports by ten percent - or a million barrels a day - in the last year alone.

BOEM is committed to managing the Nation's offshore resources in a balanced way that promotes efficient and environmentally responsible energy development through oil and gas leasing, renewable energy development, and a commitment to rigorous, science-based environmental review and study. This includes making significant areas available for offshore oil and gas exploration and development. BOEM's Proposed Outer Continental Shelf Oil and Gas Leasing Program for 2012-2017 makes areas containing more than 75 percent of undiscovered, technically recoverable oil and gas resources estimated in federal offshore areas available.

Simpson Q27: What production goals would you like to be realized as a part of the 2012-2017 five year plan and how are you proposing to achieve that?

Answer: Although the Proposed Five-Year Program aims to facilitate production, it has typically been the prerogative of the individual lessees/operators to actually recover and produce the resources in areas they have paid to develop. To encourage timely development of leases, BOEM has introduced new measures to incentivize production.

Recent administrative reforms aim to ensure fair return to taxpayers and encourage diligent development, consistent with policies articulated in the Administration's *Blueprint for a Secure Energy Future*. These include escalating rental rates to encourage prompt exploration and development of leases, as well as time under the lease if the operator demonstrates a commitment to exploration by drilling a well during the base period. The durational terms of leases are graduated by water depth to account for differences in operating at various water depths.

In addition, BOEM recently increased the minimum bid for deepwater to $100 per acre, up from only $37.50, to help ensure that taxpayers receive fair market value for offshore resources and to provide leaseholders with additional impetus to invest in leases that they are more likely to develop. Rigorous analysis of the last 15 years of lease sales in the

Gulf of Mexico showed that deepwater leases that received high bids of less than $100 per acre, adjusted for energy prices at time of each sale, experienced virtually no exploration and development drilling.

Moving forward, lease sale terms now reflect a series of conditions to protect the environment. These include stipulations to protect biologically sensitive resources, mitigate potential adverse effects on protected species, and avoid potential conflicts associated with oil and gas development in the region. BOEM completed a supplemental environmental impact statement relating to its most recent Central Gulf of Mexico lease sale, which considers the latest available information for the Central Gulf of Mexico Planning Area following the *Deepwater Horizon* oil spill.

In terms of goals specific to the Proposed Program, BOEM is focused on diligent and responsible development on the part of lessees. The Proposed Program is designed to promote the diligent development of the Nation's offshore oil and gas resources, which are and will remain central to the Nation's energy strategy, economy, and security. One goal of the Proposed Program is to support the Administration's *Blueprint for a Secure Energy Future*, which aims to promote the Nation's energy security through decreased reliance on oil imports and increased – safe and responsible – domestic oil and gas production.

Moreover, the Proposed Program attempts to build on the significant progress made by the Department in accelerating reforms that have improved the safety and environmental protection of the OCS since the *Deepwater Horizon* blowout and oil spill. These reforms have improved both the safety of offshore drilling to reduce the risk of another loss of well control in our oceans and our collective ability to respond to a blowout and spill. While offshore oil and gas exploration and development will never be risk free, these activities can be conducted safely and responsibly, with appropriate measures to protect human safety and the environment.

Questions for the Record from Mr. Calvert

5-year Plan

Last month, I joined with 182 bipartisan members of the House of Representatives in signing a letter to Secretary Salazar regarding the 2012-2017 Proposed Outer Continental Shelf Plan. Specifically, the letter was sent to express our concern that the new 5-year plan does not make any new areas of the OCS for assessment. With gas prices approaching record levels, I believe we must begin taking the necessary steps to expand OCS energy production into new areas.

Calvert Q1: Generally speaking, America has been exploring the same areas of the OCS for the better part of a generation. Why was the decision made to not include any new areas of the OCS for assessment as part of the 5 year plan?

Answer: The Proposed Program, which includes a schedule of offshore oil and gas lease sales in six planning areas on the United States Outer Continental Shelf (OCS) that contain more than 75 percent of undiscovered technically recoverable OCS oil and gas resources, is designed to achieve the careful balance required under Section 18 of the OCS Lands Act. The Act states: "[m]anagement of the Outer Continental Shelf shall be conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the Outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the Outer Continental Shelf and the marine, coastal, and human environments."

Two primary guiding principles underlie this Proposed Program. First, the Proposed Program is designed to promote the diligent development of the Nation's offshore oil and gas resources, which are and will remain central to the Nation's energy strategy, economy, and security. The Proposed Program is in alignment with the Administration's *Blueprint for a Secure Energy Future*, which aims to promote the Nation's energy security and reduce oil imports by a third by 2025 through a comprehensive national energy policy that includes a focus on expanding safe and responsible domestic oil and gas production.

Second, this Proposed Program is grounded in the lessons learned from the *Deepwater Horizon* tragedy, which caused the deaths of 11 workers and resulted in the release of nearly five million barrels of oil into the GOM. Since the *Deepwater Horizon* event, DOI has raised standards for offshore drilling safety and environmental protection in order to reduce the risk of another loss of well control in our oceans and improve our collective ability to respond to a blowout and spill. While offshore oil and gas exploration and development will never be risk-free, the risk from these activities can be minimized and operations can be conducted safely and responsibly, with appropriate measures to protect human safety and the environment.

Based on these principles, the Proposed Program provides for lease sales in six offshore areas where there are currently active leases and exploration and where there is known or anticipated hydrocarbon potential. This represents a regionally targeted approach that is tailored to the specific needs and environmental conditions of different areas in order to best achieve the dual goals of promoting prompt development of the Nation's oil and gas resources and ensuring that this development occurs safely and with the necessary protections for the marine, coastal and human environments. This approach accounts for the differences between different areas – including differences in current knowledge of resource potential, adequacy of infrastructure to support oil and gas activity, accommodation of regional interests and concerns, and the need for a balanced approach to our use of natural resources.

Calvert Q2: As America moves toward the goal of energy independence, shouldn't expanding OCS exploration be a part of that movement?

Answer: Expanding offshore oil and gas production is a key component of the Administration's comprehensive energy strategy to grow America's energy economy, and will help continue to reduce dependence on foreign oil.

The Proposed Program focuses on encouraging exploration and development where the oil is – and the Gulf of Mexico still has the greatest, by a large margin, untapped resource potential in the entire U.S. Outer Continental Shelf. The Gulf of Mexico is the crown jewel of the U.S. OCS, and will remain so for the foreseeable future as developments in seismic and drilling technology have opened new resource frontiers in the Gulf. The Gulf of Mexico, in particular the deepwater, already has several world class producing basins, and just in the past year there have been a number of significant new discoveries.

The November 2011 *Assessment of Undiscovered Technically Recoverable Oil and Gas Resources of the Nation's Outer Continental Shelf* estimates that the Central Gulf of Mexico holds more than 30 billion barrels of oil and 133.9 trillion cubic feet of natural gas yet to be discovered. This is nearly double the resource potential of even the Chukchi Sea. The Western Gulf of Mexico is just behind the Chukchi with more than 12 billion barrels of oil and nearly 80 trillion cubic feet of natural gas. In short, the Gulf of Mexico is an expanding oil and gas frontier that will help fuel the economies of the Gulf Coast region and help meet the Nation's energy needs for decades to come.

The Gulf of Mexico remains an enormously attractive place to work. The Gulf offers unparalleled infrastructure and support to develop finds and bring resources to market efficiently. Indeed, there currently are more drilling rigs working in the deepwater of the Gulf than there were at the time of the *Deepwater Horizon* oil spill.

While the proposed leasing program makes available the areas with the richest resources, BOEM is also evaluating the oil and gas potential of areas where drilling has not occurred in the past. BOEM is working to advance a strategy to evaluate the potential for oil and gas exploration off of the mid- and south- Atlantic. Although it is premature to schedule lease sales in those areas, BOEM is completing an environmental impact

statement related to seismic activity in the mid- and south-Atlantic so that current, accurate data can be collected about the oil and gas potential in the region. BOEM is also actively engaging with the Department of Defense about the military's needs in these areas, as well as developing information about other potentially conflicting uses. These are all threshold issues that must be better understood to inform decisions about whether — and if so where — any oil and gas activity in the Atlantic should occur in the future.

Calvert Q3: Given the regulatory and industry changes that occurred in the wake of the Deepwater Horizon disaster to improve the safety of offshore energy exploration, the lifting of the OCS moratorium and rising public support for offshore drilling, especially as gas prices continue to climb, does the Administration have a plan for expanding OCS energy availability that includes oil and natural gas?

Answer: Expanding safe and responsible offshore energy exploration and development is an important component of the Obama Administration's "all of the above" energy strategy—which sets a goal of reducing oil imports by a third by 2025. In 2011, American oil production reached the highest level in nearly a decade and natural gas production reached an all-time high. America's dependence on foreign oil has gone down every single year since President Obama took office. Thanks to booming U.S. oil and gas production, more efficient cars and trucks, and a world-class refining sector that last year was a net exporter for the first time in 60 years, the United States has cut net imports by ten percent − or a million barrels a day − in the last year alone.

The Proposed Five-Year Program provides a framework for our offshore leasing strategy for the coming years. The Proposed Program, which is in line with President Obama's direction to continue to expand safe and responsible domestic production, includes six offshore areas where there are currently active leases and exploration, and where there is known or anticipated hydrocarbon potential. It schedules 15 potential lease sales for the 2012-2017 period – 12 in the Gulf of Mexico and three off the coast of Alaska.

The Proposed Program will promote safe and responsible domestic energy production by offering substantial acreage for lease in regions with known potential for oil and gas development. It also reflects the need for a regionally tailored approach to offshore development that accounts for issues such as current knowledge of resource potential, adequacy of infrastructure including oil spill response capabilities, and the need for a balanced approach to our use of natural resources. The majority of lease sales are scheduled for areas in the Gulf of Mexico, where resource potential and interest is greatest and where infrastructure to bring production to market and to respond in the event of an accident is most mature.

NEPA

There is no doubt that in the wake of the Deepwater Horizon disaster we must ensure there continues to be strong oversight over offshore drilling operations to ensure environmental protections. However, as many of us hear from job creators in our

districts time and again, there is often a fine line between commonsense environmental protections and heavy handed, job killing, bureaucratic overreach.

Calvert Q4: What are BOEM and BSSE doing to ensure their environmental reviews under NEPA and other applicable statutes are conducted efficiently and in a manner that reduces review time as much as possible without compromising safety?

Answer: The BOEM, the agency with primary responsibility for NEPA analysis with respect to offshore activities, is committed to a tiered approach to NEPA in order to ensure that the environmental review of oil and gas leasing, exploration, development, and decommissioning are done in both a rigorous and efficient manner, and in a way that ensures that analysis at each stage of the process builds on previous work. BOEM's analysis begins during development of the five-year leasing program with a broad programmatic environmental impact statement which effectively establishes a foundation for more specific analyses that are subsequently conducted in advance of individual lease sales and at the post-lease stage. At the post-lease stage, BOEM conducts site-specific environmental assessments on all exploration and development plans in deepwater which were generally not done prior to the Deepwater Horizon event. Consistent with strengthened standards for environmental analysis, BOEM is committed to ensuring that the plan review process is efficient and transparent to industry while ensuring that operators comply with heightened standards for safety and environmental protection.

BOEM continues to take concrete steps to facilitate this approach. For example, BOEM assigns a designated "plans coordinator" to work with operators and to provide them with a single point of contact throughout the review of each plan. Further, on April 25, 2012, BOEM held a technical workshop with industry operators to discuss heightened standards for offshore oil and gas exploration plans, share best practices, and obtain industry feedback regarding the plan review process – with the goal of promoting compliance and further increasing the efficiency of plan reviews. The program included a specific focus on identifying frequent errors in industry submissions and identifying the characteristics of comprehensive plans. Addressing operator errors in submittals, particularly early on in the plan completion and review process, can increase efficiency by avoiding unnecessary review of incomplete plans, and reduce the need for BOEM to return materials to operators with requests for corrections and additional information.

Calvert Q5: What steps are being taken to streamline and reduce redundancy within the NEPA process and, where applicable, to reduce redundancy between state and federal reviews?

Answer: BOEM relies on a multi- tiered approach to NEPA in which the analysis at each stage of the leasing process builds on prior work – with greater detail at each successive stage of the leasing, exploration and development process. BOEM's analysis begins with a broad programmatic environmental impact statement at the five-year leasing program planning stage, which effectively establishes a foundation for the more specific analysis that is subsequently conducted in advance of individual lease sales and at the post-lease stage. Similarly, BOEM and BSEE use concurrent review processes

under the Coastal Zone Management Act, the Endangered Species Act, and the Marine Mammal Protection Act to reduce review times. The NEPA processes are also aided by programmatic consultations and rulemaking efforts that allow State and Federal agencies to consider proposed actions that would be conducted within previously-approved terms and conditions.

Hearing Questions for the Record (QFR) Prepared for the Department of Interior, U.S. Fish and Wildlife Service

Hearing: U.S. Fish and Wildlife Service FY 13 Budget Oversight Thursday, March 1, 9:30am Rayburn B308

Questions for the Record from Chairman Simpson

Quagga and Zebra Mussels

Simpson Q1: Like many of my colleagues, I am deeply concerned about the spread of invasive species, particularly quagga and zebra mussels, in western waters. These species post a serious threat to the water infrastructure and hydropower systems in my state and others, not to mention the impact on habitat.

I understand that these destructive mussels have moved from the Great Lakes into western waters mainly on trailered boats. Has your department used your authorities under the Lacey Act to restrict interstate transport of these mussels?

Answer: The Department, through the Fish and Wildlife Service (Service), has used its authorities under Federal law to restrict interstate transport. The Service's Office of Law Enforcement is responsible for enforcing Federal prohibitions on the importation and interstate transport of species listed as "injurious" under the Lacey Act (18 USC 42) and 50 CFR Part 16. The zebra mussel is listed as injurious; however, the quagga mussel is not. The Service's enforcement officers also support State efforts to prevent the introduction of State-banned invasive species via interstate commerce or international trade. This is done using the Lacey Act's injurious wildlife provisions (18 USC 42) and import or interstate commerce in violation of underlying State, Federal, tribal, or foreign conservation law (16 USC 3372).

Service enforcement efforts include: interdiction of unlawfully imported species listed as injurious under the Lacey Act (18 USC 42); investigations of illegal importation and interstate transport of federally listed injurious wildlife (18 USC 42); assistance to States with intercepting illegal importation and/or interstate transport of invasive species banned under State law (16 USC 3372); and supporting the Aquatic Nuisance Species Task Force's "Quagga/Zebra Mussel Action Plan" (QZAP).

In addition to using these authorities, the Service has employed a more holistic approach that includes voluntary public actions to reduce interstate transport of these mussels. In 2002, the Service, under the umbrella of the Aquatic Nuisance Species Task Force, unveiled the "Stop Aquatic Hitchhikers!" campaign (www.protectyourwaters.net). By tapping into shared ownership and using a grassroots branding strategy, the Service has empowered citizen organizations and conservation groups around the country to join the Service in promoting a unified message across State lines. The campaign targets all aquatic recreation users (anglers, boaters, paddlers, waterfowl hunters, etc.) and all types of aquatic species--animals (including the quagga mussel) and plants. The campaign prompts the users to clean their gear every time they leave the water.

Simpson Q2: I understand that the 100th Meridian Initiative, a collaborative effort between local, state, and federal agencies, was created within your department to keep these mussels out of the West. This is a great concept.

Given the fact that the mussels were discovered in Lake Mead in 2007 and have spread rapidly throughout the federal waters of the Lower Colorado system, do you feel that the 100th Meridian Initiative is seen as a successful program? If so, how do you gauge success in this instance?

Answer: *The 100th Meridian Initiative: A Strategic Approach to Prevent the Westward Spread of Zebra Mussels and other Aquatic Nuisance Species* (100th Meridian Initiative) was developed in 2001 and was the first comprehensive, strategically focused effort, involving Federal, State, tribal and Provincial entities, potentially affected industries, and others to address the western spread of zebra mussels and other aquatic invasive species. The 100th Meridian Initiative has and continues to build public awareness about quagga and zebra mussel threats, provide training and protocols for watercraft inspections, assist with new State enforcement programs, early detection monitoring, rapid response planning, and work with States to identify gaps and incorporate authorities needed to reduce ANS spread on transported vessels.

Thanks largely to the efforts of the 100th Meridian Initiative, the West was not caught off guard by the discovery of quagga mussels in Lake Mead in 2007. In fact, that first report of quagga mussels came from an active volunteer with the 100th Meridian Initiative's volunteer zebra/quagga mussel monitoring program run out of Portland State University. Within just a few days of the discovery the 100th Meridian Team had mobilized a meeting of western ANS personnel and efforts were underway to detect, monitor, control and contain quagga mussels in the lower Colorado River Basin. Although quagga mussels are established in Lake Mead and the lower Colorado River Basin, the West has seen only limited spread beyond the connected waterways (natural and artificial) in the basin. Another example of success of the 100th Meridian Initiative is the zebra mussel (the initial impetus for the formation of the 100th Meridian Initiative), which is only established in two water bodies west of the 100th Meridian, while it is recorded as present in over 500 water bodies (not including the Great Lakes) east of the 100th Meridian.

The 100th Meridian Initiative has also been successful to the extent that it has been collaboratively implemented. Many Western waters remain free of zebra and quagga mussels, and these waters tend to be in State jurisdictions where the threat is taken seriously and considerable State and partner resources have been allocated to prevention. The Western Regional Panel of the Aquatic Nuisance Species Task Force understands the importance of the 100th Meridian Initiative and provided direction in the 2010 Quagga-Zebra Mussel Action Plan for Western U.S. Waters (QZAP). The QZAP specifically details the highest priority actions needed to effectively combat the threat of invasive mussels in the Western United States. To date, $2 million has been allocated for QZAP, 40 percent of which was directed to a single water body (Lake Tahoe). Lake Tahoe remains free of invasive mussels and serves as testament to the effectiveness that the 100th Meridian Initiative can achieve, if fully implemented as designed.

Simpson Q3: In FY12, we appropriated $1 million in the Fish and Wildlife Service budget for mandatory inspections and decontaminations at infested federally-managed water bodies.

Can you tell me how the Service intends to implement this operational program and use it to assure that boats that leave mussel-infested places like the Lake Mead National Recreation Area are not carrying mussels into other water bodies?

Answer: The Service must work together with Federal and State partners to protect our shared resources. Coordination and collaboration are essential. Lake Mead National Recreation Area has already begun a program to prevent boats from carrying mussels away from Lake Mead. However, several improvements are necessary to better implement this program. The Service will work with the National Park Service and the States of Nevada and Arizona to implement a three-pronged approach recommended by the Quagga/Zebra Mussel Action Plan for Western Waters. This approach will include elements of prevention, containment, and outreach. Specifically, the Service and its partners will work collaboratively to increase outreach and law enforcement participation, improve decontamination procedures, discourage boaters from avoiding mandatory decontamination procedures, and coordinate more fully and effectively with our State partners to interdict boats that have slipped past our containment program. Lake Mead is an important water body, and as one of the top boating destinations in the West, Lake Mead will be the focus of Service efforts. However, Lake Mead is only one of many infested waters that could act as a source for further infestations in the West. The Service's containment efforts will include other water bodies along the lower Colorado River, including, for example, working with the Bureau of Land Management on Lake Havasu.

Simpson Q4: The budget proposes an increase of $2.9 million for Asian carp while at the same time cutting the funding for zebra mussel control and prevention.

Are we to presume that controlling the spread of Asian carp is a more pressing issue right now than controlling the spread of quagga and zebra mussels?

Answer: It is difficult and expensive to deal with an invasive species after it has become established in new ecosystems. Quagga/zebra mussels and Asian carp are both pressing issues, and while each present unique threats and impacts, addressing their spread collectively is of critical importance to protecting our environmental and economic interests in our nation's waters. This is why the Administration has sought to actively manage numerous pathways of spread in the U.S. For example, the Service's Office of Law Enforcement provides assistance to States with intercepting illegal interstate transport of quagga/zebra mussels and other invasive species banned under State law. The Service is actively promoting through its national campaign, Stop Aquatic Hitchhikers, voluntary actions the public can take to prevent spreading invasive species, such as cleaning, draining, and drying all aquatic recreational equipment. The Service has also implemented numerous prevention and containment actions under the 100th Meridian Initiative that have also been identified under the Quagga/Zebra Mussel Action Plan. At Congress' urging and leadership, the Service is strengthening containment actions at infested water bodies, such as Lake Mead.

The $2.9 million increase for Asian carp is related to the Asian Carp Control Strategic Framework (Framework). The Framework includes projects that are specifically funded by the Great Lakes Restoration Initiative (GLRI) and by Federal agency base funding directed towards the Great Lakes basin. The GLRI is the primary source of funding for the vast majority of the projects in the Framework. The GLRI was established by President Obama and funded by Congress for projects that restore and protect the Great Lakes basin. Projects outside of the Great Lakes basin are not included within the Framework, because they are not directly connected to the Great Lakes and not

eligible for GLRI funding. However, preventing the spread of Asian carp to other U.S. water bodies is also critically important.

Simpson Q5: Considering the increases and decreases proposed for the invasive species program, are we to presume that invasive species are much of a problem to warrant significant net increases to the budget?

ANSWER: Invasive species are a significant threat to America's economy and natural resources, costing at least tens of billions of dollars each year. Invasive species pose a threat to every region of the United States. Brown tree snakes in Guam, zebra and quagga mussels in the West, white-nose syndrome in the Northeast, and nutria in Louisiana are just a few of the highly destructive species that the Service and its partners are actively working to manage. We are also working actively on domestic and international prevention, which is widely recognized as the most cost-effective means to deal with invasive species. We want to keep the "next" Asian carp, Burmese python, or zoonotic disease from ever establishing in our country or spreading into new ecosystems. The Service is investigating opportunities and new approaches to improve both regulatory and voluntary efforts to deal with invasive species, and looks forward to working with Congress, partners, and stakeholders to continue making a difference on this critical issue.

Wolf Monitoring

Simpson Q6: As you know, the Service is obligated to monitor wolf populations for five years post-delisting. In the past, the Fish and Wildlife Service has included in its budget a line-item for wolf monitoring to help states defray the costs of these requirements--in recent years, that amount has been around $2 million. It now appears that the agency has rolled that money into its general program activities, and I am concerned by reports that now only a fraction of the money once intended for wolf monitoring is going to the states and that the Fish and Wildlife Service is starting to siphon that money to other priorities.

Can you tell me how much funding you intend to spend on wolf monitoring in FY13 and the out years?

Answer: The Congressional Action Table accompanying the President's fiscal year 2011 request included 5 separate "wolf monitoring" lines, totaling $2,182,000. They could have been labeled "wolf management," because this funding was all directed to supporting management of the listed wolf population in the northern Rocky Mountains. Monitoring of those listed wolf populations was only one of the management functions supported by that funding.

The Service's fiscal year 2011 Operations Plan consolidated the "wolf monitoring" lines into the general program activities line for Recovery, but the Service fully funded the States and affected field offices for management and monitoring of wolves in the northern Rocky Mountains in the manner requested in the 2011 President's budget. The post-delisting monitoring requirement was not triggered until wolves in Idaho and Montana were delisted in 2011.

In fiscal year 2013, if funded at the President's request level and if wolves in Wyoming are also delisted by that time, the Service intends to provide $232,000 to each of the States of Idaho, Montana and Wyoming and $50,000 to each of the States of Washington and Oregon for post-delisting

monitoring of wolves in the northern Rocky Mountains distinct population segment. The Service also intends to distribute an additional $694,000 to the States and Tribes to assist in various wolf management activities, for a combined total of $1,490,000 to assist the States and Tribes in wolf monitoring and management in fiscal year 2013. The Service is committed to funding the States at the fiscal year 2012 level for monitoring of the recovered wolf population ($796,000) for each of the 5 years post-delisting, but the Service intends to gradually reduce funding support for management of this recovered wolf population through subsequent years and redirect those Recovery funds to critical recovery needs of other species listed as threatened or endangered.

Peregrine Fund

Simpson Q7: For the past few years, the Fish and Wildlife Service has provided between $600 and $700 thousand per year out of their base for condor recovery and around $150 thousand for aplomado falcon recovery work being done in partnership with the Peregrine Fund. This organization has done great work in recovering these birds, resulting in some of the few success stories under the ESA. After hearing in early January that the Service intended to continue this partnership at previous levels in FY12, I recently learned that you are now shifting some of this money to the San Diego Zoo and to the regional office to create a staff position focused on condor recovery.

Can you tell me why you have made these changes and how that will improve efforts to recover condors?

Answer: Both the Peregrine Fund and the San Diego Zoo are significant and critical partners in this recovery effort, contributing approximately $1.5 million each toward the program annually. Despite this significant funding effort, each organization, including the Fish and Wildlife Service, has additional needs that would improve their participation in Condor recovery. The fiscal year 2012 level of funding for the Peregrine Fund is equal to the level they received prior to the increase in 2008.

The Service's new coordinator position is crucial to the program's long term success and aligns with the Service's long term objectives. The position results in part from recommendations made by the American Ornithologists' Union that the Service "increase its leadership of condor recovery" and will provide close coordination with the Service's many partners to reconcile conflicts associated with new and existing threats that the California condor will encounter as it recovers and expands its range. The position will provide leadership to ensure the continued success of the breeding, distribution, monitoring and management of this important recovery effort.

Program	FWS Funding to the Peregrine Fund	Years
Annual Funding	$400K	1997-2007
Annual Funding	$634K	2008-2010
Annual Funding ($75K provided to San Diego Zoo for condor recovery)	$559K	2011
Annual Funding ($150K provided to San Diego Zoo, $80K for California Condor Position)	$404K	2012

Simpson Q8: Do you see a continued partnership with the Peregrine Fund on these projects, or should I expect to see this partnership fade away in the coming years as funding for their work is shifted to other priorities?

Answer: The San Diego Zoo participates in captive propagation, assists in managing the release site on the San Pedro Martir in Baja California, Mexico, and administers exhibits at the San Diego Zoo and San Diego Safari Park. The San Diego Zoo provides veterinary services and presents necropsy reports on condor mortalities and manages the studbook for propagation.

The Peregrine Fund participates in captive propagation and reintroduction efforts. The Peregrine Fund manages a release site at Vermillion Cliffs in Northern AZ and captive breeding facility and exhibit at the World Center for Birds of Prey in Boise, Idaho.

The ability of the San Diego Zoo to contribute to condor recovery is significant and warrants a level of partnership as exists with the Peregrine Fund. Both organizations are critical to ensure the success of recovery efforts. The Service does not anticipate its partnership with the Peregrine Fund to fade away in the coming years. The Peregrine Fund is a key partner in condor propagation and recovery efforts in Arizona which will continue into future years.

Sage Grouse

Simpson Q9: What is the Fish and Wildlife Service doing to conserve sage grouse and how are you measuring success?

Answer: The Fish and Wildlife Service is doing work to conserve sage grouse through multiple programs. National Wildlife Refuges are reviewing their management strategies to ensure sage-grouse and sagebrush management are adequately addressed on refuge lands. Refuge managers are also actively engaging with surrounding landowners/managers to ensure good management across political boundaries.

Through the Partners for Fish and Wildlife, Service Program biologists are assisting private landowners with sagebrush conservation projects on their lands. This includes securing funding, and working with other partners, such as the Natural Resources Conservation Service (NRCS) to get projects implemented.

The Ecological Services program is assisting the Bureau of Land Management (BLM) and Forest Service (FS) with their efforts to revise land management plans for sage-grouse conservation. Service personnel are engaged at all levels (Director, Regional, and State) to ensure that BLM and FS are getting the necessary guidance to produce an effective conservation strategy. The Service is a member of the BLM National Technical Team, which is responsible for delineating the science necessary to inform management decisions. Additionally, projects submitted by any Federal agency are reviewed by Ecological Services staff so that recommendations to minimize project impacts on sage-grouse are incorporated.

In addition, the Ecological Services program is assisting NRCS with the implementation of their progressive Sage-Grouse Initiative, both at the planning and implementation stage. Ecological

Services is also preparing Candidate Conservation Agreements with Assurances across the species' landscape to assist private landowners in proactive sage-grouse conservation.

The Service is actively engaged in State planning efforts for sage-grouse including the Wyoming core area strategy, the Utah Governor's Sage-Grouse Team, the Idaho Sage-Grouse Task Force, and the Oregon sage-grouse planning efforts. Additionally, the Service works closely with State wildlife biologists as requested, in developing and incorporating sage-grouse management recommendations.

The Service is a member of the Secretary of Interior's National Task Force, tasked with developing a range-wide sage-grouse conservation plan. This includes chairing the Conservation Objectives Team, a technical group composed of State and Federal experts tasked with quantifying long-term conservation objectives.

The Service is a long-standing member of the Western Association of Fish and Wildlife Agencies Sage-Grouse Technical and Range-wide Interagency Sage-Grouse Conservation Teams. This includes participation at both the Director and Regional level. The Service has signed a MOU agreeing to focus on pro-active conservation activities for this species, and was co-author of the 2006 Greater Sage-Grouse Comprehensive Conservation Strategy. Service members at the State level are members of Local Working Groups for sage-grouse conservation. There are multiple groups per State, and Service employees are involved in each team.

Landscape Conservation Cooperatives are becoming actively engaged in working with the many partners in sage-grouse conservation, serving as a central clearinghouse for information and data; coordinating research and landscape-scale conservation projects; and facilitating communication between all stakeholders. Migratory Birds, through the Intermountain Joint Ventures program, is assisting NRCS in securing positions to assist local landowners with sagebrush and sage-grouse conservation efforts.

The Service has employed a National Sage-Grouse Conservation Coordinator to work with all stakeholders in developing and implementing effective conservation efforts. Success is measured by the amelioration of threats to the extent that listing is not warranted.

Simpson Q10: Please provide a funding cross-cut table, by program, for the record.

Answer: While the Service does not budget for nor track expenditures for individual species, the Service's Ecological Services Program estimates it spends about $2 million in staff time annually to conserve sage-grouse and the sage brush habitat on which the species depends. This figure is based on an estimated 13 GS-12 FTEs (approximately $107,617/year each, including benefits), 3 GS-14 FTEs (approximately $151,222/year each, including benefits), and 1 GS-15 FTE (approximately $177,882/year, including benefits) dedicated full-time to sage-grouse conservation. In addition, the Partners for Fish and Wildlife program estimates annual expenditures of $450,000 to conserve sage-grouse and sage-grouse habitat.

Expenditures by other Service programs are not accounted for in this total. In general, the Service focuses its funding and efforts on conservation actions that benefit habitats and ecosystems that support multiple species.

Northern Rocky Mountain Multispecies Conservation Agreements Initiative

As I mentioned in my opening, thank you again for your work on the Northern Rocky Mountain Multispecies Conservation Agreements Initiative. My hope is that the Service, together with the States and private landowners, can enter into innovative, multispecies, multipartner conservation agreements that simplify the process for private landowners so that more of them want to sign up; that empower the States to work directly with private landowners to set up the agreements; and that still recognize the Service's statutory obligations. If the initiative works, I would like to work with you to consider expanding the model to other parts of the country.

Simpson Q11: Would you please update us on progress of the initiative?

Answer: The Service's intent with the Northern Rocky Mountain Multispecies Conservation Agreements Initiative is that through the Governor's greater sage-grouse Task Force in Idaho, and the associated conservation efforts, we will work with partners to explore the potential for agreements for conservation of sagebrush and sagebrush-obligate species. The second meeting of the Governor's Task Force is scheduled for March 20th. The Service has attended these meetings, and will continue to participate actively as a technical and policy advisor to the Task Force.

Mitigation Fisheries

Simpson Q12: The Service is proposing a $3.2 million reduction from mitigation fish hatchery operations that arguably should have been paid for all along by those Federal agencies that built the dams in the first place. That model seems to work well in the West, but in the East, somewhere along the way, somehow, the Fish and Wildlife Service started picking up the tab. Thanks to the Congressional direction from my predecessors and tireless efforts of program staff, the Service has started to receive some reimbursement. Moreover, the Army Corps and the Bureau of Reclamation are now requesting funds in their budgets to at least partially reimburse the Fisheries Program for the fish it grows and stocks in and below these Federal reservoirs.

Is the $3.2 million reduction proposed in the Service's FY13 budget fully offset by proposed increases in the other Federal agency budgets? If not, what is the shortfall?

Answer: The Service is migrating to a user pay system for mitigation hatcheries. Most of the hatchery raised fish the Service provides for mitigation are funded through reimbursable agreements with the sponsor of the water project requiring mitigation. For example, the Bureau of Reclamation currently provides funds to the Service for hatchery raised fish for mitigation.

The fiscal year 2012 President's budget proposed eliminating funding for mitigation hatcheries from the Service's budget, a funding reduction of $6,288,000 from base hatchery operations. The fiscal year 2013 President's budget for Hatchery Operations continues the proposal to eliminate hatchery mitigation funding from the Service's budget, a net program decrease of $3.2 from the 2012 enacted level. Adjusted for inflation, the Service's cost of mitigation efforts for these hatcheries in 2010 dollars is $6,288,000. The Corps of Engineers has asked for $4.3 million, and the Bureau of Reclamation has asked for an increase of $600,000 in their respective fiscal year 2013 budget requests. The Service is also seeking reimbursement for mitigation work performed for both the Tennessee Valley Authority and the Bonneville Power Administration for mitigation efforts. To date

no reimbursement has been received from the TVA or BPA for these activities. That leaves an estimated shortfall of $1,388,000. When adjusted for inflation, this shortfall amounts to a projected deficit of $1,932,000 in 2013.

The Service will continue to work with the Corps, the Tennessee Valley Authority, and the Bureau of Reclamation, to establish equitable reimbursable agreements for the production of hatchery fish for mitigation. Without the agreements, the Service will only produce the amount of fish that correspond to the amount of the reimbursement received.

National Wildlife Refuge Fund

Simpson Q13: What is the justification for terminating the National Wildlife Refuge Fund at a time when the Administration is proposing full funding for what is essentially the rest of PILT?

Answer: The Service is not terminating the National Wildlife Refuge Fund; funds are not requested for the additional single-year appropriation that supplements the receipts collected from economic use activities on Refuges. Payments to local governments for recognition of reduced tax income would continue to be made from receipts carried over from the previous year.

The Refuge Revenue Sharing Act, as amended, authorizes revenues and direct appropriations to be deposited into a special fund, the National Wildlife Refuge Fund (NWRF), and used for payments to counties in lieu of taxes for lands acquired in fee or reserved from public domain and managed by the Fish and Wildlife Service (FWS). As counties can use these funds for any purposes, the Fund is a lower priority program than efforts to produce conservation outcomes.

Importantly, refuges have been found to generate tax revenue for communities far in excess of tax losses from Federal land ownership. National Wildlife Refuge lands provide many public services, such as watershed protection, while placing relatively few demands on local governments for schools, fire, and police services. National Wildlife Refuges bring a multitude of visitors to nearby communities, which provide substantial economic benefits. Hunters, birdwatchers, beach goers, hikers and others bring money into local economies, generating millions of dollars in tax revenue to local, county, State and Federal governments. In 2006, for example, nearly 35 million people visited national wildlife refuges, creating almost 27,000 private sector jobs and producing approximately $543 million in employment income. Such economic generators are not taken into consideration when determining NWRF payments. Without these funds, local governments will also continue to be compensated through the Payment In Lieu of Taxes (PILT) program for lands that are withdrawn from the public domain.

Simpson Q14: What evidence do you have that National Wildlife Refuges generate more revenue for surrounding counties than National Parks, National Forests, or BLM lands?

Answer: Hunting, fishing, and other outdoor recreation activities contribute an estimated $730 billion to the U.S. economy each year, and one in twenty U.S. jobs are in the recreation economy. Therefore, the Refuge System Visitor Services program has a direct impact on the local economies of communities where refuges are located. Recreational visits to refuges generate substantial retail expenditures in the local area, for gas, lodging, meals, and other purchases. According to the Department of the Interior Economic Contributions 2011 report, in 2010 national wildlife refuges

generated more than $3.98 billion in economic activity and created more than 32,000 private sector jobs nationwide. The 2006 Banking on Nature report revealed that each $1 investment in the National Wildlife Refuge System returned approximately $4 to the local economies where refuges are located. The quantity and quality of recreational programs available at refuges affect not only direct retail expenditures, but also jobs, job-related income, and tax revenue. On a national level, each $5 million invested in the Refuge System's appropriations (salary and non-salary) impacts an average of 83.2 jobs, $13.6 million in total economic activity, $5.4 million in job-related income and $500,000 in tax revenue. Each one percent increase or decrease in visitation impacts $16.9 million in total economic activity, 268 jobs, $5.4 million in job-related income, and $608,000 in tax revenue. Therefore, maintaining a healthy visitor program at national wildlife refuges is vital to the economic well-being of communities all across the nation.

Cooperative Recovery

Your budget includes a $5.4 million increase for a new initiative, Cooperative Recovery. I generally support new and innovative efforts to try and recover endangered species as quickly as possible. However, this new initiative seems to suggest that the only way for Refuges, Fisheries, and Partners for Fish and Wildlife to focus their collective efforts on recovery is to provide them new funds to do so.

Simpson Q15: In addition to these new funds for Cooperative Recovery, how much of the Fish and Wildlife Service's budget is focused on recovering threatened and endangered species? Please provide a cross-cut table for the record.

Answer: The Service's Endangered Species Program budget request for FY 2013 is $179.7 million to implement the Endangered Species Act. One of the primary objectives of the ESA is to recover species so that protection of the ESA is no longer needed. The Cooperative Endangered Species Conservation Fund ($60 million) is also dedicated to the conservation and recovery of species. The Service believes that all its programs contribute to recovery of listed species through many efforts, such as invasive species control, needed habitat acquisition, law enforcement, and climate change planning. The concepts of the Cooperative Recovery Initiative are not new, however this request will provide additional resources to address recovery in a collaborative, strategic approach, complimenting the resources already directed towards recovery efforts with current resources.

Simpson Q16: The Fisheries Program is taking cuts to the population assessment and habitat restoration components of their budget. Won't these cuts affect ongoing recovery efforts?

Answer: As the principal funding source for most of the Service's Fish and Wildlife Conservation Offices (FWCO), this reduction will impact the Service's infrastructure; however, this decrease will be attenuated by increases in the fish passage program to fund fish passage activities and in the new initiative, Cooperative Recovery. As a result, the Service will be able to minimize impacts to recovery efforts.

Funding for the new Cooperative Recovery initiative will allow the Service to counter the impacts of the Fisheries program cuts by increasing its fish population recovery and management activities on National Wildlife Refuge System properties. Working cooperatively across programs, the Service will focus on delisting threatened and endangered species and enhancing habitat for depleted fish

populations. This will create aquatic refuges for fish and other aquatic organisms that otherwise would be in peril of decline and, ultimately, extinction. The Service will stem the loss of keystone fish species on several National Wildlife Refuges that also support fisheries and bolster economies of local communities through recreational fishing.

Building upon the existing Fish and Wildlife Conservation Office infrastructure, the Service will continue its transition towards a leaner, habitat-focused conservation delivery program, crucial for delivering the aquatic conservation component of the Service's mission.

Land Acquisition

Your budget includes a $52 million increase for land acquisition but the projects aren't listed in numbered, priority order. It is unlikely in this budget climate that you'll receive your full funding request for land acquisition. In any event, this Committee would still like to know what the American people are buying before we appropriate the funds to do so.

Simpson Q17: When can this Committee expect to see a prioritized list of projects—a list that combines both the "core" projects and the "collaborative landscape" projects?

Answer: The FWS is working with the Department to develop a list that is in priority order. The list will be submitted to the committee separately.

The two lists are complimentary to each other but have different goals. The core project list supports bureau specific, mission related acquisitions. These acquisitions have been ranked through the Land Acquisition Priority System (LAPS), but are listed here and in the FWS Congressional Justification in the Administration's priority order. LAPS only provides a biological starting point for the land acquisition budget formulation process. Considering LAPS as the final prioritized list of projects removes critically important considerations from implementing the most efficient land acquisition process possible, such as the presence of willing sellers, potential partners and the ability to leverage financial resources. The core projects, utilizing these considerations, are listed below in priority order:

FWS Core LWCF Project List	State	Amount
Dakota Grassland CA	ND/SD	$2,500,000
Dakota Tallgrass Prairie WMA	ND/SD	$500,000
Everglades Headwaters	FL	$3,000,000
Flint Hills Legacy CA	KS	$1,951,000
Middle Rio Grande	NM	$1,500,000
Neches River NWR	TX	$1,000,000
Silvio O. Conte NF&WR	CT/NH/VT/MA	$1,500,000

San Joaquin River NWR	CA	$1,000,000
Upper Mississippi River NW&FR	IA/IL/MN/WI	$1,000,000
Northern Tallgrass Prairie NWR	IA/MN	$500,000
Grasslands WMA	CA	$1,000,000
Nisqually NWR	WA	$1,000,000
St. Vincent NWR	FL	$1,000,000
Total for Core Project List		**$17,451,000**

The Collaborative Landscape Planning component list includes all of the acquisitions that will support a set of strategic interagency landscape-scale conservation projects that also align with agency-specific acquisition needs. Smart investment in strategic conservation on a landscape scale focuses on select areas for acquisition by multiple Federal agencies that meet defined goals and support well-established State and local collaborative efforts. Investing now in these ecologically important and threatened landscapes will ensure they remain resilient in the face of development pressures and global change. These coordinated efforts will protect large areas to maximize ecosystem values, support at-risk species, and prevent further ecosystem decline or collapse, thereby precluding the need for restoration. In order to reap the benefits of this new strategic interagency approach to acquisition planning, funding is requested for the entire ecosystem, including the individual projects identified by all of the participating bureaus.

FWS Collaborative Conservation Project List	**State**	**Amount**
CoC -Rky Mtn Frnt/Blackfoot Val/Swan Val CAs	MT	$19,742,000
LLP -St. Marks NWR	FL	$32,912,000
LLP - Okefenokee NWR	GA	$13,636,000
Total for Collaborative Conservation Project List		**$66,290,000**

Simpson Q18: What are some of the criteria you will use to set your priorities?

Answer: All of the proposed FY 2013 projects were prioritized based on the Service Land Acquisition Priority System (LAPS) and considered in light of bureau-wide and Departmental requirements. The Department-wide projects target landscape-level conservation, especially river and riparian conservation and restoration, conservation of wildlife and their habitat, recreation opportunities in urban landscapes, and cultural and historical preservation. The four categories of evaluation criteria for these projects include:

- **Process:** ensure proposals are built through Federal agency and local stakeholder collaboration and make efficient use of Federal funding *(e.g. which stakeholders are involved, what other resources will be leveraged)*
- **Outcomes:** ensure Federal resources are targeted to achieve important biological, recreational, cultural and socio-economic outcomes *(e.g. anticipated impact on recreation opportunities, species and habitats, working lands, rivers and waterways, cultural and historical resources)*
- **Urgency:** ensure funding is focused on outcomes that may be lost today if no action is taken or that are particularly achievable today *(e.g. nature and timeliness of threats to the landscape).*
- **Contribution to national priorities:** ensure local proposals are important contributors to national outcomes at the regional and national scales *(e.g. does proposal contribute to goals related to priority regions or topics).*

The LAPS ranks the proposed acquisition projects that have willing sellers. Numerical scores are assigned to four components (Fisheries and Aquatic Resources, Endangered and Threatened Species, Bird Conservation, and Landscape Conservation), in addition to a project summary. The points for each component are totaled to yield a cumulative score and produce a biological profile for each project. The Service's land acquisition program achieves its conservation goals by prioritizing proposed acquisitions according to their potential to permanently protect habitats where biological communities will flourish within ecosystems.

Simpson Q19: Are parcels identified for acquisition already fully or mostly bordered by other federal lands? If not, then how can you claim that acquisitions save money on maintenance and enforcement?

Answer: Projects submitted for funding in FY 2013 are within the approved acquisition boundaries of the refuge or wildlife management area. Acquisitions made by conservation easements do not require Service-manned maintenance and minimal Service law enforcement activities. Most of the time yearly fly-overs to verify that land owners are compliant to the terms of the easement. As easements prohibit or strictly limit construction of buildings, fire protection and suppression costs are reduced or eliminated.

Dakota Grassland Conservation Area and Flint Hills Legacy Conservation Area are recent additions to the Refuge System and will be composed of conservation easements. Because Conservation Areas cover millions of acres, acquiring easements from willing sellers that are co-located or share boundaries may not be possible for FY 2013. Future acquisitions may be targeted to acquire easements within designated areas to provide a solid core area of protection. The landowner is responsible for maintaining the land and habitat for plants and wildlife.

Service conservation easements with contiguous borders or borders shared with other Federal or State governments, or partner organizations require minimal oversight. Conservation easements eliminate the need for the Service to install utilities or maintenance facilities, and also eliminate the need for the need for road maintenance.

Everglades Headwaters NWR and CA
Approximately 750 acres would be acquired in fee title within the approved acquisition boundary of Everglades Headwaters National Wildlife Refuge and Conservation Area. A significant portion of the refuge lies within the boundaries of the Comprehensive Everglades Restoration Plan, a collaborative partnership among the federal government, including the Army Corps of Engineers and Department of Interior (FWS/NPS), the State of Florida Department of Environmental Protection, numerous county and local governments, and non-governmental organizations. Additionally, the Natural Resource Conservation Service is making significant investments in wetland protection easements in the Northern Everglades area and the Service anticipates working with NRCS to coordinate conservation investments.

Neches River NWR
The 640-acre parcel to be acquired from a willing seller for the Neches River National Wildlife Refuge is adjacent to existing Service-owned parcels. The purchase will enable the Service to straighten out existing boundaries, making fencing and management practices such as prescribed fire easier and safer. Resource protection will be more efficient and cost effective.

The Service, in partnership with the State of Texas and The Conservation Fund, has cooperated in identifying focus areas for bottomland hardwood conservation. Currently, the Service owns land in the project area. Therefore, adding acreage to the existing Service land will not cause additional expenses for management or maintenance.

Silvio O. Conte NFWR
The acquisition of tracts totaling 1,041 fee acres within the Refuge boundaries will enhance protection of a large grassland area for the benefit of the upland sandpiper and other grassland bird species.

The acquired tracts will straighten out existing boundaries and make resource protection more efficient and cost effective. The Service anticipates no additional costs associated with the acquisitions because the parcels are located within the refuge boundary and would create no additional workload.

Upper Mississippi River NW&FR
This acquisition is three parcels totaling fee title of 335 acres within the approved land acquisition boundary. These parcels will round out Service ownership and reduce maintenance costs by eliminating the need for retracement surveys, sign maintenance, or, in some locations eliminate the need for boundary fences. Consolidation enables consistent management and reduces confusion for visitors to these areas. On a river refuge prone to flooding, reducing signage and fence maintenance is cost effective. The public benefits from consolidated ownership because there is much less likelihood of accidentally trespassing on privately-owned land; public use and hunting regulations are uniform; and law enforcement costs are reduced.

Northern Tallgrass Prairie NWR
The majority of parcels to be acquired for the Northern Tallgrass Prairie National Wildlife Refuge are adjacent to existing public lands, and have been given the highest priority for that reason; the purchases will straighten out existing boundaries, making fencing and management practices, such as

prescribed fire, easier and safer. They will also make resource protection more efficient and cost effective.

Although not immediately adjacent to other land holdings within the boundaries of previously established priority "focus areas" for land acquisition, the Service, in partnership with the States of Minnesota and Iowa, The Nature Conservancy and the Natural Resource Conservation Service have identified these focus areas for grassland conservation. The Service currently has a land acquisition presence in each area; therefore, adding acreage to this base will not add to travel and/or long-term management costs to our agency. The Service will work with private landowners to develop stewardship agreements, and provide incentives and management assistance in the interest of preserving the prairie landscape regardless of ownership.

Nisqually NWR
The Service intends to acquire fee acreage, with a possibility of one parcel including both fee and easement, of an estimated total of 208 acres. Nearly all parcels targeted for acquisition are contiguous to existing Service-owned lands, and some of the key areas are also adjacent to Nisqually Indian Tribe lands or the Joint Base Lewis-McChord (a.k.a. Fort Lewis).

Acquiring these contiguous parcels will reduce trespass problems due to the patchwork nature of land ownership, predominantly at the Black River Unit, but also at the main unit of the refuge. Acquiring inholdings will make the boundary clearer for both refuge staff and the general public. The refuge is in a growing urban area, and encroachment on Service boundaries is a significant problem, particularly in the form of neighboring yards and fencing, and acquiring these parcels should reduce these issues with neighboring land owners.

St. Vincent NWR
The St. Vincent National Wildlife Refuge targeted acquisition is four acres. The tract to be acquired consists of a one-acre upland parcel, an ingress and egress easement, and the marina parcel, consisting of both the boat basin and surrounding land for parking and storage of vehicles and boats. The main purpose in acquiring this property is to obtain safe, secure, and permanent deep water boat and barge access to St. Vincent Island, the main unit of the St. Vincent National Wildlife Refuge, for the purpose of maintaining Refuge facilities; protecting trust species and their habitats; supporting public visitation, including the annual hunt program; and continuing the refuge's biological program, including wildlife census, research, and management of the federally-endangered red wolf captive breeding program. The refuge is on a month-to-month lease for boat and barge access at a campground approximately 10 miles to the west, but the access is not for sale and the lease can be terminated at any time. There are only three deepwater canals in the general vicinity of St. Vincent Island: the campground, the Fisherman's Cooperative, which is not for sale or lease, and the Trust for Public Land marina property. The TPL marina is the closest property to St. Vincent Island. If the refuge does not acquire the TPL marina, the next closest available marina is one of the public marinas in Apalachicola, about 20 miles east.

Acquisition of the subject property will save time and money for maintenance and for biological, fire, and law enforcement programs. As the marina is very close to St. Vincent Island, boats and barges could be stored at the property, reducing both ferry time and costs (most notably the cost of gas) involved in getting boats, barges, and other equipment to the island for maintenance purposes and for continuation of biological programs, including management of the federally-endangered red wolf

captive breeding programs. The same reduction in time and costs will be realized by the refuge law enforcement program, since officers would be able to access boats and quickly respond to emergencies on the island in a matter of moments instead of nearly an hour.

Okefenokee NWR
The 9,886 acres to be acquired for Okefenokee National Wildlife Refuge is owned by The Conservation Fund. Funding would be used to acquire timber, recreational, and hunting rights, providing the Service with full management rights on these lands. The acquisition will assist in preserving a tapestry of Federal, State, and private forest lands that provide more than a million acres of unfragmented habitat for a variety of federally-listed endangered and threatened species, including the red-cockaded woodpecker, woodstork, flatwoods salamander, Eastern indigo snake, and whooping crane. Acquisition would significantly contribute to a multi-partner effort by Greater Okefenokee Association of Landowners to establish a one-mile, wildfire-resilient wildlife conservation zone around the Refuge.

The acquisition of the 9,886 acres would allow the Service to manage the area as a fire resilient forest and save substantially on suppression efforts, as well as significantly improving our ability to protect the rural community (Spanish Creek) immediately to the east of the parcels.

Simpson Q20: The Land Acquisition budget includes a new set-aside of $66 million for "Collaborative Landscapes", with the focus being on three ecosystems: the Northern Rockies, the Greater Yellowstone, and the Florida-Georgia Longleaf Pine.

How did the selection of these three ecosystems come about?

Answer: Seven teams of interagency staff from the field submitted proposals requesting collaborative funding for acquisitions of landscapes. These proposals were reviewed first by a Technical Advisory Committee (TAC) comprising bureau staff with expertise in real estate, recreation, and conservation programs. The TAC scored each proposal against the set of criteria agreed upon by the interagency working group that designed the new collaborative program. There were four categories of evaluation criteria:

- **Process:** ensure proposals are built through Federal agency and local stakeholder collaboration and make efficient use of Federal funding *(e.g. which stakeholders are involved, what other resources will be leveraged)*

- **Outcomes:** ensure Federal resources are targeted to achieve important biological, recreational, cultural and socio-economic outcomes *(e.g. anticipated impact on recreation opportunities, species and habitats, working lands, rivers and waterways, cultural and historical resources)*

- **Urgency:** ensure funding is focused on outcomes that may be lost today if no action is taken or that are particularly achievable today *(e.g. nature and timeliness of threats to the landscape).*

- **Contribution to national priorities:** ensure local proposals are important contributors to national outcomes at the regional and national scales *(e.g. does proposal contribute to goals related to priority regions or topics).*

Then, a National Selection Committee (NSC) comprising all four agency Directors/Chiefs, plus senior representatives from both DOI and USFS, reviewed the results of the TAC scoring and discussed and weighed the merits of the proposals. In addition to the scores from the TAC, the NSC members considered where their agencies were making complementary investments in the same landscapes through other programs, and whether communities had made a case for locally-driven conservation plans over the course of the AGO listening sessions and in other contexts.

The recommendations of the NSC were approved by the Secretaries prior to inclusion in the budget.

Simpson Q21: Why do you not have any projects in the Greater Yellowstone ecosystem?

Answer: The Service's acquisition efforts are located in the Northern Rockies large landscape portion of the request. The acquisitions total $19.7 million and are concentrated in the Rocky Mountain Front, Blackfoot Valley, Swan Lake and Red Rocks Lakes Conservation Areas.

Simpson Q22: What are your goals and measurable objectives? I understand your strategy is acquiring land, but where and how far are you asking us to go with this?

Answer: The collaborative process was developed in response to congressional directives for greater coordination and to achieve greater conservation impacts. The new process was piloted in formulation of the President's 2013 Budget in a small number of ecosystems where the groundwork for collaboration was already in place and where significant acquisition opportunities of strategic importance were known to be available. The Departments of the Interior and Agriculture focused on these ecosystems for the pilot year to test the new process and evaluate whether it would successfully yield high quality collaborative proposals. The results of the pilot were promising and could be used to broaden the effort in successive years.

The broader goals of this new collaborative approach to land acquisition using LWCF funds are:

- To be more strategic with our LWCF investments;
- To make LWCF investments based on the best science and analysis that are collectively available to all agencies;
- To incentivize collaboration among bureaus, other federal agencies, and other stakeholders;
- To achieve efficiencies and improved results through complementary efforts and leveraging joint resources; and
- To support locally-driven conservation efforts.

Interior and Agriculture defined measurable goals and objectives for each landscape's proposed acquisition strategy. Staff in the field were challenged to work together to define common conservation and community (e.g. recreation, economic development) goals at the landscape scale, then determine whether land acquisition was an appropriate tool to help reach those goals. Goals and metrics for measuring progress to goal were articulated by the interagency teams preparing each

collaborative funding proposal. For example, some of the goals and measurable objectives for landscapes selected for funding were:

- Protect 96 percent of the threatened flatwoods salamander Critical Habitat between the St. Marks and Auculla Rivers (metric = % of Critical Habitat).
- Protect 29,000 acres of future habitat to allow the expansion of endangered red-cockaded woodpecker recovery populations identified in the Red-cockaded Woodpecker Recovery Plan by at least 135 breeding pairs (metric = acres pineland acquired; metric = number of breeding pairs).
- Protect a 6-mile corridor inland from Apalachee Bay (between St Marks and Pinhook Rivers) to protect habitats for wildlife movement inland as a result of sea level rise and connectivity to other public lands (metric = miles of corridor).
- Protect crucial wildlife migration corridors, endangered biological and geological systems, and special status species.
- Enhance cultural and natural landscapes while allowing for traditional working ranches and forests in many cases.
- Enhance outdoor recreational opportunities by increasing access, maintaining the integrity of scenic vistas and the primitive qualities of the Crown of the Continent Ecosystem.

The proposals were scored in part on how well project goals were articulated, expected outcomes were quantified, and how well the plan narrative contributed to the goals set.

Simpson Q23: Why is acquiring land the only strategy for this initiative, particularly when one considers that the Service's budget is filled with conservation and restoration programs that could be at least partially targeted toward these priority ecosystems?

Answer: The Department is striving to achieve greater collaboration across all its conservation and restoration programs per congressional directives. The goal is to better align a broad range of Department of the Interior and Department of Agriculture programs so that we can achieve even greater efficiencies and improved outcomes through leveraging diverse strategies and funding. Other Fish and Wildlife Service programs that complement the Land and Water Conservation Fund (LWCF) program include the Cooperative Endangered Species Conservation Fund grants, North American Wetlands Conservation Act grants, and the Partners for Fish and Wildlife program. These programs contribute significantly to a broad range of conservation goals, but LWCF remains unmatched in its importance as a conservation tool.

To help explore how to do this, the FY 2013 budget request pilots a collaborative planning and decision-making process for Federal land acquisition under LWCF. A signature reason for starting with LWCF was to be responsive to Congress' directives in House Report No. 111-180 and Conference Report No. 111-316 which accompanied the 2012 Appropriations bill, to collaborate extensively with other government and local community partners.

Another reason it made sense to develop a collaborative approach among the four LWCF Federal land acquisition programs is that each agency implements land acquisition programs that are substantially similar in mission but often operate independently from one another. That is, they all acquire land in fee or easement to be managed (or monitored, in the case of easements) by the agency, to further the specific agency mission without always considering how other agencies'

missions and priorities overlap. Yet each agency makes decisions about which parcels to prioritize for acquisition according to an agency-specific set of criteria, all of which are stringent and merit-based, but do not consistently incorporate considerations about mutually beneficial opportunities for interagency collaboration. It made sense to first align these four bureaus around a common and robust decision-making process and determine related land acquisition opportunities on a small scale before implementing an interagency collaborative land acquisition program on a larger scale.

The Department thinks the successful collaboration of this program will help to identify opportunities to align programs and funds to achieve greater efficiencies and meet mutual goals.

Environmental Contaminants

The Environmental Contaminants program is looking at a $1.3 million increase and the addition of 4 FTE to focus on spending down the high unobligated balances in the Natural Resources Damage Assessment and Restoration program. I know the Environmental Contaminants program has been instrumental in dealing with the Deepwater Horizon disaster, but what I don't understand is why we need to invest additional discretionary dollars into programs that ought to be paying for themselves using funds received from damage settlements.

Simpson Q24: Please explain.

Answer: While there is over $450 million available for restoration in the DOI Natural Resources Damage Assessment and Restoration fund, this money is arrayed across several hundred individual accounts. The funds in each individual account were specifically obtained in a Federal court approved settlement for on-the-ground restoration to compensate the public for documented injuries specific to that individual damage assessment case. With very few exceptions, these restoration funds are not available for consolidation or to cover restoration implementation costs of the involved Federal, State, or tribal trustees. In addition, since these settlement funds are not divisible among the trustees, all trustees have an equal claim to the funds and decisions on expenditures are made by consensus among the case specific individual trustee council members.

While some of the larger restoration settlements have sufficient funding to cover the cost of implementation, many of the settlements of smaller and medium size cases are not structured to cover such implementation costs. Implementation costs are normally sought during settlement negotiation, but a shortfall often occurs as a function of the risk and cost of litigation. In addition, the Department's co-trustees (states, tribes, and other federal agencies) on NRDA cases often are focused on putting the restoration dollars on the ground and not in funding the necessary staff support for project implementation. While DOI will continue to seek full funding of implementation costs in NRDAR settlements, the requested increase in funds and FTEs will substantially increase the speed of NRDA restoration implementation.

The funds will be used to fully fund several NRDA restoration specialists in the Environmental Contaminants program to take a leading role in guiding several specific trustee councils to more expeditiously and intentionally complete their stalled or sluggish restoration activities. Restoration within the NRDA context requires a unique skill set as the specialist not only needs to fully understand all the aspects of implementing a wide array of restoration options, but also have to be comfortable with environmental chemistry, consensus and coalition building, applying cutting edge

economic theory (e.g., ecosystem services and habitat or resource equivalency analysis), and avoiding legal challenges.

Some of the funds and FTEs will be used to support staff in critical, administrative duties (e.g., organizing and leading meetings, obtaining consensus among the trustees, writing restoration plans that incorporate a broad array of restoration options and public input) necessary to complete restoration planning, partnering, and leveraging of funds before on-the-ground restoration projects can be implemented. Successfully addressing these duties is often critical to obtaining consensus among the members of a trustee council, especially when the decision-making process of the council does not have to meet time critical deadlines.

In 2013 the Service will prioritize restoration efforts into three categories anticipated to produce the greatest return on investment:

- Closing out 12 cases with restorations nearly completed,
- Accelerating restoration expenditures on 24 cases with on-going restorations, and
- Expediting restoration planning on 16 large recently settled cases to begin restoration activities.

With the Environmental Contaminants program's track record of effectively utilizing Federal dollars for on-the-ground restoration, this increase can produce huge environmental returns. Based on the performance of the program since the late 1990's, a return of 25:1 is expected; for every $1 in funding spent by the Environmental Contaminants Program $25 in natural resource restoration will be returned, making this requested increase an excellent investment of Federal funding. In 2011 alone, Environmental Contaminants-led NRDA restoration projects restored 32,038 wetland acres, 55,557 upland acres, and 392 stream miles. By providing the funding to hire or fully fund dedicated NRDA restoration specialists, the Service anticipates doubling the current annual restoration efforts to $50 million per year.

Fisheries Program

The Fish and Wildlife Service's Fisheries Program just released a report estimating that the program's activities generate a total economic impact of $3.6 billion annually, which translates into a 28:1 return on investment and 68,000 jobs. A major message of the America's Great Outdoors initiative is about the economic benefits of outdoor recreation. It seems to me that fishing is a major component, and therefore that the Fisheries Program should be an important piece of the AGO crosscut.

Simpson Q25: Not only is it not, but core programs are severely cut. Why?

Answer: While the FY 2013 President's Budget proposes reductions in the Fisheries Program totaling $11.8 million, the Service is proposing to partially offset these reduction with the proposed $7.0 million in increases for high priority programs that will enhance the AGO initiative, such as $1.5 million for the National Fish Passage Program for barrier removal/bypass projects and $2.9 million for Asian carp control. Included in the program reduction is $600,000 which was shifted to other bureau budgets for direct reimbursement of mitigation production, $1.9 million for which the Service is seeking reimbursement for the production of fish for mitigation of federal water projects, and $741,000 which was a fiscal year 2012 congressional addition for supplies. The Office of

Management and Budget, Congress and DOI have asked the Service to amplify efforts to obtain full reimbursement from the Corps of Engineers, the Bureau of Reclamation and the Tennessee Valley Authority.

The Service and the Fisheries Program is committed to advancing the key goals of the AGO initiative, and the fiscal year 2013 President's Budget request works toward that goal.

Fish Passage Program

The budget proposes a $1.5 million increase for fish passage, while at the same time proposes a $1.1 million reduction from aquatic habitat general activities.

Simpson Q26: Compare and contrast what you expect to do more of with the increase for fish passage, versus the decrease from aquatic habitat general activities.

Answer: Fish passage has become a critical conservation tool for the Fisheries Program as the need to address aquatic habitat fragmentation has increased. Restoring habitat connectivity is essential for restoring anadromous fish specifically and making all fish species more resilient to the effects of climate change. The requested increase will implement as many as an additional 28 critical barrier removals or bypass projects that will reconnect important waterways and reopen habitat for fish and other aquatic species. Based on values reported in the Service study *Net Worth, The Economic Value of Fisheries Conservation, Fall 2011*, it is estimated that this will result in more than $200 million in economic benefits to local communities, as well as create or maintain over 1,300 jobs. Through the fish passage program as a whole, the Service will work with over 700 partners to assist local communities with the planning and implementation of these projects.

As increased funding for large fish passage projects becomes available, more expertise is needed in the highly specialized areas of fluvial geomorphology, fish passage engineering, fish behavior, and conservation business management. Building upon the existing Fish and Wildlife Conservation Office infrastructure, the Service will continue its transition towards a leaner, habitat-focused conservation delivery program, crucial for delivering the aquatic conservation component of the Service's mission. Therefore, while there will be a reduction in the delivery of on-the-ground fisheries habitat restoration and conservation due to the decrease in general program activities, the Service is funding high priority needs.

Simpson Q27: Will the decrease from aquatic habitat general activities include cuts to the National Fish Habitat Action Plan?

Answer: No, the National Fish Habitat Action Plan funding request remains at the FY 2012 appropriated funding level of $7,141,555.

Simpson Q28: Why are you putting more fish passage money into people instead of into projects?

Answer: More than 70 percent of the funds received by the Fisheries Program for the National Fish Passage Program (NFPP) go directly to the implementation of projects. The Fish and Wildlife Service is working strategically to strengthen on-the-ground fish passage delivery capabilities by training current biologists in the science of fish passage. This increase of in-house capabilities would

reduce the price tag of fish passage projects. The Service's experience with NFPP engineers shows that when in-house expertise is used, the price of implementing a fish passage project can be reduced by over 20 percent.

Simpson Q29: Have you ever considered rolling the fish passage program into the National Fish Habitat Action plan so that fish passage dollars can be considered within the greater context of aquatic habitat restoration priorities?

Answer: The National Fish Habitat Action Plan (NFHAP), a Service supported and Association of Fish and Wildlife Agency (AFWA) led effort, exclusively addresses priorities of the Fish Habitat Partnerships (FHP), some of which are fish passage related, but not all. While a portion of National Fish Passage Program (NFPP) funds and expertise address priorities of the FHPs, the fish passage program also addresses a myriad of other Service priority fish habitat projects.

The Service established the NFPP in concert with repeated Congressional report language issued from 1998 to 2005 to increase the habitat focus of the Fisheries Program. Since its formation in 1999, the NFPP has expanded in scope and capabilities to the point that the Service is a vital and trusted partner in community-based fish passage projects. Funding for NFPP support Service technical expertise, as well as on-the-ground cost-shared projects with over 700 partners across the country The program is flexible, allowing the Fisheries Program's Fish and Wildlife Conservation Office field biologists to respond quickly to priorities of the Service and our partners (both Federal and non-Federal), as demonstrated recently with the post tropical storm Irene recovery efforts.

The NFHAP emerged in 2002 from a recommendation to the Service by the Sport Fishing and Boating Partnership Council. NFHAP gained momentum in 2003 when the Association of Fish and Wildlife Agencies, representing the States, endorsed the effort and agreed to take a leadership role. To this day, the AFWA serves as the lead entity in what is now known as the National Fish Habitat Partnership (Partnership). The Service is a key participant in the Partnership at local, regional, and national levels, and provides crucial funding to support science, partnerships, and on-the-ground cost-shared projects. The Partnerships help by enlisting a broader slate of partners and identifying matching funds for projects. This synergy is increasing over time within the Service's Fisheries Program, and also with the Service's Coastal Program and Partners for Fish and Wildlife Program.

Increased collaboration across programs, bureaus, and departments is encouraged by the Secretaries of the Interior, Agriculture, and Commerce through a recently signed Memorandum of Understanding for Implementing the National Fish Habitat Action Plan. The MOU recognizes that the National Fish Habitat Partnership provides a national strategy to harness energies, expertise, and existing programs to achieve cooperative, proactive conservation goals. The Service believes that the approach put forward in the MOU effectively links the NFPP with the greater context of aquatic habitat restoration priorities.

National Wildlife Refuges

Simpson Q30: Will the refuge system complete Comprehensive Conservation Plans for all 554 original refuges by October 9, 2012, as mandated by the National Wildlife Refuge System Improvement Act of 1997?

Answer: The Service has made significant progress toward meeting the goal of completing Comprehensive Conservation Plans (CCPs) for 554 units by October 9, 2012:

- Through the end of FY 2011, CCPs for 427 of these units have been completed.
- CCP development is underway for an additional 109 of these units.
- CCPs for 18 of the required units are yet to be started.

The CCPs for 8 of the 427 completed units are currently being revised. The Service has also completed CCPs for 9 units that were created after the Improvement Act. Despite this progress, there is a reasonable chance that that a CCP will not be completed for all of the original 554 units by October 9, 2012. The current schedule indicates that CCPs for 42 of the required 554 Refuge System units will not be completed by that date. All of these plans, however, should be under development on that date.

Simpson Q31: How many refuges are closed to the public? How many are unstaffed?

Answer: Of the 594 refuge units, 459 of them, or 77 percent, are open to the public and 134 are closed to the public.

The latest data on staffed refuges is from 2008, when it was determined that 216 refuge units (including both national wildlife refuges and wetland management districts) were unstaffed. "Unstaffed" in this case does not mean the unit never receives attention, but it does indicate that no FWS employees are located there. The number of unstaffed refuges is approximately the same today. Therefore, with 594 total units (556 refuges and 38 wetland management districts), including Everglades Headwaters established in 2012, approximately 374 units (63%) are staffed and 220 (37%) are unstaffed. Unstaffed and closed are not the same. Some refuges may be closed to the public but are staffed and accomplishing specific work such as invasive species management.

Simpson Q32: How many refuges are open to hunting and fishing?

Answer: According to the Code of Federal Regulations (CFR), the Refuge System offers hunting on 327 refuges and fishing on 272 refuges. There are 243 refuges that are open to both hunting and fishing.

Simpson Q33: How large is the maintenance backlog, and is it growing?

Answer: The Refuge System continues to manage its maintenance backlog by continuing to refine its condition assessment process, using maintenance action teams, actively pursuing local partnerships, carefully prioritizing budgets, and disposing of unneeded assets. As a result the backlog declined by $200 million from fiscal year 2010 to fiscal year 2012.The condition of the overall portfolio has improved; mission critical needs are being met.

The Refuge System's list of deferred maintenance projects decreased from $2.7 billion to $2.5 billion. There are 14,641 deferred maintenance projects. Repairs to roads and parking lots, bridges and trails, dams, levees, and other water control structures are among the most common maintenance needs. With the start of the Service using the Financial and Business Management System (FBMS), the Service redefined 'facilities;' thus, the total number of Refuge System facilities dropped from

44,475 in 2011 to 31,577 in 2012. Of the Refuge System's 31,577 facilities, 10,603 are now in need of some repair, and many of these pose safety threats for refuge visitors, staff, and wildlife.

Landscape Conservation Cooperatives

The Service has invested heavily to establish Landscape Conservation Cooperatives around the country over the past few years. The FY13 budget proposes no additional funds for LCC's, yet at least four of the 22 LCC's aren't fully established.

Simpson Q34: Was the shift in funding priorities for FY13 a direct response to Congressional direction in FY12 to concentrate the bureau's efforts on a select few LCC's?

Answer: Yes. In fiscal year 2012, Congress directed the Service to more fully develop the LCC initiative in a limited number of areas. The Service has responded to that concern by focusing funding and support on those LCCs that are best able to deliver priority conservation outcomes as defined by LCC partners while maintaining others at a reduced level. Targeting funding in fiscal year 2013 will provide for continued development of critical partnerships associated with more established LCCs and will focus resources so they are used effectively to benefit fish, wildlife, plants and their habitats.

Simpson Q35: Why is the Peninsular Florida LCC not a priority at a time when the Department is investing billions in restoration and new acquisition?

Answer: In accordance with Congressional direction, the Service proposes to focus funding and support on those LCCs that are best able to deliver priority conservation outcomes while maintaining others at a reduced level. The Peninsular Florida LCC has hired a coordinator and established an interim Steering Committee, which are important steps in its development. However, the Peninsular Florida LCC was initiated later than most of the other LCCs and has not had sufficient time to fully develop the critical partnerships and capabilities associated with more established LCCs. In FY 2012, the Peninsular Florida LCC received a small funding increase, which will enable it to continue to develop so that it can better serve the considerable needs of the conservation community in Florida in the future.

Simpson Q36: Shouldn't a Peninsular Florida LCC be a prerequisite to investing so much in conservation and acquisition? If not, then what exactly is the point of the LCC?

Answer: LCCs are intended to be applied conservation science partnerships working to build a shared view of future conservation needs across regional landscapes. The fundamental objective of LCCs is to define, design, and help partners deliver landscapes that can sustain fish and wildlife species at desired levels. LCCs are a nexus for bringing together land and resource managers from all sectors -- federal, state, tribal, local, non-governmental, to address the onslaught of natural resource stressors. They work towards this objective by agreeing on common goals and jointly developing the scientific information and tools needed to develop, prioritize and guide more effective conservation actions towards these goals. In this way, LCCs play an important role in identifying gaps, prioritizing and connecting existing efforts with all conservation partners, leveraging funding and preventing duplication. This integrated approach is needed to address increasing land use pressures and widespread resource threats and uncertainties in a more efficient and effective way. Cross agency coordination is a critical component to this approach as is working with highly effective

existing partnerships such as the State Wildlife Action Plans, Joint Ventures, and Fish Habitat Partnerships.

The conservation issues and opportunities in Florida are too urgent to wait until the Peninsular Florida LCC reaches its full operational capacity. While the LCC will enhance cooperative conservation in Florida, existing Service programs and conservation partnerships can begin the important work of assessing and addressing the multiple stressors affecting this landscape.

Simpson Q37: Please explain whether and how the Service is integrating the work of its LCC's into each and every one of the Service's other programs—and particularly the State and Tribal Wildlife Grants.

Answer: The LCCs were developed to address critically important conservation challenges that are large-scale in nature. These may be climate change related or may be among a wide variety of other stressors that transcend ecological, geographic, administrative, and political boundaries. The impacts include, but are not limited to, energy development, invasive species, land use transformation, establishment of migratory corridors, and habitat connectivity. Clearly, this scale of impacts is relevant to many programs of the FWS. Administratively, the Fish and Wildlife Service is represented on all 22 LCC steering committees. One of the key roles of the steering committee representative is to act as a liaison to all Service programs of relevance to the LCC. This happens through a variety of mechanisms such as email notes from the steering committee meetings, regular meetings with staff, assignment of Service staff to various LCC work teams, and other approaches. Furthermore, this role is supported through the actions of the Assistant Regional Director for Science Applications who has a primary responsibility for ensuring science coordination among Service programs and the LCCs.

Existing collaborative conservation programs such as the Joint Ventures (JV) and the National Fish Habitat Action Plan (NFHAP) are highly relevant to the LCCs. The initial geographic development of the LCC areas was primarily based upon Bird Conservation Regions. As a result, several LCCs were very closely aligned with JVs (e.g., Great Plains LCC and the Playa Lakes JV; Gulf Coastal Plains and Ozarks LCC and the Lower Mississippi JV). Because of this, LCC Steering Committees and JV Boards often had substantial overlap in membership. More frequently, though, the JVs would be represented on the LCC Steering Committee or be engaged as part of an advisory board consisting of multiple partner-based organizations such as JVs, NFHAP Fish Habitat Partnerships (FHP), and other pre-existing organizations. In both cases, science needs identified by the JVs and FHPs have been incorporated into the larger framework of the LCC science agendas. A working group of national coordinators or board leaders of the JV, NFHAP and LCC programs has been established and is working on further programmatic integration.

The State Wildlife Action Plans (SWAP) are a fundamental source of information for the LCCs. Most LCCs have reviewed SWAP priorities, developed multi-state SWAP comparisons, and included them in initial conservation science planning. This has led to a number of approaches for further advancement of SWAP and LCC integration. For example, the North Atlantic LCC recently co-hosted a meeting with Wildlife and Sport Fish Restoration and Northeast State partners to discuss how State Wildlife Action Plan updates will incorporate common elements and regional information to allow States and conservation partners to make state-level decisions within a regional or landscape context. The regional information, including maps, conservation designs, and regional assessments to

inform this planning, is coming from joint efforts between the North Atlantic LCC and the Northeast States' Regional Conservation Needs (RCN) program which pools State Wildlife Grant funding for regional projects.

The Southeastern States and LCCs have embarked on a process to develop a Southeast Conservation Adaptation Strategy (SECAS). The purpose of SECAS is to provide a forum and process for the conservation community to come together to develop a vision and strategies needed to enable fish and wildlife populations to be sustained at desired levels in the face of major stressors such as continued human population growth, growing energy development, and a changing climate. The foundation for a SECAS will be based on and built upon conservation planning efforts already in place: SWAPs, bird conservation plans [e.g., North American Waterfowl Management Plan, Partners in Flight, and Northern Bobwhite Conservation Initiative], National Fish Habitat Action Plan, The Nature Conservancy (TNC), Ecoregional Plans, etc.

In addition, national LCC staff is participating in an Association of Fish and Wildlife Agencies (AFWA) sponsored work group that is developing voluntary guidance in the form of a 'best practices' document that can be used by U.S. States and Territories when revising their State Wildlife Action Plans. One goal of this work group is to identify practices that would make the SWAPs more useful for landscape scale conservation.

The first recommendation of the new National Wildlife Refuge System vision is to, "Incorporate the lessons learned from the first round of Comprehensive Conservation Plans and Habitat Management Plans into the next generation of conservation plans, and ensure these new plans view refuges in a landscape context and describe actions to project conservation benefits beyond refuge boundaries." Working towards this vision, the Service's refuge program has assigned a central liaison to the LCCs and is working with LCCs to develop tools and information to support planning decisions. Refuge staff serve on LCC steering committees (e.g., Chief of the Refuge System in the Southeast Region serves on the Steering Committee of the South Atlantic LCC). LCCs support and add value to Refuge System work. For example, the California LCC and the North Pacific LCC are helping the Service model sea-level rise along the Pacific Coast. In this project, the LCCs are allowing five National Wildlife Refuges to evaluate sea-level rise effects at a local scale relevant to the landscape level.

The Refuge System Inventory and Monitoring (I&M) Program has a mission to create "a nationally coordinated effort to support inventories and monitoring at the refuge, landscape, regional and national scale to inform management and evaluate the effectiveness of strategies to support adaptation to climate change and other major environmental stressors." This aligns very closely with a function of the LCCs to support the development of landscape-scale measures of conservation status and success. The Refuge I&M program will look beyond the traditional refuge boundaries and link with other I&M efforts such as those of the National Park Service. Efforts are underway within the LCCs to facilitate and provide leadership in this process. For example, at the recent Denver National LCC workshop (March 26-29, 2012) a special working session on coordination of monitoring programs across multiple agencies took place. Furthermore, the LCC leadership team has established a standing work team on monitoring coordination that includes a defined Refuge I&M liaison to ensure appropriate coordination.

The LCCs support and add value to the Endangered Species Program's efforts to achieve listed and candidate species conservation on the working landscape. A top priority of the Great Basin LCC is to

provide science to advance the conservation of sage-depended species such as the greater sage grouse, which is a candidate species for listing under the Endangered Species Act . The Great Plains LCC provides applied science and decision support tools to help natural resource managers conserve plant, fish and wildlife in the mid- and short-grass prairie of the southern Great Plains. Great Plains LCC priorities include listed and candidate species such as the Lesser Prairie-Chicken, sand dune lizard, and American burying beetle. The Gulf Coastal Plains and Ozarks LCC is working with the FWS, US Forest Service and TNC to develop a prioritization model for identifying potentially suitable, but currently unoccupied, habitats to target search and restoration efforts for the federally-threatened Louisiana Pearlshell Mussel. The Great Northern LCC is working to support the recovery of the threatened Bull Trout in the Crown of the Continent ecosystem.

In addition to working with NFHAP, the LCCs have engaged the Fisheries and Habitat Conservation program at various levels. This has included an extensive work session at a national meeting of FHC leadership held in Burlington, VT, in fall 2011, and working sessions with the Branch of Aquatic Invasive Species and Branch of Habitat Restoration. LCC staff are also involved in the field station reviews of the Fish Technology Centers and work with individual fish technology center staff on evaluating science development and identifying linkages with LCCs. At the individual LCC level, fisheries programs and LCCs are increasingly identifying valuable collaborative opportunities. For example, the Upper Midwest and Great Lakes LCC is working with Service fisheries program offices, the Great Lakes Fisheries Commission, and States to provide overall coordination for fish passage analysis and planning.

Simpson Q38: Does the Service assess its other programs to supplement the LCC line-item funding?

Answer: No, funding appropriated to the Cooperative Landscape Conservation and Adaptive Science subactivity provides the necessary funding for LCCs. While other Service programs work collaboratively with LCCs and contribute resources and effort, they are not assessed financially to support LCCs.

Simpson Q39: The Service hasn't been shy about trying to re-build the science capacity it lost to the National Biological Survey and eventually the Biological Resources Division at the USGS.

Is it just not working, this model of having all of Interior's biological science housed in the USGS?

Answer: As a natural resource management bureau, the Fish and Wildlife Service is a science-based organization and requires trained scientists and basic science capacity in order to apply scientific findings to resource management decisions. The USGS has a different but complementary role to conduct long-term objective research, to develop modeling and forecasting capability to support decisions, and to maintain large-scale, long-term monitoring and data efforts.

In recent years USGS has provided important science support to the Service to assist with a range of management issues including wind energy, golden eagles, sage grouse, white nose syndrome in bats, invasive species and polar bears. Yet the leadership of USGS would be among the first to acknowledge that there are currently not enough resources within the USGS to meet all of the needs of the Fish and Wildlife Service for science in support of the Service's mission. In a constrained budget environment both USGS and the Service must balance competing needs and prioritize limited

resources. The fiscal year 2013 budget request for both bureaus represents this prioritization for science funding in each bureau.

Simpson Q40: The USGS budget includes a $16.2 million increase for "science in support of ecosystem management for priority ecosystems." I thought that was basically the mission of Interior's Landscape Conservation Cooperatives, which are funded through the Fish and Wildlife Service.

Why the need for both? Please explain.

Answer: The fundamental objective of LCCs is to define, design, and help partners ensure that landscapes can sustain fish and wildlife species at desired levels. LCCs are not research institutions, and their role is to work towards this objective by collaborating with partners to reach agreement on common goals to develop, prioritize and guide more effective conservation actions. LCCs play an important role in identifying science gaps and developing science-based strategies and decision support tools, leveraging funding, and preventing duplication. To do this, LCCs rely on the research capacity of USGS, Cooperative Ecosystems Studies Units (CESU), and other institutions to provide new scientific information.

A broad array of scientific expertise is necessary to understand both the biotic and abiotic systems that drive landscape change. The USGS has the unique range of capabilities to conduct this type of landscape-scale, systems-based science that will be applied by the Landscape Conservation Cooperatives (LCCs).

The $16.2 million increase in the USGS 2013 budget request is intended to fund fundamental science questions related to restoration of economically important priority ecosystems, including control of invasive species of greatest concern such as pythons in the Everglades, Asian carp in the Great Lakes and Upper Mississippi, flow conditions and water quality in the San Francisco Bay-Delta, and water availability, water quality, and fish habitats in the Klamath Basin. This information is available for application by the LCCs and other resource management entities in conservation planning and landscape level resource management.

Simpson Q41: The LCC's appear to be more partnership-based than the USGS research program. Is that the case, and, if so, shouldn't we be investing in the LCC's primarily?

Answer: LCCs were designed and organized to be partnership-based. However, LCCs alone cannot provide the full range of science capacity needed to address the increasing land use pressures and widespread resource threats and uncertainties affecting fish and wildlife resources. For example, the impacts of accelerating climate change are a major uncertainty that needs to be considered in fish and wildlife conservation and the USGS Climate Science Centers are being developed to work with the LCCs to address this need.

USGS research activities are partnership-based to ensure both efficient use of scarce funds and close matching of results to management needs. For example, USGS science is being applied in the Chesapeake Bay as part of a broad coalition of Federal, State, and local partners supporting implementation of the Chesapeake Bay Executive Order. In the Great Lakes region, USGS Asian carp research into early detection and control technologies is being conducted in support of the Asian

Carp Regional Coordinating Committee, which consists of Federal, State and local agencies in addition to other private stakeholders.

Simpson Q42: A closer look at the Fish and Wildlife Service's budget reveals $13.5 million for ecosystem restoration activities that appear to be separate from the budget for LCC's. Of this amount, an increase of $2.5M is for Great Lakes restoration.

Why is the Administration asking separately for Great Lakes restoration funding increases in the Fish and Wildlife Service budget, when the Service already receives a significant portion of funding through EPA's Great Lakes Restoration Initiative?

Answer: The Service's 2013 budget request includes additional funding of $2.9 million for nation-wide activities to control the spread of Asian carp. The U.S. Fish and Wildlife Service (Service) currently implements two different strategies to address the threat of Asian carps in the United States. The first is the *Management and Control Plan for Bighead, Black, Grass, and Silver Carps in the United States* (Plan), which is national in scope. Implementation would be done through the Service, in cooperation with partners. Its goal is eradication of all but "triploid" grass carp in the wild. The second is the more recent *Asian Carp Control Strategy Framework* (Framework) created in 2010, focused on Great Lakes waters only. This approach is being implemented through the Asian Carp Regional Coordinating Committee (ACRCC), a partnership of Federal, Great Lakes States, and local agencies led by the White House Council on Environmental Quality. The latest version of the 2012 Framework was released this past February.

The Service continues to provide technical assistance to Midwest Region States to prevent the spread of these fish and to share information learned from Asian carp control efforts in other areas. The Service will soon establish an environmental DNA (eDNA) facility, that will be attached to the La Crosse Fish Health Center in Wisconsin. The new facility will increase the Service's capacity to test water samples for traces of Asian carp DNA.

The Service's 2013 requested increase will be used for early detection and surveillance of the leading edge of Asian carp distributions. If funded, work could include collecting and analyzing water samples for eDNA testing from State and Fish and Wildlife Conservation Offices in areas potentially susceptible to Asian carp invasions. Work plans would need to be developed and prioritized, but Asian carp intrusion into the upper Mississippi River could be considered a high priority area. Other high risk-ecosystems include the San Francisco Bay Delta and Columbia River Basin. Early detection and surveillance of the leading edge of Asian carp distributions is part of a broader national containment strategy outlined under the National Asian Carp Management and Control Plan.

Simpson Q43: Why is the Service's ecosystem restoration funding separate and apart from LCC's? Shouldn't the funding go to the LCC's to ensure that the programs are aligned and focused on the highest priorities?

Answer: The Service's funding for ecosystem restoration goes to collaborative efforts in which many partners work together to implement management actions to restore coastal areas and habitats, improve natural resource management and protect endangered species in areas such as the Everglades, Gulf Coast, Chesapeake Bay and California Bay Delta. Many of these large-scale projects are being done in collaboration with Landscape Conservation Cooperatives (LCCs).

By locating ecosystem restoration funding in programs such as refuges and fisheries, the Service is providing resources to the project managers and biologists who execute the specific actions called for in restoration plans such as the California Bay Delta Conservation Plan.

LCCs are landscape-scale conservation partnerships that produce and disseminate applied science products for resource management decisions; they do not implement direct conservation actions. LCCs promote efficient and effective targeting of Federal dollars, as well as use fiscal resources, personnel and real property assets of their partners to obtain and analyze the science necessary for the Service and its partners to protect fish, wildlife, plants and their habitats. Each LCC is guided by a steering committee comprised of its key partners who identify a shared vision of the sustainability of natural and cultural resources in that landscape. The partners identify the highest priority science needs; it is not directed by the Service or the Department of the Interior. While LCC science may benefit the restoration of a particular ecosystem, each LCC determines what the highest priority needs are in that landscape.

LCCs advance the goals of ecosystem restoration by supporting efforts such as those of the Gulf Coast Ecosystem Restoration Task force that, in cooperation with the Gulf States, is seeking to address the long-term impacts of recent disasters (e.g., the Deepwater Horizon oil spill and hurricane Katrina). The Gulf LCCs (South Atlantic, Peninsular Florida, Gulf Coastal Plans and Ozarks, and Gulf Coast Prairie LCCs) provide conservation planning, decision support tools, prioritized and coordinated research, and help design inventory and monitoring programs to meet the regional restoration goals of the Gulf Coast Restoration Strategy. In addition, the Service in conjunction with NOAA, has established a Gulf Coast liaison position to work with the Gulf LCCs and the States in the Gulf Coast region to help identify best practices, connect conservation efforts, identify data gaps and avoid duplication of effort as they strive to restore this area.

The North Atlantic LCC also is very active in Chesapeake Bay restoration. For example, the LCC is working on science projects to support conservation of at-risk species such as the Red Knot and the Horseshoe Crab. LCCs are a mechanism to bring together the resources of all partners to answer fundamental questions about habitat management and species conservation.

Coastal Impact Assistance Program

Simpson Q44: In the short time that the Fish and Wildlife Service has administered the Coastal Impact Assistance Program, what steps has the Service taken to work with the States to try and obligate this funding?

Answer: The Service has taken a number of steps to improve the management of the Coastal Impact Assistance Program (CIAP). We began meeting with all of the affected States starting in May 2011 to discuss the issues and develop a transition plan to minimize the impact on States and Coastal Political Subdivision (CPS) operations. As a result of the preliminary discussions, we centralized the grant administration into the Washington Office and hired and trained a professional grants management team to review and award grants. Additionally, we have added a technical guidance function in each of the States to provide a State Liaison to work closely with the recipients of CIAP funds. Five of the six States presently have a State Liaison, with the sixth in the process of being hired. The State Liaisons in the four Gulf States are co-located with State staffs. In California and Alaska, the liaisons

are located in local Service offices in Sacramento and Anchorage, respectively, to encourage communication and expeditious handling of technical questions on planning and proposed project issues. The Washington Office staff is responsible for the technical review of grants, including programmatic and financial aspects that are integral to the grant award process. The State Liaisons are working with the recipients in the pre-award phase to guide the planning process, develop project proposals and to help improve the quality of initial grant application submissions to alleviate the time-consuming process of supplemental information requests during review.

In addition, we have held a national webinar and two national teleconferences with CIAP applicants. We have completed a CIAP training session in Alaska and are in the process of scheduling training workshops for States and CPSs for better CIAP grants management. We expect to hold these workshops April through August 2012 in the eligible States.

Simpson Q45: What was the obligation rate for this program before and after the Service started administering this program?

Answer: Prior to its transfer to FWS, approximately $402 million was obligated from FY 2007 through FY 2011. During these 60 months, which includes the start-up period, funds were obligated at an average rate of $6.7 million per month. In FY 2012, the average monthly obligation through March 15, 2012, is approximately $25 million per month. However, it should be noted that due to the short time frame that the Service has been awarding grants, the rate of obligation may vary in future months from this monthly average.

Simpson Q46: Does the Coastal Impact Assistance Program overlap with other Service programs, such as the Coastal Program?

Answer: Although there are similarities between CIAP and some other Service grant programs, such as the nationally competitive Coastal Wetlands Planning, Protection, and Restoration Act, there is no duplication of effort. The Service's Coastal Program has a primary purpose to work with other Federal, State and local agencies, Tribal governments, non-governmental organizations, educational institutions, industry and private landowners, to protect and restore coastal habitat for the benefit of Federal trust species in all coastal States and Territories. This complements but does not duplicate CIAP purposes that are limited to the six States designated in the legislation: Alabama, Alaska, California, Louisiana, Mississippi, and Texas. These programs are often working in the same or adjacent habitats, and the Service works closely with its State and local conservation partners to serve local and national goals without duplicating efforts or working at cross purposes. CIAP projects were developed by each State, vetted through a public review process, and the State CIAP Plans approved by the Governor and the federal awarding agency. During the States' planning and review process, the Service's Coastal Program and Landscape Conservation Cooperative staffs were involved and helped broaden opportunities for partnership between agencies and non-governmental organizations. The interdisciplinary and complementary processes involved allow States to select their highest priority projects within the CIAP eligible uses.

Spotted Owls

Simpson Q47: Does the USFWS believe that spotted owl populations will continue to decline unless barred owl populations are meaningfully reduced?

Answer: Managing competition from encroaching barred owls is one of the primary short-term recovery recommendations in the spotted owl recovery plan. Barred owls pose the most significant short-term threat to spotted owl recovery. Barred owls reportedly have reduced spotted owl site occupancy, reproduction, and survival. Limited experimental evidence, correlational studies, and copious anecdotal information all strongly suggest barred owls compete with spotted owls for nesting sites, roosting sites, and food, and possibly predate spotted owls.

This threat has increased in intensity over the years since the spotted owl was listed. It could result in the local extinction or near extirpation of the northern spotted owl from a substantial portion of their historical range even if other known threats, such as habitat loss, continue to be addressed. Because the abundance of barred owls continues to increase, the Service recommended in the 2008 Recovery Plan and the Revised Recovery Plan for the Northern Spotted Owl that specific actions to address the barred owl threat begin immediately.

Simpson Q48: If barred owl populations are not controlled will increases in designated critical habitat for the Northern Spotted Owl stop the decline of the spotted owl?

Answer: The spotted owl recovery plan includes 34 recovery actions and makes three overarching recommendations: 1) protect the best of the spotted owl's remaining habitat; 2) revitalize forest ecosystems through active management, and 3) reduce competition from the encroaching barred owl. Consequently, both habitat protection and barred owl management are key components of spotted owl recovery and should be conducted simultaneously.

Recent science affirms the need to conserve larger areas of habitat to save the spotted owl in light of its continued decline (the overall population is declining at a rate of 2.9 percent per year). This was demonstrated through two scientific peer review processes—on the 2008 and 2011 spotted owl Recovery Plans—and in recent published studies by leading spotted owl researchers. Scientists have emphasized the importance of habitat conservation in the short term as we evaluate approaches for managing competition from the encroaching barred owl. Maintaining or restoring forests with high-quality habitat reduces key threats faced by spotted owls and provides high-quality refugia habitat from the negative competitive interactions with barred owls that are occurring where the two species' home ranges overlap. Maintaining or restoring these forests should allow time to evaluate the competitive effects of barred owls on spotted owls and the effectiveness of barred owl removal measures.

Simpson Q49: When does the USFWS expect that it will begin implementing a barred owl removal program?

Answer: No policy decision is made by the draft Environmental Impact Statement (EIS). If the U.S. Fish and Wildlife Service moves forward with the proposed barred owl removal experiment to support northern spotted owl recovery, the soonest we would expect to implement the experimental removal would likely be late FY 2013 or early FY 2014. After the 90-day public comment period on

the draft EIS, we will review all public comments received and develop a final course of action. We seek to finalize an EIS by the end of 2012 and proceed with obtaining the appropriate permits. Unless the "no action" alternative is chosen, survey work to locate barred owls could take place during the spring of 2013, and the first removal could begin later that year, somewhere around the beginning of FY 2014. Depending on the alternative chosen, results may not be conclusive for several years.

Simpson Q50: How many acres of the spotted owls' habitat is currently occupied by barred owls? What is the current estimated population of barred owls in the Pacific Northwest?

Answer: The range of the barred owl in the western United States now completely overlaps with the range of the northern spotted owl. We observe that as the number of barred owls detected in historical northern spotted owl territories increase, the number of spotted owls decrease. In the US, the density of barred owls appears greatest in Washington where barred owls have been present the longest and spotted owl populations have declined at the greatest rate in these areas.

At this time, we do not have a current estimate of the barred owl population numbers. Until recently, most of the information on barred owls was gathered incidentally from observations taking place in the course of other field research, which indicated that barred owl populations were increasing. However, this collateral information was only providing a sense of a trend, not comprehensive data. The 2008 Recovery Plan and the Revised Recovery Plan for the Northern Spotted Owl recognized the importance of gathering population information for barred owls and, as a result, a team of scientists and researchers have worked together to develop protocols for detecting barred owls and documenting important population information, including pair status and reproduction. We expect these tools will help provide vital data needed to help manage barred owls and reduce their threat to spotted owls.

Simpson Q51: How much does it cost per acre for barred owl removal activities?

Answer: The draft EIS includes eight potential alternatives that vary in size, methodology and cost. The differences in these alternatives make it difficult to derive a reliable per acre cost estimate at this time. In addition, public comments may provide information that could change the alternatives in scope, scale, approach or timing and thus, could affect the final cost.

Simpson Q52: What is the total estimated annual cost of implementing the type of widespread barred owl removal program needed to reverse spotted owl declines? How many years would it take to implement this program?

Answer: The draft EIS includes eight potential alternatives of targeted barred owl removal for public consideration and does not propose a widespread or rangewide removal program. Each alternative includes information on the experiment location(s), the estimated cost and duration, the approximate number of barred owls that would be removed, the potential effect on other species, and any potential social, economic, cultural, and recreational effects. If it proceeds, the experiment would take place over a period of 3-10 years (the duration varies in the different alternatives).

Simpson Q53: Does the USFWS have sufficient funding to begin implementing this program in FY13? If not, why didn't the agency request additional funding for these activities?

Answer: The amount of funding needed will depend on the alternative selected. The FWS anticipates working with partners to identify funding options appropriate for the selected alternative. Currently, without a better estimate of the funding that may be needed, the Service anticipates using base funding for its portion of the initial phase if we proceed with the removal experiment.

Simpson Q54: What authority does the USFWS have to conduct barred owl removals on state and private lands? Can barred owl population growth trends be meaningfully reduced if removal activities only take place on federal lands?

Answer: Interspersed State and private land occurs within the boundaries of many study areas but would only be included in the experiment with landowner permission. Incentives, such as easily-implemented safe harbor agreements or habitat conservation plans, may be offered to encourage participation.

For the Service to proceed with the removal experiment, we would be required to obtain a permit under the Migratory Bird Treaty Act for scientific collection of barred owls. As a component of the issuance of that permit we are conducting a National Environmental Policy Act (NEPA) review. We would also conduct a consultation under section 7 of the Endangered Species Act (ESA). Depending on the study area and land management agency involved, the study may require additional Federal and State permits. Any study on National Parks or Recreation Areas would require a research permit. Study areas on National Forests would require a special use permit. Most proposed study areas for the experiment are focused on federal lands (U.S. Forest Service, Bureau of Land Management, and National Park Service). One proposed study area includes the Hoopa Valley Indian Reservation in California.

If a decision is made to implement the experimental removal, barred owl population trends could likely be meaningfully reduced if removal activities take place only on Federal lands, since Federal lands comprise the majority of landownership within the range of the spotted owl. Any effort to reduce or remove barred owls from the spotted owls' range is likely to be beneficial, based on information collected to date from Green Diamond Resource Company lands in coastal northern California and efforts in British Columbia. While only small pilot efforts, these studies indicate that spotted owls will re-occupy sites from which barred owls are removed, at least under some circumstances. Spotted owls returned to all sites after barred owls were removed in the California study. Successful breeding by spotted owls in Canada also was observed in areas where barred owls were removed.

Questions for the Record from Mr. Calvert

Coastal Impact Assistance Program

Your budget request includes a request for the rescission of $200 million from the Coastal Impact Assistance Program, a program that, among other things, funds projects for the mitigation of the impact of OCS activities through funding of onshore infrastructure projects and public service needs for coastal states. It is my understanding that this program existed in MMS until FY2012 when authority over the funds was transferred to FWS. Now, it seems that after 1 year under management by FWS you are seeking to severely cut funds from this program.

Calvert Q1: Your budget justification seems to indicate that the reason for this rescission is because the money is not being obligated fast enough. What factors are contributing to these funds relatively low obligation rate?

Answer: In 2005, the Secretary of the Interior delegated Federal authority and responsibility for the Coastal Impact Assistance Program (CIAP) to the Minerals Management Service (MMS – which was later reorganized as the Bureau of Ocean Energy Management Regulation and Enforcement (BOEMRE)). Before grants can be approved and funding obligated, the statute requires the States to have approved plans for the funding. The MMS/BOEMRE approved State CIAP Plans for five of the six States for FY 2007 through 2010 funds. Texas has an approved Plan for 2007-08 funds, and a proposed Plan for 2009-10 funds. Additionally, there have been subsequent Plan amendments submitted by States. For example, Louisiana submitted a fourth revision to their Plan in November 2011.

The CIAP authorizing statute requires these plans to go through a substantive public planning process that is coordinated through a designated State lead agency with a great degree of participation of the local Coastal Political Subdivisions (CPS). In addition to the six eligible States, there are 70 CPSs, which are the County, Parish and Borough governments eligible to receive CIAP funds directly. A multi-level CIAP Plan review process at the Federal level conducted previously also contributed to the delayed Plan implementation and slow obligation rates. Further, the proposed projects are all located in sensitive coastal habitats that involve permitting prior to the full obligation of funds as part of the grant review process. The complexity of the MMS/BOEMRE administrative process was a recognized factor in the slow obligations, which led to the transfer of the program to the Fish and Wildlife Service (Service) in October 2011.

Through the end of FY 2011, approximately $402 million of the total available CIAP grant funds were awarded by MMS/BOEMRE. In FY 2012, the Secretary of the Interior re-delegated CIAP administration authority to the Service, under its Wildlife and Sport Fish Restoration Program. The Service is in the process of awarding the balance of CIAP funds, and has already awarded over $40 million in grants this year. The Service immediately consulted with States and CPS to develop a framework to better implement the program and obligate funding, including centralizing the grant administration into the Washington Office and adding a technical guidance function in each of the States to provide a State Liaison.

Calvert Q2: As I understand it, FWS has only had control over CIAP funds for less than 1 fiscal year. Do you believe FWS has had sufficient time managing the program to increase the obligation rate of these funds? How does FWS' obligation rate compare to that of the program's previous manager, MMS?

Answer: The Service has been administering CIAP funds since Oct. 1, 2011. A complicating factor has been that at the time of the CIAP transition to the Service, the Department of the Interior converted the Service to its new financial system, the Financial and Business Management System (FBMS). FBMS is designed to incorporate the majority of DOI's financial management functions into one system. The conversion to FBMS, along with the need to deobligate the obligated but unexpended grants in the BOEMRE system and obligate them anew in the Service system, delayed the Service's ability to award grants and amendments until January 2012. Since this time, the Service has awarded 38 grants and grant amendments for a total of about $41.3 million, a rate of about $25 million per month. MMS/BOEMRE administered the program from FY 2007 through FY 2011, for a total of 60 months, a period that included the program start-up and development of State plans. During this time they obligated approximately $402 million, an average of $6.7 million per month. The Service, working with the States, has also created a new framework to administer the program, including centralizing staff and providing more technical guidance through State Liaisons, which should increase the obligation funding rate compared to levels prior to FY 2012.

Calvert Q3: Do you believe that, if given more time, FWS could effectively and efficiently obligate these funds on projects?

Answer: The Service's Wildlife and Sport Fish Restoration Program has a proven track record of working with States and others to award approximately $1 billion per year in cost-shared grants associated with the Pittman-Robertson Wildlife Restoration Act; the Dingell-Johnson Sport Fish Restoration Act; State Wildlife Grants; the Coastal Wetland Planning, Protection, and Restoration Act; the Clean Vessel Act and others. The Service plans to incorporate similar administrative practices and processes that have been shown to be effective in these programs to manage CIAP. This will also provide greater transparency and public accountability. The Service has the experience and expertise to effectively and efficiently obligate grant funds while working with the recipients to achieve national CIAP goals for projects that meet the program's eligible purposes.

Endangered Species Act

In my home county of Riverside County, CA, we have established a multispecies habitat conservation plan that establishes a plan for landscape level conservation of endangered species in the region. These plans provide clear conservation goals as well as facilitate infrastructure development.

Calvert Q4: Given that the Endangered Species Act lists ecosystem conservation as its first goal, even before providing for the conservation of endangered species, what is the FWS doing to promote the establishment of these MSHCPs that support ecosystem level conservation?

Answer: The Endangered Species Act of 1973 (ESA) was established to save species at risk of extinction and to protect the ecosystems upon which they depend. Toward that aim, the ESA makes it unlawful for any person to "take" a listed species. In 1982, the ESA was amended to authorize

incidental taking of endangered species by private landowners and other non-federal entities, provided they develop habitat conservation plans (HCP) that minimize and mitigate the taking.

Across the nation, Fish and Wildlife Service Offices work hand in hand with city planners to help municipalities understand both the benefits of the ecosystem approach and of the comprehensive planning for streamlining compliance with ESA. In the Pacific Southwest Region, which includes California, Nevada and the Klamath Basin of Oregon, the Service is committed to the development of landscape level plans.

Since 1983, when the first HCP was permitted on San Bruno Mountain, there have been 139 HCPs completed in California and 8 HCPs in Nevada ranging from .015 acres to 5 million acres of habitat. The duration of plans also varies widely, from 1 year for the Shimboff plan in Vacaville to 80 years for the El Sobrante Landfill plan in Riverside County, depending on the activities and conservation actions and can cover from as few as one species to as many as 140 species.

Because HCP's involve take of endangered species, they must include information about the ***status*** of populations and habitats of the species, an assessment of how many individuals and how much habitat will be ***taken*** under the plan, and what ***impact*** that take will have on the species overall. As a result, these plans can take many years to complete and involve complicated negotiations between applicants (seeking 'take' coverage for listed species – to comply with the Endangered Species Act "ESA") and the Service.

A crucial measure for the success of HCPs is the choice and implementation of measures to avoid, minimize, and mitigate impacts on the species included in the permit. If the appropriate measures are chosen and implemented in a timely fashion, the impact on the species in question might be effectively mitigated, justifying the issuance of an incidental take permit.

Many plans are initiated by commercial companies, or local municipalities looking to develop in some way or to maintain their operations. Examples of activities included in HCPs: residential development, logging, energy development, industrial development, maintenance of energy facilities, etc. Most plans involve NGO's, local, state, and federal agencies.

Habitat Conservation Plans cover greater than 6.5 million acres in California and greater than 6.7 million acres in Nevada for a total of greater than 13.2 million acres. HCPs seek to protect and improve priority habitats for both listed and sensitive species. The conservation strategy of each HCP varies, but often focuses on protecting a key/limited habitat type or key ecological functions. Each plan relies on the principals of conservation biology and contributes to landscape level needs by connecting conservation areas or by adding to existing reserves. Examples of conservation provided in HCPs include: maintaining connectivity between populations, protecting limited habitat types (e.g. streams), enhancing ecosystem function, reducing/eliminating non-native species, and others. The conservation planning process is complex, but incorporates the needs of many species to identify and to protect important areas and/or enhance ecosystem function.

The Service demonstrates its' commitment to landscape level HCP's in many ways; one of which is through the ESA Section 6 funding. Every year a national competition is conducted to fund HCPs in two ways: 1) the development of new plans and 2) the acquisition of lands to complement preserves in existing HCPs. Throughout the competition for Section 6 funds the emphasis is on funding plans that provide the biggest benefit to ecosystems and landscape level conservation. The criteria for

choosing which plans to fund are heavily weighted towards plans that can provide large scale ecosystem benefits. The tables below illustrate the Service's commitment to fund HCPs using Cooperative Endangered Species Conservation Funds.

Cooperative Endangered Species Conservation Fund Request and Award Totals since 2006, U.S. Fish and Wildlife Service

1. HCP Land Acquisition (dollars)

	Requested		Awarded	
F.Y.	**National**	**CA/NV**	**National**	**CA/NV**
2011	72,603,630	30,000,000	28,631,600	16,463,936
2010	60,329,000	18,000,000	40,944,474	18,000,000
2009	75,297,000	22,000,000	36,008,000	14,407,200
2008	125,214,920	74,528,850	35,031,843	12,613,122
2007	114,611,031	55,842,050	47,158,967	31,645,592
2006	175,632,703	105,469,000	46,158,967	21,639,054

2. HCP Planning (dollars)

	Requested		Awarded	
F.Y.	**National**	**CA/NV**	**National**	**CA/NV**
2011	10,771,660	5,838,335	10,771,660	5,838,335
2010	16,416,505	6,462,448	10,002,010	1,726,839
2009	17,316,695	4,064,612	7,449,103	1,886,576
2008	8,757,383	2,138,096	8,634,573	2,103,896
2007	7,125,335	1,763,116	6,610,856	1,763,116
2006	9,833,026	2,917,824`	7,530,533	1,727,465

Calvert Q5: Do you believe that the most efficient way to focus conservation resources is on a species by species basis, as is the current model, or can more effective use of conservation funds be realized through the broader application of landscape level conservation plans?

Answer: We believe that we can be more effective through the broader application of landscape level conservation plans. The overall condition of natural systems and many species of fish and wildlife that inhabit them is declining. With the multitude of stressors on the landscape such as climate change, urbanization, energy development, human population growth, spread of invasive species, to name a few, we can no longer rely on small achievements to stem the tide of biodiversity loss, habitat degradations, and encroaching development. Recognizing the complexity and scale of today's conservation problems, the Service has committed to a partner-based, landscape-scale approach in our conservation efforts. We must be strategic, collaborative, science-based and aim for landscape-scale successes. Biological, social, and financial realities demand that the Service and conservation community work as a singular force for conservation. We will continue to work with State fish and wildlife agencies and other partners to identify comprehensive conservation strategies that benefit a broad number of species. However, it is important to recognize that landscape level conservation plans will not fulfill all our responsibilities or the conservation needs of all species. Where necessary, we will continue to work on priority issues on a species by species basis, such as

where required under the Endangered Species Act, Migratory Bird Treaty Act, or Bald and Golden Eagle Protection Act.

Calvert Q6: Should more resources be dedicated to analyzing comprehensive and coordinated ecosystem level conservation strategies?

Answer: At the requested funding level, the Service will continue to strategically build the National LCC Network. In FY 2012, the Service is working with its LCC partners to complete administrative underpinnings and work plans for each LCC and identify conservation outcomes. Each LCC will establish targets and then prepare biological plans and conservation designs capable of achieving those targets. In FY 2013 more attention will be directed toward establishing landscape-scale conservation targets for the priority species and habitats collaboratively identified by LCC steering committees. As a result, we expect that partners will align their funding and personnel to implement specific activities laid out in the conservation designs. LCCs leverage resources for the conservation delivery activities of partners which will provide significant benefits for fish and wildlife and help sustain those resources in critical landscapes across the country. As this occurs, LCCs will devote more time and resources to designing and implementing monitoring and evaluation efforts capable of determining the extent of those successes, while refining and improving science and planning tools which will benefit future biological planning and conservation delivery.

Santa Ana Sucker

Secretary Salazar, as I'm sure you are aware, the Fish and Wildlife Service has designated expanded critical habitat on the Santa Ana River for the ESA-listed Santa Ana sucker fish. While this action was locally viewed as having the potential to be overly restrictive of future water supply development projects in the region and with little scientific underpinnings to support the designation, I was encouraged to hear that the Service was also reaching out to and participating with local water agencies in a collaborative effort to find common ground on protecting locally developed water supplies and endangered fish in the process.

I encourage you and the Service to continue to work with our local water agencies in identifying actions that can protect both wildlife and our region's important water resources for future generations.

Calvert Q7: Can you please provide the Subcommittee with an update on the progress of this collaborative effort?

Answer: The Fish and Wildlife Service appreciates your comments. The Service continues to regularly meet and provide technical assistance with all members of the collaborative group. To assist in their project planning efforts, the Service will soon be providing the collaborative group with an interim conservation strategy that will help identify short-term and long-term conservation needs of the fish.

Questions for the Record from Mr. LaTourette

Northern Spotted Owl

In February 2011, U.S. Fish & Wildlife Service (FWS) issued a "Protocol for Surveying Proposed Management Activities that May Impact Northern Spotted Owls" that requires two years of surveys be conducted for listed species, 6 visits per year. In order for landowners to be able to harvest timber in Northern Spotted Owl range, I understand that the FWS needs to be involved in the process to provide Technical Assistance (TA), which would allow biologists to review the site specific information and issue a "not likely to take" opinion. However, some landowners have been informed that certain local FWS field offices (Arcata, CA and Yreka, CA) do not have funds to conduct the TA reviews, which prevents them from harvesting timber in these areas.

LaTourette Q1: I see that you are requesting $64.1 million for Endangered Species Consultation, which is a $3 million increase from what you received for this program in FY12. If you receive this increase, would that allow local FWS offices to move forward on these technical reviews?

Answer: Of the $2.8 million increase requested in FY 2013 for program changes, $1.5 million would be directed towards consultations related to renewable energy projects, $1.0 million would be directed towards developing and implementing consultations with EPA on pesticide registrations, and the $300,000 would be directed towards better integration of various environmental reviews and ecological information through the development of a decision support system to assist federal agencies and project proponents with their resource management decisions. Regarding technical assistance for spotted owl surveys, the Service has been working closely with the State of California agency, CALFIRE, to help landowners successfully survey their timber harvest plans. The Service has produced written recommendations on how to survey for spotted owls and how to avoid taking spotted owls during timber harvest. The Service also holds multiple workshops with landowners and CALFIRE annually to educate the public and equip CALFIRE as they assist landowners during the State's timber harvest plan permit process under the Forest Practice Rules. The written recommendations produced by the Service have enabled landowners to survey for and avoid taking spotted owls, thus eliminating the need for direct technical assistance from the Service.

Questions for the Record from Mr. Cole

Cole Q1: The FWS recently moved the Lesser Prairie Chicken from a priority 8 to a priority 2 on the Endangered Species Priority List. What justifies such a severe jump after 10 years as an 8 and what scientific data was used to make that decision?

Answer: On June 9, 1998, the Service announced in the *Federal Register* the outcome of the lesser prairie-chicken status review. In that publication, we provided our determination that listing of the lesser prairie-chicken was warranted under the ESA. However, the immediate listing of the lesser prairie-chicken was precluded by the need to first list other species that were higher priority for protection. A "warranted but precluded" finding must be reviewed every 12 months to determine if the listing priority for the lesser prairie-chicken has changed.

In 2008, as part of the annual review, we updated the listing priority number of the lesser prairie-chicken and changed the priority from an 8 to a 2, thereby elevating its listing priority. The change reflected an increase in the overall magnitude of threats to the species throughout its range, primarily from wind energy development and its associated infrastructure and the anticipated conversion of CRP (Conservation Reserve Program) lands to croplands. These activities are ongoing and continue to affect the long-term viability of the lesser prairie-chicken. The most recent candidate assessment form for the lesser prairie-chicken is posted (http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=B0AZ) and contains a list of the referenced scientific literature. The assessment form has not been updated since 2010, as the Service funded work on the listing proposal in early 2011.

Cole Q2: Does the FWS have reliable population counts for Lesser Prairie Chickens in Oklahoma, Texas and New Mexico?

Answer: The most recent candidate form for the lesser prairie-chicken found at http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=B0AZ contains population estimates current at that time. In 2012, State fish and wildlife agencies in Colorado, New Mexico, Texas, Oklahoma, and Kansas will work cooperatively to conduct a comprehensive range-wide survey effort for the lesser prairie-chicken. Information from these surveys will be used by the Service in partnership with other State and Federal agencies and non-government organizations to monitor population trends and manage the lesser prairie-chicken. Information will also be used to identify and provide conservation opportunities to landowners and private industries to conserve the lesser prairie-chicken. The Service will use the best available scientific data in the development of its proposed listing rule.

Cole Q3: If the Lesser Prairie Chicken is listed what tangible measure of recovery is realistic?

Answer: The Service recognizes the vital role the States, private landowners and other partners play in the conservation of the lesser prairie-chicken, and we have been involved in a number of conservation efforts with our partners over many years and we continue to make these efforts a high priority.

Recovery planning in the context of the ESA is a process that reverses the decline of an endangered or threatened species by removing or reducing threats identified when the species becomes listed. A

"Recovery Plan" pursuant to the ESA is not required until a Federal listing occurs. In the event the lesser prairie-chicken becomes listed, a recovery team will be appointed to draft a Recovery Plan. A Recovery Plan must identify objective and measurable criteria to enable the Service to remove the species from the Federal list when met.

Cole Q4: What impact does the Fish and Wildlife Service FY13 budget have on Indian Country?

Answer: The FY13 budget provides approximately $10.0 million for Native American Programs, the same as the FY12 enacted level, including $4.3 million in Tribal Wildlife Grants to develop and implement programs supporting wildlife and habitat conservation on Indian Country. In addition, the FY13 budget funds Native American fisheries, wildlife, and refuge management efforts that include resources for marine mammals, the Great Lakes Consent Decree, Nez Perce Wolf Monitoring, and the Yukon Flats NWR. In the FY13 budget, the Service continues its support of Native American programs and projects that employ tribal youth and provide career-enhancing work experience in conservation and natural resources management.

Cole Q5: In your FY 13 Budget, you propose a $3.7 million cut to the fisheries program. How would this affect tribal fisheries?

Answer: The Service has over 230 formal agreements with Native American governments. The Service is committed to delivering our federal trust responsibilities and expects to operate as close to 2012 enacted levels as possible to deliver these priority services to our tribal partners. However, the Service has had to make difficult funding decisions in FY 2013 to ensure adequate resources are available for high priority programs such as Asian carp control. As a result, the fisheries program has experienced some funding reductions which have both direct and indirect impacts on its ability to assist Tribes in managing, protecting and conserving their treaty-reserved and statutorily-defined trust natural resources. In addition, the Service will have reduced capacity to assist Tribes with the development of their own conservation delivery capabilities.

Despite these negative impacts, the fisheries program continues to work closely with Native American governments to conserve and protect their trust natural resources.

Questions for the Record from Mr. Flake

Endangered Species Act & the Border Patrol

During last year's budget process, I noted that an October 2010 GAO study reported that "Five Border Patrol stations reported that as a result of consultations required by section 7 of the Endangered Species Act, agents have had to adjust the timing and specific locales of their ground and air patrols to minimized the patrol's impact on endangered species and critical habitat." I noted that many are familiar with the Endangered Species Act consultation process being used when federal or other construction projects could have in impact on an endangered species or critical habitat, but these are consultations having to do with Border Patrol operations.

Flake Q1: When asked if the Service anticipated continued use of the section 7 consultation process when it comes to Border Patrol operations, it was noted that a programmatic approach to section 7 consultations on border operations would best serve the interests of both agencies. Has any progress been made on a programmatic approach to section 7 consultation?

Answer: The Service is currently working with Border Patrol/Customs and Border Protection on a programmatic consultation for maintenance and repair of border infrastructure in Arizona (except that infrastructure already covered by previous consultations or for infrastructure covered by a waiver issued by the Secretary of Homeland Security). This programmatic consultation will be a model for other consultations to be conducted for similar activities in the other southern border states: California, New Mexico, and Texas. While the Service has suggested that Border Patrol request a programmatic consultation for its operations in Arizona (and other states), this would be a complicated endeavor (due to the necessarily dynamic nature of the Border Patrol's operations) and to date, the Border Patrol has not requested this approach.

The Service performs consultations on individual projects (e.g., installation of infrastructure such as Integrated Fixed Towers, Remote Video Surveillance System towers, Forward Operating Bases, helipads) as requested by the Border Patrol. These requests for project-specific consultation are made by the Border Patrol as they complete their planning for each phase of infrastructure construction. Consultations are completed in Texas as operations are submitted for review, such as Operation Rio Grande, Operation FORDD, and national guard deployment and training exercises.

Wildfires and Endangered Species

It is well known that Arizona's forests are host to a number of species on the endangered species list. It is also well known that Arizona has faced catastrophic wildfires in recent years. Last year, a Fish and Wildlife spokesman noted in reference to the fires that raged ""The natural fires are good for a healthy forest, but these fires – where the debris has been allowed to build up and it just hasn't been addressed – they come out very hot and just scorch everything."

Flake Q2: Given that our land management has prevented the natural fire regimes and litigation regularly halts important thinning and fuel reduction projects, do the recovery goals for forest-dependent endangered species reflect the fact that they are living in arguable un-natural habitats that can experience catastrophic fires like in Arizona have seen?

Answer: The Mexican spotted owl (*Strix occidentalis lucida)* is likely the best known forest-dependent species in Arizona, and the danger of high-severity, stand replacing wildfire is recognized as one of two primary reasons for listing the owl as threatened in 1993 (69 FR 53182; August 31, 2004). The Service is currently in the process of revising the 1995 Recovery Plan for the Mexican spotted owl and released a draft for public comment in 2011. Both the 1995 and the revised Recovery Plan for the Mexican spotted owl (*In Draft)* acknowledge that recent forest management has moved from a commodity focus and now emphasizes sustainable ecological function and restoring fire-adapted ecosystems, both of which have the potential to benefit the owl. However, the revised Recovery Plan also notes that Southwestern forests have experienced larger and more severe wildfires from 1995 to the present than those fires recorded in history, and that climate variability, combined with unsustainable forest conditions and the intensification of natural drought cycles are likely to increase the negative effects to habitat from fire. The revised Recovery Plan, and the Service, support landscape-level initiatives such as the Southwest Jemez Mountain Restoration Project in New Mexico and the Four Forest Restoration Initiative in Arizona, that are focused on addressing forest sustainability through thinning and prescribed fire across large, fire-prone areas. These projects will aid in recovery efforts for the Mexican spotted owl, Jemez Mountains salamander, and other sensitive forest-dwelling species.

Flake Q3: Are you aware of any recovery goals that have been changed or revisited as a result of the reality that catastrophic fires have burned in Arizona?

Answer: Recovery planning documents can be revised in response to new information on the species, threats to the species, or other factors. The original Apache Trout Recovery Plan (USFWS 1983) did address wildfire, noting that intensive wildfire could result in major losses of existing Apache trout habitat, and that fuel reduction in high risk areas should be considered. The revised Apache Trout Recovery Plan (USFWS 2009) recognizes the increase in wildfires, noting that drought, wildfire, and post-fire flooding are on the rise, and that Apache trout are vulnerable to these threats because the small remaining populations are in areas most likely to be impacted by these climatic effects (Williams and Meka Carter 2009). The revised Apache Trout Recovery Plan (USFWS 2009) now includes a specific action item (1.5) which provides for salvage and development of refuge facilities for populations of Apache trout that are affected by wildfire, among other impacts. This action item indicates that wildfire was considered in development of the most recent recovery plan, the impacts of wildfires have been revisited for this species, and that action items within the plan have been developed to address catastrophic wildfires.

U.S. Fish and Wildlife Service. 1983. Apache trout recovery plan. Albuquerque, New Mexico. Available online at http://www.fws.gov/southwest/es/arizona/ApacheTrout.htm U.S. Fish and Wildlife Service. 2009. Apache trout (*Oncorhynchus apache)* recovery plan, second revision. Albuquerque, New Mexico.
Available online at http://www.fws.gov/southwest/es/arizona/ApacheTrout.htm

Williams, J.E., and J. Meka Carter. 2009. Managing native trout past peak water. Southwest Hydrology 8(2): 26-27, 34.

Flake Q4: Specifically, with the Southwest Region having initiated the revision of the 1982 Mexican Wolf Recovery Plan, will the recovery criteria, goals, and objectives of wolf species recovery in Arizona be informed by an objective review of factors influences their habitat?

Answer: Yes, factors that influence wolf habitat will be incorporated as appropriate into the revised Mexican wolf recovery plan. Habitat factors will be incorporated in the following ways:

- The revised recovery plan will contain an analysis of habitat-related threats to the Mexican wolf. Per recovery planning guidelines established by FWS and NOAA Fisheries based on section 4 of the ESA, recovery plans should include a "five factor analysis" of threats to the species. Factor A assesses "present or future destruction, modification, or curtailment" of a species' habitat or range. For the Mexican wolf, this will likely include assessment of habitat modifications such as increasing human development, prey availability, and catastrophic wildfire (e.g., the Wallow Fire in Arizona).
- Any significant threats identified in the five factor analysis will be accompanied by the development of recovery actions in the implementation portion of the plan aimed at lessening or alleviating those threats. Therefore, the revised recovery plan may include recovery actions to address identified habitat-related threats.
- Recovery criteria must be "objective and measurable" (section 4 of the ESA). The recovery team is currently developing draft recovery criteria based on demographic and genetic information that will be considered within the context of the quantity and quality of habitat in the southwestern United States and Mexico.
- Specifically, the recovery team has collated previously unstandardized data on ungulate distribution and abundance in the Southwest to ensure criteria are achievable.
- Specific to the Wallow Fire, we did not document any wolf mortalities from the fire. Further, the Apache-Sitgreaves National Forest summarizes the Wallow Fire impact to the Mexican wolf as follows:

> Fire impacts on Mexican gray wolves are expected to be most pronounced immediately following the fire, and are directly related to fire impacts on wolf prey species abundance and distribution. Prey species abundance, primarily elk and deer, will respond favorably as forage and browse within the fire perimeter recover. It is further anticipated that deer abundance will exceed pre-fire conditions within five years as browse, including aspen, respond to reduced competition from fire killed conifers.
>
> Although prey numbers are expected to recover quickly, prey distribution may be slower to return to pre-fire conditions. An important factor will be wildlife water availability. Through increased ash and sediment flow from high and moderate severity burn areas, water catchments utilized by wildlife as well as livestock will experience reduced capacity. Reduced water availability is likely to impact Mexican gray wolf pup recruitment through decreased availability of prey in the vicinity of denning sites.
>
> To address this need, prioritization of water catchment cleaning, rebuilding, and refurbishment activities within the fire perimeter must incorporate Mexican gray wolf prey base needs. As described in the range section of this document, a total of fourteen water catchments are considered high priority for rebuilding and refurbishment within the next five years (Wallow Fire 2011: Large Scale Event Recovery Rapid Assessment Team Wildlife Report, Apache-Sitgreaves National Forests, July 29, 2011, p. 3).

Twenty Percent Reduction in Administrative Spending

The written testimony submitted by the Service for the FY13 budget hearing noted that that "the Department of the Interior's goal is to reduce administrative spending by 20 percent or $207 million from the 2010 levels by the end of 2013."

Flake Q5: Is this a realistic and attainable goal?

Answer: The Service is aggressively working to achieve its administrative spending reductions by the end of FY 2013. Our target reduction goals include realistic cuts to travel, transportation, supplies, printing, advisory contracts, and equipment. By continuing efforts that ensure administrative functions are performed more efficiently and effectively, FWS will meet its 20% reduction target without programmatic impacts by the end of 2013.

Flake Q6: Given that we are working on the Fiscal Year 2013 budget proposal, what actions to date have been taken by the Service to reduce administrative costs?

Answer: The Service has taken action to identify specific activities where administrative savings will be realized in Fiscal Year 2013. In Fiscal Years 2011 and 2012, efforts were focused on reductions being achieved in travel and transportation costs that included reduced expenses associated with meetings, conferences, and employee relocations. Reductions also targeted cutbacks in supplies, and advisory and assistance contracts associated with consultants, IT and other communication support services. In FY 2013, the Service continues these reduction efforts with specific actions to reduce equipment costs (computers, printers, etc.).

Revision of the 1982 Mexican Wolf Recovery Plan

It is my understanding that the U. S. Fish and Wildlife Service is in the process of updating the Mexican gray wolf recovery plan. Further, it is my understanding that in the process the Service has created a Tribal Liaisons Subgroup, Stakeholder Liaisons Subgroup, Agency Liaisons Subgroup, and a Science and Planning Subgroup. Given the persistent controversy surrounding wolf recovery and the regulatory issues the program has engendered for Arizona residents, the recovery planning process is important.

Flake Q7: Can you please detail for the opportunities for public involvement, both for the general public as well as for stakeholders that may or may not be represented in the various groups you have convened, in the recovery planning process?

Answer: Due to the overwhelming interest in recovery plans, it is not possible to include all interested parties in our recovery planning efforts for any species. However, for the Mexican Wolf Recovery Team, our stakeholder members (New Mexico Cattle Growers Association, Arizona Wool Producers Association, Arizona Cattle Growers Association, Defenders of Wildlife, The Rewilding Institute, Coalition of Arizona and New Mexico Counties, New Mexico Council of Outfitters and Guides, Grand Canyon Wildlands Council, and Arizona Wildlife Federation) serve as conduits for communication to the broader public. During the development of the plan, some information is considered deliberative in nature and we request that sensitive information not be shared with the

public by recovery team members until a draft document has been approved by the Service. However, these stakeholder members can update their broader constituencies on the general findings of the team, its progress, and issues under deliberation. Further, we have established a Recovery Planning webpage on the Mexican Wolf Recovery Program website to keep the public apprised of the Team's activities. The draft recovery plan will be available for public comment in 2013. All comments received from the public comment period will be considered during the finalization of the plan by the Team and the Service. In addition, we are conducting a multi-faceted effort to engage tribes in the Southwest through working group meetings and outreach activities.

Hearing Questions for the Record (QFR) Prepared for Indian Affairs

Hearing: Indian Affairs FY 13 Budget Oversight
Tuesday, February 28, 1:00pm Rayburn B-308

Questions for the Record from Chairman Simpson

Strategic Direction

Please talk about the strategic direction of the bureaus and the primary measurable objectives.

Simpson Q1: What did you set out to accomplish in **FY11** with the money we appropriated; what did you actually accomplish; where did you fall short; and why?

Answer:
Strategic Direction

At a high level perspective, Indian Affairs made a number of important policy accomplishments in FY 2011 and plans to continue those successes in FY 2012 and FY 2013. For example, the Administration released and began implementation of a new Consultation Policy which strives to engage Tribes with regular and meaningful collaboration in order to strengthen the government to government relationship. With specific regards to this policy and the budget, the Administration worked to fully incorporate recommendations from the Tribal Interior Budget Council into budget formulation decisions.

Public Safety and Justice

FY 2011 represented the second half of the 24 month Safe Indian Community priority goal period for the first four targeted high-crime reservations. These reservations were Rocky Boy's in Montana, Wind River in Wyoming, Mescalero in New Mexico, and Standing Rock in North and South Dakota. By the end of FY 2011, the initiative documented results that far exceeded the initial goal. Violent crime decreased, overall, by 35 percent between all four reservations. The results were achieved by implementing community policing, tactical deployment, and interagency and intergovernmental partnerships between the Federal Bureau of Investigation (FBI), the Department of Justice, the tribal police departments, and tribal leadership. The number of sworn staff was increased by an average of 58 percent to bring each location up to national sworn staffing levels as listed under Uniform Crime Report (UCR) staffing averages.

There are a number of remaining challenges to be addressed as this approach is implemented in other locations. Continued improvements to the recruitment process, including screening police officer candidates more carefully, and making housing more accessible to officers hired would help address the problem of high turnover rates. In addition, law enforcement facilities could be better equipped with modern police communication technology such as mobile digital terminals in order to improve the effectiveness of intelligence-based policing.

Closer coordination between law enforcement and tribal courts could improve the effectiveness of justice systems and crime deterrence where court codes need to be brought up to date to appropriately sentence repeat offenders.

Two additional reservations have been identified for implementation of the HPG initiative in FY 2012. The San Carlos Apache Tribe in Arizona and the Rosebud Sioux Tribe in South Dakota were selected from the 10 reservations ranked highest in terms of crime rate and officer staffing need in FY 2011. The initiative goal remains to achieve a significant reduction in violent criminal offenses of at least five percent within 24 months on these two targeted tribal reservations. Indian Affairs provided the two new priority goal locations with additional funding to address their current staffing and other resource deficiencies. Both locations are in the process of hiring police officers to fill vacant positions and Indian Affairs will continue intensive support to the two Tribes through the initiative period to achieve the targeted reduction by the end of FY 2013.

A community assessment has been completed at each location and Office of Justice Services staff is working with the Tribes to facilitate the initial analysis of crime data, identify current and historic crime trends, and determine criminal relationships, patterns and possible points of origin for criminal activity. Once completed, the analysis will provide an accurate portrait of the base crime rate or "crime rate profile" for each location so the program can develop an effective crime reduction plan. The crime reduction plan will provide the necessary information for management personnel to quickly prioritize their law enforcement response to most effectively begin reducing the crime rate at each location.

The overall violent crime reduction goal for FY 2012 includes a target set at 454 violent crimes per 100,000 people, which represents no change for the overall Indian Country violent crime rate from FY 2011. In fact, through the first quarter of FY 2012 violent crimes per 100,000 were 99, as compared to 88 per 100,000 for the first quarter of FY 2011. Continuing adverse economic conditions and inadequate law enforcement presence on most reservations may be contributing to crime rates running slightly higher than the previous year.

In FY 2013, the overall violent crime reduction goal includes a target set at 449 per 100,000. This represents a one percent decrease for the overall Indian Country violent crime rate from FY 2012 as the FY 2013 President's Budget request includes an increase of $3.5 million for Criminal Investigations and Police Services, as well as corresponding increases in Detention/Corrections and Tribal Courts. Successful, effective justice systems require the cooperation and dedication of all parties to include the tribal government and tribal community. Funding additional staff, equipment, and other resources in the areas of police, corrections, and tribal courts will be crucial to bring these programs to the level of effectiveness needed to achieve a reduction in the violent crime rates in Indian communities.

Trust Services

Real Estate – In FY 2011, the Land Title and Records Office developed and implemented a new performance metric system to automate the current manual metric reporting process for probate, deeds and certifications. This system will increase the accuracy of data collection and processing, and will provide continuous process improvement, for each of these key areas.

Natural Resources – Indian Affairs implemented an improved set of performance measures in the Agriculture and Range, Forestry, and Subsistence program activities that more accurately reflect tribal priorities and Federal responsibility for the these programs. During FY 2011, baselines were established for each of these measures and the information collected will allow BIA to establish sensible milestone targets for improving program performance and effective use of appropriated funds in these important areas.

For FY 2012 both Indian Affairs Irrigation and Dams Programs face multiple challenges and opportunities. The Irrigation Program is mostly funded from revenues from water users. BIA delivers irrigation water through thousands of miles of canals and through more than 100,000 irrigation structures. The Safety of Dams Program is responsible for 136 high and significant hazard potential dams.

On track to accomplish:

- Irrigation—Improving assessments of the current infrastructure through condition assessments, GPS inventories and GIS mapping tools. Coordination with the water user groups in determining funding priorities, taking over various operational and maintenance aspects of the projects and other areas.
- Dams—Risk assessments and emergency preparedness and response to protect downstream populations are strong points and on track. Close cooperation with Tribes concerning dams on their reservation for all work in this program is a strong point and remains on track. A new risk approach has identified 78 dams with moderate to high risk (moderate to high probability of failure and consequences) failure modes. These higher risk issues are being mitigated to an acceptable level. The program received a funding increase of $3.8 million in which an emergency management specialist has been hired and 10 dams are in the design, construction, and rehabilitation phases. The performance for the program has risen and is assisting to reduce the liability and risk for management of the dams on tribal lands.

Falling short:

- Irrigation—Ongoing difficulty in locating qualified staff who are able and willing to serve the Indian population. For instance, the recruiting and retention of qualified irrigation project managers is a longstanding problem primarily due to the remote locations associated with projects. There is difficulty in establishing accurate construction estimates given volatile fluctuations in the costs of construction materials. Many problems remain with water delivery and aging systems many of which have exceeded their life expectancies that need of major repairs and upgrades.
- Dams—For the 78 dams with moderate to high risk (moderate to high probability of failure and consequences) failure modes, some mitigation measures may be temporary until a permanent repair can be implemented.

For 2013, the Indian Affairs Irrigation Program will continue to face the same challenges.

- Irrigation—Indian Affairs is working with various Tribes and water users in finding opportunities to increase the funding stream and in turning project operations over to the Tribes and water users.
- Dams—The primary emphasis is on emergency management to protect downstream residents from undue risks associated with the dams. This includes emergency action plans and early warning systems, performing maintenance, enhancing security, and rehabilitating dams in

poor condition. Updating and exercising these plans will continue on a 3-year cycle during this period. Indian Affairs will perform design and construction rehabilitation on 15 dams during this period.

- Irrigation and Dams—Improve support to provide a Contracting Officer to the Program Office. The Personnel Office is currently partnering with Program and Project staff in establishing consistent position descriptions and job standards for all labor categories (GS Series) in the Irrigation and Safety of Dams Programs. This same team would be tasked with developing a hiring and retention plan for Irrigation Project Managers.

Indian Services

The percent of active supervised Individual Indian Monies (IIM) case records reviewed in accordance with the regulation performance measure has remained near 100 percent for the past three years. The significant increase from 81 percent in FY 2008 to 97 percent in FY 2009 and 98 percent in FY 2011 was due to a more accurate method of tracking IIM reviews, which was initiated in FY 2009. The Office of Special Trustee for American Indians and Bureau of Indian Affairs are the entities that oversee fiduciary trust activities to ensure fulfillment of the federal government's responsibility.

The Human Services program developed and has implemented a Financial Assistance and Social Services – Case Management System (FASS-CMS), which is a comprehensive case management system to help Social Service case workers provide assistance more effectively and efficiently. The system provides accurate records management, supports the processing of financial payments to eligible Indian clients and provides necessary management reporting.

As a result of Recovery Act funding, the Road Maintenance Program was able to increase the percentage of BIA-owned roads in acceptable condition from 12 percent in FY 2009 to 17 percent in FY 2010 and 2011 – an increase of 5 percent. The percentage of bridges in acceptable condition has trended upward since FY 2008, gaining 5 percentage points; this was also attributed in part to ARRA funding. ARRA funds provided the program with necessary resources to demonstrate how additional funds can vastly improve the condition of BIA owned roads.

Bureau of Indian Education

There are several key initiatives now being implemented by the Administration that will frame future Bureau of Indian Education strategies by encouraging a comprehensive approach to address the challenge of improved educational outcomes for American Indians and Alaska Natives. BIE will play a major role in each initiative. This will undoubtedly result in a reshaping of strategies to achieve success; as well as how that success will be measured. They are:

1) President Obama signed Executive Order 13592 establishing the White House Initiative on American Indian and Alaska Native Education (Initiative) during the Third Annual White House Tribal Nation's Conference on December 2, 2011. The mission of the initiative is to help expand educational opportunities and improve educational outcomes for all American Indian and Alaska Native (AI/AN) students, including opportunities to learn their Native languages, cultures, and histories and receive complete and competitive educations that prepare them for college, careers, and productive and satisfying lives.

2) The Secretary of the Interior's initiative to advance Indian education reorganizes the strategic role of education in the long-term health and vitality of Native American communities, and is a vital component of the broader initiative to improve Native American communities. This initiative addresses the full spectrum of educational needs in Indian Country from elementary through post-secondary and adult education.

3) Department of Education Providing Additional Flexibility in Responding to Requirements of No Child Left Behind [NCLB]

The Department of Education is offering States and BIE "flexibility" in changing their Accountability systems with regard to the requirements of NCLB. States will request waivers to particular regulations of NCLB, notably the requirement of incrementally increasing annual measurable objectives to 100 percent proficiency by 2014. The BIE is exploring flexibility scenarios and its flexibility proposal likely will feature an "Accountability Index" that runs from 0 to 100. BIE proposes the goal of having 100 percent of its schools achieve a score of 70 or higher on the Accountability Index.

The proposed BIE Accountability Index will consist of student participation in assessments; achievement in assessed subjects; student attendance, graduation, and drop-out rates; school improvement activities; school participation in professional development activities; and school compliance with federal mandates. These measures provide a clearer picture of school performance in educating their students. Because BIE's proposed accountability system will reflect stakeholder input and tribal consultation, as well as Department of Education recommended changes, the measures outlined here will likely change to reflect the implementation of the program that replaces current AYP measures.

4) Performance Goals for FY 2013 are currently established at levels consistent with baseline performance.

All current projections of BIE performance in the current FY2012-13 Annual Performance Plan are based on "steady state" assumptions. These new initiatives could have a major impact on how performance goals and strategies are formulated for FY 2013 and beyond.

In FY 2011, major learning improvements were established with the new educational initiative. Although student performance at BIE schools across the board remains lower than national averages, some dramatic progress has been made in selected schools.

- The Northwest Evaluation Association (NWEA) developed a standardized assessment tool that can be used across all Indian schools to measure student progress.
- Using NWEA data currently utilized by 128 of 173 BIE funded schools, the following examples of significant changes in achievement scores can be cited.
    - In mathematics, NWEA assessment growth data from fall 2010 to spring 2011 indicated that students in 51 of the BIE schools exceeded growth expectations or outperformed other students with similar beginning scores.
    - One particularly successful Education Line Office [ELO], New Mexico Navajo North, 8 of 9 schools exceeded growth expectations or outperformed other students with similar scores at the beginning of the year in reading and math, based on NWEA assessment growth data.

The larger challenge is to raise the achievement scores of all schools and students so that they approach, and ideally exceed the national norms. In FY 2011 (SY 09-10), with the funding appropriated our primary funding goals were the following:

- 38% of BIE and tribal schools achieve Adequate Yearly Progress (AYP), in comparison to 32% in FY 2010
- 57 % of BIE schools not making AYP show improvement in reading
- 57 % of BIE schools not making AYP show improvement in math
- 56 % of students show proficiency in reading at BIE funded schools
- 47 % of students show proficiency in math at BIE funded schools

Actual performance in FY 2011 (SY 09-10) fell short of the targeted goal in each of these key areas:

- 29% of BIE and tribal schools achieved AYP, compared to the 38% target
- 54% of BIE schools not making AYP showed improvement in reading, compared to the 57% target
- 48% of BIE schools not making AYP showed improvement in math, compared to the 57% target
- 40% of students showed proficiency in reading at BIE funded schools, compared to the 56% target
- 31% of students showed proficiency in math at BIE funded schools, compared to the 47% target

As noted in the Department of Education budget justification, a major reason for the lower than expected performance by most schools on No Child Left Behind [NCLB] goals, was the tightening of proficiency standards by all States. FY 2011 (School Year 2009-10) was the third year into the new state proficiency levels for reading and math. This trend was applicable to BIE and tribal schools as well.

In March 2011, the Secretary of Education estimated that no less that 82 percent of public schools would fail to make AYP in academic year 2010-11. Relative to this Nation-wide picture, and in light of tightening State standards, the consistent percentage of BIE and tribal schools making AYP over the past several years [30 to 32%] can be considered from a new perspective. Relative to recent national AYP results, BIE percentages fare well by comparison.

In FY 2012 BIE performance goals have been set at levels which are consistent with baseline performance. The following actions are being taken to enhance performance at both the BIE and tribally owned schools:

- Consult with Tribes to formulate strategies that will increase student achievement and identify additional measures that will track individual student achievement
- Expand use of the Northwest Evaluation Association diagnostic tool to assess students at the beginning of the year and then compare year end results with growth targets
- Use the results of data analysis to target specific teaching strategies aimed at particular areas of student weaknesses
- Conduct leadership institutes for teachers and principals in effective reading and math instruction
- Expand BIE Reads program in participating schools to all grade levels

- Expand Math Counts program at an additional ten schools

The implementation of **Executive Order 13592** will address the shortfalls referenced because it mandates a comprehensive approach to address the challenge of improving educational outcomes for American Indians and Alaska Natives. BIE will benefit from the collaboration between entities within the Department of Education, the Department of the Interior, and Tribal Leadership, as well as other representatives at the federal and State level. Furthermore, effective governance mechanisms and policy development will provide the means to bring BIE schools into alignment with standards at the national level in all areas.

Simpson Q2: What are you on track to accomplish in **FY12** and where are you falling short?

Answer:
Strategic Direction

At a high level perspective, Indian Affairs made a number of important policy accomplishments in FY 2011 and plans to continue those successes in FY 2012 and FY 2013. For example, the Administration released and began implementation of a new Consultation Policy which strives to engage Tribes with regular and meaningful collaboration in order to strengthen the government to government relationship. With specific regards to this policy and the budget, the Administration worked to fully incorporate recommendations from the Tribal Interior Budget Council into budget formulation decisions.

Public Safety and Justice

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The implementation of **Executive Order 13592** will address the shortfalls referenced because it mandates a comprehensive approach to address the challenge of improving educational outcomes for American Indians and Alaska Natives. BIE will benefit from the collaboration between entities within the Department of Education, the Department of the Interior, and Tribal Leadership, as well as other representatives at the federal and State level. Furthermore, effective governance mechanisms and policy development will provide the means to bring BIE schools into alignment with standards at the national level in all areas.

Simpson Q3: Where do you want to go in **FY13**?

Answer:
Strategic Direction

At a high level perspective, Indian Affairs made a number of important policy accomplishments in FY 2011 and plans to continue those successes in FY 2012 and FY 2013. For example, the Administration released and began implementation of a new Consultation Policy which strives to engage Tribes with regular and meaningful collaboration in order to strengthen the government to government relationship. With specific regards to this policy and the budget, the Administration worked to fully incorporate recommendations from the Tribal Interior Budget Council into budget formulation decisions.

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Real Estate – In FY 2011, the Land Title and Records Office developed and implemented a new performance metric system to automate the current manual metric reporting process for probate, deeds and certifications. This system will increase the accuracy of data collection and processing, and will provide continuous process improvement, for each of these key areas.

Natural Resources – Indian Affairs implemented an improved set of performance measures in the Agriculture and Range, Forestry, and Subsistence program activities that more accurately reflect tribal priorities and Federal responsibility for the these programs. During FY 2011, baselines were established for each of these measures and the information collected will allow BIA to establish sensible milestone targets for improving program performance and effective use of appropriated funds in these important areas.

For FY 2012 both Indian Affairs Irrigation and Dams Programs face multiple challenges and opportunities. The Irrigation Program is mostly funded from revenues from water users. BIA delivers irrigation water through thousands of miles of canals and through more than 100,000 irrigation structures. The Safety of Dams Program is responsible for 136 high and significant hazard potential dams.

On track to accomplish:

- Irrigation—Improving assessments of the current infrastructure through condition assessments, GPS inventories and GIS mapping tools. Coordination with the water user groups in determining funding priorities, taking over various operational and maintenance aspects of the projects and other areas.
- Dams—Risk assessments and emergency preparedness and response to protect downstream populations are strong points and on track. Close cooperation with Tribes concerning dams on their reservation for all work in this program is a strong point and remains on track. A new risk approach has identified 78 dams with moderate to high risk (moderate to high probability of failure and consequences) failure modes. These higher risk issues are being mitigated to an acceptable level. The program received a funding increase of $3.8 million in which an emergency management specialist has been hired and 10 dams are in the design, construction, and rehabilitation phases. The performance for the program has risen and is assisting to reduce the liability and risk for management of the dams on tribal lands.

Falling short:

- Irrigation—Ongoing difficulty in locating qualified staff who are able and willing to serve the Indian population. For instance, the recruiting and retention of qualified irrigation project managers is a longstanding problem primarily due to the remote locations associated with projects. There is difficulty in establishing accurate construction estimates given volatile fluctuations in the costs of construction materials. Many problems remain with water delivery and aging systems many of which have exceeded their life expectancies that need of major repairs and upgrades.
- Dams—For the 78 dams with moderate to high risk (moderate to high probability of failure and consequences) failure modes, some mitigation measures may be temporary until a permanent repair can be implemented.

For 2013, the Indian Affairs Irrigation Program will continue to face the same challenges.

- Irrigation—Indian Affairs is working with various Tribes and water users in finding opportunities to increase the funding stream and in turning project operations over to the Tribes and water users.
- Dams—The primary emphasis is on emergency management to protect downstream residents from undue risks associated with the dams. This includes emergency action plans and early warning systems, performing maintenance, enhancing security, and rehabilitating dams in poor condition. Updating and exercising these plans will continue on a 3-year cycle during this period. Indian Affairs will perform design and construction rehabilitation on 15 dams during this period.
- Irrigation and Dams—Improve support to provide a Contracting Officer to the Program Office. The Personnel Office is currently partnering with Program and Project staff in establishing consistent position descriptions and job standards for all labor categories (GS

Series) in the Irrigation and Safety of Dams Programs. This same team would be tasked with developing a hiring and retention plan for Irrigation Project Managers.

Indian Services

The percent of active supervised Individual Indian Monies (IIM) case records reviewed in accordance with the regulation performance measure has remained near 100 percent for the past three years. The significant increase from 81 percent in FY 2008 to 97 percent in FY 2009 and 98 percent in FY 2011 was due to a more accurate method of tracking IIM reviews, which was initiated in FY 2009. The Office of Special Trustee for American Indians and Bureau of Indian Affairs are the entities that oversee fiduciary trust activities to ensure fulfillment of the federal government's responsibility.

The Human Services program developed and has implemented a Financial Assistance and Social Services – Case Management System (FASS-CMS), which is a comprehensive case management system to help Social Service case workers provide assistance more effectively and efficiently. The system provides accurate records management, supports the processing of financial payments to eligible Indian clients and provides necessary management reporting.

As a result of Recovery Act funding, the Road Maintenance Program was able to increase the percentage of BIA-owned roads in acceptable condition from 12 percent in FY 2009 to 17 percent in FY 2010 and 2011 – an increase of 5 percent. The percentage of bridges in acceptable condition has trended upward since FY 2008, gaining 5 percentage points; this was also attributed in part to ARRA funding. ARRA funds provided the program with necessary resources to demonstrate how additional funds can vastly improve the condition of BIA owned roads.

Bureau of Indian Education

There are several key initiatives now being implemented by the Administration that will frame future Bureau of Indian Education strategies by encouraging a comprehensive approach to address the challenge of improved educational outcomes for American Indians and Alaska Natives. BIE will play a major role in each initiative. This will undoubtedly result in a reshaping of strategies to achieve success; as well as how that success will be measured. They are:

1) President Obama signed Executive Order 13592 establishing the White House Initiative on American Indian and Alaska Native Education (Initiative) during the Third Annual White House Tribal Nation's Conference on December 2, 2011. The mission of the initiative is to help expand educational opportunities and improve educational outcomes for all American Indian and Alaska Native (AI/AN) students, including opportunities to learn their Native languages, cultures, and histories and receive complete and competitive educations that prepare them for college, careers, and productive and satisfying lives.

2) The Secretary of the Interior's initiative to advance Indian education reorganizes the strategic role of education in the long-term health and vitality of Native American communities, and is a vital component of the broader initiative to improve Native American communities. This initiative addresses the full spectrum of educational needs in Indian Country from elementary through post-secondary and adult education.

3) Department of Education Providing Additional Flexibility in Responding to Requirements of No Child Left Behind [NCLB]

The Department of Education is offering States and BIE "flexibility" in changing their Accountability systems with regard to the requirements of NCLB. States will request waivers to particular regulations of NCLB, notably the requirement of incrementally increasing annual measurable objectives to 100 percent proficiency by 2014. The BIE is exploring flexibility scenarios and its flexibility proposal likely will feature an "Accountability Index" that runs from 0 to 100. BIE proposes the goal of having 100 percent of its schools achieve a score of 70 or higher on the Accountability Index.

The proposed BIE Accountability Index will consist of student participation in assessments; achievement in assessed subjects; student attendance, graduation, and drop-out rates; school improvement activities; school participation in professional development activities; and school compliance with federal mandates. These measures provide a clearer picture of school performance in educating their students. Because BIE's proposed accountability system will reflect stakeholder input and tribal consultation, as well as Department of Education recommended changes, the measures outlined here will likely change to reflect the implementation of the program that replaces current AYP measures.

4) Performance Goals for FY 2013 are currently established at levels consistent with baseline performance.

All current projections of BIE performance in the current FY2012-13 Annual Performance Plan are based on "steady state" assumptions. These new initiatives could have a major impact on how performance goals and strategies are formulated for FY 2013 and beyond.

In FY 2011, major learning improvements were established with the new educational initiative. Although student performance at BIE schools across the board remains lower than national averages, some dramatic progress has been made in selected schools.

- The Northwest Evaluation Association (NWEA) developed a standardized assessment tool that can be used across all Indian schools to measure student progress.
- Using NWEA data currently utilized by 128 of 173 BIE funded schools, the following examples of significant changes in achievement scores can be cited.
    - In mathematics, NWEA assessment growth data from fall 2010 to spring 2011 indicated that students in 51 of the BIE schools exceeded growth expectations or outperformed other students with similar beginning scores.
    - One particularly successful Education Line Office [ELO], New Mexico Navajo North, 8 of 9 schools exceeded growth expectations or outperformed other students with similar scores at the beginning of the year in reading and math, based on NWEA assessment growth data.

The larger challenge is to raise the achievement scores of all schools and students so that they approach, and ideally exceed the national norms. In FY 2011 (SY 09-10), with the funding appropriated our primary funding goals were the following:

- 38% of BIE and tribal schools achieve Adequate Yearly Progress (AYP), in comparison to 32% in FY 2010
- 57 % of BIE schools not making AYP show improvement in reading

- 57 % of BIE schools not making AYP show improvement in math
- 56 % of students show proficiency in reading at BIE funded schools
- 47 % of students show proficiency in math at BIE funded schools

Actual performance in FY 2011 (SY 09-10) fell short of the targeted goal in each of these key areas:

- 29% of BIE and tribal schools achieved AYP, compared to the 38% target
- 54% of BIE schools not making AYP showed improvement in reading, compared to the 57% target
- 48% of BIE schools not making AYP showed improvement in math, compared to the 57% target
- 40% of students showed proficiency in reading at BIE funded schools, compared to the 56% target
- 31% of students showed proficiency in math at BIE funded schools, compared to the 47% target

As noted in the Department of Education budget justification, a major reason for the lower than expected performance by most schools on No Child Left Behind [NCLB] goals, was the tightening of proficiency standards by all States. FY 2011 (School Year 2009-10) was the third year into the new state proficiency levels for reading and math. This trend was applicable to BIE and tribal schools as well.

In March 2011, the Secretary of Education estimated that no less that 82 percent of public schools would fail to make AYP in academic year 2010-11. Relative to this Nation-wide picture, and in light of tightening State standards, the consistent percentage of BIE and tribal schools making AYP over the past several years [30 to 32%] can be considered from a new perspective. Relative to recent national AYP results, BIE percentages fare well by comparison.

In FY 2012 BIE performance goals have been set at levels which are consistent with baseline performance. The following actions are being taken to enhance performance at both the BIE and tribally owned schools:

- Consult with Tribes to formulate strategies that will increase student achievement and identify additional measures that will track individual student achievement
- Expand use of the Northwest Evaluation Association diagnostic tool to assess students at the beginning of the year and then compare year end results with growth targets
- Use the results of data analysis to target specific teaching strategies aimed at particular areas of student weaknesses
- Conduct leadership institutes for teachers and principals in effective reading and math instruction
- Expand BIE Reads program in participating schools to all grade levels
- Expand Math Counts program at an additional ten schools

The implementation of **Executive Order 13592** will address the shortfalls referenced because it mandates a comprehensive approach to address the challenge of improving educational outcomes for American Indians and Alaska Natives. BIE will benefit from the collaboration between entities within the Department of Education, the Department of the Interior, and Tribal Leadership, as well as

other representatives at the federal and State level. Furthermore, effective governance mechanisms and policy development will provide the means to bring BIE schools into alignment with standards at the national level in all areas.

"Organizational Streamlining" (-$19.7 million)

The BIA budget claims $19.7 million in savings that it is calling "organizational streamlining", and that the agency has not yet implemented, planned, or even consulted on with Tribes.

Simpson Q4: Are you not putting the cart before the horse, by claiming savings that you haven't even realized yet?

Answer: The FY 2013 budget request identifies $19.7 million in savings from streamlining and $13.4 million from significantly reduced administrative costs associated with the wide range of services Indian Affairs delivers through its programs. Indian Affairs will engage in extensive consultation to identify strategies to ensure that tribal needs and priorities are addressed.

Indian Affairs is in the process of scheduling extensive consultation meetings with Tribes and believes the targeted savings can be realized by strategic position management, shared resources and potential program and office consolidation. In addition, Indian Affairs is considering requesting voluntary early retirement authority and the voluntary early separation incentive program to assist in meeting the targeted savings.

Simpson Q5: What assurances can you give us that this consolidation, and the associated loss of 192 FTE, will not negatively impact services for Indian Country?

Answer: No changes will be implemented that will negatively impact services for Indian Country. Any potential consolidation, which will affect the delivery of services to Tribes, will require the support and participation of the Tribes. The results and recommendations from the consultations will be included in implementing a plan for a streamlined and cost effective organization.

Simpson Q6: Was this cut supported by the Tribal/Interior Budget Council?

Answer: The Tribal/Interior Budget Council was aware that Indian Affairs would present an organizational streamlining effort in order to protect tribal base funding. While the TIBC recognizes the importance of meeting budget targets, TIBC consistently argues for the protection of the entire IA budget.

Simpson Q7: Reorganizations have to be approved by this Committee, so when do you plan on submitting a reorganization proposal?

Answer: Once the consultations have occurred, Indian Affairs will incorporate the results and recommendations into a plan for a streamlined and cost effective organization. If the plan requires reorganization, Indian Affairs will submit a proposal to the Committee for approval.

Administrative "Savings" (-$13.2 million)

The BIA budget claims $13.2 million in administrative "savings". No other bureau in the deparment even comes close to that level.

Simpson Q8: Are these real savings?

Answer: Over the last two years, the Administration has implemented a series of management reforms to curb uncontrolled growth in contract spending, terminate poorly performing information technology projects, deploy state of the art fraud detection tools, focus agency leaders on achieving ambitious improvements in high priority areas, and open government to the public in order to increase accountability and accelerate innovation. In November 2011, President Obama issued an Executive Order reinforcing these performance and management reforms and the achievement of efficiencies and cost-cutting across the government. This Executive Order identifies specific savings, as part of the Administration's Campaign to Cut Waste to achieve a 20 percent reduction in administrative spending from 2010 to 2013. The Department of the Interior's goal is to reduce administrative spending by $207 million from 2010 levels by the end of 2013. BIA proposes $13.8 million in management efficiencies that would focus on the reduction of costs in printing, fleet management, and employee information technology devices.

Simpson Q9: Why is Indian Affairs the only bureau that is claiming these kinds of "savings"?

Answer: Indian Affairs is not the only DOI bureau impacted by the Administration's Campaign to Cut Waste Initiative. BIA proposes $13.8 million in management efficiencies that would focus on the reduction of costs in printing, fleet management, and employee information technology devices. Of this $13.8 million, over two-thirds are attributed to the Presidential initiative to reduce waste within government. Indian Affairs, along with other bureaus, will achieve these savings through efforts to reduce travel and relocation expenses, limit employee mobile IT devices, and continue to consolidate the IT infrastructure by collaborating and consolidating with the Department.

The Department of the Interior's goal is to reduce administrative spending by $207 million from 2010 levels by the end of 2013. Over the last two years, the Administration has implemented a series of management reforms to curb uncontrolled growth in contract spending, terminate poorly performing information technology projects, deploy state of the art fraud detection tools, focus agency leaders on achieving ambitious improvements in high priority areas, and open government to the public in order to increase accountability and accelerate innovation. In November 2011, President Obama issued an Executive Order reinforcing these performance and management reforms and the achievement of efficiencies and cost-cutting across the government. This Executive Order identifies specific savings, as part of the Administration's Campaign to Cut Waste, to achieve a 20 percent reduction in administrative spending from 2010 to 2013.

Guaranteed Loan Program (-$2.1 million)

The Indian Guaranteed Loan Program is facing a $2.1 million cut, "while the program undergoes an independent evaluation."

Simpson Q10: Is that not a guilty-until-proven-innocent approach?

ANSWER: Indian Energy & Economic Development plans to conduct a strategic review of the Indian Affairs Loan Guarantee Program to review the effectiveness of the program and its results. The program evaluation will help strengthen the program's goal to improve access to capital opportunities for Native American businesses. Indian Affairs is reviewing the bid for proposals and will keep the Committee apprised of major milestones in the program evaluation process. The review will be initiated this year with a target completion date of early next calendar year.

Simpson Q11: What prompted the evaluation, and who is conducting it?

Answer: The Office of Indian Energy and Economic Development initiated the plan to conduct a strategic review of the Indian Affairs Loan Guarantee Program in order to review the effectiveness of the program and its results in Indian Country. IEED has not determined the independent program evaluation firm as it is still reviewing the proposal bid application. Indian Affairs will ensure that the Committee is kept abreast of the progress of the program evaluation process.

Simpson Q12: When will it be completed?

Answer: The program evaluation is anticipated to begin this year with a target completion date early in the next calendar year.

Replacement School Construction (-$17.8 million)

There are 41,000 students attending 183 BIE-funded schools and dormitories which the Federal government is responsible for building, maintaining, and eventually replacing. If we were to only replace one school every year, we would be expecting each school to have a 183-year lifespan. Your budget proposes to replace no schools. The budget justifies this $17.8 million cut by proposing to continue the facilities maintenance and repair program instead.

Simpson Q13: Wouldn't you say that a more balanced approach to the budget would be to include funding for both maintenance and replacement?

Answer: The American Recovery and Reinvestment Act invested a total of $285 million into Indian schools and detention center facilities. Many of these projects are still under construction. In light of this investment, the Indian Affairs request is maximizing funding available for other vital Indian Affairs programs. The Indian Affairs budget proposal for FY 2013 continues $48.5 million for maintenance, repair and improvements to existing education facilities. This strategy recognizes the importance of a quality school environment to best meet the learning needs of Indian students while working in a period of fiscal constraint. Beginning in FY 2012, the amount of funds for repairs and improvements was increased which resulted in improved facility conditions at multiple schools and this budget request continues that approach.

Simpson Q14: What is the average lifespan of a BIE school compared to surrounding schools?

Answer: Nationwide, the average lifespan of a school, including BIE schools, is forty years.

Simpson Q15: How many schools should we reasonably expect to replace each year, on average?

Answer: Indian Affairs sponsors 183 schools and dormitories. It is a real property standard that the life expectancy of buildings is 40 years; however, many buildings, including schools throughout the country, are still in use after this period of time. Indian Affairs cannot predict or determine the number of schools that need to be replaced annually as it is dependent on variable factors such as the conditions of the school facilities and Indian Affairs' ability to maintain the structures through annual maintenance and modernization improvements to minimize the need to replace a school.

Simpson Q16: When is a new replacement school construction list going to be published?

The current Replacement School Construction priority list was published in 2004. Of the fourteen school projects on the list, all but three have been completed or are under construction.

Indian Affairs has set up a committee to review the criteria for placing a school on the revised priority list. The committee has finished their recommendations, and it is expected that the criteria recommendations will be delivered to Congress and the Secretary of the Interior in the spring of 2012. Once the criteria is completed, Indian Affairs will be joined by a committee representing schools and Tribes to develop a recommended school construction priority list that will be submitted to the Assistant Secretary Indian Affairs. Once approved by the Assistant Secretary, the list will be published in the Federal Register and posted on the Bureau of Indian Affairs and Bureau of Indian Education's web sites.

Once the criteria recommendations have been delivered to Congress and the Secretary, the effort to establish the review committee, apply the criteria and prepare the preliminary list for approval by the Assistant Secretary will likely take 12 months to final publication.

Domestic Violence and Substance Abuse

Two years ago this subcommittee included considerable report language directing the Department to engage the Department of Justice, Tribes, States, and the Inspector General to better address the epidemic levels of sexual and domestic violence, substance abuse, and related criminal problems.

Simpson Q17: Please update the committee on progress made to date on that effort.

Answer: The BIA Office of Justice Services (OJS) has developed a partnership with the Federal Law Enforcement Training Center's (FLETC) Office of State and Local Training to host OJS Domestic Violence "Train-the-Trainer" instructor training programs aimed at BIA and tribal law enforcement officers.

The training is designed to enhance the officers' skills and effectiveness in working with victims suffering from the physical and emotional effects of domestic violence. The four programs trained 96 domestic violence subject matter experts who are able to return back to their police departments and provide the local training to their departments. This training includes: Dynamics of Domestic Violence; Documentation and Collection of Evidence; Report Writing Dynamics; Victim Impact Statements; Referral to Domestic Violence Shelter or Services; Referral to Victim Services; Referral to Victim Witness Advocate; Case Report; and Testimony in Tribal/Federal Court.

In addition, the instructors are encouraged to provide educational opportunities to the community and participate with local domestic violence and sexual assault victims programs. The trainings have been completed and more than 90 new domestic violence trainers are working in Indian Country.

OJS and DOJ are also partnering to hold multiple sexual assault seminars later in 2012 which will bring training to Indian Country law enforcement programs in areas specific to addressing investigation and prevention of sexual assaults.

OJS is also making sexual assault a key topic of OJS In-Service training for 2012; every OJS Special Agent will receive additional training in the investigation of sexual assault cases.

Further, the Office of Justice Services has just recently created a Department of Justice (DOJ) liaison position. This is an OJS funded position that is housed at the main Justice building and will serve as OJS primary point of contact with the Department of Justice on many shared issues to include working very closely with the Office on Violence Against Women.

Simpson Q18: What are some of the major obstacles you've encountered, and how have you overcome them?

Answer: The main obstacle to effectively dealing with these issues has been the availability of training for officers in Indian communities on being effective first responders to domestic violence calls. In partnership with the Federal Law Enforcement Training Center (FLETC), the design and schedule of comprehensive training is underway.

The BIA Office of Justice Services (OJS) and the FLETC's Office of State and Local Training are scheduled to host four Domestic Violence "Train-the-Trainer" instructor training programs aimed at BIA and tribal law enforcement officers.

The training is designed to enhance the officers' skills and effectiveness in working with victims suffering from the physical and emotional effects of domestic violence. In addition, the instructors are encouraged to provide educational opportunities to the community and participate with local domestic violence and sexual assault victims programs. The trainings have been completed and more than 90 new domestic violence trainers are working in Indian Country.

Public Safety and Justice (+$7.7 million)

Please tell us about Interior's efforts over the past several years to reduce crime in Indian Country.

Simpson Q19: What goals did you set, what strategies did you put into action, and were you able to achieve your goals?

ANSWER: Since FY 2004, the Department of the Interior's budget request has prioritized significant increases for public safety and justice programs, with FY 2008 marking the first year of the Protecting Indian Country initiative. During this time, the BIA has focused on increasing the law enforcement presence in Indian communities while strengthening detention/corrections and tribal courts programs to foster comprehensive and effective justice systems for tribes.

With an overall goal of reducing violent crime in Indian country, Indian Affairs employed data gathering strategies to assemble and analyze crime statistics of all law enforcement programs to determine the areas of greatest need and of highest priority. In 2009, Indian Affairs focused its efforts on a pilot project with the goal of reducing local violent crime by five percent over a 24-month period through development and implementation of a community assessment and police improvement effort in coordination with the Tribes and several Federal partners.

In FY 2010 and FY 2011, the High Priority Performance Goal (HPPG) pilot project was implemented in four communities with excessive crime problems and began with a full assessment in an effort to determine the root causes for the excessive crime. The four communities were Mescalero Apache, Rocky Boys, Standing Rock, and Wind River. Using the information obtained in the assessment, BIA developed an action plan comprised of the best strategies and practices to implement sustained crime reduction in each community. The plan included customized community policing programs suitable to the community; strategic operational practices tailored to the community for stronger patrol and enforcement within current staffing levels; and establishment and mediation of any necessary partnerships with various Federal, State and local programs such as the Drug Enforcement Administration (DEA) or drug task forces, social services, and rehabilitation programs. As a result of the efforts in FY 2010 and FY 2011 on the four sites, violent crime was reduced by 35 percent from the overall baseline total established from the baseline years FY 2007 through FY 2009.

Simpson Q20: I see that you're proposing additional investments in '13 to expand upon past efforts. Would you say then that you've been successful?

ANSWER: The final results of the 24 month goal period are summarized in the FY 2013 President's Budget request. A detailed report is currently in the review process within Indian Affairs. The anticipated completion and distribution date of the detailed report is July 2012.

At the end of the goal period, the BIA Office of Justice Services achieved an overall 35 percent decrease in violent crime across all four Priority Goal sites. The following statistics are the results of each individual location:

- 68 percent reduction in violent crime at Mescalero
- 40 percent reduction in violent crime at Rocky Boy
- 27 percent reduction in violent crime at Standing Rock
- 7 percent increase in violent crime at Wind River.

Wind River was the only location showing an increase in violent crime over the 24 month period. The seven percent increase is attributable to multiple factors:

- The increase of sworn police officers that Wind River hired contributed to a huge improvement in public trust and thereby increased reporting.
- The violent crimes reported to law enforcement showed a 53 percent increase the first year. Reviewing the violent crime statistics, the rise of violent crime being reported was noticed at the time of the influx of sworn law enforcement staff.

Based upon the current violent crime statistics, Wind River law enforcement personnel have shown success reducing violent crime in the second year by implementing sound crime reduction strategies. The statistics show the program is trending in the right direction as a 30 percent decrease, or 43 fewer incidents than 2010, in violent crime was observed from 2010 to 2011 alone.

Based upon the current trend, OJS believes the crime reduction strategies and staffing levels are sufficient to achieve and maintain the reduction in violent crime as outlined in the HPPG initiative. In fact, the Wind River violent crime statistics for the three months following the end of the initiative (October, November, and December 2011), have shown an additional decrease of 17 violent crimes (68 percent) from the same three months of the previous year, and an 11 overall percent reduction since the beginning of the initiative.

Based on the success of the pilot project's first four locations, two additional reservations were identified for implementation in FY 2012 – FY 2013. The two include reservations are San Carlos Apache Tribe in Arizona and the Rosebud Sioux Tribe in South Dakota.

Simpson Q21: What improvements can be made?

Answer: One area improvement is being made is in crime data verification. To ensure the Priority Goal crime statistics were accurate and the processes for Uniform Crime Reports (UCR) classification and scoring were standardized at these locations, the Office of Justice Services (OJS) put together a multidisciplinary team comprised of Indian Affairs, the Federal Bureau of Investigation (FBI) and DOJ Bureau of Justice Statistics (BJS) personnel to verify all crime data for FY 2009, FY 2010, and FY 2011.

Eight IA and three BJS personnel completed UCR training conducted by the FBI UCR program. From these trained personnel, four multi-disciplinary teams were created and assigned to complete the verification initiative at each of the four Priority Goal locations. During the crime data verification initiative, the FBI provided more than 20 UCR personnel from Clarksburg, West Virginia, including four of the most senior UCR auditors in the FBI. Each of the four teams was provided a single tool to ensure the consistency of documented offenses across the Priority Goal sites, and the teams communicated regularly to share information, challenges, and best practices.

The verification team initiative will continue to verify all crime data for the sites throughout the duration of this initiative. The lessons learned continue to shape the BIA's approach to crime reporting and implementation of the necessary changes to improve the accuracy and consistency of crime reporting in Indian Country.

Simpson Q22: How did you come to choose the San Carlos Apache Tribe in Arizona and the Rosebud Tribe in South Dakota as the two places to expand your efforts in '13?

ANSWER: The San Carlos Apache Tribe in Arizona and the Rosebud Sioux Tribe in South Dakota were selected from the ten reservations ranked highest in terms of crime rate and officer staffing need in FY 2011. Also key to the selection of these two reservations was the level of commitment of the tribal leadership. Tribal leadership and support was confirmed for the initiative during discussions with BIA Office of Justice Services (OJS) management in late September 2011. Both Tribes

accepted the corresponding responsibilities and welcomed the Priority Goal initiative on their reservations beginning in October 2011.

Simpson Q23: Will you continue to detail officers from other Department bureaus?

ANSWER: Indian Affairs will continue to leverage outside resources by partnering with other bureaus within the Department, as well as other Federal agencies to address near term critical officer shortages at the Priority Goal Indian communities.

Simpson Q24: Please explain the $2.6 million decrease in BIA for law enforcement special initiatives.

ANSWER: The FY 2013 budget includes a number of reductions to ensure the most effective prioritization of available Indian Affairs (IA) resources to address core responsibilities to American Indians and Alaska Natives. Additionally, newly built detention centers were allocated an additional $6.4 million in FY 2013 to ensure that they would be staffed and ready when construction is completed. In the area of public safety and justice, decreases totaling $2.6 million are proposed.

This amount includes a decrease in funding of $1.0 million in assistance to tribal law enforcement programs with jurisdictions that border on or near Mexico and represents a shift in emphasis from a geographic driven distribution of resources under this initiative to a methodology that allocates additional resources based on objective criteria such as crime statistics, land base, and resident population.

Also included in the request is a reduction of $550,000 that will eliminate one Intelligence Analyst position located at the El-Paso Criminal Intelligence Center (EPIC) and two positions at drug enforcement field locations in Muskogee, OK and Phoenix, AZ. Through the remaining three intelligence Analyst positions, the BIA will continue to maintain real-time access to intelligence related to criminal enterprise and narcotics trafficking and distribution.

The final component is a reduction of $1.0 million that the Incident Management Analysis and Reporting System (IMARS). The system is a Department sponsored project that was developed to ultimately provide all bureau justice service agencies with the ability to accurately report incidents and transmit those reports for inclusion in various state and Federal databases.

Regional Detention Centers

The FY10 and FY12 conference reports included language encouraging BIA to consider establishing regional detention centers at new or existing facilities.

Simpson Q25: Please update the committee on progress being made at Interior and Justice to address this as a possible solution to the building, operating, and maintaining of individual tribal detention centers.

Answer: The BIA Office of Justice Services and the DOJ Bureau of Justice Assistance (BJA) are making strides in their commitment to better coordinate the planning and construction of new jails in Indian Country as prescribed in the Tribal Law and Order Act (TLOA). In FY 2011, these

organizations implemented quarterly meetings to meet with the tribal grant recipients to track the planning, development, construction and opening of new facilities. The BIA's role in this planning is time sensitive given the two year lead time required by the Federal budgeting process. Mandating through the grant process that tribal grantees submit budget requests to BIA in time for proper budget planning was discussed as a method for improving coordination between BJA, OJS, and the Tribes.

The discussion included the possibility of BIA taking on a role as decision-maker where these facilities are to be built. Attempting to resolve these two challenges through further collaborative efforts continues in FY 2012 and represents significant progress in operating detention facilities in a cost effective and efficient manner for Indian Country public safety.

Public Safety and Justice Construction

Once again this year the Public Safety and Justice Construction activity doesn't budget for facility replacement and new construction, presumably because construction is now handled by the Department of Justice. As you know, there have been problems in the past with coordination, as the facilities built by Justice didn't always match with Interior's highest priorities, and as Interior was being handed the bill for operations when there wasn't money in the budget.

Simpson Q26: Please explain why the approach taken in this budget proposal is an improvement over the way we've funded safety & justice construction in previous years.

Answer: New construction under the Public Safety and Justice (PS&J) Construction program is excluded from the BIA budget to ensure there is no overlap with detention center construction in the Department of Justice (DOJ) budget. Rather than duplicate efforts among Federal agencies, the President's Budget incorporates a collaborative approach that aligns new construction under DOJ and operation and maintenance under Indian Affairs in terms of resources and responsibility. To ensure the activities of both Federal agencies produce the maximum possible benefit to Tribes on a nationwide basis, Indian Affairs is committed to close coordination and information sharing with DOJ.

Simpson Q27: Under Justice's competitive grant program, how do you ensure that the reservations with the greatest need are the ones getting new facilities?

Answer: The BIA Office of Justice Services (OJS) and the Department of Justice Bureau of Justice Assistance (BJA) are engaged in ongoing discussions to determine the role of BIA in selecting the location of tribal detention facilities. OJS and BJA are developing a criteria list to build facilities based on tribal needs. The BIA is providing the Department of Justice a priority list for consideration; however, this remains a competitive grant program, this collaboration represents significant progress in operating detention facilities in a cost effective and efficient manner for Indian Country public safety.

Simpson Q28: Can you assure this committee that those problems of the past aren't repeated?

Answer: The BIA remains committed to working closely with the Department of Justice to ensure appropriate coordination, planning, and construction of new detention facilities in Indian Country.

However, under the current process the final decision for the grant awards continues to be with the Department of Justice.

Education (+5.2 million)

I'm told that Tribal Grant Support Costs are like "Contract Support Costs" for education programs, and that there is a $2 million increase in this proposed budget.

Simpson Q29: Is that the case, and, if so, why aren't they proposed for full funding in the same way that Contract Support Costs are proposed for full funding?

Answer: The FY 2013 Indian Affairs budget reflects a fiscally responsible balance of the priorities expressed by Tribes during consultation. By legislation and tribal litigation, Contract Support is paid at one hundred percent of the stated need.

Simpson Q30: What is the cost to fully fund Tribal Grant Support Costs?

ANSWER: In the 2012-2013, academic year, schools will receive approximately 62 percent of their stated need. The estimated percent of calculated need for FY 2013 with the proposed $2.0 million increase in the 2013-2014 academic year, schools will receive an estimated 65 percent of the calculated need. Fully funding the estimated need for the 2013-2014 academic year would cost an additional $25.98 million, for a total of $74.24 million for Tribal Grant Support Costs.

Simpson Q31: What are the downsides to not fully funding Tribal Grant Support Costs?

Answer: The Tribal Grant Support Costs Program pays the administrative expenses incurred by Tribes and tribal organizations operating Bureau-funded elementary or secondary educational programs. These expenses are required by law and are prudent management practices. Tribes and tribal organizations are required by law to perform the following functions:

(i) contract or grant (or other agreement) administration;

(ii) executive, policy, and corporate leadership and decision-making;

(iii) program planning, development, and management;

(iv) fiscal, personnel, property, and procurement management;

(v) related office services and insurance auditing, legal, safety and security services.

When Tribes and tribal organizations operating Bureau-funded elementary or secondary educational programs receive less than 100 percent of their Tribal Grant Support Costs Program needs, they are unable to satisfactorily perform the above requirements, resulting in reduced administrative oversight, poor program planning and management, and negative audit findings. In School Year 2011-2012, nineteen tribally operated schools received less than $200,000, with six of the 19 schools receiving only $127,600, to pay for the above functions.

Reduced funding also delays the transfer from Bureau operated to tribally operated schools as tribes and tribal organizations recognize they will receive less than 100 percent of need to administer their schools, and the addition of new tribally operated schools reduces the funding for all tribally operated schools.

Simpson Q32: Increases for Education are mostly offset by administrative reductions and a $4.4 million reduction to the base. Tell us about this $4.4 million reduction for ISEP (Indian Student Education Program) formula funds.

Why is the base being reduced?

Answer: The reduction is attributed to the small decline in enrollment from previous years and the constrained fiscal resources.

Simpson Q33: Does a declining student population automatically trigger a base reduction, or do you see an opportunity for real savings here?

Answer: A decline in enrollment does not automatically generate savings. However, reduced enrollment and other variables combined may allow for small reductions in funding. In recognition of constrained fiscal resources and the President's call for a more efficient government, schools will be asked to pursue cost-saving options, such as:

a. Reducing non-student and non-mandatory travel by holding meetings on-site and through telephone conference calls and WebEx sessions;
b. Reducing transportation expenses by combining training sessions, meetings and travel when possible;
c. Using more fuel efficient vehicles and return limited use or surplus vehicles (and other equipment) to the leasing companies when allowable;
d. Reducing staff overtime and purchases to only essential needs;
e. Consolidating purchases within schools and with other schools when vendors provide reduced prices for bulk purchases and services;
f. Purchasing from vendors that provide free or reduced shipping; and
g. Sharing resources and services with other schools to reduce duplication.

Simpson Q34: The budget notes that enrollment at tribal colleges and universities is on the rise, and that an additional $2.5 million is proposed to help accommodate the increase.

Is the $2.5 million proportional to the student increase, or is it the best you could do with a limited budget?

Answer: Learning beyond high school is also critical to a successful life and career; 80 percent of new jobs in the competitive global economy require post-secondary education such as a college degree or vocational training. To address this need, BIE administers operating grants to 27 tribal colleges and universities. The increase will help accommodate some, of the increased enrollment at the existing Tribal Colleges and Universities and the addition of the Keweenaw Bay Ojibwa Community College.

Energy (-$239,000)

In November 2011, you announced the reform of Federal surface leasing regulations for American Indian lands. The reforms are intended to streamline the approval process for home ownership, expedite economic development, and jump start renewable energy development in Indian Country. The proposed rules include enforceable timelines for BIA to review leases including a 30-day limit for residential leases and a 60-day limit for commercial or industrial development.

Simpson Q35: Don't these proposed rules create additional demands on the bureau, and, if so, how are you going to pay for it?

Answer: The BIA Real Estate Services Program has developed new automation capability in the TAAMS system of record that is expected to significantly streamline the processes for the approval of residential leases and business leases, which should allow us to implement these new regulations utilizing existing staff. This new TAAMS module was implemented in the fall of 2011 and is currently in use at all locations across the country. BIA is also developing web-based training for our existing staff to allow them to become familiar with the new regulations without a significant travel expense. If in the future it is determined that these measures are not enough to sustain the possible increased workload, the BIA Real Estate Services program will evaluate the actual need and request the required funding to ensure proper processing of leases under the new regulations.

Simpson Q36: Two weeks ago, Indian leaders testified before Congress that the Federal government remains an impediment to developing resources on tribal lands. Tribes want more energy production on tribal lands, from developing solar and wind power to refining oil. They say that Federal offices at the local level are "understaffed, underfunded, and underqualified".

Does the bureau embrace an "all-of-the-above" policy of energy production on tribal lands, and, if so, how does this budget reflect that?

Answer: The BIA with the support of the Office of Indian Energy and Economic Development is working closely with numerous tribal nations to explore and develop conventional energy resources on Indian Trust lands. Together, the Office and Tribes are further defining, quantifying, and developing their energy resources for industrial scale energy production. These projects help spur job creation and economic activity on reservations by assisting Tribes to develop their energy and mineral resources. Energy and mineral development on Indian lands in recent years had an estimated economic impact of over $12.3 billion or 85 percent of Indian Country's trust resources.

Further, this economic activity has produced an estimated 120,000 jobs related to trust resources. In the last three years, the Office of Indian Energy and Economic Development has assisted Indian mineral owners in the negotiation of 48 leases for oil, gas, renewable energy, and aggregate materials development on approximately 2.8 million acres. This office has achieved quality work on behalf of Tribes and is not underfunded or under-qualified.

The 2013 budget request includes $2.5 million for conventional energy and audit compliance, the same as the 2012 enacted level, to support leasing activities on the Fort Berthold Reservation. At the request of the Tribes, IEED has evaluated the oil and gas potential for the Tribes. From 2005 to

2008, the Office of Indian Energy and Economic Development assisted the Tribes in the negotiation of lease agreements with oil and gas companies.

Increased focus from Indian Affairs to approve leases in a timely fashion and a hands-on approach to technical assistance helped to stimulate oil and gas development in the area. In 2011, over 200 drilling permits and associated rights-of-ways were approved in the area. It is expected over 300 drilling permits and associated rights-of-ways permits will be approved in 2012. Drilling activity is expected to increase through 2013, with the development rate leveling off to 100 wells per year over the next five years. Approximately 1,000 wells are expected to be drilled to initially develop the Bakken Formation with an additional 1,000 wells drilled to complete full development of the Bakken and Three Forks Formations over the next ten to 20 years. In order to provide better coordination and collaboration among interagency staff to respond to increased demand for oil and gas permits in certain regions, Indian Affairs is developing strike teams to provide technical staff to assist as demand increases. The teams include expert specialists in realty services and environmental compliance, as well as petroleum engineers; and leverage subject matter experts from various bureaus within the Department. The first team created is already working on the Fort Berthold Reservation and has provided a solution to the increased workload. This concept will be used at other reservations where IEED is observing an increase in energy development activity.

The budget provides $6.0 million, the same as the 2012 level, for renewable energy projects. This program supports development of renewable energy projects to provide a reliable renewable energy resource for use in manufacturing and industrial processes on Indian Trust lands. Renewable energy development on Indian lands has the advantage of attracting outside investment, enabling Native American business ownership, and spurring job creation on reservations that often have double the unemployment rate compared to the rest of the United States.

Simpson Q37: Tribal leaders have testified that high fees imposed by the BLM scare off potential business partners.

What is your response to that, and are you working with the BLM to try and address the fee issue?

Answer: The current BLM fee of $6,500 for processing an application for permit to drill (APD) applies to companies' developing oil and gas resources on federal and Tribal lands. The Administration has proposed an additional tiered fee structure for oil and gas inspections that BLM conducts to ensure that companies are conducting operations in safe and environmentally responsible ways and that they are properly paying production royalties owed to the Federal government, Tribes, and individual Indian mineral owners. Both of these fees are cost recovery fees, intended to reimburse the Federal government for the costs it incurs to properly oversee oil and gas development from which private companies directly benefit. In total, the combined fees (APD and inspection fees) that developers would pay under the Administration's proposal represent a very small share – usually far less than 1 percent – of the revenue developers can expect to receive from this oil and gas development.

Rights Protection

Over the past couple of years we have appropriated significant increases for Rights Protection programs, and we included language directing the BIA to distribute the increase provided for rights

protection using a merit-based process, in accordance with language included in the President's FY10 budget. This is an area of the budget that both Mr. Dicks and I feel strongly about, and I think we were looking forward to the development and rationale of such a merit-based process. To date we have not seen it, and the allocation of increases appears to have been largely pro rata with a few minor changes.

Simpson Q38: Is a merit-based process in place?

Answer: The distribution of recent increases has been based upon formula driven distribution to tribally operated programs within Rights Protection Implementation (RPI). Historically, the share percentages have fluctuated between the two regions depending on projects being undertaken in that year.

Tribally operated programs in RPI, such as larger tribal fish and wildlife commissions, serve several Tribes, are able to outline the successful outcomes accomplished with annual funding under the formula distribution and receive a higher level of base funding. For example, the Chippewa-Ottawa Resource Authority (CORA) presented success stories of how the Authority utilizes Federal funding to accomplish their mission to the tribes that they serve and the results achieved. With this new information, as well as a well structured plan for use of additional funding in support of their inland consent decree, it was justifiable to distribute a larger percentage of necessary funding to their program.

Simpson Q39: How do you plan to distribute the $3.5 million increase in FY13 if it is appropriated?

Answer: The FY 2013 funding is proposed to be distributed as follows: A total of $1.6 million of the requested increase will be distributed to the Chippewa-Ottawa Resource Authority (CORA). Of this increase, $1.5 million will allow the beneficiary Tribes to implement Inland Consent Decree activities as a result of *U.S. v. Michigan* decision. These rights, obligations, and responsibilities are derived directly from the 1836 Treaty. The proposed increase will allow the Authority and its member Tribes to begin to cover the 14 million acres of inland bodies of water and land that the Consent Decree mandated. The remaining $100,000 provided to CORA will restore the funding base for treaty waters fishery sharing to FY 2010 levels.

An additional $1.6 million will be applied to the other inter-tribal organizations: Northwest Indian Fisheries Commission, Great Lakes Indian Fish & Wildlife Commission, Columbia River Intertribal Fisheries Commission, U.S./Canada Pacific Salmon Treaty, and Washington State Timber-Fish-Wildlife Project to return their funding base to the previous FY 2010 levels to allow them to properly implement their programs. Finally, $200,000 will be provided for implementation of the 1854 Authority and $68,000 will be provided to the Salmon Marking project to assist them in continuing their natural resource preservation efforts.

Climate Change (+$800,000)

The BIA budget includes $1 million for "Cooperative Landscape Conservation", which used to be called "Climate Change". Also, $500,000 is included in the USGS budget to "understand the impacts of climate change on tribal lands." This is a sore spot with tribes and one that we continue to hear about. Interior has invested millions on predicting the impacts of climate change on fish and wildlife

and the greater biological systems, in part to determine where to conserve land so that plants and animals can move and adapt to the changing environment. But what about the people who are tied to their land both culturally and economically? Let's face it: This country has established reservations on some of the harshest lands in the West. And water models show that the West is only going to continue to get drier. The relatively small amount of money that Interior has spent studying climate change on tribal lands misses the point; it isn't about the plants and animals so much as it is about the people.

Simpson Q40: How is Interior going to meet its trust responsibilities to American Indians and Alaska Natives in the face of a changing climate?

Answer: Adaptive management is a technique being used to ensure trust responsibilities are being met. Land management is strengthened through Integrated Resource Management Planning and other more specific land management plans such as forestry. This allows resource management decisions to address climate related issues as they appear.

The 2013 request provides an $800,000 increase over the 2012 enacted level. This proposed increase will allow the Bureau to create a Cooperative Landscape Conservation Tribal Grant Program in which funding will be made available to Tribes and inter-tribal organizations through a competitive grant program. This funding will allow tribal participation and representation in the many climate change related activities occurring around the country. The funds will also help Tribes develop and implement adaptation/mitigation projects and strategies to benefit tribal resources and communities. The request also provides for regional office participation in Landscape Conservation Cooperatives. This participation will allow for collaborative planning and coordination across the Department.

Charter Schools

Last year on the House floor we considered an amendment by Representative Gosar that would have lifted the ban on establishing charter schools. Since that time we have begun to hear similar support from others, and so it is something that I think we should at least continue to consider.

Simpson Q41: Why does your budget propose to continue the bill language prohibiting the establishment of charter schools?

Answer: Since 1999, the Appropriations Committee has included an administrative provision that prohibits the addition of any new charter schools on a BIE operated or Tribal grant school campus after September 1, 1999. At that time, the Bureau of Indian Education (BIE) had around 15 charter schools sharing bureau-funded school campuses. In reviewing these campuses, BIE found little standardization of use permits for the facilities. BIE also experienced difficulty in being reimbursed by the charter school for use of the campus facilities. Overall, these bureau-funded school campuses were assuming a considerable amount of liability in the cooperative use of their campuses. Hence, the language was inserted into the appropriations act to control the situation.

For school year 2011-12, eight of the original 15 charter schools remain in operation. Seven charter schools operated on tribal grant campuses and one operated on a BIE school campus. Currently, the administrative provision allows a charter school at a bureau- funded school facility if the charter school:

- Meets the definition of a charter school,
- The charter school pays the bureau a pro rata share of funds to reimburse the bureau for the use of the real and personal property (including buses and vans),
- The funds of the charter school are kept separate and apart from bureau funds,
- The bureau does not assume any obligation for charter school programs of the State in which the school is located if the charter school loses such funding, and
- Employees of bureau-funded schools sharing a campus with a charter school and performing functions related to the charter school's operation and employees of a charter school shall not be treated as Federal employees for purposes of chapter 171 of title 28, United States Code.

The Gosar amendment proposed during markup of the FY 2012 appropriations bill would have allowed the addition of new charter schools into the BIE school system, which may conflict with other administrative provisions regarding expanding grades for any school beyond the structure in place as of October 1, 1995 and increase the level of liability at bureau-funded school campuses. The Gosar amendment raises possible conflict with other administrative provisions enacted by Congress, including:

- A provision that makes funds available only to schools in the bureau schools sytem as of September 1, 1996, and
- A provision prohibiting the use of funds to support expanded grades for any school or dormitory beyond the grade structure in place or approved by the Secretary of the Interior at each school in the Bureau school system as of October 1, 1995.

These provisions could be problematic if the charter schools are operated by or sponsored by bureau-funded schools and existing facilities, programs and other resources such as administrative oversight, transportation, food services, utilities, telecommunications, and computer networks are shared. The BIE would have limited administrative oversight of charters schools operated by a Public Law 100-297 and Public Law 93-638 tribally operated school to insure adherence to the conditions of the administrative provision.

Since the prohibition has been in place, the BIE has received very few inquiries regarding new charter schools and is not aware of any significant support for new charter schools. The BIE continues to support the language prohibiting new charter schools until such time as the Congress removes the prohibition and identifies all necessary conditions under which new charter schools would be established on bureau-funded school campuses. The BIE is committed to working with the Congress to identify all necessary conditions and stipulations.

Questions for the Record from Mr. Calvert

BIE School Safety

A February 2010 OIG report on BIE school health and safety made some startling discoveries related to drugs, violence and other safety issues within BIE operated schools.

Calvert Q1: Can you please update us on the actions the BIE has taken to address the issues raised in this report and improve safety for students in Indian schools?

Answer: In FY 2009, the BIE established a Safe Schools Planning Guide which is available for all schools on the BIE website. The BIE established School Safety Specialists at each of its regional offices in Minnesota, Arizona and New Mexico are headed by an Associate Deputy Director. The School Safety Specialists work with schools in the East, West and Navajo region to provide technical assistance on their Emergency Preparedness Plans, Continuity of Operations Plans, school policies, answer questions or address concerns, and conduct Safe School Audits. All BIE schools will have been personally visited and will have received a Safe School Audit by May 1, 2012, as part of the BIE response to the OIG report.

In the summer of 2011, the BIE also established a Suicide Prevention Policy for all of the BIE schools throughout the country and has recommended that all grant schools adopt a similar policy. Additionally, training in the handling of suspected child abuse and neglect is required of all BIE employees, annually.

Calvert Q2: Among the recommendations made by the OIG is that the BIA should establish a uniform set of safety policies across all of their schools.

Can you please give us a status update on your implementation of a uniform set of health and safety policies?

ANSWER: BIE has mandated that all bureau-funded schools undergo a Safe School Audit concerning their Emergency Management Plans and Continuity of Operations Plans. These audits will focus on the plans' accuracy and whether or not the school requires assistance to improve their plans. These audits will be completed in May 2012. Technical assistance has been provided to many BIE-funded schools and professional in-service presentations on school safety have been shared at the National BIE Summer Institute, Family and Children Education Conference, and at individual schools.

The School Safety Specialists will continue to provide technical assistance on a variety of topics including inhalants, bullying prevention, school safety, and Suicide Recognition, Intervention, and Prevention. Additionally, *Let's Move! in Indian Country* was developed to encourage healthy and active lifestyles for students attending Bureau-funded schools.

Calvert Q3: What is being done to address the specific health and safety challenges facing BIE operated boarding school?

Answer: Our residential programs continue to be an area of concern for the BIE. With student safety as a top priority, the uniqueness of our residential programs presents unusual issues. The School Safety Specialists are performing the Safe School Audit on these residential programs, which is part of the BIE response to the OIG report. The School Safety Specialists have also provided technical assistance and training to the residential program staff members.

Facilities funding has been used to improve the safety and security of many of our residential programs specifically in the areas of lighting and fencing. The off-reservation boarding schools have developed close working relationships with local health and law enforcement agencies to provide needed services for BIE students.

Charitable Giving to BIE Schools

As public school districts across the nation cope with budget shortfalls and decreased revenues, school across the nation have had to begin to raise some of their own funds to make up for decreased tax revenue and maintain the quality of their services. In many cases, administration and faculty are encouraged to actively participate in fundraising for the school site or for specific clubs or programs, including approaching potential donors.

Calvert Q4: To what extent may BIE faculty and staff solicit donations from the community to their school sites or on-campus programs?

Answer: Sec. 115 (b) and (c) of the Consolidated Appropriations Act, 2012 provides the authority for Bureau of Indian Education employees to participate in fundraising activities that will benefit bureau–operated schools. The bureau is is in the process of writing specific regulations that will address fundraising activities that bureau staff may participate in.

Calvert Q5: To what extent may faculty participate in fundraising for their school, or if their involvement is somehow limited, what are the limiting factors (law or regulation)?

Answer: In addition to the provisions provided in Sec. 115 (b) and (c) of the Consolidated Appropriations Act, 2012, the Bureau of Indian Education is in the process of writing specific regulations that will address the extent and the nature of the fundraising activities that bureau staff may participate in to benefit their school.

Calvert Q6: Would the BIA support legislation that would free up BIE employees to more actively and fully work to support their schools through fundraisers or by soliciting community support?

Answer: Sec. 115 (b) and (c) of the Consolidated Appropriations Act, 2012 provides the necessary authority for Bureau of Indian Education employees to participate in fundraising activities that will benefit Bureau-operated schools.

Questions for the Record from Mr. Cole

Cole Q1: In your opinion does your FY 2013 budget request provide for adequate law enforcement programs on Tribal lands?

Answer: The request incorporates input from Tribes and the Administration in a manner designed to ensure the most effective prioritization of available Indian Affairs' resources to address core responsibilities to American Indians and Alaska Natives. The Tribes and the Administration agree that public safety and justice in Indian Country is a key area in need of additional resources in FY 2013 and prioritized funding increases totaling $11.0 million under the Protecting Indian Country initiative accordingly. Of this amount, $3.0 million will be used to add law enforcement officer positions in Indian communities; $500,000 is proposed to fund permanent Conservation Law Enforcement Officers; and $6.5 million is requested to help meet staffing needs at newly constructed detention facilities scheduled to become operational during FY 2013. Also included to ensure a balanced enhancement to tribal justice systems is the addition of $1.0 million to assist Tribes in strengthening their tribal court operations. A total of $42.1 million is included for Tribal courts from all sources including Self-Governance Compacts and the Consolidated Tribal Government Program.

Cole Q2: How does the Carcieri decision affect the effectiveness of law enforcement programs on Tribal lands?

Answer: To date, no clear trend has been identified with regard to how the Carcieri decision affects the effectiveness of law enforcement programs on Tribal lands.

Questions for the Record from Ms. McCollum

Responding to Juvenile Delinquency among Tribal Youth

Tribal youth are the most disproportionately represented group in the juvenile justice system. Many of these youth are placed in detention facilities outside of their communities with no tribal input or oversight. I would like to know how the BIA supports increased tribal capacity for juvenile justice and efforts to support these troubled youth within their own communities.

McCollum Q1: What BIA funds are directed to the building and/or operating of juvenile detention and correctional facilities on Native American reservations, such as the Standing Rock Juvenile Detention Center? What are the criteria for determining the necessary number of FTEs to staff these centers? Are there adequate funds for these purposes, or does the Bureau have a backlog of requests from tribes?

Answer: New construction for detention centers under the Public Safety and Justice (PS&J) Construction program is excluded from the BIA budget to ensure there is no overlap with detention center construction in the Department of Justice (DOJ) budget. Rather than duplicate efforts among Federal agencies, the President's Budget incorporates a collaborative approach that aligns new construction under DOJ and operation and maintenance under Indian Affairs in terms of resources and responsibility. To ensure the activities of both Federal agencies produce the maximum possible benefit to Tribes on a nationwide basis, Indian Affairs is committed to close coordination and information sharing with DOJ.

The FY 2013 request includes $4.4 million in Facilities Improvement and Repair that primarily focuses on improvements and repairs or renovation of Indian Affairs' (IA)-owned juvenile and adult detention centers and law enforcement facilities. Projects funded under this program are generally prioritized by the degree to which they correct critical health and safety deficiencies and/or environmental hazardous material concerns. In addition, the budget includes $13.8 million to fund the facility operation and maintenance needs of IA or tribally owned juvenile and adult detention centers and law enforcement facilities that meet IA facility and program requirements.

The Detention/Corrections program, which includes an increase of $6.5 million, requests a total of $88.2 million for FY 2013 to fund 93 existing detention programs, including 26 juvenile programs that are currently operational. It is this program that funds staff and other non-facility operational costs related to detention and corrections and the staffing needs are determined in accordance with the National Institute of Corrections (NIC) standards. The primary criteria driving the NIC standards include the facility layout and number of inmate beds.

The BIA and the DOJ Bureau of Justice Assistance (BJA) are making strides in their commitment to better coordinate the planning and construction of new jails in Indian Country as prescribed in the Tribal Law and Order Act (TLOA). In FY 2011, the organizations implemented quarterly meetings where they met with the tribal grant recipients to track planning, development, construction and opening of new facilities, including juvenile facilities. The BIA's role in this planning and tracking is critical given the two year lead time required by the Federal budgeting process. This collaboration

and proactive outreach to tribal grantees continues to guide the formulation of BIA's budget and assist in preventing a backlog of tribal requests for detention resources.

McCollum Q2: What community alternatives to these expensive projects have been considered to respond to juvenile delinquency on tribal lands? Are efforts to keep youth in their tribal communities and invest in more alternatives to detention priorities for the BIA?

Answer: The FY 2013 budget request includes funding for 16 School Resource Officer (SRO) positions that have been placed at BIE-funded schools throughout Indian Country. The primary role of these officers is to provide a continuous law enforcement presence for the Indian youth at these schools, build relationships with them as they mature, and educate them on the dangers of drug use, gang involvement and other illegal activities. These officers are in a unique position to identify and proactively reach out to the students or groups exhibiting the highest risk behaviors.

The BIA Office of Justice Services is working to expand the options available to Tribes for alternative sentencing, but ultimately the tribal courts control sentencing decisions. New elements contained in the Tribal Law and Order Act include more stringent licensing and training requirements for defense attorneys, prosecutors, and judges, including a specific requirement for access to training in alcohol and substance abuse prevention regarding both adults and juveniles. In order to address these needs and provide sentencing options to tribal courts, the FY 2013 budget adds funding to initiate pilot training and technical assistance programs that will include alternative sentencing such as ankle bracelet monitoring and home confinement devices, which could allow more tribal youth offenders to remain in their communities.

Interventions for Tribal Youth

We know the rate of suicide among tribal youth is 3.5 times higher than the national average, and they are also at a greater risk for drug and alcohol use.

McCollum Q3: Does the BIA have programs (e.g., mentoring services, gang prevention, community interventions, or criminal deterrents) designed to reach out to Indian Youth and address these crises? What program funding goes to promote well-being and prevent risky behaviors?

Answer: The FY 2013 budget request includes funding for 16 School Resource Officer (SRO) positions that have been placed at BIE-funded schools throughout Indian Country. The primary role of these officers is to provide a continuous law enforcement presence for the Indian youth at these schools, build relationships with them as they mature, and educate them on the dangers of drug use, gang involvement and other illegal activities. These officers are in a unique position to identify and proactively reach out to the students or groups exhibiting the highest risk behaviors.

McCollum Q4: Additionally, does the BIA invest resources for community-based care to reach especially high-risk youth – those who need more intensive and individualized services to help them address their needs? Does the BIA coordinate with Indian Health Services on their treatment centers, with the Department of Justice on their Tribal Youth Programs, or do you have any similar culturally competent programs in-house to serve the neediest tribal youth?

Answer: Within the existing framework of legislative authorities, the School Resource Officer program represents the primary means by which the BIA reaches out to high-risk youth. The primary role of these officers is to provide a continuous law enforcement presence for the Indian youth at these schools, build relationships with them as they mature, and educate them on the dangers of drug use, gang involvement and other illegal activities. These officers are in a unique position to identify and proactively reach out to the students or groups exhibiting the highest risk behaviors.

In light of the President's call for a more efficient government, Indian Affairs and the Indian Health Service endeavor to coordinate their functions closely to ensure there is minimal duplication of efforts or overlapping responsibilities as these programs deliver services to Indian communities, especially the youth. The shared goal is for Indian Country to serve as the model of efficient, responsible government collaboration.

Hearing Questions for the Record (QFR) Prepared for the Department of Interior, National Park Service

Hearing: National Park Service FY 13 Budget Oversight Tuesday, March 20, 1:00pm Rayburn B308

Questions for the Record from Chairman Simpson

NPS Interest in National Forest Service Lands

As I mentioned in my opening statement, it's come to my attention that multiple areas of the National Forest System have been reviewed (or designated for review) for transfer to the National Park Service or for potential designation as national monuments. This is an area that has historically been of great interest to Members on both sides of the aisle and the public. I would respectfully encourage the Park Service to weigh carefully these plans—and keep the subcommittee fully apprised—before proceeding down this path. The management of Forest Service lands differs from the management of Park Service lands and the creation of additional park units from existing Forest Service lands would likely create real concerns in Congress.

Simpson Q1: Can you describe where the Park Service is in terms of identifying or reviewing potential National Forest Service lands for transfer to the National Park Service?

Answer: The National Park Service does not have a systematic process for identifying and reviewing National Forest Service lands for transfer to the NPS. However, various Congressional and third-party proposals put forward in recent years are being considered by both agencies on the basis of their individual merits.

Simpson Q2: What consideration is being given to the management of these lands? For example, NFS lands are managed for multiple use and existing practices like hunting and fishing would potentially be restricted under Park Service management.

Answer: Stewardship of our public lands is a shared priority across all the land management agencies. Although each bureau operates under its own laws, policies, and regulations which impact how these lands are managed and what activities are authorized, there is a fundamental goal of connecting people to our public lands. If Congress authorized the transfer of land to be included within the national park system, or lands were administratively transferred, the NPS would undertake a public planning process that would guide the long-term management of these lands. Any authorized activities would have to be consistent with NPS laws, policies and regulations as well as any authorizing legislation.

NPS Construction

You have requested $132 million in the Construction account next year, an amount which is $24 million below the FY12 enacted level and $52 million below the FY11 enacted level. This is the primary discretionary account used to address the Park Service's maintenance backlog. The GAO has told us this backlog is now over $11 billion and continues to be a long-term management challenge for the Department of the Interior. It appears from the budget request that the construction account, and any hopes of addressing the maintenance backlog, is now taking a backseat to other priorities, including land acquisition.

Simpson Q3: How do you prioritize construction projects when fashioning what is arguably a very austere request for the Construction account?

Answer: The Line Item Construction program uses a two-step process to rank and prioritize construction projects. The process begins with parks evaluating and proposing their most critical capital improvement projects. Projects are screened at the Regional level and submitted for consideration to the Servicewide construction program. Projects are evaluated by an interdisciplinary national team against a numeric ranking system established by the Department of the Interior. The ranking system consists of ten ranking categories, with the highest priority given to critical health and safety projects containing deferred maintenance elements. After each project is ranked against the ten categories and assigned a project score; it is then further evaluated through a process called Choosing-By-Advantage. In this process each proposed project is evaluated to determine advantages and benefits that the project provides in such areas as visitor safety, resource protection, efficiencies, and visitor experience. Combining the numeric score and benefits score provides the Service with its priority list of projects representing the Service's highest needs by focusing on critical safety, deferred maintenance, and resource protection.

Simpson Q4: Are you able to make up for any of these proposed cuts to the Construction budget by using rec fee funding?

Answer: The NPS currently uses a major portion of recreation revenue to address deferred maintenance needs. The legislation authorizing the NPS to collect and retain fees, the Federal Lands Recreation Enhancement Act of 2005 (P.L. 108-447), restricts the use of fees to projects directly related to the visitor experience. In FY 2011, $88 million in recreation fee funds were obligated to address deferred maintenance projects at parks. In FY 2012, the NPS will obligate an estimated $72 million to address deferred maintenance work. Both amounts represent approximately 40 percent of fee obligations during that year. In FY 2012, an example of planned work includes a construction project at Cape Cod National Seashore to rebuild Nauset Light and Herring Cove facilities to address critical health and safety needs that was originally prioritized for funding in the line-item construction program in FY 2014.

However, the use of recreation fee revenue to address deferred maintenance needs was always intended to supplement construction and maintenance appropriations, not supplant them. Furthermore, recreation fee revenue does not provide a long-term solution to address large construction projects. To minimize unobligated carryover balances, the NPS initiated a policy in

FY 2010 which dictated that fee parks could carry over no more than 35 percent of their annual gross recreation fee revenue. This effectively prohibits most individual parks from banking funds to accomplish large construction projects. As allowed by the fee legislation, a small amount of funding is retained and managed at the national level. This amount generally does not exceed $20 million. While this funding can and will be used on an opportunity basis to fund larger rehabilitation and visitor service projects normally funded from the Construction Appropriation, it will support limited gains in addressing the larger maintenance and outstanding construction needs.

Deferred Maintenance

Last year, the Park Service indicated to this subcommittee that $675 million annually is needed to keep up with the deferred maintenance backlog, but the park service only receives $350 million annually for that effort through a number of accounts. To me, it would appear that a sizeable cut to construction and a reduction in facility operations and maintenance would only cause this deferred maintenance backlog to grow even further.

Simpson Q5: How much do you expect the deferred maintenance backlog to grow under this budget request?

Answer: The National Park Service updates the asset data on an annual basis at the start of each fiscal year. As of October 1, 2012, the current backlog of deferred maintenance associated with NPS constructed asset components considered critical to their function, such as roofs, foundations, road surfaces, etc., is approximately $4.1 billion. The 2013 budget proposal includes an investment of $320 million to address the highest priority deferred maintenance needs. At that funding level, the NPS deferred maintenance backlog will continue to grow to some degree.

Simpson Q6: Is the Park Service engaged in any long-range planning to address the unsustainable growth in deferred maintenance?

Answer: The NPS strategy is to fund the highest priority deferred maintenance projects. This strategy uses facility management data to drive investments to the facilities that are most critical to support the NPS mission of resource protection and visitor experience, as well as ensuring protection of life, health and safety. The NPS also maintains a robust cyclic maintenance program to prevent new deferred maintenance. Cyclic maintenance involves periodic upkeep that supports the life cycle expectancy of assets. Additionally, the FY 2013 budget does not propose funding any facility construction that would eventually increase deferred maintenance needs. It also proposes $1.5 million to demolish and remove structures at Blue Ridge Parkway that contribute to that park's deferred maintenance needs and are not necessary to support the park's mission.

Simpson Q7: Again, should we be scaling back in other areas to meet this recurring need to address the backlog?

Answer: The current budget environment has forced all of us to make difficult decisions. The 2013 budget proposal maintains funding at 2012 levels for operational deferred maintenance projects and limits the line-item Construction proposal to the highest priority projects that address critical, life, safety, resource protection, and emergency needs and does not add any new assets to the NPS asset portfolio. The NPS strategy is to target our limited investment dollars to ensure mission critical assets are functional and well maintained. The NPS 2013 budget proposal strikes a reasonable balance between addressing the deferred maintenance backlog and providing an acceptable level of visitor access and services.

Land Acquisition and State Assistance

The Land Acquisition and State Assistance budget includes a new set-aside of $11.3 million for "Collaborative Landscapes", with the focus being on two ecosystems: the Northern Rockies and the Greater Yellowstone.

Simpson Q8: How did the selection of these ecosystems come about?

Answer: Seven teams of interagency staff from the field submitted proposals requesting collaborative funding for acquisitions in their landscapes. These proposals were reviewed first by a Technical Advisory Committee (TAC) comprising bureau staff with expertise in real estate, recreation, and conservation programs. The TAC scored each proposal against the set of criteria agreed upon by the interagency working group that designed the new collaborative program. There were four categories of evaluation criteria:

- Process: ensure proposals are built through Federal agency and local stakeholder collaboration and make efficient use of Federal funding (e.g. which stakeholders are involved, what other resources will be leveraged)
- Outcomes: ensure Federal resources are targeted to achieve important biological, recreational, cultural and socio-economic outcomes (e.g. anticipated impact on recreation opportunities, species and habitats, working lands, rivers and waterways, cultural and historical resources)
- Urgency: ensure funding is focused on outcomes that may be lost today if no action is taken or that are particularly achievable today (e.g. nature and timeliness of threats to the landscape).
- Contribution to national priorities: ensure local proposals are important contributors to national outcomes at the regional and national scales (e.g. does proposal contribute to goals related to priority regions or topics).

Then, a National Selection Committee (NSC) comprising all four agency Directors/Chiefs, plus senior representatives from both DOI and USFS, reviewed the results of the TAC scoring and discussed and weighed the merits of the proposals. In addition to the scores from the TAC, the NSC members considered where their agencies were making complementary investments in the same landscapes through other programs, and whether communities had made a case for locally-driven conservation plans over the course of the AGO listening sessions and in other contexts.

The recommendations of the NSC were approved by the Secretaries prior to inclusion in the budget.

Simpson Q9: What are your goals and measurable objectives? I understand your strategy is acquiring land, but where and how far are you asking us to go with this?

Answer: The Department's collaborative process was developed in response to congressional directives and to achieve greater conservation impacts. The new process was piloted in 2013 in a small number of ecosystems where the groundwork for collaboration was already in place and where significant acquisition opportunities of strategic importance were known to be available. Interior and USDA focused on these ecosystems for the pilot year to test the new process and evaluate whether it would successfully yield high quality collaborative proposals. The results of the pilot were promising and could be used to broaden the effort in successive years.

The broader goals of the Department's new collaborative approach to land acquisition using LWCF funds are:

- To be more strategic with our LWCF investments;
- To make LWCF investments based on the best science and analysis that are collectively available to all agencies;
- To incentivize collaboration among bureaus, other federal agencies, and other stakeholders;
- To achieve efficiencies and improved results through complementary efforts and leverage joint resources;
- To support locally-driven conservation efforts; and
- To support an "All Lands" approach to conservation.

Interior and USDA defined measurable goals and objectives for each landscape's proposed acquisition strategy. Staffs in the field were challenged to work together to define common conservation and community (e.g. recreation, economic development) goals at the landscape scale, then determine whether land acquisition was an appropriate tool to help reach those goals. Goals and metrics for measuring progress to goal were articulated by the interagency teams preparing each collaborative funding proposal. For example, some of the goals and measurable objectives for landscapes selected for funding were:

- Protect 96 percent of the threatened flatwoods salamander Critical Habitat between the St. Marks and Auculla Rivers (metric = % of Critical Habitat).
- Protect 29,000 acres of future habitat to allow the expansion of endangered red-cockaded woodpecker recovery populations identified in the Red-cockaded Woodpecker Recovery Plan by at least 135 breeding pairs (metric = acres pineland acquired; metric = number of breeding pairs).
- Protect a 6-mile corridor inland from Apalachee Bay (between St Marks and Pinhook Rivers) to protect habitats for wildlife movement inland as a result of sea level rise and connectivity to other public lands (metric = miles of corridor).
- Protect crucial wildlife migration corridors, endangered biological and geological systems, and special status species.

- Enhance cultural and natural landscapes while allowing for traditional working ranches and forests in many cases.
- Enhance outdoor recreational opportunities by increasing access, maintaining the integrity of scenic vistas and the primitive qualities of the Crown of the Continent Ecosystem.

The proposals were scored in part on how well project goals were articulated, expected outcomes were quantified, and how well the plan contributed to the goals set.

The Department recognized that each bureau had acquisition needs that could not be supported through the collaborative effort alone. The NPS, as did the other bureaus involved in this effort, also presented a "core list" of acquisition priority projects that targeted their bureau's mission objectives, which may not have fallen within the targeted objectives or the larger ecosystems of the "Collaborative Landscapes" efforts. The NPS can only acquire lands within authorized boundaries and also has a significant cultural resources preservation responsibility, neither of which can be totally addressed through this collaborative effort.

Simpson Q10: Why is acquiring land the only strategy for this initiative, particularly when one considers that the Interior budget is filled with conservation and restoration programs that could be at least partially targeted toward these priority ecosystems?

Answer: The Department is striving to achieve greater collaboration across all of its conservation and restoration programs per congressional directives. The future goal is to better align a broad range of Department of the Interior and Agriculture programs to achieve even greater efficiencies and improved outcomes through leveraging diverse strategies and funding. Other programs that complement the LWCF program include the Cooperative Endangered Species Conservation Fund grants, North American Wetlands Conservation Act grants, and the Partners for Fish and Wildlife program. These programs contribute significantly to a broad range of conservation goals, but LWCF remains unmatched in its importance as a conservation tool.

As part of a multi-bureau process, the FY 2013 budget request pilots a collaborative planning and decision-making process for Federal land acquisition under LWCF. A major reason the Department started with LWCF was to be responsive to Congress' directives in House Report No. 111-180 and Conference Report No. 111-316 which accompanied the FY 2012 appropriations bill, to collaborate extensively with other government and local community partners.

Another reason it made sense to develop a collaborative approach among the four LWCF Federal land acquisition programs is that each agency implements land acquisition programs that are similar in mission but often operate independently from one another. That is, they all acquire land in fee or easement to be managed (or monitored, in the case of easements) by the agency, to further the specific agency mission without always considering how other agencies' missions and priorities overlap. Yet each agency makes decisions about which parcels to prioritize for acquisition according to an agency-specific set of criteria, all of which are stringent and merit-based, but do not consistently incorporate considerations about mutually beneficial opportunities for interagency collaboration. It made sense to first align these four bureaus around a common

and robust decision-making process and determine related land acquisition opportunities on a small scale before implementing an interagency collaborative land acquisition program on a larger scale.

The Department thinks that the successful collaboration of this program will help to identify opportunities to align programs and funds to achieve greater efficiencies and meet mutual goals.

Each bureau presented priority land acquisition projects to be considered under this process that still stayed within their specific mission and legislative parameters. The $11.3M NPS portion of the FY 2013 request will cover costs to acquire parcels at Glacier National Park and Grand Teton National Park. These parcels are under threat of development that would negatively impact the lands under question and adjacent park-owned lands. They also meet the legislative requirement of being within authorized park boundaries. The Grand Teton piece also helps meet a purchase agreement signed by the Department and the State of Wyoming.

Simpson Q11: When can this Committee expect to see a prioritized list of projects—a list that combines both the "core" projects and the "collaborative landscape" projects?

Answer: The NPS is currently working with the Department along with the other land management bureaus and the USDA to address this request and hopes to be able to provide a response shortly.

Simpson Q12: We have had many discussions with you about your prioritization process. What are some of the criteria you will use to set your priorities, and have you revisited your prioritization process since last year? Is the Park Service autonomous in this regard, or does the Secretary heavily influence your priorities?

Answer: The NPS continues to use the prioritization process it has provided to you in the past. The acquisitions proposed by the parks are weighted and ranked at the park, regional, and national levels using merit-based criteria established by the NPS, in addition to the Department's enhanced focus on collaboration among all land management agencies, including: threat to the resource; preservation of the resource; visitor use facility accommodation; involvement of partners, non-profit groups or availability of matching funds; continuation of an ongoing effort; recreational opportunities; local support for the acquisition; connectivity of the total landscape; and future operations costs for the NPS.

These criteria, while focused on the NPS mission and goals, are also inclusive of the Administration's focus on riparian and watershed aspects, urban outreach, and landscape level concerns. The Secretary's Collaborative Landscape effort complements the NPS mission of protecting and preserving the resources within the boundary of the National Park System.

The Secretary, by maintaining the Core List funding for the bureaus, has recognized that all bureau/mission-specific acquisitions cannot be incorporated into the over-arching efforts of the Collaborative Landscape Program (CLP). As an example, since all NPS acquisitions have to be within authorized boundaries, the NPS cannot participate in the larger effort unless the unit is within the targeted ecosystem. Also, the NPS has a large cultural preservation responsibility, at a

wide variety of sites, which may or may not have a natural/ecosystem component, which has been the current focus of the CLP.

Simpson Q13: Are parcels identified for acquisition already fully or mostly bordered by other federal lands? If not, then how can you claim that acquisitions save money on maintenance and enforcement?

Answer: The $11.3M request will enable the acquisition of Tract 13-101 at Glacier National Park and a portion of the State of Wyoming tracts (02-118, 05-121, and 06-102) at Grand Teton National Park. All of these tracts are fully or mostly bordered by Federal lands and are within authorized boundaries of the national park system.

The Park Service proposes $20 million in the Stateside LWCF program for competitive funding awards for "urban parks and green spaces, blueways, and landscape-level conservation in communities."

Simpson Q14: What does "landscape-level conservation in communities" mean?

Answer: Landscape-level conservation considers conservation needs across public, private, and tribal lands, and involves the consideration of large, interconnected ecosystems and recreational areas. This approach recognizes that watersheds, wildlife, and ecosystems do not recognize property lines. Therefore, conserving large landscapes requires coordination among landowners; tribal, local, State, and Federal governments; conservation groups; agriculture and forestry groups; and other stakeholders. Such locally grown landscape partnerships are vital to 21st century conservation.

This concept is a significant Secretarial priority, and the Department and its Federal partners are working to engage tribal, local and State governments; non-profit organizations; and landowners in regions where these stakeholders and Federal agencies are conserving and restoring large landscapes through grants and planning activities. The 2013 budget request builds on the collaborative Federal land acquisition process and provides a tool to foster more effective coordination with government and local community partners to achieve shared conservation goals. With regard to the LWCF State Assistance competitive grant component, eligible projects could include grants to States to acquire lands to establish new State wildlife areas, State recreation areas, State parks, or land to fill in gaps among publicly and privately-owned conserved areas to create corridors or contiguous protected landscapes that also facilitate recreation.

Simpson Q15: Does the competitive funding need new authorization from Congress?

Answer: New authorization is not needed. The Land and Water Conservation Fund Act outlines a methodology for distributing appropriated funds which provides the Secretary with discretion for how to distribute a portion of the funding. The relevant portions of the Act are as follows:

16 U.S.C. § 460l–8 Financial assistance to States

(b)Sums appropriated and available for State purposes for each fiscal year shall be apportioned among the several States by the Secretary, whose determination shall be final, in accordance with the following formula:

(1) Forty per centum of the first $225,000,000; thirty per centum of the next $275,000,000; and twenty per centum of all additional appropriations shall be apportioned equally among the several States; and

(2) At any time, the remaining appropriation shall be apportioned on the basis of need to individual States by the Secretary in such amounts as in his judgment will best accomplish the purposes of this part. The determination of need shall include among other things a consideration of the proportion which the population of each State bears to the total population of the United States and of the use of outdoor recreation resources of individual States by persons from outside the State as well as a consideration of the Federal resources and programs in the particular States.

Consistent with the Act, the budget proposes that 40 percent, or $22.6 million, of the total grant funding ($56.5 million) be equally allocated among the 51 "States". Each of the 50 States receive an equal apportionment and the District of Columbia and all of the Territories share one apportionment equal to that of each of the 50 States.

Of the remaining 60 percent portion ($33.9 million) that can be allocated to the States by the Secretary on the basis of need, $13.9 million would be allocated according to the formula that NPS has used in recent years that takes into account total and urban population by State. In total, $36.5 million will be allocated to States in the same manner as in prior years.

The remaining amount of the 60 percent portion, $20.0 million, is proposed for a competitive grant component, consistent with 16 U.S.C. § 460l–8 (b)(2).

Simpson Q16: Aren't the activities proposed under the new competitive program already funded under the formula program?

Answer: The types of projects envisioned for the competition can be and to some extent are funded by the formula grants. However, the competitive grant component would more strategically focus a portion of the funding on projects that achieve America's Great Outdoors goals of expanding urban parks, community green spaces, and blueways, and conserving large-scale landscapes in communities that need them the most. These priorities were the outgrowth of public input, identified during the 51 public listening sessions that the Administration conducted across the Nation; as well as in many of the over 105,000 written comments that called for more focused investment of LWCF State Assistance competitive grant funds.

Applications would be evaluated based on general criteria as well as criteria specific to the target investment areas (urban, blueways, and landscape conservation). Common criteria would include factors such as the ability to demonstrate the degree and urgency of the need for the project; ability to articulate the expected benefits to be realized by funding the project; alignment with

goals of Statewide Comprehensive Outdoor Recreation Plans and other strategic plans that guide investment in recreation and conservation; identification of partnerships and community support; demonstrated need for safe and accessible routes; multiple identified benefits, such as flood control, tourism, habitat protection and connectivity, and outdoor recreation; ability to leverage the federal funding, including commitments of matching funds or other complementary non-federal investments that support the goals of the project; and other criteria enumerated in law. Objective-specific criteria would be used, based on project type (e.g. urban, blueways, or landscape conservation) to provide additional evaluative factors, such as the project's ability to increase or improve access, or the use of science and mapping to identify important conservation lands.

Urban parks and community green spaces support outdoor access for the nearly 80 percent of the Nation's population that lives in urban areas. However, projects in urban areas are typically more expensive, as land is often limited and thus more costly, even though populations are substantial and demand for new recreation opportunities is great. In a fall 2011 survey, States estimated a total need for State and local public outdoor recreation facilities and parkland acquisition at more than $18.6 billion. Land costs in general similarly means that acquisition projects are far less common; more than 75 percent of LWCF State grants fund recreational facility development projects, such as playgrounds, picnic shelters, and walking paths, which are relatively more affordable. A competitive component of the appropriated funds outside of the State apportionments would enable States to apply for larger grants than they typically can through the State-based competitions, which are limited by each State's standard apportionment.

Rivers connect people and communities to America's great outdoors and are vital migration corridors for fish and wildlife. During the AGO listening sessions, participants expressed a passion for waterways, knowledge of their economic and ecological importance, and enthusiasm for their conservation. A competitive grant component will help address the recommendations that the Administration received to expand Federal assistance to communities to enhance recreational opportunities on local waterways and adjacent green spaces; to help increase community access to rivers and lakes for recreation, such as boat ramps and swimming access points; and to support community-based protection and enhancement of the nation's waters.

Landscape-level conservation considers conservation needs across public, private, and tribal lands, and involves the consideration of large, interconnected ecosystems and recreational areas. The new competitive process will enable the highest return on investment for Federal funds used for conservation and recreation projects implemented by States and localities, in the context of a broader strategy to fund projects that meet high-priority needs and satisfy the shared vision of a wide range of stakeholders working in collaboration. For example, eligible projects to facilitate recreation could include grants to States to acquire lands to establish new recreation areas, parks, or lands to fill in gaps among publicly and privately-owned conserved areas to create corridors or contiguous protected landscapes that also provide recreational opportunities.

NPS funding for presidential inauguration

The budget request includes funding to support next year's presidential inauguration. I assume this is one of those "once every four years" type of funding requests.

Simpson Q17: What is the total amount requested in your budget for activities relating to the inauguration and how exactly is the Park Service directly involved?

Answer: The 2013 NPS budget request in support of the 2013 Presidential Inauguration totals $2.6 million including $1.2 million for National Capital Area Parks and $1.4 million for the United States Park Police to provide stewardship and support for inaugural ceremonies and celebrations and other official events planned by the Presidential Inaugural Committee that occur on lands managed and protected by the NPS. These events include the Opening Ceremony, Swearing in Ceremony, and Inaugural Parade and may include large scale concerts or programs, festivals, and firework displays, among other potential activities. The NPS plays a crucial role for Presidential Inaugurations by providing logistical and material support associated with managing and facilitating events, ensuring visitor safety and enjoyment, and protecting park resources. NPS support provided for inaugural events is wide-ranging and diverse, including but not limited to ranger presence to give directions, answer questions, inform visitors of safety, and provide interpretive information; setup before and clean-up after events; provision of medical/safety services; restoration efforts/mitigation of resource damage related to events; and law enforcement personnel and safety and security support in coordination with the United States Secret Service and other law enforcement personnel.

Rec Fee unobligated balances

I want to commend the Park Service and especially Bruce Sheaffer for the progress made over the last couple of years to address the issue of high unobligated balances within the Rec Fee program. These fees are used to address deferred maintenance and other Park Service priorities. This subcommittee included report language in the fiscal year 2010 bill raising concern over these high balances and directing the Park Service to take corrective measures. When we first raised this issue, the carryover balance was approaching $300 million. By the end of FY11, I believe, that number was, cut in half.

Simpson Q18: Where are we today with the rec fee carryover balances?

Answer: The unobligated balance at the end of FY 2011 was $98 million. In FY 2011, the NPS obligated $222 million in fee receipts for high priority projects; about 30 percent more than annual gross revenue. Parks that collect entrance fees are allowed to retain 80 percent of collections while the remaining 20 percent is put into a national account and distributed by the Director to high priority projects primarily at parks which do not collect fees or collect very low fee amounts. As an incentive for fee collecting parks to spend down balances, NPS implemented a new policy in 2009 that requires parks that collect fees to carry over no more than 35 percent of annual collections into the next calendar year or have their retention amount reduced from 80 percent to 60 percent.

Simpson Q19: Can you provide some examples of how and where these fees are making a tangible difference to enhance the visitor experience within our national parks?

Answer: Recreational fee revenue allows parks to fund projects that benefit visitors authorized under the Federal Lands Recreation Enhancement Act. Each year, recreation fees fund over 1,100 projects throughout the national park system. Projects include rehabilitation or enhancement of park facilities and other physical assets, repair of trails, replacement of wayside exhibits, upgrade of campground facilities, and other projects that benefit the visitor experience. Recreation fee revenue is also used for providing interpretive programs, and for restoring habitats for visitor enjoyment by way of photography, wildlife viewing, fishing, and other recreational activities.

Death Valley National Park is utilizing recreation fee money to rehabilitate and improve sustainability of the Furnace Creek Visitor Center and Administrative Complex. This 18,000 square foot Mission 66 era structure houses the main interpretive exhibits and is the location for ranger programs and park orientation video. The complex was built in 1960 with no insulation. The lack of insulation overtaxed the HVAC equipment and the systems were unable to maintain evenly and sufficiently cooled interior temperatures during the summer months. Interior temperatures in the visitor center were consistently 95 degrees F in the summer presenting a health hazard to visitors and employees. The utility bills for this complex averaged $46,000 annually. The project to insulate the structures and install a photovoltaic system will improve the health and comfort of visitors and employees and reduce the cost of utilities. The 1960 era exhibit panels in the visitor center are also being updated to reflect a more modern interpretation of the park.

Recreation fees have funded 150-200 Public Land Corps (PLC) projects annually serving 150-200 parks. PLC projects utilize partnerships with identified organizations targeting youth 16-22 years of age for education-based work experience. Participants gain knowledge about the National Park Service, job skills, and valuable life skills in serving the public. Projects include providing visitor contacts in education centers, improving computer operations, rehabilitating trails, and maintaining buildings and campgrounds, among other activities.

Recreation Fees have also been used to meet accessibility standards. Recreation fees have funded assessments to determine accessibility needs at over 60 parks and for projects to update visitor center audio-visual programs with closed captioning and exhibits with Braille text, provide wheelchair access to visitor areas, and create accessible trails, boardwalks, and campgrounds. Carlsbad Caverns National Park, for example, used recreation fees to close caption its only audio-visual program, entitled "Caves of the National Parks – The Wonder Beneath," a film produced by the Discovery Channel showing various caves throughout the national park system. In a further effort to enhance the visitor experience, the park used recreation fee revenue to create a second open captioned park-specific film, this one highlighting various features that show the diversity of the park in addition to the cavern.

Everglades Restoration

Director Jarvis, the Committee included language in the Consolidated Appropriations Act for 2012, authorizing the National Park Service to implement an additional 5.5 miles of bridging in the Tamiami Trail over and above the one-mile bridging now underway. When you and

Secretary Salazar presented this park plan to the Committee last year, you both indicated that the additional bridging is necessary to fully restore historic water flow to Everglades National Park, which was disrupted decades ago by the construction of the Tamiami Trail. The Committee provided $25 million last year for land acquisition related to the Everglades which is critical to restoring water flow.

Simpson Q20: What are the long-term costs associated with this additional bridging? Will this bridging be funded through the use of highway dollars (as opposed to funding from this subcommittee)? Is the Administration working to secure the necessary funding for this additional bridging?

Answer: The estimated cost for the construction of the 5.5 miles of additional bridging in the Tamiami Trail is $310 million. However, this estimate, which was developed for inclusion in the final environmental impact statement for the project and is based upon actual contract costs associated with the one-mile bridge span underway, requires additional planning and design and will be revised to reflect that planning. Presently, the National Park Service's Denver Service Center is reviewing a proposed sequencing plan for the additional bridge segments to determine the most effective way to proceed to implement the project.

Given the costs associated with this project and the overall fiscal environment, the NPS and the Department do not envision requesting annual appropriations for the NPS to fund this project.

Simpson Q21: Can you describe how the Park Service is working with the tribes and others in the area that oppose your efforts? Can these conflicts be satisfactorily resolved?

Answer: The NPS and the Department have consulted with the Miccosukee Tribe and its representatives on numerous occasions relating to the construction of both the one-mile bridge, as well as the additional bridging. In developing the plans for the additional bridging, the NPS did make adjustments to the proposal based upon input from the Tribe. For example, the bridge spans were located no closer than one-half mile on either side of existing Native American camps. The Department is also in the process of scheduling additional hydrologic briefings for the Tribe to explain the scientific basis for the proposal and how this proposal will work in concert with other planning efforts underway to restore and achieve more natural water levels to the water conservation areas immediately to the north of the Tamiami Trail, which is a long-standing goal expressed to the Department by the Miccosukee Tribe. It is unclear if the scientific dispute between the Miccosukee Tribe and the Department can be resolved over the best way to achieve increased and more natural water flow through the Tamiami Trail and to Everglades National Park, however, the Department hopes that the current dialogue will narrow differences. The Department notes that the National Park Services's plan for additional bridging has been presented to other restoration scientists, including those working for the National Academy of Sciences, and has received broad support from other interests notwithstanding the Tribe's current opposition.

General Management Plans

Director Jarvis, the National Park Services' management of the Ozark National Scenic Riverways (ONSR) in Missouri has been under consideration for a number of years now. In 2009, the National Park Service proposed alternative General Management Plans and has since received thousands of comments on the NPS proposed alternatives. I commend the National Park Service for taking the time to listen to those who would be affected by this decision; however, I believe the alternatives presented do not address the impact on the local communities and counties along the ONSR.

Just about two weeks ago, around 500 local citizens gathered in a town of just over a population of 800 to engage in discussion and share their concerns on ONSR's new management plan. These people who live, work and raise their families in the area understand better than anybody the negative effects a new management plan that restricts access would have on the local economy and livelihoods. And, I argue that the local residents care much more deeply than any other outside organization on the importance of preserving this blessed resource for themselves and future generations.

Vibrant and even thriving local partners are essential to fulfilling the goals of the National Scenic Riverways System; however, it is not clear to me that the National Park System is even allowed to consider the surrounding, local economic community in their decision-making process. Final alternatives for the General Management Plan have not yet been released, and it is my understanding that the final plan should be soon released with time for another comment period.

Simpson Q22: The restrictions on access are very problematic for many of the most frequent visitors to the ONSR. How much weight has been given to their concerns about the GMP? Shouldn't these considerations have priority?

Answer: The NPS has been working on a new general management plan to address resource management and visitor use of the Ozark National Scenic Riverways for a number of years. In the first years of the project, the park superintendent and the planning team held five public meetings, attended by nearly 300 people to introduce the planning process and to collect input on the issues the public felt the NPS should address in a long-term plan for the Riverways' future. The planning team collected over 1,700 comments, and based on those comments held a stakeholder workshop to discuss options for resolving some of the long-standing conflicts between user groups.

Based on all the public input, the planning team presented a set of preliminary management alternatives for public review in 2009. A second series of public meetings were held to gather public feedback, after which the planning team reviewed and analyzed the comments and suggestions, and made changes to the set of preliminary alternatives. The planning team is currently analyzing the potential impacts of implementing any of the alternatives on natural and cultural resources, visitor access, safety, and socioeconomics. NPS expects to present a draft management plan for public review in Spring 2013.

NPS has engaged many local stakeholders and has worked to present acceptable alternatives for current usage, as well as protection of the resource for the future. In the process of arriving at a general management plan for sites deemed worthy of inclusion in the national park system, it is the foremost responsibility of NPS to assure that the plan provides for the enjoyment of park resources in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. The NPS mission does not preclude the enjoyment of park resources through present public uses, but reminds us to conserve the resources so they will be available in the future. NPS has strived to balance the requirements for conserving the resource with the usage of various public groups' needs and interests. Conflict caused when balancing between preservation and preferred current usage is encountered at many NPS sites. As in this case, issues are addressed on a site by site basis to allow adjustments for unit specifics.

Simpson Q23: What do you believe should be the balance between access to people who enjoy our natural resources and conservation efforts that restrict access entirely?

Answer: In the process of arriving at a general management plan for sites deemed worthy of inclusion in the national park system, it is the foremost responsibility of NPS to assure that the plan provides for the enjoyment of park resources in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. The NPS mission does not preclude the enjoyment of park resources through present public uses; however, in some cases, prior usage has been so heavy that resources or portions of the resources have to be removed from current usage in order to conserve the resources so they will be available in the future. Once the resource has stabilized to a sustainable condition in keeping with the park purpose, re-opening the resource to the public, to the extent the resource can handle it, is a priority. Often, this re-opening presents an opportunity for the NPS to engage visitors about the costs of over-use, the various options and steps to restoration, and the remarkable ability of nature to heal itself, if protected prior to the total destruction of the resource.

Delaware Water Gap National Recreation Area

The Committee has been concerned by numerous delays in the process administered by the NPS to set the terms for replacing and upgrading the electric transmission grid segment that crosses Delaware Water Gap National Recreation Area. This is an issue that was addressed in the FY12 Omnibus bill.

Simpson Q24: Can you describe the current status of the decision-making process for the Susquehanna-Roseland Project, and state for the record the date on which the NPS will make a final decision about the permits and approvals needed for the project?

Answer: The NPS is currently developing the Final Environmental Impact Statement (FEIS). The publication of the FEIS in the Federal Register is expected September 1, 2012. The Record of Decision (ROD), which is the final decision about the permits and approvals needed from the National Park Service, is expected October 1, 2012. If approved, the applicant still must obtain several other federal and state approvals in order to commence construction.

Simpson Q25: Can you also describe how you intend to overcome any obstacles from within the NPS or other federal agencies that may threaten to cause further delays in the decision-making process?

Answer: The National Park Service is actively participating in the Administration's Rapid Response Team for Transmission, which is a consortium of agencies assembled to work cooperatively through any obstacles encountered during the permitting and approval process. To date, there have been no delays in the schedule. The present date of October 1, 2012 for a formal Record of Decision is the date first projected in the official notification of the project schedule.

Questions for the Record from Mr. Calvert

H.R. 3640

Calvert Q1: Congressman Jeff Denham has introduced legislation, H.R. 3640, that he purports will create an improved experience for those visiting Yosemite National Park. Does the Park Service agree with this assessment? Are there additional benefits, such as job creation or positive impacts on Park employees' health and safety that the bill provides?

Answer: The NPS has not yet take a formal position on this legislation; however, the NPS is available to testify on this subject.

Calvert Q2: Is Congressional action necessary to authorize this land acquisition since the bill it does not require federal appropriations?

Answer: The NPS is available to testify on this subject.

Calvert Q3: Has the Park Service assessed the economic benefits of this legislation to the local communities surrounding Yosemite? If so, to what extent have you assessed it and what benefits were you able to discern?

Answer: The NPS has not formally assessed the economic benefits of this legislation.

Calvert Q4: Does local support exist for the project authorized by H.R. 3640? If so, from who and to what extent? Is the Park Service aware of opposition to the project?

Answer: The Mariposa County Board of Supervisors and several community groups have been supportive of this legislation. The NPS is not aware of any organized or public effort to oppose this project.

Calvert Q5: Does the Park Service believe the proposed site, as would be authorized by H.R. 3640, to be the most appropriate location for the project? If not, are there factors, such as Wild and Scenic River designations, or other land use restrictions that prohibit the use of more viable areas in and around Yosemite National Park?

Answer: The NPS has not yet take a formal position on this legislation; however, the NPS is available to testify on this subject.

Yosemite National Park

Calvert Q6: Is the National Park Service planning the removal of residential structures at Camp Curry within Yosemite? If so, will the structures be relocated, or does the Park Service have plans to replace those structures within the Park to ensure that there is no loss of affordable overnight public access to the Park?

Answer: The NPS is currently in the process of completing a comprehensive management plan for the Merced River Corridor to satisfy the requirements of the Wild and Scenic Rivers Act and to comply with a court decision challenging earlier attempts to complete the river plan. As part of this exercise, we are examining a range of options for the number and type of visitor accommodations to be located at Camp Curry and other areas throughout Yosemite Valley. At this time, a full range of alternatives is being analyzed, including alternatives that reduce the supply of overnight accommodations in the Valley as well as alternatives that increase the supply.

Calvert Q7: Can you please account for how the parking spaces and campsites that were washed away in the 1997 flood will be replaced? It is my understanding that Congress appropriated funds for this purpose years ago. However, it has been conveyed to me that the spaces and campsites have not been restored. If there has been a delay to restoring these campsites, what factors have contributed to the delay? Have there been legal challenges to restoring these campsites? If so, who are the parties to this legal challenge and what progress has been made on coming to a resolution? If internal National Park Service or Department of the Interior factors have contributed to the delay, please describe these challenges and what the National Park Service is doing to resolve these challenges.

Answer: Beginning in 1999, a series of legal challenges to the NPS planning efforts constrained the NPS' planning process. On September 29, 2009, the National Park Service signed a settlement agreement with the Friends of Yosemite Valley and Mariposans for the Environment and Responsible Government, ending years of litigation regarding planning for the Merced Wild and Scenic River. The settlement agreement stipulated that the NPS will produce a new Comprehensive Management Plan and Environmental Impact Statement for the river by December 2012, and that the agency would employ an "extensive, frequent, and robust public involvement process" that enables all interested parties access to the planning process. Until the Merced River Plan (MRP) is completed, the National Park Service cannot take any action to modify or add infrastructure to Yosemite Valley or other areas within the Merced River corridor. The moratorium on new construction prior to a final river plan is an explicit provision of the agreement. When it is completed, the MRP will specify the location and number of campsites to be provided in Yosemite Valley along with the associated construction costs and implementation schedule.

Questions for the Record from Mr. LaTourette

Heritage Partnership Programs

The National Park Service is requesting a nearly 50 percent reduction in the Heritage Partnership Programs, which includes the National Heritage Area Program. As Director Jarvis mentioned in his March 14, 2012, memo on this program, National Heritage Areas "are places where small investments pay huge dividends, providing demonstrable benefits in communities across the country and in partnership with our national parks." In 2008, the Park Service was directed to complete evaluations of Heritage Areas and report back to Congress with its recommendation as to the future of the Park Service's role with respect to the National Heritage Area, no later than three years before the date on which authority for federal funding terminates. I'm aware that so far, only three evaluations have been conducted, and zero reports have been delivered to Congress.

LaTourette Q1: Can you please provide an update as to the status of these evaluations and reports? What is your plan with respect to continued funding for the Heritage Areas that still have evaluations pending when they reach their sunset dates?

Answer: Three of the nine required P. L. 110-229 evaluations are complete and draft reports to Congress are currently under review. The remaining six evaluations are currently underway and are due to be complete by the end of July, 2012; the National Park Service plans to transmit the reports to Congress by the end of calendar year 2012.

The National Park Service recently provided testimony before the Senate Subcommittee on National Parks of the Committee on Energy and Natural Resources regarding proposed legislation for five areas that will likely have evaluations pending when they reach their sunset dates. In our testimony, we recommended that the bills be amended to authorize an extension for heritage area program funding from Federal sources until the evaluations and reports to Congress are complete. We stated that the Department would like to work with Congress to determine the future Federal role when heritage areas reach the end of their authorized eligibility for Federal funding. NPS also recommended that this Congress enact national heritage program legislation that standardizes timeframes for technical support and Federal funding to assure each area's continued success into the future.

Questions for the Record from Mr. Cole

I understand that the Eastern Band of the Cherokee Nation and the Tribe's citizens are seeking to continue traditional gathering practices of foods and medicines in the Great Smoky Mountains National Park.

Cole Q1: Are you working on a solution to work with the tribe?

Answer: Authority provided under 36 CFR 2.1(d) allows for the taking, use, or possession of fish, wildlife or plants for ceremonial or religious purposes where specifically authorized by Federal statutory law, treaty rights, or in accordance with NPS regulations governing wildlife protection and fishing.

The NPS is preparing to issue a proposed rule that addresses agreements between NPS and federally recognized Indian tribes regarding the gathering of plants and minerals for traditional purposes.

Cole Q2: When do you expect a resolution on this issue?

Answer: The NPS is preparing to issue a proposed rule that addresses agreements between NPS and federally recognized Indian tribes regarding the gathering of plants and minerals for traditional purposes. NPS cannot provide an estimate for the date of issuance, due to the required review in the regulatory process, but the NPS hopes to finalize this resolution as soon as possible.

Cole Q3: Does the NPS have any experience working with Tribes managing National Park lands?

Answer: The NPS has extensive experience working with Tribes at various parks, including at Great Smoky Mountains National Park (GRSM). The Qualla Boundary of the Eastern Band of the Cherokee Indians (EBCI) borders GRSM and the town of Cherokee, North Carolina serves as a gateway community to GRSM in western North Carolina. The park and Tribe have a longstanding history of cooperative efforts relating to cultural and natural resource management, tourism, law enforcement and emergency services, wild land and structural fire, transportation, education and employment opportunities.

Cole Q4: How successful have those relationships been?

Answer: The NPS has worked successfully with Tribes nationwide on implementing such statutes as the Native American Graves Protection and Repatriation Act, the National Historic Preservation Act (which authorizes Tribal Historic Preservation Offices (THPO), which now number 131), and the Tribal Self-Governance Act (Title IV of the Indian Self-Determination and Education Assistance Act).

Examples of cooperative relationships between the GRSM and EBCI include ongoing consultation with its THPO on historic and archeological resource management issues, conducting archeological field schools for Cherokee youth, developing exhibits for the new Oconaluftee Visitor Center that tell the Cherokee story, and developing wayside exhibits in GRSM in both English and Cherokee.

The GRSM maintains cooperative mutual aid agreements with the EBCI for emergency services and wild land fire response, in addition to conducting joint training and assisting with ongoing incidents. The GRSM maintains an open line of communication to ensure that any issues that might affect visitor access to Cherokee from the park, such as weather related road closures, road construction, or utility installation and maintenance, so that plans to mitigate effects can be implemented.

The park has partnered on mutually beneficial joint utility projects which have brought municipal water and sewer services through portions of the National Park and on to Tribal lands. Managers at the GRSM continue to work with the Cherokee Transit Authority to facilitate operations of a shuttle bus transportation system between Cherokee and Gatlinburg, TN for visitors to utilize.

The GRSM educational outreach efforts include park staff participation in a Career Day with the schools in Cherokee. The park provided information on careers in addition to training in skills to assist during the job application and interview process. The park also participated in the Cherokee Children's Trout Fishing Derby where park information was provided and children received assistance with learning fishing skills. Additionally, resource education rangers continued to offer a two-week science camp in which middle school students are taught about scientific research occurring in the Smokies and about careers with the National Park Service.

Cole Q5: What efforts are ongoing to create new relationships with tribes managing park units.

Answer: One example is the work NPS is doing with the Oglala Sioux Tribe to provide for greater tribal management of the South Unit of Badlands National Park. A new General Management Plan for the South Unit of Badlands NP will soon be released.

Questions for the Record from Mr. Flake

Grand Canyon Air Tour Operators Issue

The National Park Service (NPS) has developed a draft plan to address the impacts of aircraft noise on park resources and has released a draft environmental impact statement. This plan has generated some controversy and concerns.

The 1987 National Parks Overflight Act requires NPS and FAA to restore the "natural quiet" of the Grand Canyon through a variety of techniques, including incentivizing Quiet Aircraft Technology and raising the altitude ceiling of the no-fly zones above Canyon. The Act does not clearly define "natural quiet." Since 1997, the Park Service has defined "natural quiet" to mean (at a minimum) no aircraft audibility in 50 percent of the park for 75 percent of each day.

Flake Q1: The Park Service issued a Draft EIS on the proposed Grand Canyon air tour plan last year. During the hearing, it was suggested that the Service could have a Record of Decision on the matter by the end of the year. Could you be any more specific with the estimate of when the EIS will be finalized a Record of Decision issued?

Answer: The 1987 National Parks Overflight Act (Overflight Act) requires (1) protection of park resources, (2) substantial restoration of the natural quiet and experience of the park, and (3) protection of public health and safety from adverse effects associated with aircraft overflights. Most of the law's requirements are part of what the NPS does every day in managing the national park system. However, "substantial restoration of natural quiet" was not a commonly understood term, so the NPS defined it in a 1994 Report presented to Congress in response to the 1987 Overflight Act. The NPS definition is that "substantial restoration requires that 50 percent or more of the park achieve 'natural quiet' (i.e., no aircraft audible) for 75-100 percent of the day." Further NPS and Federal Aviation Administration clarifications included that "the day" meant "each and every day" or "any given day," and that 50 percent of the park was a minimum, not the goal of restoration.

The NPS anticipates the publication of the Final Environmental Impact Statement in spring of 2012. After a 30 day waiting period, it is anticipated that the Record of Decision will follow in the summer of 2012.

Flake Q2: Some air tour operators have expressed a concern that the Draft EIS does not consider the economic impact that the Plan will have on the air tour industry. Do you intend to address this concern as you refine the Draft Plan? How?

Answer: Comments on the Draft EIS socioeconomic analysis ranged widely from criticisms that it overstated impacts to the air tour industry to criticisms that it understated impacts to the industry. In response to comments, the NPS commissioned a peer review of the socioeconomic analysis in the Draft EIS and an additional socioeconomic analysis for the Final EIS by an internationally recognized economic consulting firm. The outcome of the peer review suggested

that the impacts to the air tour industry presented in the Draft EIS was a worst-case view of the potential impacts on the air tour industry that did not adequately take into account the growth of exempt flights on the west end of the park or the adaptability of the industry to previous changes at Grand Canyon. Flights on the west end of the park that did not require an allocation were included in the Draft EIS analysis, and updated information about those flights is currently being analyzed.

The NPS has analyzed historic data and has concluded that air-tour regulations enacted since the National Parks Overflight Act of 1987 did not have any substantial, long-term effect on the Grand Canyon air tour industry or market. Changes imposed immediately after the 1987 Act had much more impact on the air tour industry than any other regulatory actions since then. The history at Grand Canyon in the past 25 years indicates that additional changes in routes, scheduling requirements and related regulations are unlikely to have a substantial long-term effect on air-tour operations over the park. The air tour operators have predicted negative consequences each time regulatory changes have been considered since 1987, and each time their revenues have actually increased.

By reducing the effect of noise on Grand Canyon park resources and values, this plan will help preserve Arizona's number one tourist attraction. It will protect tourism dollars and jobs and promote economic stability. In 2010 alone, visitors to Grand Canyon National Park spent nearly $416 million in the park and neighboring communities. This directly supported almost 6,200 jobs. If the growth and spread of man-made noise over the park continues, we may risk damaging not only park resources, but an important economic engine for the state and the region.

Flake Q3: While the Proposed Plan acknowledges that 53 percent of the Park is quiet today (thanks in part to about $200 million invested in Quiet Aircraft Technology by air tour operators voluntarily) the Park Service now wants to add additional restrictions making the Park up to about 70 percent quiet. What would prevent the Park Service from coming back at a future point and mandating 100 percent of the Park to be quiet?

Answer: The NPS is not planning to eliminate overflights at Grand Canyon National Park, but it is required to meet the mandates of the Overflight Act. The law requires 1) protection of resources, and 2) substantial restoration of the natural quiet and experience of the park, and 3) protection of public health and safety from adverse effects associated with aircraft overflights. The NPS definition of Substantial Restoration of Natural Quiet (SRNQ) is that 50 percent or more of the park achieves natural quiet (i.e., no aircraft audible), 75-100 percent of the day each and every day.

The preferred alternative identified in the NPS Draft EIS makes progress toward achieving SRNQ. The Draft EIS describes in great detail the adverse impacts to resources and visitor experience, in addition to adverse impacts on natural quiet (natural soundscape). Wherever heavily travelled air-tour routes are located, major adverse impacts occur, with impacts decreasing as the distance increases away from routes. Even in areas of the park meeting the NPS definition of SRNQ, air tour related aircraft can still be heard up to 25 percent of the day. In the other areas of the park not meeting the NPS definition, aircraft can be heard up to 100 percent of the day and there are major adverse impacts to park resources and visitor experiences

in many places throughout the park. That is why the park is continuing to work on improving progress toward SRNQ and fulfilling all provisions of the 1987 mandate.

Questions for the Record from Ms. McCollum

R.S. 2477 Claims in Utah

The state of Utah recently filed a notice of intent to sue the Department of Interior to gain title to over 18,000 rights of way. To date, Utah has been largely unsuccessful in its pursuit of thousands of R.S. 2477 claims. I share the concerns of conservationists in Utah that these claims have the potential to undermine federal land protections.

McCollum Q1: How will the National Park Service (NPS) determine how R.S. 2477 claims would impact existing and proposed conservation designations, and the effects on Park Service conservation goals?

Answer: The NPS is currently evaluating the potential effects of R.S. 2477 claims within its units in Utah. The NPS is considering the claims relative to the park units' management plans, particularly whether roads claimed as R.S. 2477 rights-of-ways are among those designated as open or closed to vehicle travel in the management plans. In addition, the NPS is considering potential effects on resource protection and visitor use related to all claimed roads.

McCollum Q2: How would the recognition of these claims affect the Department of Interior's ability to manage federal public lands? Would it reduce the effectiveness of law enforcement and ORV monitoring or the effectiveness of archaeological site protection efforts?

Answer: Managing national parks for the long term is central to the mission of the NPS. As the world changes, and as visitor use patterns and needs change, the management of parks often changes in response. Recognition of the subject claims could have a very significant, long-term effect on the ability of the NPS to manage park units, because it could reduce or remove the NPS's ability to respond to changing conditions and to adjust management accordingly.

Managing park roads well is essential to managing parks. The NPS manages roads to provide visitors with a safe, fulfilling, memorable and enjoyable park experience, to protect park resources, and to manage visitor use patterns. The subject right-of-way claims within national park units in Utah fall into two groups: roads recognized as closed in park management plans, and roads considered open in those same plans.

Roads identified as closed, or that do not exist in park plans, are not considered appropriate to the management of the park. If R.S. 2477 claims to such road rights-of-way were to be recognized, it could have very significant, long-term effects on the NPS's ability to manage parks. Often, such roads are closed specifically to protect park resources or to enhance the visitor experience, so recognizing rights-of-way on these roads could, for example, reduce the effectiveness of law enforcement and ORV monitoring or archaeological site protection efforts, as you suggest.

Roads identified in park management plans as open are considered appropriate to the current management of the unit. However, the recognition of right-of-way claims on such roads could nonetheless make it difficult for the NPS to re-align, improve, move, widen, narrow, or close a

road; add or alter bridges, culverts, drainage, intersections and crossings; establish, maintain, and manage interpretive pullouts, viewpoints and signs; or to use visitor management tools such as permit systems, alternative transportation systems, and commercially guided tours. In addition, it could become extraordinarily difficult to close a road or restrict its use if that were to become necessary in the future.

McCollum Q3: Some of the state's claims lie in wilderness areas designated under the Cedar Mountains Wilderness Act and the Washington County Wilderness Act. How would NPS manage designated wilderness areas, places Congress itself has determined to be essentially road-less, in the face of R.S. 2477 claims?

Answer: The Cedar Mountains Wilderness Area, designated by Congress in 2005, contains no NPS lands. In the Washington County Growth and Conservation Act of 2009, Congress designated wilderness areas in Zion National Park, subject to valid existing rights. If an R.S. 2477 claim for a route on those lands were to be recognized, the NPS would continue to manage the lands to maintain and protect their wilderness values, consistent with the Wilderness Act of 1964, but those management actions might be constrained by the recognized right-of-way.

Questions for the Record from Mr. Hinchey

National Heritage Areas

As you know, there are 49 National Heritage Areas across the country, including the Hudson River National Heritage Area which I helped create in 1996. Heritage Areas have a proven record of leveraging federal funds to create jobs, generate economic development and rejuvenate local communities. In fact, every federal dollar invested in a National Heritage Area yields an average of $5.50 in leveraged public and private funding.

That's why, frankly, I'm disappointed that the Administration's 2013 budget request cuts funding for heritage areas by roughly 50 percent. National Heritage Areas aid in economic growth and promote tourism in the surrounding regions. Without strong federal funding, however, many of these heritage areas will be severely impacted and probably fail to function effectively.

Hinchey Q1: Director Jarvis, I've heard you speak positively about heritage areas on a number of occasions and I know you're a strong supporter. So I'd like to ask you, will this level of funding enable the Park Service to continue funding more established National Heritage Areas while also nurturing the less mature areas?

Answer: The NPS, as with many agencies, was faced with extremely difficult choices in the development of the FY 2013 budget. The proposed level of funding reflects a choice to support the long-term sustainability of National Heritage Areas by recognizing the continued importance of Federal seed money for less mature areas while also supporting the directive in the FY 2010 Interior Appropriations Act for the more established National Heritage Areas to work towards becoming more self-sufficient. We are currently working to update the formula for allocating the Congressional appropriation for National Heritage Areas; we have engaged all current areas in this effort and are looking forward to implementing a revised formula in FY2013.

Hinchey Q2: What is Park Service's long term vision for the federal role in National Heritage Areas?

Answer: The NPS envisions a wide range of long-term options for the Federal role in support of National Heritage Areas. These options will be better defined and explored through the ongoing process of evaluation of individual areas, and when Congress enacts programmatic legislation for National Heritage Areas.

Everglades

For some time now I have been extremely interested in the massive Florida Everglades restoration project being undertaken by the Park Service and the Army Corps of Engineers.

As you know, the Everglades Park is the largest subtropical wilderness in the United States and is home nearly three dozen threatened or endangered species. This is a critically important

natural resource that must be protected and I've been working with other members of this Committee to ensure that the Everglades restoration project gets the funding it needs to undertake the enormous mission that Park Service and the Army Corps has been tasked to complete.

Hinchey Q3: The Park Service has requested an increase in funding for research related to the Everglades restoration project, citing the need to further monitor and assess restoration efforts. Can you please provide more detail on how this additional research funding will be used?

Answer: The FY 2013 President's Budget does not request a programmatic increase for the NPS Critical Ecosystems Studies Initiative. However, there is a $1.0 million increase for Everglades activities for the U.S. Geological Survey, which conducts scientific investigations in partnership with the South Florida Ecosystem Restoration Task Forces (SFERTF) and other Federal and State agencies to fill key science information gaps and to assist in the sustainable use, protection, and restoration of the South Florida ecosystem. The proposed funding increase would support high priority research needs identified by the interagency invasive species working group of the SFERTF including quantifying ecosystem effects of invasive species to assist partnering agencies in deciding where best to allocate management and control efforts; filling key biological and ecological information gaps of invasive species to better inform early detection efforts of partnering agencies; and to improve methods to better detect and control species such as Burmese pythons for which ecosystem effects have been documented.

Hinchey Q4: Up until this point, the Everglades restoration project has been solely focused on water management. However, the Park Service has indicated that additional ecosystem-wide issues need to be addressed. Can you please explain what other areas the Park Service plans to devote resources to?

Answer: Since the beginning of this initiative in the early 1990s the Everglades restoration effort has focused on three main goals that were established early on by the South Florida Ecosystem Restoration Task Force: (1) getting the water right; (2) restoring habitat and recovering species; and (3) fostering long-term compatibility between the built and natural systems.

As you note, although the main effort is focused on water management - increasing water supplies for the environment and ensuring that water management operations benefit the remaining natural Everglades - there are other ecosystem-wide issues that support Everglades restoration, including water quality improvements; control and eradication of invasive exotics; and private-sector land conservation, particularly through the wetlands reserve program; and opportunities for conservation through conservation easements.

Yellowstone Bison

For many years I've been following the Park Service's activities with respect to its treatment of Bison in Yellowstone National Park. As you know, several years ago the Park Service began targeting and shooting Bison on public lands because of supposed threats to commercial livestock.

I was very concerned by this for a number of reasons, a primary one being that we were threatening with extinction the last of America's genetically pure wild Bison.

In 2000, the National Park Service and other agencies adopted the Interagency Bison Management Plan in order to coordinate activities related to the Yellowstone Bison. I believe you are to be commended for taking this issue seriously. And I know you share my desire to see that these great animals are protected and preserved.

Hinchey Q5: Recently, Montana officials approved an additional 75,000 acres north of Yellowstone National Park for bison grazing. Does the Park Service believe that 75,000 additional acres is adequate to prevent excessive captures of Yellowstone Bison or do you believe that the state of Montana needs to allot additional acreage for roaming?

Answer: The additional 75,000 acres north of the park in the conservation area will provide additional habitat for bison and reduce the need for more extreme management actions (e.g., hazing, captures). There will continue to be a need for conflict resolution at the agreed upon boundary of the conservation area; even if additional habitat is added in the future and the bison population is allowed to increase. The park looks forward to continued work on providing winter range bison habitat with our Interagency Bison Management Plan partners.

Hearing Questions for the Record (QFR) Prepared for the Department of Interior, Office of the Secretary

Hearing: Department of the Interior FY 13 Budget Oversight Thursday, February 16, 1:30pm Rayburn 2359

Questions for the Record from Chairman Simpson

Oil and gas exploration and permitting

Oil prices are rising again and analysts are now predicting the return of $4/gallon gas in the United States by Memorial Day. As I stated in my opening statement, it seems that both BOEM and BSEE are beginning to move in the right direction, though I still hear concerns from the bureaus that they may not be able to meet expectations. This is concerning because the bureaus now have the dollars and tools they need.

Simpson Q1: Can you commit to me that these bureaus will consider exploration plans and permits in a reasonable amount of time?

Answer: Both BOEM and BSEE are committed to reviewing plan and permit applications in a manner that ensures that the applicants are meeting all necessary environmental and safety standards. BOEM and BSEE are also committed to completing the reviews in as efficient a manner as possible given the resources available to us. Over the past year, both agencies have worked diligently to shorten the times required to approve plans and permits significantly and to increase predictability for operators. We will continue to identify ways to promote compliance and make the process more transparent, efficient, and timely. Variations in a number of factors, including the quality and complexity of individual plans and permits, operator experience, water depth, operational complexity, and the quality of the applications submitted can affect the time needed to conduct reviews. We are committed to using additional resources provided by Congress to continue to meet the need for a predictable and timely review process, while ensuring that operations on the Outer Continental Shelf are conducted safely and responsibly.

Simpson Q2: How will the bureaus hire the much-needed engineers and inspectors needed to fulfill the bureau's work load?

Answer: BSEE and BOEM are committed to active recruitment and placement of highly competent engineers, inspectors, and other subject matter experts, particularly in the Gulf of Mexico Region. BOEM and BSEE have jointly contracted with Image Media Services (IMS) to launch a targeted marketing campaign nationwide. IMS will analyze methods for recruiting for hard-to-fill positions, design materials in various media to promote employment with the bureaus, and support current recruitment activities such as career

fairs and departmental visits. Both BOEM and BSEE websites will have an Employment Opportunities feature designed to attract potential candidates. Each bureau has a recruitment team that is targeting entry and mid-level engineers and scientists by visiting universities; including their engineering departments, and university-sponsored conferences. Representatives from these teams have participated in various events held at universities and have developed professional contacts with the engineering department heads through site visits. Additionally, continued utilization of compensation flexibilities and recruitment strategies has helped to recruit both engineers and inspectors. These strategies include offering advanced pay grade steps to applicants with superior qualifications, repayment of student loans, relocation payments, exceptional benefits packages, additional training, opportunities for limited telework, and an overall worker and family-friendly culture. Additionally, BSEE and BOEM are working with the Department and Office of Personnel Management (OPM) to quickly and effectively implement the special salary rate position authority provided by Congress for FY 2012 and 2013. This special salary authority applies specifically to petroleum engineers, geologists, and geophysicists in the Gulf of Mexico Region. We expect it to be helpful in attracting highly qualified recruits to fill these essential positions. Advertisements are being placed in petroleum journals, scientific magazines, and newspapers in order to increase applicant pools. A direct hire authority also was approved for a limited time last year, and BSEE and BOEM are discussing the possibility of an extension of that authority from OPM. The direct hire authority from OPM could potentially enable BSEE and BOEM to expedite hiring if a critical need or severe shortage of qualified candidates exists.

Goals for domestic energy production

You have been an outspoken proponent of renewable energy and your budget request reflects that interest again this year. The administration has outlined very specific goals for domestic renewable energy production.

Simpson Q3: Should the administration have similar goals for domestic oil and gas production to ensure that we are making progress toward decreasing our reliance upon foreign sources of oil?

Answer: America's oil and natural gas supplies are critical components of our Nation's energy portfolio. Their development enhances our energy security and fuels our Nation's economy. Recognizing that America's oil supplies are limited, we must develop our domestic resources safely, responsibly, and efficiently, while taking steps that will ultimately lessen our reliance on fossil fuels and help us move towards a clean energy economy.

In 2011, American crude oil production reached its highest level since 2003, increasing by an estimated 120,000 barrels per day over 2010 levels to 5.6 million barrels per day. In 2011, American oil production reached the highest level in nearly a decade and natural gas production reached an all-time high. Much of this increase has been the result of growing natural gas and oil production from shale formations as a result of technological

advances. These resources, when developed with appropriate safeguards to protect public health, will play a critical role in domestic energy production in the coming decades.

The Department manages Federal lands and waters that provide resources that are critical to the Nation's energy security. To encourage robust exploration and development of the Nation's resources, the Department has offered millions of acres of public land and Federal waters for oil and gas leasing. Oil production from the Outer Continental Shelf increased more than a third – from 446 million barrels in 2008 to more than 589 million barrels in 2010. Responsible oil production from onshore public lands also increased – from 109 million barrels in 2009 to 114 million barrels in 2010. The Department's Proposed Outer Continental Shelf Oil and Gas Leasing Program for 2012-2017 promotes future development of domestic resources by making more than 75 percent of undiscovered technically recoverable oil and gas resources estimated in Federal offshore areas available for exploration and development.

More than 70 percent of the tens of millions of offshore acres under lease are inactive—including almost 24 million inactive leased acres in the Gulf of Mexico, where an estimated 11.6 billion barrels of oil and 59.2 trillion cubic feet of natural gas of technically recoverable resources are going undeveloped. Onshore, about 57 percent of leased acres – almost 22 million acres in total – are neither being explored nor developed.

The Department adopted lease terms for offshore sales that are designed to encourage faster exploration and development of leases. Minimum bid requirements for the most recent Gulf of Mexico lease sale were increased from $37.50 to $100 per acre, adjusted for inflation, based on a rigorous historical analysis which showed that leases that received high bids of less than $100 per acre have experienced virtually no exploration and development activities. The fiscal year 2013 budget request also includes proposals designed to incentivize the development of leases or the earlier release of non-producing leases, making them available to other companies who may be more willing or able to pursue development. The terms of onshore leases, which currently are issued for standard 10-year terms, are constrained by a nearly century-old statute.

The Department is taking a new approach to lease-extensions that reward diligence by tying extensions more directly to lessee investment in exploration and development. For offshore leases, the Department has already begun to implement this new approach by requiring the spudding of a well before a lease extension is granted for example. The Department plans to build on recent reforms for both offshore and onshore leasing, so that when companies approach lease deadlines or apply for extensions, their record of demonstrating diligent exploration and development will help determine whether they should be able to continue using their leases, or whether those leases would be better utilized by others.

These actions will contribute to fulfilling the Administration's *Blueprint for a Secure Energy Future*, which aims to promote domestic energy security and reduce oil imports by a third by 2025 through a comprehensive national energy policy.

Simpson Q4: While the President and you have stated you are committed to increasing the production of convention energy, there isn't anything in this budget that would actually help to increase production or reduce excess process and red tape. What is the Administration's plan to increase conventional energy production?

Answer: The fiscal year 2013 budget request includes the funding necessary to fulfill the President's vision for a secure energy future for America. A key part of President Obama's all-of-the-above energy strategy is expanding production of American energy resources. Since the President took office, energy from renewable sources like wind and solar has nearly doubled. Domestic oil and natural gas production has increased every year President Obama has been in office. In 2011, American oil production reached the highest level in nearly a decade and natural gas production reached an all-time high.

The Department oversees development of publicly-owned energy and mineral resources and continues to advance the safe and environmentally responsible development of these resources. Since 2008, oil production from the Federal Outer Continental Shelf (OCS) has increased by 30 percent, from 450 million barrels to more than 589 million barrels in 2010. Balancing the need for safety and environmental enforcement, the Department currently manages over 35 million acres of the OCS under active lease. A recently proposed five-year oil and gas leasing program would make more than 75 percent of undiscovered technically recoverable oil and gas estimated on the OCS available for development. In addition, in response to the *Deepwater Horizon* incident in the Gulf of Mexico, the Department launched the most aggressive and comprehensive reforms to offshore oil and gas regulation and oversight in U.S. history to ensure that our Nation can safely and responsibly expand development of offshore energy resources.

Onshore, the Bureau of Land Management (BLM) held 32 onshore oil and gas lease sales in 2011. The BLM offered 1,755 parcels of land covering nearly 4.4 million acres. Nearly three-quarters those parcels offered were leased, generating about $256 million in revenue for American taxpayers. This was a 20 percent increase in lease sale revenue over 2010, following a strong year in which leasing reform helped to reduce protests and increase revenue from onshore oil and gas lease sales on public lands. The BLM recently has seen a 50 percent jump in industry proposals to lease public lands for oil and gas exploration. Oil and gas companies nominated nearly 4.5 million acres of public lands for leasing in 2011, up from just under 3 million acres the year before. Industry nominations are the first step in the BLM leasing process. After evaluating the parcels, BLM may offer them at auction. Successful bidders can then apply to drill for oil and gas.

The Department is also taking steps to ensure we can safely develop our vast supplies of domestic natural gas. This abundant domestic resource holds unique promise to fuel our energy sector as well as fuel job growth – all while reducing harmful emissions. To ensure that we can successfully tap this critical resource for decades to come, the budget request for the Department invests in research and development to promote energy development that proactively addresses concerns about the potential impacts of hydraulic

fracturing on air, water, ecosystems, and earthquakes. The 2013 budget supports a $45 million interagency research and development initiative aimed at understanding and minimizing potential environmental, health, and safety impacts of shale gas development and production through hydraulic fracturing.

Overall, the budget request for the Department is needed to deploy American assets and support innovation and technology development so that we can safely and responsibly produce more energy here at home and be a leader in the global energy economy.

DOI Wildland Fire

The budget reflects a decrease of $38 million—roughly 20 percent—for hazardous fuels reduction. As you know, this line item reduces the threat of catastrophic wildfires and saves us money in the long run by avoiding high suppression costs. I realize difficult decisions must be made, but study after study shows that it's much cheaper to prevent fires than to put them out.

Simpson Q5: Why reduce hazardous fuels funding in light of the urgent need to reduce fire threat on Interior lands?

Answer: Interior's 2013 budget decisions were made in the context of a challenging fiscal environment. The DOI budget formulation process involved making difficult decisions about reducing funding or ending programs that are laudable, but that in this fiscal environment cannot be funded at desired levels. The Department's commitment to fully fund the 10-year suppression average, which required a $195.6 million increase over the 2012 enacted level, and other priority investments, impacted the funding available for other important programs.

The Wildland Fire Management program's primary objective is to protect life and property, and this is achieved by fully funding the suppression 10-year average and maintaining our initial and extended attack firefighting capability at current levels. The 2013 request does this by funding Preparedness at the 2012 enacted level, as adjusted for fixed costs.

The planned Hazardous Fuels Reduction program for FY 2013 represents the most effective use of available funds. High priority projects will be completed in high priority areas with the goal of mitigating wildfire risks to communities.

Simpson Q6: As I mentioned in my opening statement, the FY12 Omnibus bill report specifically directed the Department to abandon its requirement that 90% of hazardous fuels funds be spent in the wildland urban interface and instead be spent in the highest priority areas on the highest priority projects as determined by land managers in the field. Why is the Department still insistent on this rigid requirement? [I'd like to remind the Department that if this continues, we're happy to consider bill language on this issue rather than report language]

Answer: The Department is complying with the Committee's direction and will be allocating resources to the highest priority projects in the highest priority areas using a rigorous, criteria-based approach. Interior's HFR projects will be designed with the objective of mitigating wildfire risks to and its potential effects on communities. Fuels treatments that have been identified as key components of Community Wildfire Protection Plans and are cost-effective will be prioritized. The 90% requirement from previous allocations will no longer be used.

Office of Wildland Fire

Mr. Secretary, I met with your staff regarding the Office of Wildland Fire last year. I've been concerned that this office continues to grow, while the National Interagency Fire Center (NIFC) is shrinking—I didn't get a satisfactory answer. In FY11 the office increased its FTEs by 9 for a total of 19 FTE's. This year, the office proposes 27 FTE's. The FY12 Omnibus bill report requires the Department to explain to the Committee how and why this office exists and how it will be more efficient, but in light of the FY13 budget request, I now have additional concerns about the expansion of this office.

Simpson Q7: Why is this office growing and how can you ensure that duplicative fire positions in the agencies are being eliminated?

Answer: The Office's growth is primarily due to the transfer of the decision support (i.e., Information Technology) staff and funding to the centralized office in the Department. The decision support staff focuses on developing tools that 1.) provide clear, systematic processes for allocating available funds to high priority fuels projects in high priority areas, 2.) identify the most effective firefighting resource investments and location, and 3.) assist managers in taking the best action in response and management of wildfire.

The decision support staff addresses the key elements of the Cohesive Wildfire Management Strategy as required by the FLAME Act 2009. The elements include the:

- identification of the most cost-effective means for allocating fire management budget resources;
- reinvestment in non-fire programs by the Secretary of the Interior and the Secretary of Agriculture;
- employing the appropriate management response to wildfires;
- assessing the level of risk to communities;
- allocation of hazardous fuels reduction funds based on the priority of hazardous fuels reduction projects;
- assessing the impacts of climate change on the frequency and severity of wildfire; and
- studying the effects of invasive species on wildfire risk.

The staff of the Office of Wildland Fire also increased slightly to accommodate the growth in OWF's workload emanating from its assumption of budget execution functions

when the Wildland Fire management account was moved to the Department and the added responsibilities and workload associated with developing and implementing the Cohesive Strategy, as required by the FLAME Act.

With respect to duplicative positions, the Department is currently engaged in an outside, third party review of potential duplication. This is in response to the language in House Report 112-331 that accompanied Public Law 112-74 the Consolidated Appropriations Act, 2012. A vendor has been selected and formal contract award is expected to occur in the spring. The results of the study are expected to be delivered in the fall. Once the recommendations from the study are received, the program will identify duplicative positions and take corrective actions as warranted.

Simpson Q8: Why is a centralized office necessary for wildland fire management?—what were the problems the past structure?

Answer: A departmental policy office is necessary to ensure the consistent development, implementation, and application of business practices and policies across all Interior fire bureaus. The function was established in 1992 following the creation of the single fire appropriation to ensure consistency within the Interior fire program. In 2001, the Office of Wildland Fire Coordination was created to manage the additional complexity and scope of the program due to the requirements of the National Fire Plan. The Office of Wildland Fire continues to oversee and integrate the wildland fire management programs of the Department's bureaus and provide Department-wide leadership, direction, and coordination. In addition to these intra-Departmental functions, the Office of Wildland Fire also coordinates the Department's wildland fire program with the Forest Service and other Federal agencies, and with tribal, State and local partners.

Simpson Q9: How will this affect National Interagency Fire Center (NIFC) and its funding?

Answer: Funding for the OWF is a total program cost and does not have a direct effect on NIFC or its funding. The Fire Center houses national and regional fire operations, including smokejumpers, equipment supply cache, training, and equipment development. These are primarily Bureau of Land Management (BLM) operational activities and are funded by BLM's share of the fire budget.

The Fire Center also provides common and shared office space for the national staffs of the Interior fire organizations and part of the Forest Service national staff. As the host agency, BLM provides basic services. Individual tenant programs and staffs pay a share of the costs for the space they use.

Grazing

Mr. Secretary, grazing is a large component of what the BLM does and the land it manages. For years, if not decades, this program has been underfunded given all that it must administer. In FY12 we worked very hard to increase this budget, yet your FY13

request would reduce the budget by $15 million (17%) at a time when BLM offices are being bombarded by FOIA requests and litigation in addition to their every-day jobs.

Simpson Q10: How will this reduction help the BLM catch up on permit backlogs, resource management plan revisions, NEPA, trailing and all the other work necessary to operate the range management program?

Answer: The FY 2013 budget requests a program decrease of $15.8 million from 2012. The BLM is using the increase over FY 2011 in FY 2012 to address numerous challenges, including completion of grazing permit renewals; monitoring of grazing allotments; and strengthening the BLM's environmental documents. The decrease will be partially offset by the proposed pilot project for an administrative processing fee of $1 per animal unit month that is estimated to generate $6.5 million in 2013, which will be returned to the BLM to use for the same purposes.

Simpson Q11: To offset some of this reduction, you've recommended a fee of $1 per animal unit month that would generate roughly $6.5 million. The BLM already has the authority to increase the fee on AUM's through a rule making process—why doesn't the BLM start this process rather than proposing a fee in an appropriations bill?

Answer: The goal of the Administrative Fee is to recover some of the cost of processing grazing permits/leases for the parties (permittees) who are economically benefitting from use of the public lands. This fee mirrors the concept used in the Oil and Gas program and Rights-of-Way program, where the users of the public lands pay a fee for the processing of their permits and related work. The budget includes appropriations language for a three-year pilot program, beginning in 2013, which would allow BLM to recover some of the costs of issuing grazing permits/leases on BLM lands. During the period of the pilot, BLM would work through the process of promulgating regulations for the continuation of the grazing administrative fee as a cost recovery fee after the pilot expires.

Simpson Q12: In the FY12 bill, we included language requiring litigants to exhaust administrative review of grazing activities before litigating—are there similar ideas that you have to maximize the dollars appropriated for range management?

Answer: Another general provision in the FY 2012 Appropriations Act assists BLM in meeting several challenges with grazing activities. Sec. 415 specifies that the transfer of a grazing permit, during the term of the permit, is not subject to additional NEPA if there is no change in the mandatory terms and conditions required. This provision will significantly streamline the work process on approximately 10 to 15 percent of BLM's annual permit workload, and allow BLM to process permits originally scheduled to expire. It allows the BLM more opportunity to focus on analysis of environmentally-significant permits. Focusing on the most environmentally sensitive allotments will increase attention on land health assessments and quantitative data collection; improve the usefulness of both the RMP/EIS and site-specific NEPA analyses; and result in grazing management decisions guiding land health solutions for the future. This strategy will assist in ensuring that unprocessed permits consist of the least environmentally-

sensitive allotments that are more custodial in nature and/or are already meeting land health standards. Sec. 415 also extends, through 2013, the BLM's ability to renew expiring grazing permits without additional NEPA analysis. This provision will allow the BLM to focus on the grazing permit renewals in high-priority areas.

NOAA to DOI/Reorganization Plan

President Obama recently announced a reorganization plan for the Commerce Department that would place the National Oceanic and Atmospheric Administration (NOAA) and its $5 billion budget within the Department of the Interior. Our Committee has requested details of this proposal from the Administration but, thus far, has received nothing.

Simpson Q13: What can you tell us about the plan to move NOAA to the Department? Is there a timeline for implementation of this proposal? How would NOAA's functions be integrated within the Department?

ANSWER: The potential transfer of NOAA to the Department of the Interior is a preliminary proposal that has been discussed in concept. We won't begin detailed planning to implement this proposal until Congressional authority is provided to allow the President to reorganize Executive Branch agencies.

Washington Monument Repair/National Mall Restoration Efforts

Mr. Secretary, there's a great deal of restoration work underway on the National Mall. Our Committee was pleased it could be helpful in providing construction funds for repairs of the Washington Monument which was damaged by last year's earthquake. These funds were matched by a local philanthropist. I know that other work is being done on the Jefferson Memorial, the Tidal Basin, and parcels of land on the Mall itself are now fenced off and bull dozers are working feverishly.

Simpson Q14: What is the timeline for completing the repairs to the Washington Monument?

ANSWER: Currently, repair design documents are being prepared and a construction contract for Washington Monument repairs is scheduled for bid advertisement in late May 2012, with possible award in August 2012. The project is expected to begin in September 2012 and last for approximately 12 to 18 months.

The elevator, which was damaged by the earthquake, has been partially repaired, however, permanent repairs are required in order for the elevator to be recertified for public use. A contract for elevator repairs was awarded on January 20, 2012 and the elevator is expected to be fully repaired and operational by late May 2012.

NPS is committed to reopening the Monument to the public, but the timing will depend largely on visitor safety considerations.

Simpson Q15: Can you give us a brief summary of other work now underway on the National Mall and a description of funds requested for this ongoing work in your budget request?

Answer: Currently, the NPS is performing or is involved in the performance of the following work on the National Mall:

- The Lincoln Reflecting Pool is being rebuilt with a new concrete basin. The existing basin leaks severely and uses 40 to 50 million gallons of potable water each year. The reconstructed Reflecting Pool will draw water from the Tidal Basin and use approximately 10 million gallons of reclaimed water per year. Additionally, the project includes a filtration system to provide improved water quality; efforts to improve accessibility; and completion of the final section of permanent security barrier on the east side of the Lincoln Memorial. The project was funded through the Recovery Act. The total cost of the project is currently estimated at $36.7 million. The project is approximately 70 percent complete and is scheduled to be complete in June 2012.
- The National Mall is undergoing restoration between 3rd and 7th Streets. These efforts will ameliorate the aging and damaged infrastructure, poor soil condition, and resource damage from extremely high levels of public use of the Mall. Restoration includes replacing the irrigation system with one designed to be more resilient to large events and support the care of turf; providing soil irrigation, pumps, and a cistern to support drainage, storage, and reuse of storm water; rebuilding the ground sub-base to withstand heavy use, similar to professional sports fields; and establishing turf proven at other high-use public venues such as New York City's Central Park. This first phase of National Mall restoration was funded in FY 2011 at $16.14 million and is currently in progress; the contract completion date is December 11, 2012. Future phases of National Mall restoration west of 7th to 14th Streets, are included in the NPS Five Year Line Item Construction Plan for FY 2013 - FY 2017.
- A levee closure structure is under construction at 17th Street just south of Constitution Ave. to meet more stringent flood control standards recently mandated. The project will improve the reliability of river flood protection to a portion of the monumental core and downtown Washington, D.C. provided by the Potomac Park levee system. The project consists of a pair of partial walls flanking 17th Street and a foundation across 17th Street for a removable “post and panel system” dam. This work is being completed by the U.S. Army Corps of Engineers under a construction permit issued by the NPS. The project is currently scheduled to be completed in the fall of 2012.

The project to improve the long term integrity of the Jefferson Memorial plaza seawall was completed in winter of 2011. The project was one of the first large projects using Recovery Act funding and cost $13.6 million. Public safety concerns due to settlement and movement of areas surrounding the Jefferson Memorial prompted NPS to close a portion of the Memorial plaza in 2006. The project included demolition and reconstruction of the plaza seawall and was designed to resist future vertical and lateral movement.

The rehabilitation of Constitution Avenue from 15th Street to 23rd Street was substantially completed in December 2011. This project included repair and resurfacing of Constitution Avenue; as well as new curbs and curb cuts, sidewalks, street lights, a new storm water drainage system, and connection of bus drop-offs to sidewalks. The project was funded through the Federal Highway Administration and cost $10.3 million.

There are several non-NPS construction and repair projects currently ongoing in the vicinity of the National Mall. Examples of this work include the construction of the Smithsonian Institution's National Museum of African American History and Culture between 14th and 15th Streets on Constitution Ave.; work occurring relative to the Smithsonian Arts and Industries Building and the Gallery of Art; and Pepco work for a new underground conduit by East Basin Drive near the Jefferson Memorial.

LWCF/Federal Land Acquisition

Mr. Secretary, the President's budget request for land acquisition under the Land and Water Conservation Fund (LWCF) is funded at $450 million at the expense of other critical priorities including the need to manage and maintain land and facilities that we already own. The GAO has cited as a major management challenge the Department's inability to adequately maintain its facilities and infrastructure which can impair public health and safety, reduce employee's morale, and increase the need for costly major repairs or replacement of structures and equipment.

Construction accounts within the Department's budget request for next year are reduced by $49 million (-16 percent). And, the FY12 budget for Interior Wildland Fire cuts hazardous fuels by $39 million. Anyone looking at your LWCF budget request could reasonably conclude that you're increasing land acquisition too quickly and at the expense of other very important and deserving programs.

Simpson Q16: How do you justify historic increases for land acquisition while failing to address systemic funding issues like maintaining facilities and infrastructure?

ANSWER: The Department of the Interior takes seriously our responsibilities to maintain facilities and infrastructure. The FY 2013 Budget proposes focusing funding on the most critical health and safety issues through line-item construction accounts and facility maintenance subactivities within operation accounts. Construction of new facilities has been restricted to replacement of facilities in poor condition for the fiscal year 2013. This will focus our resources on correcting the most critical repairs on our highest priority assets.

Through the America's Great Outdoors listening sessions and public input process, we learned that there is a powerful consensus across America that outdoor spaces—public and private, large and small, urban and rural—remain essential to our quality of life, our economy, and our national identity. Americans communicated clearly that they care deeply about our outdoor heritage, want to enjoy and protect it, and are willing to take collective responsibility to protect it for their children and grandchildren.

Americans support concrete investments in conservation. In November of 2010, voters across the country overwhelmingly approved a variety of measures for land conservation, generating a total of $2 billion in new land protection funds according to the Trust for Public Land. Of 36 proposals on State and local ballots for conservation funding, 30 passed – an approval rate of 83 percent. This is the highest rate during the past decade and the third highest since 1988.

Consistent with these results at the State and local levels, the feedback received during the AGO listening sessions indicated that full funding of the LWCF program is a high priority for the American people. Respondents also suggested that LWCF funding could be more effectively used if it was strategically focused on specific project types and/or locations. With this in mind, an investment in the Crown of the Continent ecosystem was developed in the Rocky Mountain Front where Interior proposes to invest $28.6 million to protect threatened and endangered plants, fish, and wildlife; ensure terrestrial ecosystem and watershed health; ensure resiliency, connectivity, and climate change adaptation; support working farms, ranches and forests; enhance recreational access; and protect rivers and waterways. This land comes with minimal operations and maintenance costs. This proposal includes the outstanding landscapes of Glacier National Park; four units of the National Wildlife Refuge System; famous western rivers and lakes; and vast high deserts and high mountain valleys administered by the three DOI bureaus. The lands proposed for acquisition, both conservation easements and fee, will protect crucial wildlife migration corridors, endangered biological and geological systems, and special status species. Conserving these properties enhances cultural and natural landscapes while allowing for traditional working ranches and forests in many cases. Outdoor recreational opportunities will be enhanced by increasing access, maintaining the integrity of the scenic vistas and the primitive qualities of the Crown of the Continent Ecosystem. Once these lands are developed, there is no going back to how they currently exist.

Interior's 2013 request, together with the Forest Service's request, funds the LWCF at $450 million, half of the legal limit that could be appropriated for this fund. Interiors' Federal land acquisition request of $212 million includes $84 million for line-item projects resulting from a collaborative effort. The collaborative effort between the Departments of the Interior and Agriculture was in response to directives from Congress in House Report 111-180 and Conference Report 111-316. The remaining $58 million in Interior's line-item projects support bureau specific, mission related priorities. Smart investments in strategic conservation through both the interagency collaborative process and the bureau specific, mission related process will prevent further ecosystem decline or collapse, which is expected to preclude the need for future investments in restoration.

Activities funded under LWCF ensure public access to the outdoors for hunting, fishing and recreation; preserve watersheds, viewsheds, natural resources and landscapes; provide corridors for wildlife to migrate within; and protect irreplaceable cultural and historic sites for current and future generations. LWCF funds are also used to protect historical uses of working lands, such as grazing and farming.

Interior's acquisition programs work in cooperation with local communities, rely on willing sellers, and maximize opportunities for easement acquisitions. Proposed acquisition projects are developed with the support of local landowners, elected officials, and community groups. LWCF funds for Federal acquisition will support simpler, more efficient land management; create access for hunters and anglers; create long-term cost savings; address urgent threats to some of America's most special places; and support conservation priorities that are established at the State and local levels.

Land and Water Conservation Fund

The Land and Water Conservation Fund budget includes a new set-aside of $84 million for "Collaborative Landscapes", with the focus being on three ecosystems: the Northern Rockies, the Greater Yellowstone, and the Florida-Georgia Longleaf Pine.

Simpson Q17: How did the selection of these three ecosystems come about?

ANSWER: Seven teams of interagency staff from the field submitted proposals requesting collaborative funding for acquisitions in their landscapes. These proposals were reviewed first by a Technical Advisory Committee (TAC) comprising bureau staff with expertise in real estate, recreation, and conservation programs. The TAC scored each proposal against the set of criteria agreed upon by the interagency working group that designed the new collaborative program. There were four categories of evaluation criteria:

- **Process:** ensure proposals are built through Federal agency and local stakeholder collaboration and make efficient use of Federal funding *(e.g. which stakeholders are involved, what other resources will be leveraged)*
- **Outcomes:** ensure Federal resources are targeted to achieve important biological, recreational, cultural and socio-economic outcomes *(e.g. anticipated impact on recreation opportunities, species and habitats, working lands, rivers and waterways, cultural and historical resources)*
- **Urgency:** ensure funding is focused on outcomes that may be lost today if no action is taken or that are particularly achievable today *(e.g. nature and timeliness of threats to the landscape).*
- **Contribution to national priorities:** ensure local proposals are important contributors to national outcomes at the regional and national scales *(e.g. does proposal contribute to goals related to priority regions or topics).*

Then, a National Selection Committee (NSC) comprising all four agency Directors/Chiefs, plus senior representatives from both DOI and USFS, reviewed the results of the TAC scoring and discussed and weighed the merits of the proposals. In addition to the scores from the TAC, the NSC members considered where their agencies were making complementary investments in the same landscapes through other programs, and whether communities had made a case for locally-driven conservation plans over the course of the AGO listening sessions and in other contexts.

The recommendations of the NSC were approved by the Secretaries prior to inclusion in the budget.

Simpson Q18: What are your goals and measurable objectives? I understand your strategy is acquiring land, but where and how far are you asking us to go with this?

ANSWER: The collaborative process was developed in response to congressional directives and to achieve greater conservation impacts. The new process was piloted in 2013 in a small number of ecosystems where the groundwork for collaboration was already in place and where significant acquisition opportunities of strategic importance were known to be available. DOI and USDA focused on these ecosystems for the pilot year to test the new process and evaluate whether it would successfully yield high quality collaborative proposals. The results of the pilot were promising and could be used to broaden the effort in successive years.

The broader goals of this new collaborative approach to land acquisition using LWCF funds are:

- To be more strategic with our LWCF investments;
- To make LWCF investments based on the best science and analysis that are collectively available to all agencies;
- To incentivize collaboration among bureaus, other federal agencies, and other stakeholders;
- To achieve efficiencies and improved results through complementary efforts and leverage joint resources;
- To support locally-driven conservation efforts; and
- To support an "All Lands" approach to conservation.

Interior and USDA defined measurable goals and objectives for each landscape's proposed acquisition strategy. Staffs in the field were challenged to work together to define common conservation and community (e.g. recreation, economic development) goals at the landscape scale, then determine whether land acquisition was an appropriate tool to help reach those goals. Goals and metrics for measuring progress to goal were articulated by the interagency teams preparing each collaborative funding proposal. For example, some of the goals and measurable objectives for landscapes selected for funding were:

- Protect 96percent of the threatened flatwoods salamander Critical Habitat between the St. Marks and Auculla Rivers (metric = % of Critical Habitat).
- Protect 29,000 acres of future habitat to allow the expansion of endangered red-cockaded woodpecker recovery populations identified in the Red-cockaded Woodpecker Recovery Plan by at least 135 breeding pairs (metric = acres pineland acquired; metric = number of breeding pairs).

- Protect a 6-mile corridor inland from Apalachee Bay (between St Marks and Pinhook Rivers) to protect habitats for wildlife movement inland as a result of sea level rise and connectivity to other public lands (metric = miles of corridor).
- Protect crucial wildlife migration corridors, endangered biological and geological systems, and special status species.
- Enhance cultural and natural landscapes while allowing for traditional working ranches and forests in many cases.
- Enhance outdoor recreational opportunities by increasing access, maintaining the integrity of scenic vistas and the primitive qualities of the Crown of the Continent Ecosystem.

The proposals were scored in part on how well project goals were articulated, expected outcomes were quantified, and how well the plan contributed to the goals set.

Simpson Q19: Why is acquiring land the only strategy for this initiative, particularly when one considers that the Interior budget is filled with conservation and restoration programs that could be at least partially targeted toward these priority ecosystems?

ANSWER: The Department is striving to achieve greater collaboration across all of its conservation and restoration programs per congressional directives. The future goal is to better align a broad range of Department of the Interior and Agriculture programs to achieve even greater efficiencies and improved outcomes through leveraging diverse strategies and funding. Other programs that complement the LWCF program include the Cooperative Endangered Species Conservation Fund grants, North American Wetlands Conservation Act grants, and the Partners for Fish and Wildlife program. These programs contribute significantly to a broad range of conservation goals, but LWCF remains unmatched in its importance as a conservation tool.

To help explore how to do this, the FY 2013 budget request pilots a collaborative planning and decision-making process for Federal land acquisition under LWCF. A major reason for starting with LWCF was to be responsive to Congress' directives in House Report No. 111-180 and Conference Report No. 111-316 which accompanied the FY 2012 appropriations bill, to collaborate extensively with other government and local community partners.

Another reason it made sense to develop a collaborative approach among the four LWCF Federal land acquisition programs is that each agency implements land acquisition programs that are substantially similar in mission but often operate independently from one another. That is, they all acquire land in fee or easement to be managed (or monitored, in the case of easements) by the agency, to further the specific agency mission without always considering how other agencies' missions and priorities overlap. Yet each agency makes decisions about which parcels to prioritize for acquisition according to an agency-specific set of criteria, all of which are stringent and merit-based, but do not consistently incorporate considerations about mutually beneficial opportunities for interagency collaboration. It made sense to first align these four bureaus around a common and robust decision-making process and determine related land acquisition

opportunities on a small scale before implementing an interagency collaborative land acquisition program on a larger scale.

The Department thinks that the successful collaboration of this program will help to identify opportunities to align programs and funds to achieve greater efficiencies and meet mutual goals.

Simpson Q20: The Land and Water Conservation Fund Act of 1965 states, up front, that its purposes are to "assist in preserving, developing, and ***assuring accessibility to all***…"

Why do you now propose carving out $2.5 million for hunting and fishing access out of a $33.5 million BLM land acquisition program?

Answer: We are proposing to devote $2.5 million from this program to acquire lands or interest in lands in areas with complicated, "checker-board" land ownership patterns that impede access to public lands for hunting and fishing. Acquiring lands or interest in lands, in support of hunting and fishing access, can alleviate some of the challenges that recreationists face when trying to use land-locked Federal lands that do not have public access. This goal complements one of the key purposes of the LWCF Act, which is "to assist in preserving, developing and assuring accessibility to outdoor recreation resources."

Simpson Q21: Are we to infer that the other $31 million is off limits to hunting and fishing?

Answer: No, such an inference would be incorrect. While $2.5 million has been identified primarily for acquiring lands or interest in lands that provide access to landlocked public lands for hunting and fishing, the remainder of BLM's line item land acquisition projects will be used for high-priority efforts in BLM's core and collaborative land acquisition program components, which include lands valuable in part because of their hunting and fishing opportunities.

Simpson Q22: As far as I'm concerned, hunting and fishing access should be integrated into every acquisition wherever and whenever it is feasible and safe to do so. Why is there not a similar carve-out in the Fish and Wildlife Service program?

Answer: The access of hunters and anglers to the public lands is often frustrated by complicated "checkerboard" land ownership patterns. This is most often seen with the Bureau of Land Management, whose mission is multiple use of our public lands. The request for BLM includes $2.5 million to purchase hunting and fishing access easements to alleviate some of the challenges and provide better access to valuable public recreation opportunities.

The 1997 National Wildlife Refuge System Improvement Act created a hierarchy of uses for refuges. In implementing that Federal law, the Service must consider wildlife-dependent recreation as lower-priority use than conservation to be consistent with the

conservation mission of the Improvement Act. Within the 556 unit National Wildlife Refuge System, there are 327 refuges open to hunting, 272 refuges open to fishing, and 243 refuges open to both hunting and fishing. The FWS also supports hunting and fishing through program dollars, especially through the Pittman-Robertson Wildlife Restoration Program and the Dingell-Johnson Sport Fish Restoration program.

Simpson Q23: The Park Service proposes $20 million in the Stateside LWCF program for competitive funding awards for "urban parks and green spaces, blueways, and landscape-level conservation in communities."

What does "landscape-level conservation in communities" mean?

ANSWER: Landscape-level conservation considers conservation needs across public, private, and tribal lands, and involves the consideration of large, interconnected ecosystems and recreational areas. This approach recognizes that watersheds, wildlife, and ecosystems do not recognize property lines. Therefore, conserving large landscapes requires coordination among landowners; tribal, local, State, and Federal governments; conservation groups; agriculture and forestry groups; and other stakeholders. Such locally grown landscape partnerships are vital to 21st century conservation.

This concept is a significant Secretarial priority, and the Department and its Federal partners are working to engage tribal, local and State governments; non-profit organizations; and landowners in regions where these stakeholders and Federal agencies are conserving and restoring large landscapes through grants and planning activities. The 2013 budget request builds on the collaborative Federal land acquisition process and provides a tool to foster more effective coordination with government and local community partners to achieve shared conservation goals. With regard to the LWCF State Assistance competitive grant component, eligible projects could include grants to States to acquire lands to establish new State wildlife areas, State recreation areas, State parks, or land to fill in gaps among publicly and privately-owned conserved areas to create corridors or contiguous protected landscapes that also facilitate recreation.

Simpson Q24: Does the competitive funding need new authorization from Congress?

ANSWER: New authorization is not needed. The Land and Water Conservation Fund Act outlines a methodology for distributing appropriated funds which provides the Secretary with discretion for how to distribute a portion of the funding. The relevant portions of the Act are as follows:

16 U.S.C. § 460l–8 Financial assistance to States
(b)Sums appropriated and available for State purposes for each fiscal year shall be apportioned
among the several States by the Secretary, whose determination shall be final, in accordance with the following formula:

(1) Forty per centum of the first $225,000,000; thirty per centum of the next $275,000,000; and twenty per centum of all additional appropriations shall be apportioned equally among the several States; and
(2) At any time, the remaining appropriation shall be apportioned on the basis of need to individual States by the Secretary in such amounts as in his judgment will best accomplish the purposes of this part. The determination of need shall include among other things a consideration of the proportion which the population of each State bears to the total population of the United States and of the use of outdoor recreation resources of individual States by persons from outside the State as well as a consideration of the Federal resources and programs in the particular States.

Consistent with the Act, the budget proposes that 40 percent, or $22.6 million, of the total grant funding ($56.5 million) be equally allocated among the 51 "States". Each of the 50 States receive an equal apportionment and the District of Columbia and all of the Territories share one apportionment equal to that of each of the 50 States.

Of the remaining 60 percent portion ($33.9 million) that can be allocated to the States by the Secretary on the basis of need, $13.9 million would be allocated according to the formula that NPS has used in recent years that that takes into account total and urban population by State. In total, $36.5 million will be allocated to States in the same manner as in prior years.

The remaining amount of the 60 percent portion, $20.0 million, is proposed for a competitive grant component, consistent with 16 U.S.C . *§* 460l–8 (b)(2).

Simpson Q25: Aren't the activities proposed under the new competitive program already funded under the formula program?

Answer: The types of projects envisioned for the competition can be and to some extent are funded by the formula grants. However, the competitive grant component would more strategically focus a portion of the funding on projects that achieve America's Great Outdoors goals of expanding urban parks, community green spaces and blueways, and conserving large-scale landscapes in communities that need them the most. These priorities were the outgrowth of public input, identified during the 51 public listening sessions that the Administration conducted across the Nation; as well as in many of the over 105,000 written comments that called for more focused investment of LWCF State Assistance competitive grant funds.

Applications would be evaluated based on general criteria as well as criteria specific to the target investment areas (urban, blueways, and landscape conservation). Common criteria would include factors such as the ability to demonstrate the degree and urgency of the need for the project; ability to articulate the expected benefits to be realized by funding the project; alignment with goals of Statewide Comprehensive Outdoor Recreation Plans and other strategic plans that guide investment in recreation and conservation; identification of partnerships and community support; demonstrated need

for safe and accessible routes; multiple identified benefits, such as flood control, tourism, habitat protection and connectivity, and outdoor recreation; ability to leverage Federal funding, including commitments of matching funds or other complementary non-federal investments that support the goals of the project; and other criteria enumerated in law. Objective-specific criteria would be used, based on project type (e.g. urban, blueways, or landscape conservation) to provide additional evaluative factors, such as the project's ability to increase or improve access, or the use of science and mapping to identify important conservation lands.

Urban parks and community green spaces support outdoor access for the nearly 80 percent of the Nation's population that lives in urban areas. However, projects in urban areas are typically more expensive, as land is often limited and thus more costly, even though populations are substantial and demand for new recreation opportunities is great. In a fall 2011 survey, States estimated a total need for State and local public outdoor recreation facilities and parkland acquisition at more than $18.6 billion. Land costs in general similarly means that acquisition projects are far less common; more than 75 percent of LWCF State grants fund recreational facility development projects, such as playgrounds, picnic shelters, and walking paths, which are relatively more affordable. A competitive component of the appropriated funds outside of the State apportionments would enable States to apply for larger grants than they typically can through the State-based competitions, which are limited by each State's standard apportionment.

Rivers connect people and communities to America's great outdoors and are vital migration corridors for fish and wildlife. During the AGO listening sessions, participants expressed a passion for waterways, knowledge of their economic and ecological importance, and enthusiasm for their conservation. A competitive grant component will help address the recommendations that the Administration received to expand Federal assistance to communities to enhance recreational opportunities on local waterways and adjacent green spaces; to help increase community access to rivers and lakes for recreation, such as boat ramps and swimming access points; and to support community-based protection and enhancement of the nation's waters.

Landscape-level conservation considers conservation needs across public, private, and tribal lands, and involves the consideration of large, interconnected ecosystems and recreational areas. The new competitive process will enable the highest return on investment for Federal funds used for conservation and recreation projects implemented by States and localities, in the context of a broader strategy to fund projects that meet high-priority needs and satisfy the shared vision of a wide range of stakeholders working in collaboration. For example, eligible projects to facilitate recreation could include grants to States to acquire lands to establish new recreation areas, parks, or lands to fill in gaps among publicly and privately-owned conserved areas to create corridors or contiguous protected landscapes that also provide recreational opportunities.

America's Great Outdoors (AGO)

The Fish and Wildlife Service's Fisheries Program just released a report estimating that the program's activities generate a total economic impact of $3.6 billion annually, which translates into a 28:1 return on investment and 68,000 jobs. A major message of your America's Great Outdoors initiative is about the economic benefits of outdoor recreation. It seems to me that fishing is a major component, and therefore that the Fisheries Program should be an important piece of your AGO crosscut.

Simpson Q26: Not only is it not, but the program is cut by a combined $11.8 million, or 9 percent in FY13. Why?

ANSWER: The Fisheries Program contributes to the America's Great Outdoors (AGO) initiative by restoring aquatic species and their habitats, as well as monitoring and controlling aquatic invasive species such as the Asian carp. Collectively, these efforts enhance myriad outdoor recreation activities and provide economic benefits to local economies as outlined in the Service report, *Net Worth: The Economic Value of Fisheries Conservation*.

The FY 2013 President's Budget proposes $131.6 million for fisheries and aquatic resources, a decrease of $3.7 million from the 2012 enacted level. Reductions in the Fisheries Program total $11.8 million. The Service is proposing to partially offset these reduction with the proposed $7.1 million in increases for high priority programs that will enhance the AGO initiative, such as $1.5 million for the National Fish Passage Program for barrier removal/bypass projects and $2.9 million for Asian Carp control. Included in the program reduction is $3.2 million for the production of fish for mitigation of Federal water projects for which the Service is seeking reimbursement. Many partners, the Office of Management and Budget, Congress and DOI have asked the Service to amplify efforts to obtain full reimbursement from the Corps of Engineers, the Bureau of Reclamation and Tennessee Valley Authority.

The Service and the Fisheries Program is committed to advancing the key goals of the AGO initiative. Overall, the Service increased funding for the initiative by $20.9 million. The Service remains committed to this Secretarial initiative and the FY 2013 President's Budget request, including the funding requested for the Fisheries Program, works toward that goal.

The Fish and Wildlife Service proposes for a second year in a row to zero out discretionary payments through the National Wildlife Refuge Fund, which for all intents and purposes is the only part of the PILT program that wasn't made mandatory a few years ago. The Administration's budget proposes to fully fund PILT for another year, which is inconsistent with zeroing out the National Wildlife Refuge Fund.

Simpson Q27: Please explain this apparent inconsistency.

ANSWER: Though they often function similarly, the PILT program and the National Wildlife Refuge Revenue Fund (NWRF) program are two entirely separate programs. The Department makes Payments in Lieu of Taxes (PILT) (31 U.S.C. 6901-6907) on all public domain lands, including Service-reserved land. Unlike the NWRF, PILT payments are based on the population of the county where the public land is located; those counties with a higher population receive higher PILT payments. NWRF payments are made from revenue from sales such as grazing or timber harvest. Local governments share in these revenues. The National Wildlife Refuge Fund (NWRF) is solely a function of the FWS, while PILT payments are made through the Department of the Interior on behalf of several public lands management entities.

The Service proposes the elimination of the entire appropriated portion of the NWRF. The mandatory receipts collected and allocated under the program would continue to be shared with local governments.

The Service is proposing this action because refuges have been found to generate tax revenue for communities far in excess of the amounts lost with Federal acquisition of the land. Refuge lands provide many public services and place few demands on local infrastructure such as schools, fire, and police services when compared to development that is more intensive. National Wildlife Refuges bring a multitude of visitors to nearby communities and so provide substantial economic benefits to these communities.

The Refuge System welcomed more than 45 million visitors in FY 2011. Hunters, birdwatchers, beachgoers and others who recreate on refuges also bring money into local economies when they stay in local hotels, dine at local restaurants, and make purchases from local stores. Recreational spending on refuges generates millions of dollars in tax revenue at the local, county, state and Federal level. According to a report titled Department of the Interior Economic Contributions, dated June 21, 2011, (http://www.doi.gov/news/pressreleases/upload/DOI-Econ-Report-6-21-2011.pdf) in 2010 national wildlife refuges generated more than $3.98 billion in economic activity and created more than 32,000 private sector jobs nationwide.

It is because of these significant economic benefits that national wildlife refuges provide their surrounding communities that FWS is no longer requesting discretionary funding for the program. The Service feels that these funds would be better directed toward higher priority mission-focused programs.

New Energy Frontier

This year's budget request includes a $45M interagency R&D initiative for hydraulic fracturing, spread among EPA, the Department of Energy, and the USGS. The initiative aims to "understand and minimize potential environmental, health, and safety impacts of shale development and production."

Simpson Q28: What, specifically, will the $13 million for USGS be spent on?

Answer: The 2013 USGS budget includes $18.6 million to support the hydraulic fracturing interagency effort, which represents a $13.0 million increase from the 2012 level. These funds will be used to enhance existing research and undertake new policy-relevant research that focuses on potential impacts of hydraulic fracturing and related activities on water quality and availability, monitoring and characterization of stray gas (gas that migrates upwards from one or more subsurface sources to near-surface aquifers and streams, rivers, and lakes), characterizing the gas resource and related geologic framework, impacts on landscapes, habitats, and living resources, induced seismicity, socioeconomic and community changes, and comprehensive data integration.

Specifically, the research will include the following activities. The USGS will develop methodologies for the quantitative determination of water requirements for hydraulic fracturing of major unconventional oil and gas plays. Development and extraction of shale gas and other unconventional hydrocarbon resources requires huge quantities of water for hydraulic fracturing and produces large volumes of fluids during flowback and production of oil and gas. New techniques will be applied to undiscovered resources, which will be beneficial for predicting water requirements in advance of drilling for a given play. The study will involve water budget assessments to determine where the water used in hydraulic fracturing is obtained and the fate of the water once it is injected. More specifically, the research will determine how much of hydraulic fracturing water flows back from development of the wells, how much water is utilized by and discharged from oil and gas production, and the manner by which flowback waters and produced waters are disposed.

In most geologic basins, brackish to saline water occurs below drinking water aquifers. Brackish water can potentially be used in hydraulic fracturing, but is often not viable for human consumption or agricultural use. This brackish water-bearing zone is poorly known and not well characterized in most basins. The USGS proposes to use geophysical methods and water quality data to estimate the volumes and spatial distributions of brackish water resources. In addition, waters of marginal quality from sources such as coal mine pools could serve as potential sources for hydrofracturing, thereby reducing the need for clean fresh water. The location and potential issues associated with using these fluids will be assessed.

Flowback fluids and brines produced from hydraulically fractured wells have been poorly characterized thus far, and may be difficult to distinguish from other potential sources of contamination in shallow aquifers. The USGS will use specially designed techniques and equipment to collect and geochemically fingerprint time-series fluid samples from major unconventional oil and gas plays. This is important for understanding potential contamination as well as for providing baseline information which has not yet been developed for any of these producing reservoirs. In addition, detailed analyses of the geochemistry of produced waters will be conducted, especially the naturally occurring radioactive materials (NORMs) and trace elements. This "fingerprinting" of produced

waters will help determine where some of the flowback water comes from and will assist in understanding the fate and transport of potential contamination.

The USGS is currently studying the occurrence of natural gas in private water wells in northern Pennsylvania, using chemical and isotopic techniques to determine the nature and source of the gas. This activity will be expanded to other gas plays across the country. This so-called "stray gas" can emanate from one or more of a variety of anthropogenic sources including abandoned oil and gas wells, subsurface fluid injection wells, and water wells. Considering the tens of thousands of abandoned wells in Pennsylvania alone, the USGS regards the potential occurrence of abandoned well leakage as a serious issue. Stray gas can also be released naturally by various organic-rich rock formations, abandoned coal mines, landfills, and decaying vegetative matter in alluvial fill (biogenic gas).

The USGS plans to develop a regional groundwater flow model for specific areas of the Marcellus Shale gas play. Little is known about the fate of injected hydrofracture waters that do not return up the wellbore to the surface as "flowback waters" (only about 15 percent of the water in Marcellus wells currently returns to the surface). Industry has stated that there is only a remote chance that these waters, which may contain toxic chemicals, salt, and radioactive elements, can migrate upward into aquifers, streams, or springs. But because no one has actually tested or modeled groundwater flow through these rocks, the fate of the injected waters is unknown.

Geologic mapping and subsurface geological and geophysical surveys will be conducted to improve the understanding of the geometry and structure of the rock formations that contain unconventional oil and gas resources. These studies are critically important, both to detect potential flow paths that conduct contaminated groundwater (as described above), and also to better understand the geochemistry of oil and gas accumulations including the salinity, radioactive elements, and other physical attributes that characterize them. Mapping and analyses of the resource base and underlying geologic framework will help resource management agencies, States, and others predict the location and magnitude of future oil and gas development.

Over the last two years, earthquakes have occurred in areas of significant shale gas production and hydrofracturing. Studies suggest that at least some of these events may have been triggered by the injection of hydrofracture waste fluids (e.g. Arkansas, Texas, Colorado, and Ohio). The USGS will conduct studies to understand the complex interaction of fluid pressures and subsurface stress to determine: 1) what distribution of earthquakes is likely to result from a specified injection operation; 2) what the probability is that ground shaking from an induced earthquake could reach a damaging level at a particular site; 3) to what extent the occurrence of earthquakes induced by deep injection and production operations can be reduced by altering procedures in ways that do not compromise a project's activities; and 4) whether small triggered earthquakes can cascade into larger, more damaging earthquakes.

Research will be conducted on potential impacts to ecosystems, terrestrial and aquatic species, and landscapes. Studies will be conducted to provide an improved understanding of the sensitivity of aquatic organisms to the chemical components of hydraulic fracturing fluids and flowback water to help design effective wastewater treatments and greener hydraulic fracturing compounds. Other studies will evaluate best management practices (BMPs) used in shale gas development for adequacy in protecting sensitive aquatic and terrestrial species and the application of that information to design and test economically viable alternatives to ineffective BMPs. Funding would also be used to determine cumulative impacts of shale gas development on the landscape so as to develop strategies to prevent, minimize, or mitigate ecosystem-level disturbances over time. Additional studies include evaluating the socioeconomic effects of shale gas development on communities and how these effects might be measured over time, and developing a framework for assessing the impact of hydrofracturing on ecosystem services.

The broad availability of information and data related to the multi-disciplinary components of hydraulic fracturing studies is of vital importance to the implementation of collaborative research associated with unconventional oil and gas exploration and production. The USGS Powell Center serves as a catalyst for innovative thinking in Earth system science research focused on multi-faceted issues. The Center will develop an atlas of U.S. unconventional hydrocarbon production areas, resources, and environmental impacts and will develop a spatially explicit approach for assessing the full life cycle of shale gas production and produced waters.

The research activities that the USGS will conduct will be carefully coordinated with the Department of Energy (DOE), the Environmental Protection Agency (EPA), other Federal agencies (including Interior's Bureau of Land Management, Fish and Wildlife Service, and National Park Service), tribal and State entities, academia, and non-governmental organizations. The DOE, EPA, and Interior will soon release a joint Memorandum of Agreement that will guide this interagency effort. This agreement will emphasize the fundamental core competencies of each agency in synergistic ways that lead to complementary and non-duplicative work. Working collaboratively, the agencies will develop a comprehensive Federal research plan to address the highest-priority challenges to safe and prudent development of unconventional natural gas resources through hydrofracturing. The agencies have already begun to work cooperatively on studies of environmental impacts through EPA case studies at prospective drill sites, in areas of potential induced seismicity, in technology enhancements, and in the development of a comprehensive plan to assess the potential effects of Marcellus Shale gas production on the environment.

USGS research results will provide stakeholders with the scientific and technical data and information required to make sound policy, planning, regulatory, technical, and resource management decisions while minimizing the potential environmental, health, and safety risks of natural gas development and bolster public confidence that unconventional natural gas development can proceed safely and responsibly.

Simpson Q29: Why do you need all $13 million in the first year? Can you spend it all?

Answer: Proposed USGS research on hydraulic fracturing is complex and interdisciplinary in nature, and $13.0 million is required and can be spent in the first year. The research involves multiple USGS science programs with the overall goal of understanding and minimizing potential environmental, hazard, and safety impacts of shale gas development and production. Because extensive planning has already been conducted to enhance current studies and to develop and design new research, the USGS is well positioned to start these efforts in a timely manner.

Included among these efforts is the development of networks to collect baseline data on water quality, water availability, earthquakes, stray gas, and sensitive terrestrial and aquatic species. In many instances, these networks will necessitate the acquisition and installation of a significant amount of equipment and supplies that will require continuous monitoring and maintenance.

Funding in the first year is also needed to produce deliverables that can be readily used for making sound policy, planning, technical, and resource management decisions. For instance, the USGS will develop regional and local scale groundwater models to trace fluids injected during hydraulic fracturing to determine whether the effects of the fracturing can be predicted and what the possible effects may be on groundwater. Aerial images will be required to evaluate the effects of hydraulic fracturing-related activities on disturbance of landscapes. Additional staff will be needed during the first year to conduct some of the work.

USGS science for hydraulic fracturing will be conducted in collaboration with partners at the Federal, State, tribal, and local levels. As part of this effort, the USGS will provide part of this funding to States through the National Cooperative Geologic Mapping Program.

Simpson Q30: As you know, BLM draft regulations for hydro fracking were leaked early this year. When can we expect the final draft to be released?

Answer: The BLM released its proposed regulations on hydraulic fracturing on May 4, 2012.

Simpson Q31: The USGS budget contains a $6.8 million increase for a new coastal and ocean science initiative related to energy development.

How much is in the base for coastal and ocean science?

Answer: The 2012 enacted level includes $2.0 million in base funding for activities supporting this initiative. These funds provide access to data, interpretive maps, and assessments of seabed and coastal conditions and vulnerability. These science products are derived from existing data and from increased understanding resulting from USGS

research projects. Products will respond to regional needs to inform coastal management and planning.

Simpson Q32: How is this new initiative different from what USGS has already been doing?

Answer: Most of the funding requested for this initiative will support development of new data, maps, and assessments of coastal and ecosystem vulnerability along the Arctic Alaskan Coast and in the Pacific Island territories to support sustainable management of resources. These regions are particularly sensitive to changing coastal conditions and development, contain substantial living and non-living resources under Interior's stewardship, and support native and indigenous populations that depend on coastal resources. This initiative will provide these regions with access to science-based products to support planning and management similar to those developed by the USGS for mainland coastal regions.

Simpson Q33: Compare and contrast the USGS role with that of the Bureau of Ocean Energy Management or the Bureau of Safety and Environmental Enforcement.

Answer: The USGS is the Nation's science and information agency, and is responsible for providing science to characterize and understand the processes that define hazard vulnerability, resource availability, and ecosystem health and function. The USGS, unlike the Bureau of Ocean Energy Management (BOEM) or the Bureau of Safety and Environmental Enforcement (BSEE), has no regulatory or enforcement role. The USGS provides science-based products to understand the regional character, dynamics, and vulnerability of coastal and marine systems. USGS research informs decision-making by other agencies, including BOEM and BSEE, providing broad understanding and characterization that informs more site- and resource-specific assessments by regulatory and management agencies.

Simpson Q34: Why not put the $6.8 million increase into BOEM or BSEE instead of USGS?

Answer: USGS research programs, including this initiative, provide integrated understanding of coastal, marine and Great Lakes conditions and processes to inform decision-making. This is achieved through multi-disciplinary studies, drawing on the breadth of USGS expertise and capabilities, which comprehensively address the multiple uses and impacts within these systems. In support of Interior's broad responsibilities this initiative will address the potential for and consequences of natural hazards, environmental change, and energy and other development activities to ensure sustainable coastal ecosystems and communities. Energy development potential and consequences are only a few of the factors that can be informed by the comprehensive understanding developed through this research effort. The USGS is the only Federal research bureau with the broad science mission and the diversity of research expertise required to meet these objectives. In addition, as a science agency with no regulatory, management, or

enforcement roles, the USGS is an unbiased provider of credible scientific information to inform decision-making.

White Nose Syndrome in Bats

The USGS budget includes $1.8 million for research on white-nose syndrome which is decimating bat populations across the country. USGS has found that bats contribute $3.7 billion to the agricultural economy by eating pests that are harmful to agricultural and forest commodities. Given the ramifications, I would like to presume that the Department of Agriculture is taking significant action in collaboration with Interior.

Simpson Q35: Is that the case, and if so can you talk a little bit about this collaborative partnership?

Answer: The proposed increase of $1.0 million in the Wildlife Program would be used to enhance surveillance and diagnostic capacity to detect the continued spread of WNS; bolster research on environmental factors controlling persistence of the fungus in the environment, develop management tools, particularly development of a vaccine; and conduct research on mechanisms by which WNS causes mortality in bats. The ultimate goal is to provide management solutions to reduce the impacts of this devastating disease.

The USGS is working collaboratively with USDA/Forest Service on several projects related to bat mortality and the development of molecular detection methods for screening cave soils for the presence of the pathogen that causes the syndrome. The information collected and research conducted by the USGS, FWS, and other Interior bureaus will be useful to the USDA in evaluating the impacts of the syndrome to pest-control services provided by bats. A recent article in the journal *Science*, entitled "Economic Importance of Bats in Agriculture," was co-authored by a USGS scientist and has helped to highlight those impacts.

Cooperative Landscape Conservation

The USGS budget includes a $16.2 million increase for "science in support of ecosystem management for priority ecosystems." I thought that was basically the mission of Interior's Landscape Conservation Cooperatives, which are funded through the Fish and Wildlife Service.

Simpson Q36: Why the need for both? Please explain.

Answer: The 2013 budget request for the USGS includes a $16.2 million increase for interdisciplinary research activities in priority landscapes and across the breadth of USGS science mission areas. The increase is intended to fund fundamental science questions related to the restoration of priority ecosystems, including control of invasive species of greatest concern such as pythons in the Everglades; Asian carp in the Great Lakes and Upper Mississippi; flow conditions and water quality in the San Francisco Bay-Delta; and water availability and quality and fish habitats in the Klamath Basin. This information is

available for application by resource managers, including the LCCs, in conservation planning and landscape level resource management.

The mission of LCCs includes the coordination of conservation planning and management activities at a landscape level, the application of science to high priority conservation needs, and identification of key science needs. In general, the LCCs are designed to focus on application of science rather than generating fundamental science.

USGS research is necessary to enable resource managers, such as those involved with LCCs, to make informed decisions, to help resolve and prevent resource management conflicts, and to support Interior's public trust stewardship responsibilities for the Nation's lands and waters. USGS studies are designed to serve local ecosystem management needs and provide knowledge and approaches transferable to similar ecosystems across the Nation. These efforts have a much broader geographic scope than any individual LCC.

Simpson Q37: The LCC's appear to be more partnership-based than the USGS research program. Is that the case, and, if so, shouldn't we be investing in the LCC's primarily?

Answer: No, on both counts. USGS's broad suite of ecosystem-related research activities are extensively partnership-based to ensure that science activities are well-coordinated with the management needs of partners and that scarce funds are utilized and leveraged to the greatest extent possible. The priority ecosystems proposed for additional scientific research under the $16.2 million increase are a prime example. USGS science within these areas is focused on the restoration of economically and socially important ecosystems across the United States, and informed by extensive communication with Federal, State, local, tribal, NGO, and academic partners. For example, USGS science is being applied in the Chesapeake Bay as part of a broad coalition of Federal, State, and local partners supporting implementation of the Chesapeake Bay Executive Order. In the Great Lakes region, USGS Asian carp research on early detection and control technologies is being conducted in support of the Asian Carp Regional Coordinating Committee which consists of Federal, State and local agencies and other private stakeholders. The $16.2 million increase will support fundamental science on which targeted restoration efforts in these specific ecosystems depend.

DOI's Landscape Conservation Cooperatives (LCCs) on the other hand, have been established to create a national framework to support regional partnerships across broad ecological landscapes to establish and maintain lasting links between science and management. The role of the LCCs is to work with local partners to define science needs and apply and translate scientific results into resource management tools. This role and structure is complementary to, rather than duplicative of, the fundamental science undertaken and provided by USGS in support of the specific ecosystem restoration efforts described above.

Simpson Q38: A closer look at the Fish and Wildlife Service's budget reveals $13.5 million for ecosystem restoration activities that appear to be separate from the budget for LCC's. Of this amount, an increase of $2.5M is for Great Lakes restoration.

Why is the Administration asking separately for Great Lakes restoration funding increases in the Fish and Wildlife Service budget, when the Service already receives a significant portion of funding through EPA's Great Lakes Restoration Initiative?

Answer: The Service's 2013 budget request includes additional funding of $2.9 million for nation-wide activities to control the spread of Asian Carp. The U.S. Fish and Wildlife Service (Service) currently implements two different strategies to address the threat of Asian Carp in the United States. The first is The *Management and Control Plan for Bighead, Black, Grass, and Silver Carps in the United States* (Plan), which is national in scope. Implementation would be done through the Service, in cooperation with partners. Its goal is eradication of all but "triploid" grass carp in the wild. The second, the more recent *Asian Carp Control Strategy Framework* (Framework) created in 2010, focuses on Great Lakes waters only. This approach is being implemented through the Asian Carp Regional Coordinating Committee (ACRCC), a partnership of Federal, Great Lakes states, and local agencies led by the White House Council on Environmental Quality. The latest version of the 2012 Framework was released in February 2012.

The Service continues to provide technical assistance to Midwest Region States to prevent the spread of these fish and to share information learned from Asian Carp control efforts in other areas. The Service will soon establish an environmental DNA (eDNA) facility that will be attached to the La Crosse Fish Health Center in Wisconsin. The new facility will increase the Service's capacity to test water samples for traces of Asian Carp DNA.

The Service's 2013 requested increase will be used for early detection and surveillance of the leading edge of Asian Carp distributions. If funded, work could include collecting and analyzing water samples for eDNA testing from state and Fish and Wildlife Conservation Offices in areas potentially susceptible to Asian carp invasions. Work plans would need to be developed and prioritized, but Asian Carp intrusion into the upper Mississippi River could be considered a high priority area. Other high risk-ecosystems include the San Francisco Bay Delta and Columbia River Basin. Early detection and surveillance of the leading edge of Asian Carp distributions is part of a broader national containment strategy outlined under the National Asian Carp Management and Control Plan.

Simpson Q39: Why is the Service's ecosystem restoration funding separate and apart from LCC's? Shouldn't the funding go to the LCC's to ensure that the programs are aligned and focused on the highest priorities?

Answer: The Service's funding for ecosystem restoration goes to collaborative efforts in which many partners work together to implement management actions to restore coastal areas and habitats, improve natural resource management and protect endangered species

in areas such as the Everglades, Gulf Coast, Chesapeake Bay and Bay Delta. Many of these large-scale projects are being done in collaboration with Landscape Conservation Cooperatives (LCCs).

By locating ecosystem restoration funding in programs such as refuges and fisheries, the Service is providing resources to the project managers and biologists who execute the specific actions called for in restoration plans such as the California Bay Delta Conservation Plan.

The LCCs are landscape-scale conservation partnerships that produce and disseminate applied science products for resource management decisions; they do not implement direct conservation actions. LCCs promote efficient and effective targeting of Federal dollars, as well as use fiscal resources, personnel and real property assets of their partners to obtain and analyze the science necessary for the Service and its partners to protect fish, wildlife, plants and their habitats. Each LCC is guided by a steering committee comprised of its key partners who identify a shared vision of the sustainability of natural and cultural resources in that landscape. The partners identify the highest priority science needs; it is not directed by the Service or the DOI. While LCC science may benefit the restoration of a particular ecosystem, each LCC determines what the highest priority needs are in that landscape.

The LCCs advance the goals of ecosystem restoration by supporting efforts such as those of the Gulf Coast Ecosystem Restoration Task force that, in cooperation with the Gulf States, is seeking to address the long-term impacts of recent disasters (e.g., the Deepwater Horizon oil spill and hurricane Katrina). The Gulf LCCs (South Atlantic, Peninsular Florida, Gulf Coastal Plans and Ozarks, and Gulf Coast Prairie LCCs) provide conservation planning, decision support tools, prioritized and coordinated research, and help design inventory and monitoring programs to meet the regional restoration goals of the Gulf Coast Restoration Strategy. In addition, the Service in conjunction with NOAA, has established a Gulf Coast liaison position to work with the Gulf LCCs and the States in the Gulf Coast region to help identify best practices, connect conservation efforts, identify data gaps and avoid duplication of effort as they strive to restore this area.

The North Atlantic LCC also is very active in Chesapeake Bay restoration. For example, the LCC is working on science projects to support conservation of at-risk species such as the Red Knot and the Horseshoe Crab. The LCCs are a mechanism to bring together the resources of all partners to answer fundamental questions about habitat management and species conservation.

Simpson Q40: The 2012 House report expressed concern about the high unobligated balances in the Natural Resource Damage Assessment and Restoration program. The report encouraged the Department to consider better utilizing existing bureau personnel from other restoration programs to assist in project identification, design, and implementation as a means to speed up the obligation of these funds. I understand that the program is undergoing an internal review.

When do you anticipate completing the review and reporting back to us?

Answer: The Department's Office of Restoration and Damage Assessment expects to complete the report by June 2012.

Simpson Q41: Have you considered the program's role in relation to other bureau programs?

Answer: Since its inception in 1992 as a Departmental Program, the Natural Resource Damage Assessment and Restoration program has led and coordinated the efforts of six bureaus and three offices within the Department to accomplish its mission. The Restoration Program is an integrated Departmental program, drawing upon the interdisciplinary strengths of its various bureaus and offices.

For example, considerable restoration is implemented on DOI-managed lands in cooperation with land managers in the Fish and Wildlife Service (FWS) National Wildlife Refuge System, the National Park Service, and the Bureau of Land Management (BLM) National Landscape Conservation System to determine if there are components of existing management plans that have a nexus to the natural resource injury that triggered the damage assessment. Similarly, the Program consults with staff from the FWS Migratory Birds Joint Ventures Program to identify potential projects with a nexus to the underlying injury, sometimes resulting in matching funds from damage assessment settlements with funds from non-governmental organizations to seek and receive competitive grants under the North American Wetlands Conservation Act or the Coastal Wetlands Grant Program. In addition, the Restoration Program can point to numerous examples of cooperation with a variety of programs throughout the Department (e.g. Partners for Fish and Wildlife; FWS Coastal Program; FWS Endangered Species; Invasive Species; Bureau of Indian Affairs and Tribal Natural Resource Management, and the BLM California Coastal National Monument) to expedite restoration planning, design, and implementation.

Strengthening Tribal Nations

The BIA budget claims $19.7 million in savings from consolidation that the agency hasn't implemented, planned, or even consulted on with Tribes.

Simpson Q42: Are you not putting the cart before the horse, by claiming savings that you haven't even realized yet?

Answer: The FY 2013 budget request identifies $19.7 million in organizational streamlining and $13.4 million to significantly reduce the administrative costs associated with the wide range of services Indian Affairs delivers through its programs. Indian Affairs will engage in extensive consultation to identify strategies to ensure that tribal needs and priorities are addressed throughout the process.

Indian Affairs is in the process of scheduling extensive consultation meetings with Tribes and believes the targeted savings can be realized by strategic position management, shared resources and potential program and office consolidation.

Simpson Q43: Reorganizations have to be approved by this Committee, so when do you plan on submitting a reorganization proposal?

Answer: Once the consultations have occurred, Indian Affairs will incorporate the results and recommendations into a plan for a streamlined and cost effective organization. If the plan requires reorganization within the bureau, Indian Affairs will submit a proposal to the Committee for approval.

Simpson Q44: What assurances can you give us that this consolidation, and the associated loss of 192 FTE, will not negatively impact services for Indian Country?

Answer: The goal of any proposed consolidation within the BIA would be to improve the efficiency of service delivery to the Tribes with little, if any, negative impact. Any potential consolidation that could affect the delivery of services to Tribes, will require the support and participation of the Tribes. The results and recommendations from the consultations will be included in implementing a plan for a streamlined and cost effective organization.

Simpson Q45: Please tell us about Interior's efforts over the past several years to reduce crime in Indian Country.

What goals did you set, what strategies did you put into action, and were you able to achieve your goals?

Answer: Since FY 2004, the Department of the Interior's budget request has prioritized significant increases for public safety and justice programs every year, with FY 2008 marking the first year of the Protecting Indian Country initiative. During this time, the BIA has focused on increasing the law enforcement presence in Indian communities while strengthening detention/corrections and tribal courts programs to foster comprehensive and effective justice systems for tribes.

With an overall goal of reducing violent crime in Indian country, Indian Affairs employed data gathering strategies to assemble and analyze crime statistics for all law enforcement programs to determine the areas of greatest need and highest priority to receive additional resources. In 2009, Indian Affairs focused its effort on a pilot project with the goal of reducing local violent crime by five percent over a 24 month period through development and implementation of a community assessment and police improvement effort in coordination with the Tribes and several Federal partners.

In FY 2010 – FY 2011, the High Priority Performance Goal (HPPG) pilot project was implemented in four communities with excessive crime problems and began with a full assessment in an effort to determine the root causes for the excessive crime. The four

communities were Mescalero Apache, Rocky Boy, Standing Rock, and Wind River. Using the information obtained in the assessment, an action plan was developed that was comprised of the best strategies and practices to implement sustained crime reduction in each community. The plan included customized community policing programs suitable to the community to ensure the best level of success; strategic operation practices tailored to the community for stronger patrol and enforcement within current staffing levels; and establishment and mediation of any necessary partnerships with various Federal, State and local programs such as the Drug Enforcement Administration (DEA) or drug task forces, social services, and rehabilitation programs. As a result of the efforts in FY 2010 and FY 2011 on the four sites, violent crime was reduced by 35 percent from the overall baseline total established from the baseline years FY 2007 – FY 2009.

Simpson Q46: I see that you're proposing additional investments in '13 to expand upon past efforts. Would you say then that you've been successful?

Answer: The final results of the 24 month (October 1, 2009-September 30, 2011) goal period are summarized in the FY 2013 President's Budget. A detailed report is currently in the review process within Indian Affairs. The anticipated completion and distribution of the report is July 2012. At the end of the goal period, the BIA Office of Justice Services (OJS) achieved an overall 36 percent decrease in violent crime across all four High Priority Performance Goal (HPPG)sites.

- **68** percent reduction in violent crime at Mescalero
- **40** percent reduction in violent crime at Rocky Boy
- **27** percent reduction in violent crime at Standing Rock
- **7** percent increase in violent crime at Wind River.

Wind River was the only HPPG location showing an increase in violent crime over the 24 month period. We believe the seven percent increase is attributable to multiple factors:

The increase of sworn police officers hired by Wind River contributed to a huge improvement in public trust and thereby increased reporting. The violent crimes reported to law enforcement showed a 53 percent increase the first year. Reviewing the violent crime statistics, the rise of violent crime being reported was noticed at the time of the influx of sworn law enforcement staff.

Based upon the current violent crime statistics, Wind River law enforcement personnel have shown success reducing violent crime in the second year by implementing sound crime reduction strategies. The statistics show the program is trending in the right direction as a 30 percent decrease, or 43 fewer incidents than in 2010, in violent crime were observed from 2010 to 2011 alone.

Based upon the current trend, OJS believes the crime reduction strategies and staffing levels are sufficient to achieve and maintain the reduction in violent crime as outlined in the HPPG initiative. In fact, the Wind River violent crime statistics for the three months following the end of the initiative (October, November, and December 2011), have

shown an additional decrease of 17 violent crimes (68 percent) from the same three months of the previous year, and an 11 percent reduction since the beginning of the initiative.

Based on the success of the pilot project's first four locations, two additional reservations were identified for implementation in FY 2012 – FY 2013. The two include reservations are San Carlos Apache Tribe in Arizona and the Rosebud Sioux Tribe in South Dakota.

Simpson Q47: What improvements can be made?

Answer: One area where continued improvement can be made is in crime data verification. To ensure the High Priority Performance Goals (HPPG) crime statistics were accurate and the processes for Uniform Crime Reporting (UCR) classification and scoring were standardized at these locations, OJS put together a multidisciplinary team comprised of Indian Affairs (IA), Federal Bureau of Investigation (FBI) and Department of Justice (DOJ) Bureau of Justice Statistics (BJS) personnel to verify all crime data for FY 2009, FY 2010, and FY 2011.

Eight IA and three BJS personnel completed UCR training conducted by the FBI UCR program, and the multi-disciplinary teams were sent out to complete the verification initiative. Over the course of the crime data verification initiative, the FBI provided more than 20 UCR personnel from Clarksburg, West Virginia, that included four of the most senior UCR auditors in the FBI. Each of the four teams was provided a single tool to ensure the consistency of documented offenses across the HPPG sites, and the teams communicated regularly to share information, challenges, and best practices.

This team will continue to verify all crime data for the HPPG sites throughout the duration of the HPPG initiative. The lessons learned continue to shape the BIA's approach to crime reporting and implementation of the necessary changes to improve the accuracy and consistency of crime reporting in Indian Country.

Simpson Q48: How did you come to choose the San Carlos Apache Tribe in Arizona and the Rosebud Tribe in South Dakota as the two places to expand your efforts in '13?

Answer: The San Carlos Apache Tribe in Arizona and the Rosebud Sioux Tribe in South Dakota were selected from the 10 reservations ranked highest in terms of crime rate and officer staffing need in FY 2011. Also key to their selection was the level of commitment of the Tribal leadership from the two targeted reservations, gained during discussions with BIA Office of Justice Services (OJS) management in late September 2011. Both Tribes accepted the corresponding responsibilities and welcomed the HPPG initiative on their reservations beginning in October 2011.

Simpson Q49: Will you continue to detail officers from other Department bureaus?

Answer: Indian Affairs will continue to leverage outside resources by continuing to partner with other bureaus within the Department, as well as other Federal agencies to address near term critical officer shortages at the HPPG Indian communities.

Simpson Q50: Please explain the $2.6 million decrease in BIA for law enforcement special initiatives.

Answer: The FY 2013 budget includes a number of reductions to ensure the most effective prioritization of available Indian Affairs (IA) resources to address core responsibilities to American Indians and Alaska Natives. In the area of public safety and justice, decreases totaling $2.6 million are proposed.

This amount includes a decrease in funding of $1.0 million in assistance to tribal law enforcement programs with jurisdictions that border on or near Mexico and represents a shift in emphasis from a geographic driven distribution of resources under this initiative to an allocation based on crieria. The primary methodology allocates additional public safety and justice resources based on objective criteria such as crime statistics, land base, and resident population. In response to tightening federal budgets the BIA proposes to discontinue the one million dollar program that currently benefits just two Tribes, with the main qualification for receiving these funds being their proximity to national borders. Though it is valid criteria for consideration in determining the overall public safety needs of a Tribe, as currently implemented this program could be viewed as preferential treatment for these select Tribes at a time when many others are experiencing comparable, or even higher violent crime rates. Given the fiscal constraints of FY 2013, this reduction is proposed in concert with an increase to Criminal Investigations and Police Services that will employ the BIA's primary methodology to distribute the additional PS&J resources. This represents a reprioritization by the BIA to level the playing field for tribal PS&J programs nationwide, and set the BIA on a path to more objective, data driven resource distribution.

Also included in the request is a reduction of $550,000 that will eliminate one Intelligence Analyst position located at the El-Paso Criminal Intelligence Center (EPIC) and two positions at drug enforcement field locations in Muskogee, OK and Phoenix, AZ. Through the remaining three intelligence Analyst positions, the BIA will continue to maintain real-time access to intelligence related to criminal enterprise and narcotics trafficking and distribution.

The final component is a reduction of $1.0 million that supports the Incident Management Analysis and Reporting System (IMARS). The system is a Departmental sponsored project that was developed to ultimately provide all bureau justice service agencies with the ability to accurately report incidents and transmit those reports for inclusion in various state and Federal databases.

Simpson Q51: For the second year in a row you have proposed to zero out replacement school construction. There are 183 BIE schools and dormitories. Simply replacing one a year is ridiculous. Two a year should be, I believe, an absolute minimum.

Is the federal government not responsible for building, maintaining, and eventually replacing those buildings?

ANSWER: Yes, the Federal government is responsible for the maintenance, repair, and eventual replacement of the education buildings. The current Replacement School Construction priority list was published in 2004, and BIA is currently working on the next iteration of the priority list. It will take at least 12 months to develop a revised final published list. There was a substantial investment of $285.0 million as a result of the American Recovery and Reinvestment Act; many of these projects are still under construction. In light of this investment, the FY 2013 request is maximizing funding available for other vital Indian Affairs programs. As noted in the Bureau of Indian Affairs FY 2013 Congressional Justification, the Bureau's priority for FY 2013 is the maintenance and repair of existing education facilities.

Simpson Q52: When is the Department going to complete a new school construction priority list?

ANSWER: The current Replacement School Construction priority list was published in 2004. Of the fourteen school projects on the list, all but three have been completed or are under construction.

As required by the No Child Left Behind legislation, the Secretary of the Interior appointed a Negotiated Rule Making Committee to recommend the process prioritizing the school construction priority list. That Committee has completed their report which will be delivered to Congress and the Secretary in March or April of 2012.

Immediately after receipt of the report from the Committee, the Secretary of the Interior will begin the process of developing the next priority list in consideration of the recommendations of the Committee. Through a process of collaboration among schools, Tribes and the Assistant Secretary for Indian Affairs, a worst school first priority list of construction will be published. It is anticipated that the list will be approved and published prior to January 1, 2013.

I see a lot of what I would call "nice-to-do" projects in the Fish and Wildlife Service's budget and I question why we aren't putting some of this funding into schools instead. For example, here are just a few projects:

- Upgrade Visitor Center
- Repair Boardwalk and Observation Platform
- Demolish Flood-Damaged Buildings
- (Another) Repair Boardwalk, Phase Two
- Replace Fishing Pier, Ramp, and Slab

Simpson Q53: The Indian Guaranteed Loan Program is facing a $2.1 million cut, "while the program undergoes an independent evaluation."

Is that not a guilty-until-proven-innocent approach?

Answer: Indian Energy & Economic Development plans to conduct a strategic review of the Indian Affairs Loan Guarantee Program that focuses on the effectiveness of the program and its results. The evaluation will help strengthen the program's goal to improve access to capital opportunities for Native American businesses. Indian Affairs is reviewing the bid for proposals and will keep the Committee apprised of major milestones in the program evaluation process. The review will be initiated this year with a target completion date of early next calendar year.

Simpson Q54: What prompted the evaluation, and who is conducting it?

Answer: Indian Affairs is reviewing the bid for proposals and will keep the Committee apprised of major milestones in the program evaluation process.

As the only Federal loan guarantee program solely dedicated to Native American economic development, the program and its implementation is an important priority for Indian Affairs. As such, the Office of Indian Energy and Economic Development is planning to conduct a review to establish a strategic direction for the program and to be able to effectively demonstrate its success in creating jobs and building business capacity of Native businesses.

IEED is participating in the White House Administrative Flexibility Group on Loans/Credit. Through this workgroup, IEED is exploring ways in which the program can collaborate with other Federal loan and credit programs to better serve Indian Country. This includes looking at improving efficiencies and not duplicating services. Indian Affairs does not believe the Indian Loan Guarantee Program duplicates service because of its role solely dedicated to Native American economic development loans and the only program that uses leasehold interests on trust lands as security and the program issued guarantees can be enforced in tribal courts.

Simpson Q55: When will it be completed?

Answer: The review will be initiated this year with a target completion date of early next calendar year.

Simpson Q56: Road Maintenance is down slightly from FY12. I've had the discomfort of riding on some of these roads and I'm skeptical that the decrease reflects a declining need.

Why the decrease?

Answer: In FY 2012, the BIA Division of Transportation and Road Maintenance program will expend approximately $25 million to maintain, repair, and rehabilitate Indian Affairs' 29,000 miles of road and 940 bridges. The Division and Indian Tribes

work to keep BIA-owned streets, roads, highways, and bridges in a state of good repair through regular maintenance – activities such as sealing cracks, repairing pavement, cleaning and repairing drains, fixing signals, and sweeping streets. The proposed reduction will have a minimal impact on the current condition road maintenance activities. In FY 2013, Indian Affairs will continue to coordinate efforts with Tribes in order to meet the needs of tribal communities.

Simpson Q57: I'm concerned that the combined $6 million in cuts and the reduction of 14 FTE from the Office of the Special Trustee will further strain an office that is still dealing with 78 pending cases involving 108 Tribes.

How will these cuts impact the Office's ability to resolve these cases?

Answer: The Office is fully committed to resolving the current cases and is confident that it can accomplish its mission with the requested level of funding. Overall, OST's budget request is $6.1 million below FY 2012, primarily due to improvements in operational efficiencies, office consolidations, and other cost savings. The reduction in FTE is expected to be achieved through attrition. The budget for the Office of Historical Trust Accounting (OHTA), the office primarily responsible for addressing pending litigation with the Tribes, has a program change reduction of $3.3 million below FY 2012. However, no reductions in FTEs are planned for OHTA. This reduction will be absorbed through decreases in costs associated with contractor assistance. Reductions in the FY 2013 budget are not expected to adversely impact OST settlement efforts.

Simpson Q58: I see here that $500,000 is included in the USGS budget to "understand the impacts of climate change on tribal lands." This is a sore spot with tribes and one that we continue to hear about. Interior has invested millions on predicting the impacts of climate change on fish and wildlife and the greater biological systems, in part to determine where to conserve land so that plants and animals can move and adapt to the changing environment. But what about the people who are tied to their land both culturally and economically? Let's face it: This country has established reservations on some of the harshest lands in the West. And USGS rain models show that the West is only going to continue to get drier. The relatively small amount of money that Interior has spent studying climate change on tribal lands, both through the Fish and Wildlife Service's LCC's and now this $500,000 in USGS misses the point, which boils down to simply this:

How is Interior going to meet its trust responsibilities to American Indians and Alaska Natives in the face of a changing climate?

Answer: Adaptive management is a technique being used to ensure trust responsibilities are being met. Land management is strengthened through Integrated Resource Management Planning and other more specific land management plans such as forestry. This allows resource management decisions to address climate related issues as they appear.

The Interior's approach to meeting its trust responsibilities in the face of a changing climate has a dual focus: capacity building and adaptive resource management. Meeting these responsibilities head-on requires better interaction between the researchers and scientists gathering data on climate change and the land stewards (both federal and tribal) making decisions on how best to manage natural resources. As a whole, this must be a joint effort amongst not only DOI agencies, but all aspects of federal government, with marked improvement in inter-agency communication and cooperation on addressing climate change issues. Strides are already being made in this direction. An excellent example of which is the National Fish, Wildlife, and Plant Climate Adaptation Strategy. This document, drafted with input from various federal, tribal, and state agencies, provides an overview of impacts and suggestions for strategies and actions that all levels of government can adapt for their specific uses.

Increasing our understanding of the impacts of climate change on the vulnerability of tribal lands and communities is critical to meeting this challenge. Climate and adaptation research being conducted by other DOI bureaus and federal agencies is applicable across broad landscapes and ecosystems. Much of this work can be adapted to meet tribal resources and land management needs. The most efficient approach is to incorporate tribal concerns and issues into existing research networks and activities: specifically the LCCs and CSCs. The BIA has only had a climate change program for two years, with minimal funding available. In FY 2013, the program plans to shift focus to supporting BIA and tribal collaboration with the LCCs and CSCs, providing tribal input and perspectives to climate issues. Tribal involvement not only benefits the tribes themselves, it also has positive impacts on the research being conducted. Tribes have been stewards of their natural resources since time immemorial and, as such, have a unique relationship and understanding of their environment. This information is commonly referred to as traditional ecological knowledge (TEK). Combining TEK with mainstream climate research is essential for developing a comprehensive response to climate change impacts on tribal resources and practices. A budget increase of $800,000 is requested to support this task, ultimately contributing to increases in performance in the DOI High Priority Performance Goal to identify vulnerable areas and species and implement adaptation strategies.

Climate change is not something that tribes will face ten, or even five, years down the road. It's something being dealt with today. The capacity building discussed above is critical, but the second approach of the DOI plan, adaptive resource management, is just as critical to dealing with current issues. Adaptive management is an iterative decision process that promotes flexible decision making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood. This approach allows climate-related issues to be incorporated into issues as they appear. Thus, the climate-related data and knowledge being accumulated both by the tribes and other partners in LCC/CSC activities can be used to better inform managers and properly adjust adaptive management approaches as it is developed. Resource management is also strengthened through integrated resource management planning and other, more specific, management plans (e.g., forestry and water resources). Climate change is not a phenomena occurring independently from other environmental processes.

As such, climate adaptation planning should not be an independent activity, but rather incorporated into the types of existing management planning previously described. The BIA continues to offer technical assistance to tribes in creating these management plans and enhancing existing plans to include climate components.

Water Challenges

In October 2011, the Interior Department released a report entitled "Strengthening the Scientific Understanding of Climate Change Impacts on Freshwater Resources of the United States." The report underscores the importance of adequate water measuring and monitoring systems to track water availability and quality to assist water managers in decision making about water allocations and infrastructure. Almost as if in spite of this report, the USGS budget includes the following cuts in its water program: -$2 million from groundwater resources availability studies; -$6 million from national water quality assessments; -$2.8 million from the national streamflow information program; -$3.3 million from hydrologic networks and analysis; -$5 million from the cooperative water program; and, for the second year in a row, a termination of the Water Resources Research Act Program. All in all, we're looking at over $25 million in reductions to USGS water programs.

Simpson Q59: Is that being WaterSMART?

Answer: The 2013 budget request reflects the Administration's commitment and strong support for USGS science as a foundation for resource management decisions. Recognizing constrained fiscal resources, this budget reflects careful and difficult decisions that balance USGS research, assessment, and monitoring activities to ensure USGS's continued ability to address a broad array of natural resource and natural science issues facing the Nation. The 2013 budget request supports a continued legacy of world-class science to support this decisionmaking.

As competition for water resources grows, so does the need for better information about water quality and quantity. WaterSMART, through the combined efforts of the USGS and the Bureau of Reclamation, is intended to provide information to address the Nation's water challenges. The 2013 request includes a $13.0 million increase for WaterSMART that will provide information and tools for State, local, and tribal entities to manage their resources. WaterSMART supports the Department of the Interior's Water Challenges initiative and includes the establishment of the National Groundwater Monitoring Network as authorized in the 2009 SECURE Water Act (P.L. 111-11). Groundwater is one of the Nation's most important natural resources as it is the primary source of drinking water for half of the nation, provides about 40 percent of the irrigation water used for agriculture, sustains the flow of most streams and rivers, and helps maintain a variety of aquatic ecosystems. In 2013, the USGS will transition from a pilot-scale National Ground Water Monitoring Network data portal to a production scale portal. Additionally, the proposed budget for WaterSMART supports the development of a plan to study brackish groundwater, which could be an important water supply for the future. The WaterSMART increase also supports analyses of the influence of water

quality on water availability and continues water availability assessments in the Colorado River Basin, the Delaware River Basin, and the Apalachicola-Chattahoochee-Flint Basin.

The 2013 budget also supports the USGS Rapid Disaster Response effort with a $5.5 million increase to the National Streamflow Program for Federally-supported streamgages. An increase of $5.4 million to USGS Water programs for hydraulic fracturing research will support efforts to better understand and minimize potential environmental, health, and safety impacts to water resources. These activities will help ensure protection of the Nation's water supply while helping achieve energy independence. Increases of $2.1 million to the Water programs for priority ecosystems will lead to improved understanding of water issues in the California Bay-Delta, the Chesapeake Bay, the Columbia River, the Puget Sound, and the upper Mississippi River.

These investments in water science research and development reflect the Administration's commitment to advancing the well-being of the American people, economy, and environment through strategic investments in innovative science that address some of our Nation's most pressing water management needs. In a climate of limited economic resources, the 2013 budget request balances the need to maintain the long-term data gathering capabilities stakeholders across the country depend on, with the need to translate scientific discoveries into tools that water managers need to address growing national water management challenges.

Questions for the Record from Mr. Calvert

Fees on Domestic Energy Production

As I'm sure you are aware, recently, oil reached a 6 month high and many industry analysts are predicting that this summer will see record setting gas prices. American consumers are already feeling the hit at the pump.

This year's budget resurrects many proposals from the President's FY12 budget that sought to raise fees on, and increase the operational costs of, domestic oil and gas production – proposals that were rejected by this subcommittee in FY12. You and I both know that fees don't just disappear after they are paid by the producer; they are passed along to the consumer. Both the industry and CRS agree that these increased fees could increase energy prices, decrease American energy production and decrease federal energy production revenues, increase dependence on foreign oil in the long run and send American energy sector jobs overseas.

Calvert Q1: Has Interior studied the impacts of its proposed fees to determine what the economic costs of these proposals will be in terms of energy costs, domestic production and jobs? If so, what were the findings? If not, given potential impacts on jobs and prices, do you feel it is appropriate to make these fee proposals without fully understanding their impacts?

Answer: There have been no formal studies of the impacts of the fees for inspecting oil and gas operations and the non-producing oil and gas lease fees. However, it is worth noting that the non-producing lease fee is intended to encourage development of oil and gas leases. To the extent it is successful in doing so, the overall near-term economic impacts would be positive, resulting in higher domestic production and increased royalty revenues which are shared with the States and which contribute significantly to Federal government revenue collections. The proposed inspection fees would replace appropriations with an alternative funding stream to support the onshore oil and gas lease inspection program, ensuring high levels of environmental and production verification inspections. Collection of these fees is consistent with the principle that users of the public lands, rather than taxpayers, should pay for the cost of both authorizing and oversight activities. These fees are similar to fees now charged for offshore inspections, and to cost-recovery fees charged for other uses of Federal lands and resources. The fees are very small compared to the value of oil and gas produced on Federal lands, so the effect of the fees on the incentive for companies to produce these resources is expected to be negligible.

Santa Ana Sucker

Secretary Salazar, as I'm sure you are aware, the Fish and Wildlife Service has designated expanded critical habitat on the Santa Ana River for the ESA-listed Santa Ana sucker fish. While this action was locally viewed as having the potential to be overly

restrictive of future water supply development projects in the region and with little scientific underpinnings to support the designation, I was encouraged to hear that the Service was also reaching out to and participating with local water agencies in a collaborative effort to find common ground on protecting locally developed water supplies and endangered fish in the process.

I encourage you and the Service to continue to work with our local water agencies in identifying actions that can protect both wildlife and our region's important water resources for future generations.

Calvert Q2: Can you please provide the Subcommittee with an update on the progress of this collaborative effort?

ANSWER: The U.S. Fish and Wildlife Service appreciates your comments. The Service continues to regularly meet and provide technical assistance with all members of the collaborative group. To assist in their project planning efforts, the Service will soon be providing the collaborative group with an interim conservation strategy that will help identify short-term and long-term conservation needs of the fish.

Ocean Water Desalination Projects

Mr. Secretary, there is interest growing in our coastal communities in California to study the feasibility of Ocean Water Desalination Projects. Such projects would provide new and reoccurring water sources to a region of our country which have very high water demands and those demands only increase year after year.

Calvert Q3: Has the Department looked at ways in which it could support Ocean Water Desalination efforts as a way to relieve pressure on the Colorado River, and other federally managed water sources, by supporting the development of other alternate water resources?

ANSWER: Yes. The Bureau of Reclamation currently supports ocean water desalination efforts as a way to relieve pressure on the Colorado River and other federally managed water sources mainly through funding in basic, laboratory, pilot, and demonstration scale research. Reclamation has also provided funding for a Congressionally authorized seawater desalination demonstration as well as for feasibility studies for potential new desalination projects. The support is available through several Reclamation programs which address different aspects of technology innovation through demonstration and implementation of commercially available solutions. The programs that have or are providing funding include the Reclamation Science and Technology research program, the Desalination and Water Purification Research (DWPR) and development program, WaterSMART Advanced Water Treatment (AWT) Pilot and Demonstration Grants, and the Title XVI Water Reclamation and Reuse program.

A number of projects have received Reclamation funding since 1998 at different points in the development of the technology. Our goal is to lower the costs and reduce the

environmental impacts as these technologies are applied to increase water supplies. A list of all external research projects including brackish and seawater desalting by State can be found at http://www.usbr.gov/research/AWT/DWPR/cost-share.html. Some of the best examples of internal and external seawater desalination projects funded by the Reclamation programs include development of: the next generation chlorine resistant reverse osmosis membranes; a new desalting technology using clathrates; wind-powered reverse osmosis desalination for Pacific islands and remote coastal communities by the University of Hawaii; the VARI-RO high efficiency high pressure pump by Science Applications International Corp., San Diego, CA (the technology was recently acquired by General Electric); an industry consortium to develop large diameter reverse osmosis and nanofiltration elements (currently being installed in the world's largest seawater desalination facility located in Israel); new seawater intakes including a subfloor water intake system structure and the slant wells being piloted and demonstrated by the Municipal Water District of Orange County in Fountain Valley, CA through the DWPR and WaterSMART AWT programs; pilot and demonstration-scale testing of microfiltration/ultrafiltration pretreatment for seawater reverse osmosis and innovative intakes and post-treatment by West Basin Municipal Water District, Carson, CA through the DWPR and WaterSMART AWT programs; and the development of the Long Beach, CA pilot/demonstration studying a patented two-phase nanofiltration process for seawater desalination, through the Title XVI program.

Colorado River Quantification Settlement

Calvert Q4: When I was Chairman of Water and Power Subcommittee I helped create the Colorado River Quantification Settlement agreement. There have been subsequent legal challenges to this agreement. What is the status of these legal challenges?

ANSWER: Legal challenges to the Quantification Settlement Agreement (QSA) can be categorized by State litigation and by Federal litigation as follows:

State QSA Litigation: In *Imperial Irrigation District v. All Persons*, Imperial Irrigation District (IID) sought to validate its actions when it entered into multiple State and Federal agreements in 2003. The California Superior Court ruled in January 2010, that 13 of the agreements were invalid, including the Federal Colorado River Water Delivery Agreement (CRWDA), the Federal Allocation Agreement, and the Federal Conservation Agreement. The QSA parties appealed and received a stay of the decision. On December 7, 2011, the Court of Appeals reversed the Superior Court's decision and remanded the case back to the California Supreme Court for further proceedings, including coordination of California Environmental Quality Act issues. The California Supreme Court issued a decision on March 15, 2012, refusing requests for further review of the Appellate Court decision.

Federal QSA Litigation: In late 2009, Imperial County and the Imperial County Air Pollution Control District filed a complaint in U.S. District Court challenging the Secretary's 2003 execution of the CRWDA, alleging that the Environmental Impact Statement failed to comply with the National Environmental Protection Act and that it

also violated the Clean Air Act. The United States filed an answer to the complaint on March 29, 2010. In March 2011, the case was transferred to a different Federal judge within the Southern District of California and an updated briefing schedule was developed. In January 2012, briefs were filed for motions for summary judgment regarding NEPA and Clean Air Act compliance. The case is now fully briefed and the parties are waiting for a decision by the U.S. District Court.

Reclamation is working with the U.S. Department of Justice and the California parties to defend the Federal lawsuit.

Bay Delta Conservation Plan

Calvert Q5: What is the status of the Bay Delta Conservation Plan? How involved had the Department been in the BDCP Process? Do Interior personnel involved with the creation of the BDCP have access to all the resources they need for a speedy completion of this plan?

ANSWER: The Department of the Interior (Department), through the Bureau of Reclamation and the Fish and Wildlife Service, has been fully engaged on the development of the Bay Delta Conservation Plan (BDCP).

The preliminary administrative drafts of all BDCP planning documents released by the California Natural Resources Agency on February 29, 2012, are currently being reviewed by participating Federal agencies. The release of these draft documents provides an opportunity for Federal agency and stakeholder review and engagement in a scientific and transparent discussion concerning how best to protect and restore fish, wildlife, and the Delta's ecosystem while ensuring water supply reliability.

The Department is providing support that will help develop a long-term path for reliable water supply, habitat restoration, and response to the Delta's non-water-supply stressors. The Department has dedicated resources to develop the documents needed to move the plan forward, including the associated Environmental Impact Statement (EIS), and permits under the Federal Endangered Species Act (ESA) that comply with the provisions of these Federal laws.

WaterSMART Grants

I note that the Bureau of Reclamation has again budgeted funds for the Water SMART Program. I believe competitive grant programs are an excellent way for local communities to compete for federal funds on a national basis based upon the merits of their own project.

Calvert Q5: Do you have a sense of how many entities have applied for WaterSMART grants in previous fiscal years? If so, can you share this with the Subcommittee.

ANSWER: In FY 2010, Reclamation received 243 proposals for WaterSMART Grant funding across four grant categories. Together, those proposals requested $96.1 million in Federal funding. In FY 2011, Reclamation received 257 proposals for WaterSMART Grant funding, together requesting $94.8 million in Federal funding.

Calvert Q6: Is the funding budgeted for this program sufficient to meet the demand placed by applicants that meet the grant requirements? What percentage of qualified applicants are unable to receive a WaterSMART Grant?

ANSWER: Demand for funding among eligible WaterSMART Grant applicants continues to outpace available funding. As a result, only the highest ranking proposals can be awarded funding each year. In FY 2010, for example, 52 of 243 WaterSMART Grants applicants – or about 21 percent – were awarded funding. In FY 2011, when $33 million was available for the program, approximately 31 percent of proposals (80 of 257) were awarded funding. Accordingly, over the past two years about 70-80 percent of the eligible applicants were not awarded funding. With that in mind, funding proposed for FY 2013 represents an increase of $9.3 million over the FY 2012 enacted level of $12.2 million. The funding requested in FY 2013 is intended to address the continuing interest among eligible applicants for WaterSMART Grant funding to the extent possible given the economic conditions facing the Nation and competing budget priorities.

Biological Opinions

Mr. Secretary, last year the Federal Court invalidated the Fish and Wildlife Biological Opinion for Delta Smelt and directed that the Opinion be redone. This Biological Opinion dictates how the state and federal water projects operate that deliver water to 25 million Californians and millions of irrigated acres. As you know, the Department has committed to utilizing the most up to date science and a more inclusive process in developing the new Biological Opinion. In addition, the Department has indicated they will bring in new scientists and managers to insure the new rules are written in an unbiased manner and that all conclusions are submitted to independent science review.

Calvert Q7: Has sufficient funding been included in the budget to fully support the FWS' participation in this process and can you provide to me some detail about how you see the new Biological Opinion being developed?

ANSWER: The President's budget includes adequate funding and other resources for the Fish and Wildlife Service to carry out its mission in the Delta. The Service is currently working with the Bureau of Reclamation, National Marine Fisheries Service, California Department of Water Resources, and other partners in the development of new information that will be used in the next long-term operations consultation. The Bureau of Reclamation is preparing to launch a NEPA process that will be used to transparently analyze options for future operations. The Service expects the Bureau of Reclamation's process to produce new and useful information that will inform the development of an updated biological assessment. The process will facilitate exploration of new options to

efficiently deliver water without undue risk to imperiled delta smelt, salmon, steelhead, and sturgeon.

Calvert Q8: As you know, the Federal Courts have invalidated the National Marine Fishery Service's Biological Opinion for salmon and directed that it also be redone. How do you intend to ensure that the new Biological Opinions, which will be written by 2 separate agencies in 2 separate Departments, do not conflict with each other?

ANSWER: The Fish and Wildlife Service and National Marine Fisheries Service have a close working relationship that includes extensive collaboration on issues related to development and implementation of the Biological Opinions. There is already a clear mechanism in place for dealing with the unlikely, but possible conflict between fall outflow requirements under the Fish and Wildlife Service's BiOp and Shasta storage requirements in the National Marine Fisheries Service's BiOp. Inter-Service cooperation will continue in the future, and will allow both agencies to resolve any potential conflicts that arise in the future.

Questions for the Record from Mr. Cole

Cole Q1: Hydraulic Fracturing has been used for over half a century. Why do we need a national standard?

Answer: The use of hydraulic fracturing has steadily increased as the technology has advanced. The BLM now estimates that about 90 percent of wells currently drilled on Federal and Trust lands are stimulated by hydraulic fracturing techniques. The increased use of fracking has generated concern about its potential effects on water quality and availability, particularly with respect to the chemical composition of the fracturing fluids and methods used. The BLM has an important role to play in ensuring the safe and effective use of hydraulic fracturing techniques on Federal, tribal, and individual Indian Trust lands. The BLM alone is delegated the responsibility for managing Federal, tribal, and individual Indian Trust minerals. To this end, the BLM will continue to work closely with industry, other Federal agencies, State agencies, Tribes, and the public to develop a strong and effective regulatory framework that reflects the state of modern technology while protecting the important resource values on the lands the BLM manages. The proposed regulations focus on improving assurances on wellbore integrity, public disclosure of hydraulic fracturing fluids, and requiring operators to provide the BLM with information on how the operators plan to manage flowback waters from fracturing operations.

Cole Q2: What deficiency in state regulation makes you believe we need a national standard?

Answer: The proposed regulations for hydraulic fracturing fulfill the BLM's role in ensuring the safe and effective use of hydraulic fracturing techniques on Federal, tribal, and individual Indian Trust lands. The BLM's proposed regulations seek to create a consistent oversight and disclosure model that works in concert with other regulators' requirements while protecting Federal and tribal interests and resources. The BLM proposal employs best practices that are applicable regardless of geology or location. The proposed rule will not apply to regulation of State or privately-owned minerals where BLM does not have jurisdiction.

Cole Q3: When the Industry has supported the FracFocus reporting system—which is working well—why are you trying to create a new system?

Answer: The proposed hydraulic fracking rule requires that permit applicants disclose the chemicals used in the fracturing process to the BLM. The chemical information would be subsequently released to the public, most likely through posting on a public website. The BLM is working with the Ground Water Protection Council to determine whether the disclosure might be integrated into the existing website FracFocus.org.

It is my understanding that the Department recently conducted a tribal consult in Salt Lake City regarding the draft Hydraulic Fracturing regulations. I understand that the tribes were not given the draft until they arrived and there was little if any discussion.

Cole Q4: Do you plan to discuss this document in greater detail with the tribes? Did you notify the tribes to bring their technical experts on oil and gas drilling to ensure they were best prepared to provide feedback? What is the deadline for tribes to submit comments? Will their concerns be addressed prior to the rule being placed in the federal register?

Answer: The BLM conducted regional meetings as part of the hydraulic fracturing rulemaking outreach process. Tribes were given notification before the outreach meetings, with a list of available sites that may best meet their needs. It was not vital that the Tribes bring their technical experts to these initial outreach meetings. At the meetings, the BLM made clear that the agency is available for further dialogue, including with the Tribes' technical experts. The Tribes were encouraged to continue to engage with their partners in the field, the BLM Field Managers who work with them on oil and gas operations. The tribal attendees at the regional meetings were asked to provide initial comments by April 13, 2012. However, it is important to note that these meetings were just the start of the outreach process. Tribal concerns will be addressed as we receive them. In fact, a number of revisions in the proposed rule occurred based on comments received to date. There will be a formal 60-day public comment period once the proposed rulemaking is published in the Federal Register, and specific tribal consultation will also take place after the proposed rule is published and before any final rule is completed.

Cole Q5: As you know- many tribes rely on revenue from oil and gas for their livelihood. Do you believe Hydraulic Fracturing regulations would reduce revenue to the tribes due to permitting delays? Will there be a cost for the tribe to implement these regulations?

Answer: The BLM does not anticipate permitting delays from application of the proposed hydraulic fracturing regulations, nor is there expected to be a cost to the Tribes to implement the regulations.

Cole Q6: I appreciate the proposed rules on surface and renewable energy leasing on Tribal lands which will lead to more Tribal economic development. When will we see similar reforms for subsurface leasing on Tribal lands?

Answer: The referenced rules on surface and renewable energy leasing on tribal lands were proposed by the Bureau of Indian Affairs, which has jurisdiction over surface and subsurface leasing of tribal lands. Any reforms for subsurface leasing on tribal lands would also be the responsibility of the Bureau of Indian Affairs.

Cole Q7: I understand that Secretary has said the American people have a right to know that their "public lands" are being protected. Does the department consider Indian lands to be "public lands?"

Answer: The term "public lands" generally refers to government lands that are open to public sale or other disposition under general laws and that are not held back or reserved for a governmental or public purpose. The phrase "public lands" is synonymous with "public domain." Under the Federal Land Policy and Management Act, public land is land or an interest in land that the United States owns within a state and that the Secretary of the Interior administers through the Bureau of Land Management. As a rule, “Indian lands" are not included in the term “public lands.”

Cole Q8: Has the department's Office of Indian Energy and Economic Development done an analysis of the long list of comparative disadvantages energy projects on Indian lands encounters such as application for permit to drill fees, other fees, leasing and permitting delays, NEPA and frivolous lawsuits, and other obstacles?

Answer: The Office of Indian Energy and Economic Development has not performed an analysis on potential disadvantages energy projects face on Indian lands. The Office routinely assists Tribes in the negotiations of productive energy leases and approximately 94 percent of Indian leases, over 4,000, are productive. In FY 2011, the Office assisted in the development of 48 leases for oil, gas, renewable energy, and aggregate material development on approximately 2.8 million acres of trust land.

Questions for the Record from Mr. Flake

Navajo Generation Station

The EPA's forthcoming determination of what constitutes Best Available Retrofit Technology for the Navajo Generation Station is a pressing issue, one that the Department has made a priority. This attention is warranted, given that the decision EPA stands to make will impact both the Navajo and Hopi tribes as well as the regional economy, the Central Arizona Project that provides water to 80 percent of the state's residents, and agricultural water users among others.

Flake Q1: As participants in what has now become an inter-agency process, can you shed some light on what you think is the likely timing of a decision will be?

ANSWER: Interior and its agencies have provided timely input into EPA's BART determination process through a variety of means, including responding directly to the EPA on specific questions and contracting with NREL to ensure that EPA and other stakeholders have additional data and input regarding technical and economic impacts of potential BART determinations. In July 2011, Interior requested that the EPA not issue a BART determination until the NREL report was completed. The EPA agreed to not issue a ruling in 2011, and is now considering the NREL information in conjunction with all stakeholder input received. The EPA has stated that it plans to issue its BART determination for NGS in the summer of 2012.

Flake Q2: If EPA requires the most costly controls under consideration, there could be significant adverse impacts to many of Arizona's Native American Tribes. What steps is the Department of Interior taking to ensure that the potential impacts to the Tribes are given appropriate consideration in EPA's rulemaking process?

ANSWER: Reclamation and Interior have worked extensively with all affected stakeholders and conducted tribal consultations with both individually affected tribes and broader Tribal entities such as the Inter Tribal Council of Arizona. The Department contracted with the National Renewable Energy Laboratory (NREL), to prepare a study that reviewed in detail all factors relevant to EPA's Best Available Retrofit Technology (BART) determination, including particularly the full range of economic impacts on the Navajo Nation and Hopi Tribe and all users of Central Arizona Project (CAP) water. CAP water users include urban users and agricultural users, both Indian and non-Indian. The Department submitted the completed NREL Study to EPA in January 2012. In addition, the Department has participated in EPA's formal consultation with Indian Tribes in connection with its BART proceeding.

Northern Arizona Uranium Withdrawal

In his testimony, the Secretary highlighted that the Department "launched significant efforts to protect America's enduring icons" and noted the recent "withdrawal of over

one million acres in the vicinity of the Grand Canyon from additional uranium and hardrock mining, to protect and preserve the natural beauty of the Grand Canyon." Originally, it seemed the Department was taking steps to put a halt to new mining claims on federal lands on the Arizona strip because of the potential environmental impacts. Yet, during the impact statement process, many feel the Department was hard pressed to find any environmental downsides. Instead, the Secretary was recently as saying ""I do oppose efforts to overturn the decision on the Grand Canyon…Outdoor recreation and tourism are a huge part of our economies."

Flake Q3: Has the Department now shifted to using the economic benefit of tourism, which we would all certainly concede are important to Arizona, as the basis for the controversial withdrawal?

Answer: Based on the analysis in the Northern Arizona Proposed Withdrawal EIS, the Department of the Interior decided that, in accordance with the preferred alternative, a withdrawal of 1,006,545 acres from location and entry under the Mining Law, subject to valid existing rights, was warranted. Several key factors were considered in making this decision. In particular, the USGS report (SIR 2010-5025) included in the EIS acknowledged uncertainty due to limited data, including the uncertainties of subsurface water movement, radionuclide migration, and biological toxicological pathways. The potential impacts estimated in the EIS have a low probability of occurrence, but pose great environmental risk should they occur. A 20-year withdrawal allows for additional data to be gathered and more thorough investigation of groundwater flow paths, travel times, and radionuclide contributions from mining as recommended by USGS.

Flake Q4: If this is purely an economic evaluation, were the billions of dollars and thousands of jobs related to new mining in the area fully taken into consideration?

Answer: As stated above, many different factors were considered in the Northern Arizona Proposed Withdrawal EIS. The EIS included a full economic analysis that showed direct employment resulting from no withdrawal (the "no action" alternative) could lead to an annual average of 295 mining related jobs. The EIS indicated that with a full withdrawal, there could be 79 jobs annually associated with mines that have valid existing rights and are not affected by the withdrawal.

Flake Q5: Further, how do rectify the fact that, given that between roughly 1980 through 1990, mining was in full swing in the area and visitation at the Grand Canyon and nearby Zion National Parks saw steep increases in visitation?

Answer: Again, many different factors were considered in the Northern Arizona Proposed Withdrawal EIS. Based on that analysis, the Department of the Interior decided that a withdrawal of 1,006,545 acres from location and entry under the Mining Law, subject to valid existing rights, was warranted.

Flake Q6: Lastly, if uranium mining even in the vicinity of the Grand Canyon is so anathema to tourism interests, why has the Department chosen to only go after new mining claims while allowing existing mining in the area to proceed?

Answer: The withdrawal respects valid existing rights by not prohibiting previously approved uranium mining, or new projects that could be approved, on claims with valid existing rights.

Domestic Minerals Development and Resolution Copper

The Department's proposed Fiscal Year 2013 budget includes $86 million "to maintain capacity to review and permit new renewable energy projects on federal lands and waters, with the goal of permitting 11,000 megawatts of new solar, wind and geothermal electricity generation capacity on DOI-managed lands by the end of 2013." Yet, the budget does nothing to encourage the domestic production of minerals that are critical to renewable energy technologies. For example, it has been indicated that a single 3MW wind turbine needs nearly five tons of copper.

Flake Q7: How do you reconcile your significant investments in renewable energy on public lands with the failure to address barriers to domestic development of minerals that are the building blocks of wind, solar and other renewable technologies?

Answer: The Administration has an obligation to ensure that the potential impact to water, air, and other natural resources are analyzed and properly addressed before mineral resources on public lands are developed. Federal agencies have established systems that ensure adequate reviews of proposals to prospect, explore, discover, and develop valuable minerals on Federal mineral rights. Coordination between Federal land management agencies and regulatory and permitting agencies is encouraged to ensure efficient and timely review of any exploration or mining plans, including the analysis of the environmental impacts required by the National Environmental Policy Act and any similar laws.

Flake Q8: In proposing a new tax applicable to mining operations on private and public lands that goes beyond a tax on the amount of minerals removed from the ground to a tax on dirt, rock and other materials moved during the extraction process, did the Department consider the negative impacts domestic mineral production from such a disincentive?

Answer: The Administration proposes that the hardrock mining industry should be responsible for funding the cleanup of abandoned hardrock mines, just as the coal industry is responsible for funding the reclamation of abandoned coal mines. This modest fee is needed to ensure the Nation's most dangerous abandoned hardrock mine sites are addressed by the mining industry.

Flake Q9: Do you remain opposed to H.R. 1904, the *Southeast* Arizona *Land Exchange* and Conservation Act despite the fact that it would pave way forward for reportedly the third largest undeveloped copper resource in the world that could produce

the equivalent of more than a quarter of the annual U.S. copper demand for four decades, not to mention employing nearly 4,000, adding more than $60 billion to Arizona's economy, and bringing in an estimated $16 billion in federal revenue?

Answer: The Department's concerns with H.R. 1904 were presented to Congress in testimony before both the House Natural Resources Committee and the Senate Energy and Natural Resources Committee, and are documented in the statements for those hearings. As indicated at those hearings, the Administration has concerns with the Southeast Arizona Land Exchange and Conservation Act and cannot support H.R. 1904 as written. These concerns include: the requirement for the Forest Service to prepare an environmental review document under the National Environmental Policy Act (NEPA) after the land exchange is completed rather than in advance of the exchange as provided in S. 409, as reported. It is the Administration's policy that NEPA be fully complied with to address all Federal actions and decisions, including those necessary to implement congressional direction. In addition, concerns have been raised by Indian tribes that the legislation is contrary to laws and policies and Executive Orders that direct Federal land management agencies to engage in formal consultation with interested Indian tribes, and to protect and preserve sites sacred to Native Americans.

Increase in Grazing Fees

The BLM budget would enact a pilot program that would impose a 1 dollar per AUM fee on all permittees starting in 2013.

Flake Q10: Was this nearly 75 percent increase in grazing fees carefully contemplated prior to the Fiscal Year 2013 budget submission, or is it merely a spur-of-the-moment plan to backfill the cuts made to BLM's budget for this coming year?

Answer: The current grazing fee remains unchanged. The budget proposes an administrative processing fee by including appropriations language for a three-year pilot project to allow BLM to recover some of the costs of issuing grazing permits/leases on BLM lands. BLM would charge a fee of $1 per Animal Unit Month, which would be collected along with current grazing fees. The goal of the administrative processing fee is to recover some of the cost of processing grazing permits/leases from the parties (permittees) who are economically benefitting from use of the public lands and resources. This fee mirrors the concept used in the Oil and Gas program and Rights-of-Way program, where the users of the public lands pay a fee for the processing of their permits and related work. BLM will use collections from the fee to assist in processing pending applications for grazing permit renewals. During the period of the pilot, BLM would work through the process of promulgating regulations for the continuation of the grazing administrative fee as a cost recovery fee after the pilot expires.

Flake Q11: Please detail the authority by which the Department is raising grazing fees.

Answer: The BLM is not raising the current grazing fee. Rather, the BLM is requesting appropriations language that will allow the BLM, beginning in 2013, to collect an

administrative processing fee for a pilot program lasting for three years, during which time the BLM will develop regulations under its current authorities that will provide for the continuation of this administrative processing fee as a cost recovery. BLM will use collections of the administrative process fee to assist in processing pending applications for grazing permit renewals.

Shooting on Federal Lands

The issue of recreational shooting on federal lands, notably at national monuments managed by BLM is one that impacts many Arizonans. Last November, the Secretary issued a directive that made two things very clear: the Department will support recreational shooting as a safe and legitimate use of public land and that the BLM ought to ensure that it facilitates opportunities for that activity in management of public lands.

Flake Q12: Is this not inconsistent then with the fact that, at this very moment, BLM is taking steps to ban recreational shooting across 600,000 acre in two national monuments in the state of Arizona?

Answer: The Secretary's memorandum to the BLM Director provides guidance consistent with the BLM's multiple-use mission under the Federal Land Policy and Management Act (FLPMA) and the requirement to evaluate the environmental considerations associated with land uses under NEPA. Restrictions on recreational shooting are determined through BLM's land-use planning process, which is informed by public input and extensive analysis. In developing the Resource Management Plans for the Sonoran and Ironwood Forest National Monuments, the BLM closely examined nearby alternative areas that are more suitable for recreational shooting activities. These proposed alternatives were developed to address impacts to resources from increased recreational target shooting and concerns for visitor safety. While 600,000 acres of the BLM's 4.8 million acres of National Monument lands may be closed to this use, 88 percent of those lands remain open to recreational shooting. Currently, any determination to close public lands to recreational shooting activities is made by the BLM local or State Office following detailed analysis and extensive public involvement and notification, including contacting over 40 hunting and fishing interest non-government organizations, as specified in the Federal Land Hunting, Fishing and Shooting Sports Roundtable Memorandum of Understanding (MOU).

Flake Q13: The justification for these bans according to land planning documents is that recreational shooting is a danger to every living or inanimate object within the boundaries of these desert monuments. How is one to come away from that with any other than the conclusion that, for some at least, recreational shooting is simply inconsistent with public lands management?

Answer: Restrictions on recreational shooting are determined through BLM's land-use planning process, which is informed by public input and extensive analysis. This is an open process through which BLM's proposals for managing particular resources are made known to the public before management action is taken, except in certain

emergency situations. When lands are closed to recreational shooting, those restrictions are often implemented to comply with state and local public safety laws and ordinances, or are implemented at the request of local communities or adjacent property owners. Currently, any determination to close public lands to recreational shooting activities is made by the BLM local or State Office following detailed analysis and extensive public involvement and notification, including contacting over 40 hunting and fishing interest non-government organizations, as specified in the Federal Land Hunting, Fishing and Shooting Sports Roundtable Memorandum of Understanding (MOU). In extremely limited circumstances, the BLM must restrict recreational shooting to ensure public safety or protect fragile resources. In most cases, recreational shooting is consistent with multiple-use activities and management efforts. The BLM estimates that well over 95 percent of the approximately 245 million acres of BLM-managed public lands are open to recreational shooting. Of the BLM's 4.8 million acres of National Monument lands, currently 88 percent are open to recreational shooting.

Wildland Fire

I am pleased to see that Wildland Fire Suppression appears to be a budgetary priority for the Department. That said, hazardous fuels reduction is cut by nearly $39 million from last year's enacted level.

Flake Q14: Is it to be assumed that the Department of Interior is placing a higher priority on putting fires out while simultaneously undervaluing doing what is necessary to prevent fires before they happen?

Answer: Interior's 2013 budget decisions were made in context of a challenging fiscal environment. The DOI budget formulation process involved making difficult decisions about reducing funding or ending programs that are laudable, but that in this fiscal environment cannot be funded at desired levels. The Department's commitment to fully fund the 10-year suppression average, which required a $195.6 million increase over the 2012 enacted level, and other priority investments, impacted the funding available for other important programs.

The Wildland Fire Management program's primary objective is to protect life and property, and this is achieved by fully funding the suppression 10-year average and maintaining our initial and extended attack firefighting capability at current levels. The 2013 request does this by funding Preparedness at the 2012 enacted level, as adjusted for fixed costs.

The planned Hazardous Fuels Reduction program for FY 2013 represents the most effective use of available funds. High priority projects will be completed in high priority areas with the goal of mitigating wildfire risks to communities.

Questions for the Record from Mr. Hinchey

Utah R.S. 2477

The state of Utah has been largely unsuccessful to date in its quest for thousands of R.S. 2477 claims, yet it has recently filed a notice of intent to sue the department to gain title to over 18,000 rights of way, and this leads me to look with skepticism on their claims, thousands of which have never been constructed or maintained, just created by random travelers, off-road vehicle users, long-forgotten prospectors and infrequent livestock herders. I hope that you and the department vigorously defend against this attack on federal public lands in Utah.

Hinchey Q1: What will you do to ensure that federal public lands are fully protected from this threat?

Answer: The Department, through the Department of Justice, does plan a vigorous defense of United States' interests and, as the July 29, 2010, Secretarial Memorandum on R.S. 2477 makes clear, the Department must be able to make all appropriate arguments under the law to defend these interests. BLM itself does not adjudicate or specifically reserve R.S. 2477 rights. These legal determinations must ultimately be made by the courts. In this instance, we understand that plaintiffs believe themselves obligated to file so as to avoid a potential statute of limitations issue, and all parties recognize that adjudication of the lawsuits, if an alternative resolution cannot be found, will demand a significant amount of time and resources. BLM has also been working with the State of Utah in an attempt to build a constructive, inclusive solution to the issue of RS 2477 rights-of-way. BLM has joined with State and county officials and other stakeholders in a pilot negotiation project in Iron County, Utah, to try to resolve non-controversial claims through consensus building. This approach to addressing the issue, with openness on all sides, may help us establish a model for consensus-based problem solving that we can carry into the future.

Hinchey Q2: How will Interior determine how these R.S. 2477 claims would impact existing and proposed conservation designations? How would they affect your conservation goals and achievements?

Answer: The Department is still in the early stages of this matter, and we are beginning to gather the kind of information that will inform questions such as this. In general, once a suit to quiet title on an R.S. 2477 claim is filed BLM will, among other things, carry out an analysis of the resources that could potentially be impacted by designation of such a right-of-way. If an alternative resolution cannot be found, all parties agree that adjudication of these lawsuits will be time consuming and costly. Depending on the nature and scope of the right-of-way and the designation or resources at issue, if a county successfully proves R.S. 2477 claims in or near existing and proposed conservation designations, historic sites, or other areas managed by BLM to protect sensitive resources, BLM's ability to implement protective management could be impacted.

Hinchey Q3: How would the recognition of these claims affect DOI's ability to manage federal public lands? Would it affect the effectiveness of law enforcement and ORV monitoring? How about the effectiveness of archaeological site protection efforts?

Answer: The BLM will take any RS 2477 claims traversing the public lands that are recognized by a court into account when it manages the public lands. The BLM retains the power to reasonably regulate such rights-of-way. The BLM reviews travel impacts to archeological resources on a case-by-case basis. As appropriate, the BLM protects archeological resources from damage by exercising its statutory and legal authorities, and by entering into agreements with neighboring land managers.

Hinchey Q4: Some of the state's claims lie in BLM wilderness areas designated in the Cedar Mountains Wilderness Act and the Washington County Wilderness Act. Frankly, this casts doubt in my mind as to the state and counties' good faith and seriousness when it comes to enacting federal public lands designations.

How will you manage designated wilderness areas, places Congress itself has determined to be essentially roadless in the face of R.S. 2477 claims?

Answer: The BLM will comply with Wilderness Act and Congressional direction regarding the management of designated Wilderness Areas. The BLM's ability to manage areas to preserve wilderness character could be impacted if the county and state are successful in proving R.S. 2477 claims in wilderness. Validity of an R.S. 2477 claim is ultimately left to the determination of a court of competent jurisdiction. Holders of valid R.S. 2477 rights-of-way may complete some maintenance and improvement activities on recognized rights-of-ways after consultation with the BLM, but are not entitled to engage in new road construction without obtaining a Title V permit under the Federal Land Policy and Management Act from the BLM. The BLM will not issue such a permit in a Wilderness Area.

Questions for the Record from Mr. Serrano

Urban Waters Federal Partnership

Last October, Secretary Salazar, you came to the Bronx for the local announcement of the Bronx & Harlem River Watersheds' selection as one of seven pilot locations in the Urban Waters Federal Partnership—an effort by 11 federal agencies to stimulate regional and local economies, create local jobs, improve quality of life, and protect Americans' health by revitalizing urban waterways in underserved communities across the country.

Serrano Q1: Please elaborate on the successes and challenges of this program as it has gotten underway. What significant obstacles is the department facing? How could Congress help to facilitate the success of this very important program?

Answer: The Urban Waters Federal Partnership (UWFP) initiative is an interagency effort to revitalize urban waters in communities where waterway revitalization is needed most. The goals of the initiative are to improve coordination among Federal agencies and collaboration with community-led revitalization partners to improve our Nation's water systems and promote their economic, environmental, and social benefits. The initiative has already leveraged joint resources and partnerships with community-based organizations. The single greatest challenge has been to identify existing relevant programs and funding sources within the Federal partnership that align with priorities of the local communities within the Bronx and Harlem River Watersheds. The Department of the Interior has been working closely with community groups, city and State agencies, and Federal partners to identify existing funding and other opportunities to jointly leverage resources.

The Bronx and Harlem Rivers pilot stands uniquely apart from the six other UWFP pilots because it encompasses two disparate water bodies with two distinct constituencies. This adds to the complexity of implementing the initiative and to the challenges of responding to local needs and balancing resources between the two watersheds. Despite these challenges, the Department continues to work with our partners and has achieved some early successes.

Bronx River

The effort to revitalize the Bronx River has been underway for well over a decade, which has been supported through significant Federal investments such as NPS' RTCA technical assistance as well as other Federal, State and city agencies' assistance for greenway construction, fish passage, stream restoration, and park creation. The Bronx River Alliance has been the coordinating force behind the success and is a mature organization with the capacity to coordinate complex projects and partnerships. The Department has been working with staff to identify opportunities as potentially benefitting from a Federal partnership. The highest priority was dealing with an impasse between the New York State Department of Transportation (NYSDOT) and Amtrak regarding building a pedestrian overpass as part of the Bronx River Greenway segment

that NYSDOT had committed $35 million to build. Through the UWFP, and at the request of Congressman Serrano, Secretary Salazar offered the resources of the Department to mediate. Deputy Secretary Hayes subsequently convened numerous meetings between Amtrak and NYSDOT. The two parties have worked to eliminate the obstacles and now work is underway to secure funding for the project.

In addition, the Department and the Federal partners have been working with Bronx River Alliance staff on a number of other projects:

- A proposal to include the Bronx River Water Trail as one of the first urban rivers to be included in the new National Water Trail System announced by Secretary Salazar.
- A proposal for the National Park Service's Challenge Cost Share program to fund water trail projects.
- Review of the Alliance's proposal to the EPA's Urban Waters Small Grants program. The NPS expects that, if funding is available, this grant will create a Stormwater Education and Outreach Program by partnering with NYC Department of Environmental Protection's Green Infrastructure Program.

Harlem River

The effort to revitalize the Harlem River is an emerging effort. The Harlem River Working Group (HRWG), formed in 2009, is staffed by effective volunteers, but does not have the same capacity to coordinate complex projects and partnerships as the Bronx River Alliance. The HRWG has identified its top three priorities as developing a continuous waterfront greenway, increasing public access to the waterfront and out onto the river, and improving water quality in the river. The UWFP has identified a paid coordinator as one of the greatest needs of the Harlem River Working Group. Having a local partner with greater capacity to coordinate their ambitious plans and goals would strengthen the UWFP. The Department, through the UWFP, has been working with the HRWG on a number of projects to address those priorities, including:

- Seven Federal agencies, city and State agencies, and local community groups boarded the EPA vessel "Clean Waters" to conduct the first Rapid Assessment of the Harlem River. Local experts were able to point out a multitude of issues and opportunities for ecological and habitat restoration, water quality enhancements, recreation, access and open space.
- Partnering with the Trust for Public Land and Pratt Institute on a series of community visioning sessions that will culminate in the development of a "Greenprint" for the Bronx side of the Harlem River waterfront.
- The Highbridge Community Life Center just received the maximum award of $10,000 from the US Forest Service's Civil Rights Special Projects fund to hire a local Bronx student to do outreach in conjunction with the community visioning meetings.

Land and Water Conservation Fund

The Land and Water Conservation Fund has been a successful and popular program for nearly 50 years now. In New York alone, $59 million dollars have been spent acquiring critical lands and habitat that protect drinking water supplies, provide recreational access,

connect important wildlife corridors, and ease management pressures on the agencies. In addition, $230 million dollars have been spent in New York to support urban and state parks, close-to-home recreational opportunities and much needed open space which contributes to the health and well-being of our communities.

An example in my Bronx Congressional District is Crotona Park where my constituents enjoy not only a beautiful natural space with more than 25 species of trees and a three acre lake, but also the largest swimming pool in the Bronx, 20 hard courts, five baseball diamonds, and eleven playgrounds. Without improvements funded by the LWCF Program, this Park would not be the recreational gem it is to my constituents.

I appreciate and agree with your commitment in the budget to fully fund LWCF including $20 million for the Stateside Competitive Grants Program. For parks (including urban parks like Crotona Park), forests, and other public lands across the country, this is an investment that simply cannot wait.

Serrano Q2: How do you plan to implement the goals of the urban section of the America's Great Outdoors (AGO) report in urban districts like mine on a nationwide basis? Are there areas of your budget that reflect this commitment? Please explain how the LWCF fits into that plan.

Answer: Urban parks and greenway spaces are one of the three place-based priorities of the proposed competitive grant component for 2013 that would be implemented through the LWCF State Assistance grant program. This priority would focus on creating and improving public parks and other recreational opportunities in metropolitan areas and other jurisdictions with significant population densities, especially signature parks that serve as community anchors; waterside parks and other open spaces that provide the public with access to waterways; green spaces and urban garden spaces that have suffered from urban blight; and other natural areas that help reconnect people with the outdoors, especially where they are needed most.

Urban parks and community green spaces support outdoor access for the nearly 80 percent of the Nation’s population that lives in urban areas. However, projects in urban areas are typically more expensive, as land is often limited and thus more costly, even though populations are substantial and demand for new recreation opportunities is great. In a fall 2011 survey, States estimated a total need for State and local public outdoor recreation facilities and parkland acquisition at more than $18.6 billion. However, projects in urban areas are typically more expensive, as land is often limited and thus more costly, even though populations are substantial and demand for new recreation opportunities is great. Land cost in general similarly means that acquisition projects are far less common; more than 75 percent of LWCF State grants fund recreational facility development projects, such as playgrounds, picnic shelters, and walking paths, which are relatively more affordable. A competitive component of the appropriated funds outside of the State apportionments, would enable project sponsors would be able to apply for larger grants than they typically can through the State-based competitions, which are limited by each State's standard apportionment.

Serrano Q3: If a community is interested in developing or conserving an urban park, there could be many federal agencies that could be involved (planning/HUD, acquisition of land/Interior, and stormwater/EPA). Will there be any efforts to work with other federal agencies to provide support for communities that are interested in restoring their urban parks and developing new urban conservation projects?

ANSWER: Promoting more efficient and effective use of Federal resources through better coordination and targeting of Federal investments is a high priority for this Administration and the America's Great Outdoors initiative. The Urban Waters Federal Partnership (UWFP) is an example of this type of coordination. Led by the U.S. Environmental Protection Agency, the Department of the Interior, the U.S. Department of Agriculture, and several other agencies, and coordinated by the White House Domestic Policy Council, the UWFP closely aligns with and advances the work of the other place-based efforts such as the Partnership for Sustainable Communities by revitalizing communities, creating jobs and improving the quality of life in cities and towns across the nation. Interior is the lead agency for the Harlem and Bronx Rivers urban waters pilot site and is working with roughly ten other Federal agencies; State and local officials; and local citizen and environmental groups to identify on-the-ground projects that are priorities for the local community that these entities can implement as a partnership. The NPS' Rivers, Trails, and Conservation Assistance program, for example, is engaged in the Harlem and Bronx Rivers urban waters pilot site. The RTCA helps partners successfully utilize the vast array of resources and tools available through Federal agencies and nongovernmental groups to strengthen community projects by leveraging significant State and local financial and in-kind resources.

The UWFP efforts also support the America's Great Outdoors initiative, particularly focused on making the Federal government a better partner with communities that are working to provide safe, healthy and accessible outdoor spaces and to promote conservation and outdoor recreation.

In addition, the Department has been working with States and individual cities to restore and improve urban parks. For example, on October 27, 2011, Secretary Salazar and New York Mayor Michael Bloomberg announced an agreement formally establishing a partnership between the NPS and the New York City Department of Parks and Recreation to coordinate park management and connect urban communities, and especially young people, with the natural beauty and history of the region. Under the agreement, the NPS and the city will collaborate in four areas: effective management of park lands; science and restoration of Jamaica Bay; access and transportation to park lands around Jamaica Bay; and engagement of New York City youth with hands-on science programs and fun public service projects to promote recreation, stewardship and "green" careers.

Hearing Questions for the Record (QFR) Prepared for the Department of Interior, U.S. Geological Survey

Hearing: U.S. Geological Survey FY 13 Budget Oversight
Tuesday, March 6, 1:00pm Rayburn B-308

Questions for the Record from Chairman Simpson

Water Resources

As I mentioned in my opening statement, the FY13 budget proposes a net reduction of $4.8 million and 45 FTE, but there are over $45 million in program changes contained within that $4.8 million net decrease. Included are cuts to programs that have been important to our constituents, such as the Cooperative Water Program and the Water Resources Institutes. I'd like to avoid if we can this continued back and forth game of your budget proposing to cut these popular programs while we wrestle with finding the money to restore them.

Simpson Q1: Please take a few minutes to help the Committee understand where you're trying to go with water programs at the USGS.

Answer: The mission priorities of the USGS Water Resources programs are focused on providing basic science research and monitoring tools to better understand and respond to water-related hazards and for managing water quality and quantity to meet human and environmental needs. Working in concert, the USGS Water programs address these issues as a whole. Each program individually contributes to addressing these priorities and together they provide comprehensive data, information, and tools for managing the Nation's water resources. USGS activities outside the traditional Water Resources research areas also contribute to these priorities, and include such activities as rapid response to natural hazards effort, the WaterSMART Initiative, research on priority ecosystems, and efforts to better understand and minimize potential environmental, health and safety impacts of hydraulic fracturing.

The water program portfolio of USGS includes the following component programs:

- *Cooperative Water Program*—Provides science to understand floods and droughts; develops tools to better understand and document these events; develops regional assessments of floods and droughts; conducts local assessments of water availability that, when combined, provide regional and national pictures of water availability; and supports important data networks.

- *Groundwater Resources Program*—Quantifies the availability of water in the Nation's 30 principal aquifers, which provide drinking water to about half of the Nation's population; forecasts the effects of withdrawals on the long-term sustainability of these aquifers; develops

methods to better understand the effects of groundwater withdrawals on streamflow; and increases understanding of the effects of energy development on groundwater resources.

- *Hydrologic Networks and Analysis*—Supports the infrastructure to disseminate and archive USGS water data and selected partner data; provides national consistency so that data are readily comparable from any USGS site in the Nation; and supports key monitoring networks that document atmospheric deposition and water-quality conditions (background conditions) in undeveloped watersheds.

- *Hydrologic Research and Development*—Develops tools to document, help understand, and forecast changes in the hydrologic system, including effects on water availability and hydrologic hazards of changes in land-use, water management, energy development and use, and climate; and develops methods for tracking the effects of energy development on water supplies.

- *National Streamflow Information Program*—Provides a stable, Federally-supported backbone of key streamflow gauges across the Nation that provide real-time information about streamflow conditions for flood forecasting, drought monitoring, documenting water-quality and ecological conditions, and understanding groundwater contributions to streamflow.

- *National Water Quality Assessment*—Documents water-quality and ecological conditions in the Nation's streams and aquifers; develops tools for forecasting changes to water-quality from changes in land management; and maintains critical water-quality monitoring networks that document export of sediment, nutrients, and other contaminants from the Nation's watersheds to the coastal ocean.

Alone, each program provides important water-resources information. Together, these programs combine to give a more comprehensive picture of the Nation's water resources than any single program alone.

Simpson Q2: What is the WaterSMART initiative, and how smart is the strategy of cutting other water programs in order to fund it?

Answer: The WaterSMART Initiative is a Departmental initiative on water availability and use. It encompasses both the Bureau of Reclamation (Reclamation) and in the U.S. Geological Survey. The WaterSMART Initiative as implemented by Reclamation includes, among other things, the Title XVI program, the WaterSMART Grants, and the River Basin Supply and Demand Studies. The USGS implementation of WaterSMART involves multiple USGS mission areas and is coordinated with Reclamation. As competition for water resources grows for irrigation of crops, 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 founded in the requirements of the SECURE Water Act (P.L. 111-11), Section 9508, which calls for the USGS to establish a national water availability and use assessment program. It is a multidisciplinary effort designed to further understand the complex linkages between water quantity, quality, and the environment--in order to improve management of this finite resource. The goal of this initiative is to provide a well-integrated and thorough understanding of how water

quantity and quality combine to influence water availability for human and ecosystem uses. USGS expertise in understanding the hydrologic cycle, water geochemistry, land use effects on water, human water use, and the ways in which water quality and quantity affect the natural environment make the USGS the premier science agency to address this issue. WaterSMART, through the combined efforts of Reclamation in the West and the USGS throughout the entire Nation, provides science and decision support tools for a sustainable water strategy. This effort contributes to the Nation's strategic ability to maintain water resource sustainability through synthesis of knowledge about and consideration for water quantity, quality, and uses, including ecological uses.

The 2013 Budget reflects efforts to prioritize the development of these critically important tools for managing our Nation's water, while maintaining the water science, monitoring, and interpretative studies that have been at the core of the USGS mission for over a century. In a time of severe fiscal constraints, tough decisions were made in order to balance the core science needs of the Nation as a whole with the need to develop new tools to manage the Nation's waters in the 21st century. As a result, the $210 million included in the FY 2013 budget for Water Resources programs, represents both net increases for some programs and net decreases for others.

The net increases include an increase of $3.1 million for the National Streamflow Information Program to bring more stable funding to the backbone of permanent Federal streamgages utilized by water managers in every State and for a Rapid Disaster Response initiative that will provide rapid deployable streamgages for use in flood response. The budget includes an increase of $2.7 million for the Groundwater Resources Program for development of a national groundwater monitoring network. The Budget also includes an increase of $3.8 million for Hydrologic Research and Development to support research in restoring priority ecosystems and to understand and minimize potential environmental, health, and safety impacts of hydraulic fracturing.

Among the decreases, there is a net decrease of $730,000 from the FY 2012 enacted level for the National Water Quality Assessment, a $2.6 million decrease for Hydrologic Networks and Analysis, and a $4.7 million decrease for the Cooperative Water Program. The Water Resources Research Act program ($6.5 million) is not funded in the budget request.

The 2013 budget request reflects the Administration's commitment to Research and Development and the Administration's support for USGS science as a foundation for resource management decisions, while recognizing constrained fiscal resources. This budget also reflects careful and difficult decisions that balance USGS research, assessment, and monitoring activities to ensure USGS's continued ability to address a broad array of natural-resource and natural-science issues facing the Nation, now and into the future. The 2013 budget request for the USGS supports a continued legacy of world-class science to support decision-making.

Your budget proposes increases for streamgages under the National Streamflow Information Program, while at the same time decreasing streamgage funding under the Cooperative Water Program.

Simpson Q3: What's the strategy there?

Answer: The President's budget for FY 2013 proposes $59.3 million for the Cooperative Water Program (CWP), which provides funds that are leveraged by State and local partners to fund interpretative studies and other needs such as local streamgages. The CWP is a cost-share program with 1,550 cooperators who contribute significantly (70 percent) to total CWP funding. Decisions are made jointly in the context of USGS interests and local, State, and tribal needs. The capacity for local partners to leverage these Federal funds depends on cooperator budgets remaining stable. Many CWP agreements are multi-year, resulting in committed funding with cooperators in 2013 and out-years.

In a time of fiscal austerity, difficult decisions were made to maintain support for programs that balance the science needs of the Nation as a whole. Proposed reductions in the CWP could impact streamgaging, groundwater, and water quality monitoring stations operated through these cooperative partnerships.

However, a $3.0 million increase in funding for the National Streamflow Information Program (NSIP) would provide stable Federal funding for about 100 NSIP streamgages. Decisions about the exact sites to receive NSIP funding for streamgages are made at the State level in collaboration with partners. USGS national leadership is committed to working with the 48 USGS Water Science Centers that implement NSIP and CWP activities with localities, States, and Tribes, and will prioritize critical monitoring stations to the extent possible.

Simpson Q4: What is the current state of the streamgage program? How will it be strengthened under the proposed budget?

Answer: There are currently about 7,800 active streamgages funded by the USGS and over 850 other Federal, State, Tribal, and local partners. More than 95 percent of the streamgages provide the streamflow information on the web in real-time. Over the last two decades (1990 to 2010) the number of streamgages in operation has been highly variable, with a mean of 7,275 streamgages, a minimum of 6,769 streamgages (1997) and a maximum of 7,884 streamgages (2009). During the same time period, about 1,600 streamgages with more than 30 years of record were discontinued. Approximately 3,100 of the existing streamgages are designated as National Streamflow Information Program (NSIP) "Federal-needs streamgages." At current funding levels, fewer than 500 streamgages are fully funded and about 1,000 are partially funded by the NSIP. In addition, there are another 1,724 NSIP-designated streamgages that need to be established (or reactivated) to have the complete NSIP Federal-needs streamgage network in place.

The Cooperative Water Program (CWP), other Federal agencies, and other partners provide about 83 percent of the current streamgage network funding and fully or partially fund a large portion of the active NSIP-designated streamgages. Because of changes in partner funding priorities and budgets, network stability is not ensured, as indicated by the larger fluctuation in the number of gages during the last decade. There are currently nearly 669 streamgages that are at risk, threatened, or have been

recently discontinued because of changes in priorities and availability of funding (see http://streamstatsags.cr.usgs.gov/ThreatenedGages/ThreatenedGages.html).

The SECURE Water Act of 2009 provided authorization for the NSIP and called for a 10 year ramp-up to fully implement the NSIP network. Proposed funding increases in the 2013 budget for NSIP will help to bring more stable Federal funding to about 100 streamgages, which are part of the Federal backbone but are currently funded through the CWP. The 2013 budget for the streamgage program also provides for funds to be invested in activities that will help protect life and property from hazards. These activities would include developing and producing streamgages that can be rapidly deployed to locations that are currently or forecast to be in flood or drought conditions to provide more spatial streamflow information. This information could be used by first responders, those responsible for making decisions regarding activities related to the event, and to provide a better understanding of the hydrologic extremes. The 2013 proposed budget also provides for additional activities related to producing flood inundation maps, a library of maps that shows the extent and depth of flood waters to assist home owners, business owners, and first responders.

The 2013 NSIP budget also provides funds for ecosystem restoration activities that likely will include providing streamflow information for use in the design and implementation of techniques and processes to restore ecosystems.

Once again the Water Resources Institutes are proposed for termination.

Simpson Q5: What do these institutes do and why are they not a priority for the USGS?

Answer: The Water Resources Research Institutes (WRRIs), located at 54 land-grant universities across the Nation, use their 2:1 (non-Federal to Federal) matching grants to support over 250 research and technology transfer projects annually. These projects are developed in response to priorities set by the institutes' individual State Advisory Committees and address a wide variety of water resources issue and problems. The research projects provide support and training to over 700 students nationwide each year, contributing to the development of the next generation of water resources scientists, engineers, and technicians. The Water Institutes' program is described at http://water.usgs.gov/wrri/.

Federal funding for WRRIs is often highly leveraged by multiple sources of State and local funding. With diverse sources of funding and stakeholder involvement in WRRI decision-making, the priorities of individual Institutes are not solely driven by the Federal government. As a result, their priorities have not always been aligned with the national priorities of the USGS water programs. This is not a comment on the overall excellence or quality of the Institutes, which produce research products and students that can directly benefit the USGS mission. The USGS is currently evaluating different ways in which the work of the Institutes can become more aligned with National priorities, while retaining a local focus.

Though the USGS recognizes and appreciates the contributions of the Institutes, in a time of severe fiscal constraints, tough decisions were made in the formulation of the 2013 budget to meet the science needs of the Nation as a whole. The 2013 budget reflects efforts to balance USGS research,

assessment, and monitoring activities to ensure the USGS's continued ability to address a broad array of natural resources and natural science issues that face the Nation. The budget supports a continued legacy of world-class science to support decision-making.

Simpson Q6: What could these institutes be doing differently that would make them a higher budget priority for the USGS?

Answer: Though the USGS recognizes and appreciates the contributions of the institutes, the 2013 budget represents careful and difficult decisions that seek to balance USGS research, assessment, and monitoring activities to ensure USGS' continued ability to address a broad array of natural resources and natural science issues facing the Nation.

Research projects that demonstrate a direct contribution to advancing knowledge in support of national water priorities in the 21st century, in addition to priorities set by the Institutes' State Advisory Committees as currently required by the Water Resources Research Act, would provide a stronger connection to the USGS mission.

The budget for the USGS requests a $6.3 million decrease for the National Water Quality Assessment Program. The Congress established this program in 1991 to provide answers to some fundamental questions that are important to the Nation's health and well-being such as: "What is the status of the Nation's water quality, and is it getting better or worse?" Your testimony indicates that you have given priority to preserving long term data networks in this budget. Yet, the number of stream monitoring sites and wells that NAWQA samples has eroded substantially since the first decade of the program.

Simpson Q7: What is the USGS doing to address this problem and what will be the impact of this budget on the long term water quality monitoring that the Nation needs to answer the aforementioned types of questions?

Answer: The President's FY 2013 Budget includes $62.2 million for the National Water Quality Assessment (NAWQA) program. That is a $730,000 decrease from the 2012 Enacted level of $62.9 million for the program. The impact of the proposed decrease would be to diminish restoration of a number of long term water quality monitoring sites as specified in the Cycle 3 Science Plan for the period 2013-2022. NAWQA will only be able to meet about 25 percent of the 2013 planned performance measure to complete 10 percent of the decadal national assessment of streams and groundwater in support of water resources decision-making. The decrease allows for a redirection of funds to address the priority issues identified in WaterSMART, which provides an additional $3.5 million to the NAWQA program.

The USGS designed NAWQA to provide nationally consistent data and information on the quality of the Nation's streams and groundwater, to measure water-quality changes over time, and to determine how natural features and human activities affect water quality. As population and threats to water quality continue to grow and change, this information continues to be used by national, regional, State, tribal, and local stakeholders to develop more effective, science-based policies and regulations for water-quality and ecosystem protection and management.

A new decade of monitoring and assessment activities for the NAWQA program will begin in 2013. In planning the work for the next 10 years, the USGS sought recommendations from Federal and State agencies and private organizations that use the information and the National Research Council on the highest priority water-quality issues facing the Nation. Collectively, these groups recommended that NAWQA restore and enhance its national water-quality monitoring networks for streams and groundwater. These monitoring sites have been reduced in number over the last 15 years. These networks provide the only nationally consistent, long-term water-quality monitoring of its kind. They are essential in enabling the NAWQA program to track changes in water quality and for developing analytical tools to predict how the quality of groundwater, surface water, and ecosystems will respond to changing management practices, climate, and land use.

To meet the priority water-quality information needs of the Nation as recommended to NAWQA, a network of 313 sites—each actively monitored every year—has been proposed. Stakeholders strongly support this type of intensive assessment, because year-to-year tracking is critical for assessing short-term changes as well as long-term trends in nutrients, pesticides, sediment, and other contaminants. Data from these networks are also essential to assess runoff to local streams and rivers and to more distant receiving waters, such as in the Great Lakes, Gulf of Mexico, Chesapeake Bay and San Francisco Bay.

The Nation has spent billions of dollars investing in upgrades to wastewater treatment facilities and tackling problems associated with nonpoint source pollution to restore and maintain the quality of the Nation's water resources. Yet, recent reports by USGS show that nutrient levels in the Nation's streams are not getting better and the quality of groundwater is getting worse.

Simpson Q8: This year marks the 40th anniversary of the Clean Water Act—without adequate monitoring and assessment how will we know whether current investments are working?

Answer: Monitoring by the USGS, the EPA, and States has shown that increased release of nutrients into the environment due to human activities has had profound and widespread impacts on streams, groundwater, and coastal waters. Because the impacts of nutrients are widespread nationally, monitoring is needed across a wide range of scales, from small targeted scales to large rivers, including those that discharge to estuaries. Such coverage is needed to ensure that the effects of nutrient management programs can be observed as early as possible (smaller scales) and in downstream locations (e.g., cities, entry points to reservoirs, estuaries) that matter for human uses of water (larger scales).

Monitoring efforts to date need to continue in order to ensure that investments in the Clean Water Act continue to provide relevant and timely data on the status of nutrient levels in the waters of the U.S.

Simpson Q9: Will we have the information needed to make wise investments for the future?

Answer: There are numerous reports concluding that water quality monitoring currently is not adequate to provide a comprehensive assessment of the Nation's water resources (Federal Interagency Panel on Climate Change and Water Data and Information, 2011; Subcommittee on

Groundwater, 2009; U.S. Government Accountability Office, 2004). Particularly detrimental to the tracking performance in the management of nutrients is the fact that the number of long-term nutrient monitoring sites suitable for assessing nutrient trends and calibrating water quality models has declined substantially over the past two decades. Using the USGS as an example, the number of water quality sites with adequate streamflow and nutrient data available from large river sites operated by the USGS National Stream Quality Accounting Network (NASQAN) declined from about 500 sites in the mid-1970's to about 275 in 1994 to the current network of 33 sites (U.S. Geological Survey, 2011a). Since 2001, monitoring of nutrients by the USGS National Water Quality Assessment (NAWQA) Program also has declined, from 145 nutrient trend sites monitored every year to 113 sites monitored in 2011. Of these, only 12 of the 113 sites are being monitored every year, and the majority of sites are monitored only one out of every four years. This type of rotational monitoring design does not yield data suitable for reliably evaluating the effectiveness of nutrient management programs, especially in smaller streams and watersheds. Although nutrient data from other sources can partly fill the void created by the decline in Federal agency monitoring, water quality monitoring at State and local long-term sites has also declined in recent years.

New networks and major upgrades to existing water-quality monitoring networks have been recommended to meet the deficiency in monitoring data. The most comprehensive of the recommendations is the National Water Quality Monitoring Network (NWQMN) that was proposed in 2008 by the National Water Quality Monitoring Council, which is a national forum for coordination of consistent and scientifically defensible methods and strategies to improve water quality monitoring, assessment and reporting. If implemented, it would provide information on the Nation's water quality from headwaters to the coasts and would include monitoring in small streams, large rivers, lakes and reservoirs, groundwater, and estuaries and offshore coastal zones. The network design is consistent with the National Ocean Council's Strategic Action Plan (2011) and was endorsed by the Federal Interagency Panel on Climate Change and Water Data and Information (2011).

A major objective of the recommended network is to assess the loads of nutrients and other key contaminants to coastal waters. Assessing the impacts of nutrient management programs would be difficult at this large scale, given the current level of stream monitoring and the patchwork nature of nutrient management programs and best management practices across the country.

The National Research Council supports the proposed upgrade of the USGS surface-water quality monitoring network as part of NAWQA's third decade (Cycle 3) of assessment activities. One of the principal reasons for the recommendation is to provide the data and information necessary for the States, EPA, and USDA to better manage nutrients in the Nation's streams and estuaries. The Science Plan recommends upgrading the current network of 113 rotational sites on streams and rivers to a network of 313 sites that would be sampled for nutrients 18 to 24 times per year every year. This monitoring network—the National Fixed-Site Network—represents a combination of NASQAN, NAWQA, and proposed NWQNM stream sites.

Included in the proposed network are wade-able stream sites that represent watersheds that range in size from a few tens of square miles to a few hundred square miles, which is the scale at which most nutrient management programs are implemented. The proposed network also would utilize continuous water-quality monitoring technology at about half the sites to better document changes in nutrient concentrations and loads in response to short term hydrologic events or implementation of

best management practices. Monitoring would include use of new sensor technology to continuously monitor for nitrate, dissolved organic matter, and turbidity.

The USGS recommends four actions that will enable long-term evaluation of the success of nutrient management programs locally and nationally:

1) Restore and enhance multi-scale, long-term monitoring of nutrients in the Nation's surface water and groundwater resources.
2) Improve existing water-quality models for extrapolation of nutrient occurrence in space and time.
3) Establish a network of targeted watershed studies that track nutrients from source areas to receiving waters and groundwater discharge locations across a representative range of nutrient management programs.
4) Improve the detail and reliability of information on sources of nutrients, and establish requirements that all nutrient management programs document the type, location, and extent of practices implemented in each watershed or aquifer.

Accomplishing these tasks would require substantial rebuilding and enhancements of current monitoring and assessment activities to address these critical public issues.

Mineral Resources

I mentioned in my opening statement that I have some concerns about the cuts taken in FY12 for minerals programs and the additional cuts proposed for FY13. As you know, the United States requires a sustainable supply of mineral commodities that are critical to the Nation's economic and national security. These mineral commodities are increasingly important for clean-energy industries, defense applications, and consumer electronics. A geographic concentration in global supply for some of these mineral commodities introduces issues of supply risk. A $4.3 million cut in FY13 and the loss of 34 FTE is significant, especially considering that one area cut will be the "dissemination of international minerals information".

Simpson Q10: Given the Nation's heavy reliance on minerals from overseas, and given the importance of minerals to our economy and national defense, why should we be cutting this program?

Answer: The 2013 budget request for the Mineral Resources Program reflects difficult choices in a time of fiscal constraints. The proposed budget reduction will impact research on the relationship between minerals and human health. The reduction will impair collection of basic geologic and mineral deposit data in Alaska; collection, analysis, and dissemination of international minerals information and material flow studies; and reduce analytical capabilities, requiring consolidation of analytical facilities supported by the Mineral Resources Program. The reduction will also require a phased initiation of the new domestic mineral resource assessment in 2013, which will proceed with stepwise implementation that will extend the time required to complete the assessment.

While the USGS Mineral Resources Program budget request includes a reduction in 2013, funding has been prioritized to address a significant resource issue facing the Nation, the availability of critical materials such as rare earth elements that are essential for U.S. technology development,

national defense, and economic development. Rare earth elements are critically important in the development of renewable energy technology such as wind turbines, solar cells, and advanced hybrid vehicles. The USGS leads the world in unbiased scientific research on the availability of critical materials and documenting world supplies in an era of resource constraints. The USGS will be doubling its investment in rare earth elements with this increase.

Simpson Q11: How will the reductions taken in FY12 and proposed for FY13 impact the Minerals Information component of the program?

Answer: The 2013 budget request for the Mineral Resources Program reflects difficult choices in a time of fiscal constraints. The reductions taken in 2012 and those proposed for 2013 will reduce the timeliness and scope of the collection, analysis, and dissemination of minerals information and material flow studies. All parts of the Mineral Resources Program will be affected by the proposed budget reduction, but due to the priority of the work in the Minerals Information component, other parts of the Mineral Resources Program will be impacted to a greater extent.

The Mineral Resources Program recently started a new effort it calls "Critical Mineral Resources for the 21st Century". This effort includes (1) analysis of vulnerabilities of global critical mineral supply chains, (2) assessment of undiscovered critical domestic mineral resources, and (3) information of the impacts of mineral resources on human health.

Simpson Q12: How will USGS be able to continue this initiative given the proposed $4.3 million cut in FY13?

Answer: The 2013 request for the Mineral Resources Program reflects difficult choices that had to be made due to fiscal constraints in order to balance science needs and priorities in the budget. While the USGS Mineral Resources Program budget includes a net reduction in 2013, a $1.0 million increase is proposed to address the significant issue facing the Nation concerning the availability of critical materials such as rare earth elements. Rare earth elements are essential for U.S. technology development, national defense, and economic development. The USGS leads the world in unbiased scientific research on the availability of critical materials and in documenting world supplies in an era of resource constraints. The "Critical Mineral Resources for the 21st Century" initiative will continue with an increased focus on these critical mineral resources.

Conventional Energy

The FY13 budget proposes a $1 million cut to a State cooperative program focused on coal and oil shale resource assessments. According to the budget proposal, the funds instead are being directed to a $1 million increase for wind energy.

Simpson Q13: How is this proposal consistent with the president's remarks this past weekend that "We have to pursue an all-of-the-above strategy that develops every source of American energy"?

Answer: The USGS Energy Resources Program studies virtually all geologically based energy resources including oil, gas, coal, methane hydrates, geothermal, uranium, heavy oil, and oil shale. The Energy Resources Program will continue research and assessment activities on these energy commodities. However, budget constraints required the USGS to make targeted reductions so that funds could be used to support priorities elsewhere in the budget, including the Secretary's New Energy Frontier, which focuses on renewable energy resources. The Nation's "all of the above" approach to energy development is taking advantage of the USGS' expertise in wildlife and ecosystems to minimize negative impacts from wind and solar energy developments prior to the installation of this energy infrastructure.

Hydraulic Fracturing

An increase of $13 million is proposed for hydraulic fracturing research in conjunction with the Department of Energy and the EPA.

Simpson Q14: Please explain who is coordinating this interagency effort, whether there is a strategic plan driving the effort, what USGS's unique role is, and what are the end outcome measures of success.

Answer: The U.S. Geological Survey (USGS), the Department of Energy (DOE), and the Environmental Protection Agency (EPA) are developing a collaborative, multi-agency hydraulic fracturing research initiative to address the highest priority challenges associated with safely and prudently developing unconventional shale gas and tight oil resources. USGS research activities will be carefully coordinated with DOE, EPA, other Federal agencies (including the Interior bureaus of the Bureau of Land Management, the U.S. Fish and Wildlife Service, and the National Park Service), State agencies, academia, and non-governmental organizations.

On April 13, 2012, the President signed an Executive Order creating the Interagency Working Group to Support Safe and Responsible Development of Unconventional Domestic Natural Gas Resources. On the same day, the USGS, the DOE, and the EPA, signed a Memorandum of Agreement (MOA) initiating a multi-agency collaboration on unconventional oil and gas research. The objective of this collaborative effort is to better understand and address the potential environmental, health, and safety impacts of natural gas development through hydraulic fracturing. The MOA establishes the structure and process that will drive this effort. Over the next nine months, a robust and strategic R&D plan will be developed by the three agencies, working in collaboration with the White House Office of Science and Technology Policy. The plan will build on recommendations of the Secretary of Energy Advisory Board (SEAB) Natural Gas Subcommittee and emphasize the fundamental core competencies of each agency in synergistic ways that lead to complementary and non-duplicative work. This plan will prioritize and guide the agencies in the R&D work they will carry out.

The USGS has a unique role because of its diverse scientific expertise and ability to carry out large-scale, multi-disciplinary investigations that provide impartial scientific information to resource managers, planners, and other customers for decision-making purposes. The USGS is the Nation's largest water, Earth, and biological science and civilian mapping agency. It works across a wide range of Earth and life science disciplines to address multi-faceted issues such as hydraulic

fracturing. The USGS' role in this interagency effort is to enhance existing research and undertake new policy-relevant research that focuses on:

- potential impacts of hydraulic fracturing and related activities on water quality and availability;
- monitoring and characterization of stray gas (gas that migrates upwards from one or more subsurface sources to near-surface aquifers and streams, rivers, and lakes);
- characterizing the gas resource and related geologic framework;
- impacts on landscapes, habitats, and living resources;
- induced seismicity;
- socioeconomics of community changes; and
- comprehensive data integration.

The results of USGS studies will provide stakeholders with scientific and technical data and information required for making sound policy, planning, regulatory, technical, and resource management decisions to minimize the potential environmental, health, and safety risks of natural gas development.

The following are a sampling of USGS hydraulic fracturing research projects that will be conducted:

The USGS will develop methodologies to quantitatively determine water requirements for hydraulic fracturing of major unconventional oil and gas plays. New techniques will be applied to undiscovered resources, which will be beneficial for predicting water requirements in advance of drilling for a given play. The study will involve water budget assessments to determine where the water used in hydraulic fracturing is obtained and where it goes. Since brackish water has the potential for use in hydraulic fracturing, but is often not viable for human consumption or agricultural use, the USGS proposes to use geophysical methods and water quality data to estimate the volumes and spatial distributions of brackish water resources and to assess the potential issues associated with using these fluids for hydraulic fracturing activities.

The USGS will use its specially-designed techniques and equipment to collect and geochemically fingerprint time-series fluid samples from major unconventional oil and gas plays. Since flowback fluids and brines produced from hydraulically fractured wells have been poorly characterized thus far, and may be difficult to distinguish from other potential sources of contamination in shallow aquifers, the USGS study will be important for understanding potential contamination as well as for providing baseline information that has not yet been developed for any of these producing reservoirs.

The USGS will continue to study the occurrence of natural gas in private water wells using chemical and isotopic techniques to determine the nature and source of natural gas. This "stray gas" can emanate from one or more of a variety of anthropogenic sources including abandoned oil and gas wells, subsurface fluid injection wells, and water wells. Geologic mapping and subsurface geological and geophysical surveys will also be conducted by the USGS to improve our understanding of the geometry and structure of the rock formations that contain unconventional oil and gas resources.

The USGS also plans to conduct induced seismicity studies, since earthquakes have occurred in areas of significant shale gas production and hydraulic fracturing over the last two years. Proposed studies will seek to understand the complex interaction of fluid pressures and subsurface stress.

Research on living resources and landscapes will also be conducted. Studies will provide an improved understanding of the sensitivity of aquatic organisms to the chemical components of hydraulic fracturing fluids and flowback water; evaluate best management practices used in shale gas development for protecting sensitive aquatic and terrestrial species; determine cumulative impacts of shale gas development on the landscape to develop strategies to prevent, minimize, or mitigate ecosystem level disturbances over time; evaluate the socioeconomic effects of shale gas development on communities; and develop a framework for assessing the impact of hydraulic fracturing on ecosystem services.

The USGS John Wesley Powell Center for Analysis and Synthesis will also develop an atlas of United States unconventional hydrocarbon production areas, resources, and environmental impacts and a spatially explicit approach for assessing the full life cycle of shale gas production and produced waters.

LandSat

As I mentioned in my opening statement, the budget for LandSat is markedly different from the proposal just a year ago. While this Committee rejected the large increases proposed for LandSats 9 and 10, we did provide $2 million in support of maintaining continuity in a LandSat program. The FY13 budget proposes only $250,000 for LandSats 9 and 10.

Simpson Q15: Please give us an update on the status of LandSats 5, 7, 8, 9, and 10.

Answer:

Landsat 5: The USGS suspended Landsat 5 imaging activities on November 18, 2011 to explore possible solutions to problems with the satellite's image-data transmitter and to investigate the feasibility of operating a secondary multispectral payload on the 28-year old mission. The USGS turned on the Landsat 5 Thematic Mapper (TM) in late April, 2012 to determine the state of the electronics problem that suspended operations. Unfortunately, several alternate methods of acquisitions did not alleviate the problem, which severely limits any further TM acquisitions. The USGS is determining the best strategy for acquiring the final TM scenes. The second instrument on Landsat 5, the multi-spectral scanner (MSS) instrument has been reactivated and MSS data are being collected over the United States.

Landsat 7: This satellite has been operating with a scan-line corrector failure since May 2003, which causes the loss of 23 percent of the image pixels in each 12,000 square-mile scene. Nonetheless, the USGS continues to collect over 350 Landsat 7 scenes per day of the Earth's land surface and users continue to download tens of thousands of Landsat 7 scenes each week from the USGS satellite-data archive. Launched in 1999, Landsat 7 is now 8 years beyond its 5-year design life.

Landsat 8: The 2012 enacted budget includes a total of $35.5M for the USGS to develop the ground system, in step with the NASA development of the Landsat 8 satellite, in preparation for launch in January 2013.

Landsats 9 and 10: The 2012 enacted budget includes $2.0 million to support program development activities for Landsat satellites 9 and 10. These funds are being used to consider options to obtain, characterize, manage, maintain, and prioritize land remote sensing data and to support the evaluation of alternatives for a Landsat 9 mission and other means for acquiring data. In 2013, the budget request includes $250,000 to continue these activities. The evaluation of these alternatives will help inform the 2014 budget formulation process.

Simpson Q16: Are you considering new partnership and technology approaches that could lower the cost of future LandSat missions?

Answer: Yes. The USGS is working closely with the Landsat user community, the Department of the Interior, the Office of Science and Technology Policy, and other agencies to identify and consider all available options for ensuring continuity of moderate-resolution land observation for the Nation. The USGS is evaluating the results of a Request for Information (RFI) to solicit industry insights on providing a dependable, long-term source for Landsat-like data to follow Landsat 8. The RFI called for information on mission concepts that could include revolutionary "clean-slate" technical approaches, as well as evolutionary upgrade approaches. Approaches may involve single- or multiple-satellite acquisitions, commercial data buy arrangements, public/private partnerships, hosted payloads, international collaboration, small satellites, and architectures utilizing combinations of space-based sensors. The USGS is also supporting a National Research Council study on programmatic and operational alternatives for establishing a long-term source of Landsat-like data for the Nation. These efforts include a "Gathering of Experts" to examine the feasibility of new and emerging technologies that might be applicable for sustaining global land observations.

Climate Variability

The FY13 budget proposes an +$8.8 million increase to the climate change program. As I've said before, I'm not a climate change naysayer, but I do question the federal government's ability to coordinate and account for the rapid increases in so-called climate change spending since FY08. So far I haven't received the kinds of answers that would put my mind at ease.

Simpson Q17: Please summarize for us what USGS is trying to learn with respect to climate change, and explain why we need to know it.

Answer: Successful development of strategies for adapting to climate change impacts on water, land, fish, wildlife, and other Department of the Interior management priorities requires a long-term, strategic approach aimed at understanding causes and patterns of climate change and their impacts on the Earth system and the Nation's resources. Through an integrated set of science programs, USGS climate change research advances understanding of climate change and provides tools to support sound resource management decisions and adaptation strategies.

USGS climate change programs produce fundamental science to advance understanding of global change and its effects on the Earth system. For example, the USGS conducts integrated research to reconstruct regional-to-national patterns of climate variability (e.g., temperature, precipitation, and hydrology) during the last 2,000 years. These efforts aim to better understand regional responses to

climate events such as sustained drought and determine magnitudes and rates of climate change associated with natural climate variability. The paleoclimate reconstructions are compared with climate model results to test and verify model simulations of past and current climate. The regional to national reconstructions also provide a context to evaluate potential climate changes and impacts associated with altered greenhouse gas emissions and land use.

USGS climate change programs also apply scientific data and research to inform decisions on adaptation and mitigation and aid assessments of the Nation's capacity to respond to impacts and vulnerabilities associated with climate and land use change. One example is USGS research to develop an integrated model to forecast how climate may affect wildfire, permafrost, and vegetation patterns in Alaska. The research components necessary for development of this model include evidence of long-term patterns (such as permafrost variability over several millennia) and shorter-term records of changes in critical habitats and species composition. This comprehensive understanding enables development of models that simulate changes in permafrost patterns and associated plant and animal species under different climate scenarios. By integrating data generation with modeling efforts, the capability of models will be maximized to accurately forecast impacts of different climate and land use scenarios on the Alaskan landscape and provide tools to help managers develop sustainable management options and ensure the long-term sustainability of Interior resources.

USGS programs provide the platform for addressing these important questions. The primary activity supporting this work is the Climate and Land Use Change (CLU) mission area, but other mission areas, especially Water and Ecosystems, provide crucial related research and monitoring capabilities. The CLU mission area includes:

- The core Climate Research and Development program that focuses on fundamental processes by which global changes occur and how these changes affect natural resources;

- The National Climate Change and Wildlife Science Center, which manages the eight Department of the Interior Climate Science Centers, works closely with regional and local resource managers to provide scientific information and tools for understanding and adapting to change;

- A Congressionally-mandated initiative to assess the potential for sequestering carbon in both geologic and biologic reservoirs in the United States;

- The Land Remote Sensing program, which includes the Landsat satellite. This program provides high-quality terrestrial image data used by Federal, State, and local governments and the private sector to assess and manage natural resources. A critically important example is the use of these data to calibrate use of water for irrigation in the western Unites States. It is estimated that this satellite-based technique annually saves businesses and States $100 million; and

- The Geographic Analysis and Monitoring program, which conducts research and assessments to understand the patterns, processes, and consequences of changes in land use, land

condition, and land cover at multiple spatial and temporal scales, resulting from the interactions between human activities and natural systems.

These climate and land use change programs allow the USGS to assess changing climate and changing land use, which are intimately connected. The consolidation of these programs into one mission area in 2010 was an important and logical step for the USGS. Strategic Science Plans for each mission area have been developed to both guide overall efforts and ensure that complementary efforts are effectively linked.

Simpson Q18: What is the proposed FY13 increase going to be spent on and why?

Answer: Proposed increases in the Climate Variability subactivity for 2013 will support:

- Tribal climate science needs - a key research component of the Department of the Interior Climate Science Centers (DOI CSCs) in the Northwest and Northeast regions. Proposed increases for these DOI CSCs are meant to address priority tribal research issues in the Columbia River and Great Lakes ecosystems, such as surrounding fisheries and forest adaptation planning.

- Fundamental research to advance scientific understanding of patterns of climate variability and change and its impacts on the Earth system. Priority topics include: paleoclimate research to document natural climate variability over multiple temporal and spatial scales and the response of different components of the Earth system; the carbon cycle and processes influencing carbon flux; patterns, causes, and impacts of hydrologic extremes; impacts of climate and land-use change on terrestrial and marine systems; rates, causes, and consequences of land-use and land-cover change; and sea-level rise and coastal regions. These research efforts provide data needed to test and verify models used to simulate current and past climates and to forecast future climate under different scenarios. The data also serve to inform policymakers and planners during development of resource management strategies.

- Completion of initial assessments of biologic and geologic carbon storage potential as mandated by the Energy Independence and Security Act of 2007.

- High priority tactical science needs identified by the Fish and Wildlife Service, the National Park Service, and the Bureau of Land Management. Funding increases for providing this science support will go toward integrating results from research projects, such as the Alaska integrated ecosystem model being done at the Alaska DOI CSC, and applying them to key bureau concerns, such as wildfire management and adapting to changes in permafrost and habitats.

These increases provide resources to continue both the highest priority and legislatively mandated activities as identified by the USGS and Interior.

Simpson Q19: Are these priorities that were identified and tasked to USGS by a larger government-wide climate change coordination group such as the U.S. Climate Change Science Program?

Answer: Priorities for the Climate Variability Subactivity for 2013 were guided by input from needs expressed by several external bodies, including the U.S. Global Change Research Program (USGCRP, previously the U.S. Climate Change Science Program) and Interior partners. *The National Global Change Research Plan 2012-2021*, which is a strategic plan for the USGCRP, includes four strategic goals:

- *Advance Science* – advance scientific knowledge of the integrated natural and human components of the Earth System;
- *Inform Decisions* – provide the scientific basis to inform and enable timely decisions on adaptation and mitigation;
- *Conduct Sustained Assessments* – build sustained assessment capacity that improves the Nation's ability to understand, anticipate, and respond to global change impacts and vulnerabilities; and
- *Communicate and Educate* – Advance communications and education to broaden public understanding of global change and develop the scientific workforce of the future.

Priorities of the USGS Climate Research & Development Program directly address the need to advance the scientific knowledge of the Earth system and inform decisions by conducting fundamental multidisciplinary research to:

- Improve understanding of natural patterns of climate variability and impacts on terrestrial, coastal, and marine habitats;
- Distinguish patterns influenced by natural climate variability from those related to human-induced changes that include land-cover and climate changes;
- Better understand impacts of climate and land use change on ecosystems and habitats over different temporal and spatial scales; and
- Improve understanding of the influence of different processes on sea level rise, such as melting ice sheets, oceanographic changes, and natural climate variability. Such fundamental research is needed to improve the capability of models to forecast sea-level patterns under different climate scenarios.

These topics are identified in the USGCRP Strategic Plan 2012-2021 as necessary to inform future decisions and responses to the societal challenges associated with climate and global change.

The National Climate Change and Wildlife Science Center (NCCWSC) and the DOI Climate Science Centers (CSCs) are stakeholder-driven science organizations. As such, their science priorities are developed based on the science needs of numerous organizations, such as the Landscape Conservation Cooperatives, other Interior bureaus, and other Federal government programs, such as the NOAA Regional Integrated Science and Assessment program. This stakeholder-driven approach ensures that the NCCWSC and the CSCs meet climate science needs related to adaptation planning for fish and wildlife and their habitats. Equally important is assurance that this science fills identified gaps and needs and does not duplicate existing climate science activities. NCCWSC and CSC efforts help provide the scientific basis to inform and enable timely decisions, as outlined in the USGCRP Strategic Plan 2012-2021, and they participate in the National Climate Assessment as required by the U.S. Global Change Research Act.

Simpson Q20: What do you think are some of the largest impediments to climate change coordination across the federal government?

Answer: The largest impediment to a coordinated response to climate change in any sector, including the Federal government, is the complex, multi-faceted nature of global change resulting from climate variability. As the Earth's natural history reveals, changes in climate can have far-reaching impacts on natural systems and the human societies that inhabit them. Responding and adapting to these changes and mitigating their impacts requires coordination among government entities with varying missions and mandates, such as the management of natural and cultural resources or the building of infrastructure and provision of services. Responding to global change requires a Federal government that is well-equipped with robust data, tools, and governance capacities.

Coordinating climate change efforts across the Federal government is challenging because of the complex nature of global change, the differing missions and cultures of branches of government and agencies within them, and the need to develop science, strategies, and institutions that are adaptive to diverse needs. Both existing and new institutions and arrangements are being marshaled to meet these needs. They include:

- The United States Global Change Research Program (USGCRP) coordinates research programs across the Federal government to avoid duplication and fill gaps. This government-wide, long-term coordination effort has recently developed a new strategic plan that places much greater emphasis on advancing science that is relevant to the needs of decision-makers facing adaptation challenges. These efforts address both fundamental science questions and the methods to ensure tight linkage between user needs, delivery of science to users, and the research community. The USGS is an active member of multiple working groups of USGCRP and a USGS senior executive serves as the backup Department of the Interior representative to the USGCRP Principals, the 13 agencies that lead the program;

- The Interagency Climate Change Adaptation Task Force (ICCATF), co-chaired by the Council on Environmental Quality (CEQ), the Office of Science and Technology Policy, and the National Oceanic and Atmospheric Administration (NOAA), is working to implement President Obama's directive to agencies to develop strategic climate adaptation plans. The CEQ has issued implementation instructions to agencies and final plans were due to the CEQ in March 2012. USGS senior executives serve on several ICCATF workgroups, representing both the USGS and the Department of the Interior; and

- Several sectoral efforts complement these government-wide strategies. These include:

    - the development of a *National Action Plan* by Federal agencies and stakeholders for managing freshwater resources in a changing climate;

    - significant attention to resiliency and adaptation to climate change in the National Ocean Council's draft *National Ocean Policy Implementation Plan*; and

- the upcoming completion of a *National Fish, Wildlife, and Plants Climate Adaptation Strategy*, developed by Federal, State, tribal, and local representatives with significant stakeholder input.

USGS scientific staff and senior executive leadership as committee co-chairs were involved in all three of these efforts.

- Finally, individual agencies, and often their subunits, are preparing agency-specific plans, strategies, and coordinating processes. For example, Secretary Salazar has convened a high level Climate and Energy Task Force as a forum for interagency coordination to help transfer climate science into adaptation management planning in the Department of the Interior's resource management bureaus. Additionally, the implementation of the Department of the Interior Climate Science Centers (DOI CSCs) and the Landscape Conservation Cooperatives (LCCs) helps provide a coordinated, science-based management approach for adaptation across Interior's bureaus. In both of these efforts, significant attention focuses on reducing duplicative activities. For example, the DOI CSC host universities were chosen in part to maximize the co-location with NOAA's Regional Integrated Science and Assessment locations. Similarly, the LCCs bring together Federal, State, tribal, and other partners to address high priority global change issues, with a goal of ensuring appropriate science is available and maximum leverage is obtained from scarce resources.

Ecosystems

The USGS budget includes a $16.2 million increase for "science in support of ecosystem management for priority ecosystems." I thought that was basically the mission of Interior's Landscape Conservation Cooperatives, which are funded through the Fish and Wildlife Service.

Simpson Q21: Why the need for both? Please explain.

Answer: The 2013 budget request for the USGS includes a $16.2 million increase for fundamental science research activities in support of priority ecosystem restoration initiatives. This increase will support science research across the breadth of the USGS science mission areas. Research will support efforts to control invasive species such as pythons in the Everglades and Asian carp in the Great Lakes and Upper Mississippi, manage flow conditions and water quality in the San Francisco Bay-Delta, and understand and manage water availability, water quality, and fish habitats in the Klamath Basin. This information is available for application by the Landscape Conservation Cooperatives and other resource management entities in conservation planning and landscape level resource management.

LCCs, on the other hand, are established to institutionalize the kind of landscape-level ecosystem management being undertaken in the priority ecosystems initiatives, across all ecological landscapes in the U.S. The LCCs are entities with a mission that includes the coordination of conservation planning and management activities at a landscape level, application of science to high priority conservation needs, and identification of key science needs. In general, the LCCs are designed to

focus on application of science rather than generating fundamental science, which is the role of USGS.

The issues facing today's decision-makers--energy development, climate change, and water availability--are increasingly complex. A broad array of scientific expertise is necessary to understand both the biotic and abiotic systems that drive landscape change. The USGS has a unique range of capabilities to conduct the type of landscape-scale, systems-based science that will be applied by the Landscape Conservation Cooperatives (LCCs).

USGS research provides important fundamental science to enable resource managers to make informed decisions, to help resolve and prevent resource management conflicts, and to support Interior's public trust stewardship responsibilities for the Nation's lands and waters. USGS studies are designed to serve local ecosystem management needs and provide knowledge and approaches transferable to similar ecosystems across the Nation. These efforts have a much broader geographic scope than any individual LCC.

Simpson Q22: Is it fair to say that the LCC's are more partnership-based than the USGS research program? If so, shouldn't we be investing in the LCC's primarily?

Answer: USGS research activities are extensively partnership-based to ensure both efficient use of scarce funds and close matching of results to management needs. Research focused on the restoration of economically and socially important ecosystems across the United States is a prime example. USGS science at these locations is based on established and extensive partnerships between Federal, State, local, tribal, NGO, and academic partners. For example, USGS science is being applied in the Chesapeake Bay as part of a broad coalition of Federal, State, and local partners in support of the implementation of the Chesapeake Bay Executive Order. In the Great Lakes region, USGS Asian carp research in early detection and control technologies is being conducted in support of the Asian Carp Regional Coordinating Committee, which consists of Federal, State, and local agencies, and other stakeholders.

The purpose of the Landscape Conservation Cooperatives (LCCs) is to institutionalize formal partnerships and enduring relationships across the Nation's ecosystem landscapes to strengthen the links between science and management. The role of the LCCs is to define science needs and apply scientific results. This role is complementary to, rather than duplicative of, USGS programs as the LCCs draw upon the fundamental science produced by these programs.

The Fish and Wildlife Service hasn't been shy about trying to re-build the science capacity it lost to the National Biological Survey and eventually the Biological Resources Division at the USGS.

Simpson Q23: Is it just not working, this model of having all of Interior's biological science housed in the USGS?

Answer: Making sound policy and management decisions in the stewardship of natural resources requires robust scientific data and tools. The science needs of Federal resource management agencies are vast and diverse. Sound decision-making depends on long-term monitoring and assessment of

ecosystems and their components, the continued development of knowledge about ecosystem function and species, studies on questions of immediate management concern, and tools to examine and predict the impacts of potential decisions and ecological change.

The USGS produces an array of multi-disciplinary science that does all of the above. The USGS maintains vast National networks of long-term monitoring and data collection on ecosystems, species, water, geology, and seismology. All the USGS mission areas carry out fundamental, peer-reviewed laboratory and field science that contributes to our knowledge of the Earth's systems and is the basis for applied science in support of management. All of the mission areas, but particularly the Ecosystems mission area, carry out a multitude of science research and development driven by national and Interior bureau needs. Much of this research is driven by the applied management needs of the bureaus in the field.

Efforts by resource management agencies to develop specific science in support of specific mission needs, is an indication of the growing need for science data and tools in making complex resource management decisions. Coordination across bureaus and agencies to prevent duplication and promote synergies is absolutely essential to ensure that resources are being prioritized and utilized in the most effective manner.

Natural resource management agencies such as the Fish and Wildlife Service, the National Park Service, and the Bureau of Land Management are science-based organizations, and they require trained scientists in order to apply scientific findings to decisions. The USGS, as a policy-neutral, non-regulatory agency, has a different but complementary role to conduct long-term objective research, to develop modeling and forecasting capability to support decisions, and to maintain large-scale, long-term monitoring and data efforts.

There are many examples of this complementary role:

- **Energy and Renewables**. The USGS has made substantial efforts to provide new tools, based on decades of research, to Interior decision-makers to support science-based energy decisions. For example, the USGS developed habitat suitability models and maps for multiple species for siting decisions including the lesser prairie chicken in Kansas and sage grouse in Wyoming. The USGS also developed models for assessing cumulative impacts on golden eagles, ferruginous hawks, northern harrier and prairie falcons in Wyoming. A risk map of the effects of wind energy development and infrastructure on sage brush ecosystems in Nevada is used in *Energy Development Guidelines* and *Guidelines for Transmission* tower designs in Nevada. The USGS developed a rapid assessment methodology in collaboration with FWS to assist with management decisions for Bird Conservation Region (BCR) 11, which is transferrable to other BCR Primary Objectives.

- **Golden Eagles.** Building on decades of long-term research, the USGS has developed maps of long-term eagle use of wind energy space and the relationship to golden eagle occurrence on the landscape. The USGS is also providing direct technical assistance to FWS on the Eagle Task Force, developing survival estimates, migration and wintering information, mortality estimation, and other data for use in decision-making. Finally, the USGS is developing a mortality estimation framework that can be used by FWS to determine take and survey/monitoring designs that can be used by industry and FWS. This is a good example of the USGS providing the long-

term research results and decision tools to FWS scientists and managers to provide the scientific foundation decisions, applied by FWS personnel on the ground.

- **Sage Grouse**. The USGS has a broad research program on the ecology and conservation of sage-grouse and sagebrush habitats that addresses the science needs of resource management agencies. These studies have focused on renewable energy and oil/gas development, species conservation, land use planning, invasive species management, habitat restoration, and fire prevention and recovery. USGS science was extensively used in the 2004 and 2010 sage grouse status reviews and was key to the endangered species listing decisions made by FWS in those years. It was also used in developing the *Greater Sage Grouse Comprehensive Conservation Strategy,* and is used by BLM for national policies and resource management plans.

- **White-nose syndrome.** Research and monitoring efforts on white-nose syndrome (WNS) in bats is critical to the mission of Interior to protect and manage the Nation's natural resources and to provide scientific information about those resources to the public. The USGS plays a lead in WNS monitoring and research, and has made numerous discoveries to advance our understanding of this disease, including the initial description of the disease, discovery of the pathogen, and demonstration of causality. A collaboratively developed management plan, "National Plan for Assisting States, Federal Agencies and Tribes in Managing White-Nose Syndrome in Bats," was developed in 2011 by a team of Federal, State, tribal, and NGO scientists. This plan provides a framework for the coordination and management of the national WNS investigation and response. USGS research is an essential component of this plan, providing critically needed science information to Interior, State, and tribal wildlife management agencies. Ongoing and future USGS research and monitoring activities are geared towards providing enhanced disease surveillance, improved diagnostic tools, and a better understanding of WNS disease ecology and its effects on populations of bats. The ultimate goal of these efforts is to develop practical management solutions to reduce the impacts of this devastating disease.

- **Invasive species.** USGS science has informed FWS rulemaking and control of invasive species for years. For example, FWS has used environmental risk assessments and background information developed by USGS scientists to support listing various non-native species as injurious under the Injurious Wildlife Provisions of the Lacey Act. This includes the listing of nine giant constrictor snakes, four species of Asian carps, and 29 species of snakehead fish. The USGS has also provided research necessary to develop and improve targeted control methods for invasive species to support FWS management efforts. For example, the USGS has worked to improve sea lamprey control chemicals applied by FWS agents to improve their effectiveness and efficiency, and more specifically target sea lampreys. The USGS continues to develop control methods to target Burmese pythons in the Everglades to support FWS efforts to reduce the python population. With input from FWS and other partners, and using unique talents and expertise found within the USGS, scientists are also working to develop a variety of methods to kill or affect the distribution of Asian carp. Once ready for the field, these new tools can be used by FWS and other partners to reduce Asian carp populations.

- **Polar bear.** The USGS conducted seminal research assessing the global status of polar bears in relation to changing sea ice habitat conditions, now and into the foreseeable future, under varying climate scenarios. The USGS created models to integrate physical and biological knowledge with climate forecasts in direct support of specific FWS listing decision factors. This work also clearly

defined areas of uncertainty. The FWS used this work to establish that sea ice conditions were, and would continue to be, the primary determinant of polar bear status. Factors such as energy development, disease, and harvest had minimal effects relative to sea ice habitat factors. USGS research provided underlying science in support of FWS' finding that sea ice would continue to decline and that listing of polar bears as threatened under ESA was warranted. Today, the USGS model functions as a framework for FWS management actions under their Conservation/Recovery Plan. This approach developed by the USGS has subsequently been used by the USGS and FWS as input to ESA decisions for walruses, another ice-dependent species.

In each of these cases, USGS conducted, over many years, fundamental research that was used by Interior bureaus in decision-making, and in each case USGS' broad range of capabilities complemented and supported the science mission of those bureaus.

As for the desire of FWS to build more science capacity, there are currently not enough resources within the USGS to meet all of the needs of FWS for science in support of their mission. Even before FWS biology programs were moved to the National Biological Service and subsequently to the USGS, there were not enough staff biologists to meet FWS needs. This is not a new problem. If there are resources available to build science capacity, the USGS supports the current model in which those resources are placed within FWS if the purpose is to apply USGS solutions on the ground to the problems at hand, and those resources are placed within the USGS if the purpose is to develop new solutions to current and emerging problems that will then be available to FWS and the science community at large.

Simpson Q24: How did we get here, back to this decentralized biological research model, where does USGS go from here, how is it measuring success, and how does it manage to stay relevant to the needs of the other Interior bureaus?

Answer: The USGS' biological research is less decentralized now than the previous model of dispersed research capacity across several Interior bureaus. Moreover, DOI's fundamental biological research programs have been maintained throughout their history within the USGS. While there have been subtle changes in names since the incorporation of biological science into the USGS–- *Investigations of Biological Resources* was changed to *Fisheries, Wildlife and Ecosystems* programs in 2010, for example--most programs have remained essentially unchanged for more than a decade. Overall, for these core biological capabilities, only the budget activity name has changed from Biological Resources to Ecosystems.

Centralization into a single organization has helped reduce redundancy and has ensured that USGS science serves multiple Interior bureaus. For example, the USGS' significant research and development activities for the sage grouse have been used by both the Fish and Wildlife Service (FWS) and the Bureau of Land Management (BLM) in their respective management decisions. In the Grand Canyon Adaptive Management Program, key findings about the population and habitat requirements of the endangered humpback chub have been used by multiple Federal, State, tribal and non-governmental entities. The USGS works collaboratively with FWS to monitor population numbers and trends of the endangered humpback chub (*Gila cypha*), and conducts scientific research to understand how dam operations influence humpback chub recovery.

The USGS' biological research remains vibrant and healthy, and is one of the largest and most comprehensive in the Nation. The biological programs that make up USGS' Ecosystems mission area are as follows (dollars are for the 2013 request):

- **Status and Trends** ($22.2 million): measures, predicts and reports the status and trends of the Nation's biological resources.
- **Fisheries: Aquatic and Endangered Resources (**$27.1 million): conducts biological investigations on fish and aquatic resources of national importance.
- **Wildlife: Terrestrial and Endangered Resources** ($49.4 million): conducts biological research to determine factors influencing the distribution, abundance, and condition of wildlife populations, habitats, and their associated ecosystems.
- **Terrestrial, Freshwater, and Marine Environments** ($42.6 million): provides information, models and tools that land and resource managers can use to understand how management alternatives will affect ecosystems and the services they provide under a variety of climate, land use, and other change scenarios.
- **Invasive Species** ($17.7 million): provides information on early detection, monitors and assesses invaders, and develops methods and technologies needed for effective responses to invasive species threatening U.S. ecosystems and native species.
- **Cooperative Research Units** ($18.9 million) is a unique cooperative relationship among the USGS, Federal, State, and university partners to promote research, education and technical assistance focused on fish, wildlife, ecology and natural resources.

It is important to note that the USGS realigned its core biological programs into an Ecosystems mission to ensure that its science evolves to meet today's challenges, not to replace our world-class biological capability. The objective was to build upon this capability to provide new tools and technologies for decision-makers. As noted above, the issues facing today's decision-makers–-energy development, climate change, and water availability--are increasingly complex, requiring multiple disciplines and the ability to understand both the biotic and abiotic systems that drive landscape change. As described by FWS:

> Conservation is expanding beyond individual project and site-specific borders to larger landscapes. It is pushing against the boundaries of other disciplines. It is shoving aside the idea that protection, restoration and management are ends unto themselves and carrying with it the idea that each is a means to a larger outcome — landscapes capable of sustaining abundant, diverse and healthy populations of fish, wildlife and plants. Sustaining populations at landscape scales requires understanding of the diverse and complex biological systems and processes upon which they depend. (*FWS Conservation in Transition: Leading Change in the 21st Century*; http://www.fws.gov/home/feature/2009/pdf/ConsTransitionPublicsmJan2809.pdf)

Regarding the question of where the USGS goes from here, the USGS will continue to maintain a robust biological science capacity and, combined with the interdisciplinary range of USGS scientific capabilities, make wise investments in science that will enable the USGS to be prepared when partners call or when an emergency arises. For example, USGS biological science capacities have been called on to respond to the Department's polar bear listing decision, to the growth in renewable energy, and to various diseases as they crop up. Scientists are developing new capacity in innovative solutions and in the use of technological advances, such as remote sensing and genomics, and continuing to invest in decision support tools and models. These directions are laid out in the *USGS*

Science Strategy, which outlines the major societal issues that USGS science is poised to address (http://pubs.usgs.gov/circ/2007/1309/).

Success has always been measured, and will continue to be measured, by the extent to which USGS science is used in decision-making. USGS science continues to provide scientific information to support Interior decisions.

The use of USGS science is inextricably bound to the relevance of USGS science. The USGS stays relevant by working closely with Interior bureaus at all levels of organization. This communication has been enhanced by the establishment of USGS regional executive positions across the landscape. Their focus is to work with the regional communities in partnerships on a variety of issues.

The following are some examples of USGS work with other Interior bureaus to address their needs:

- **National Park Monitoring Program.** The U.S. Geological Survey National Park Monitoring Project is a collaborative research effort in direct support of the National Park Service's (NPS) Inventory and Monitoring Program. The primary role of the NPS Inventory and Monitoring Program is to collect, organize, and make available information about natural resources in national parks. USGS scientists complement NPS efforts by developing and improving data collection techniques and monitoring protocols, analyzing data, and developing tools to synthesize and report data. As a collaborative program, headquarters staffs from the NPS and the USGS work closely to identify research priorities and subsequently review and select studies for funding.

- **Landscape Conservation Cooperatives.** USGS scientists and managers provide direct support to the LCCs. The USGS serves on steering committees, provides direct scientific support, and develops research proposals responsive to the scientific needs of the cooperating agencies of the LCCs. The USGS also serves on hiring panels for LCC staff recruitments, provides counsel on LCC science directions, works closely with FWS Science Coordinators, helps link LCC science needs to ongoing research activities, and develops data portals and provides spatial data for specific LCCs. The USGS hosts the Great Northern LCC and in Alaska, the USGS has two representatives on each of the five LCC Steering Committees in which common, high priority, interagency science needs are defined that directly contribute to the development of adaptation and mitigation strategies for species and habitats vulnerable to climate change.

  Through the LCCs, the FWS presents their needs for landscape-scale science in the lands comprising the extensive National Wildlife Refuge System in Alaska, as well as for the range of their other missions, including Threatened and Endangered Species, Migratory Waterfowl, and Federal Subsistence Management. The USGS co-sponsored the Appalachian LCC Science Needs Workshop and provided both fiscal support and expertise to that meeting, another example of typical interaction with FWS. The USGS provided science project support for the Southeast Regional Assessment Project (SERAP), which included downscaled climate projections, urban land-use projections, and hydrologic projections as part of a large project that covers most of the southeastern United States.

- **Livestock Grazing at Sheldon-Hart Mountain National Wildlife Refuge Complex.** Since 2000, the USGS has worked with FWS to address the response of songbirds and their riparian

habitat to the removal of cattle on the Sheldon-Hart Mountain National Wildlife Refuge Complex in eastern Oregon and northern Nevada. The FWS is using the information to make decisions about livestock management on the complex and will incorporate the information in a forthcoming Comprehensive Conservation Plan. The FWS has asked the USGS to conduct another round of research beginning in 2012 to evaluate any additional responses.

- In the **Klamath Basin,** the USGS works closely with the FWS, Reclamation, and Tribes on a wide variety of water, restoration, and listed species research tailored to the specific question and needs of these partners. The USGS provides not only the research, but also a science-management liaison function to provide information transfer and interpretation, and to help partners articulate key science needs.

- **Desert Renewable Energy Conservation Plan (DRECP).** The DRECP is a planning effort underway that is intended to provide binding, long-term endangered species permit assurances while facilitating the review and approval of renewable energy projects in the Mojave and Colorado deserts in California. Three of the eleven independent science advisors who produced recommendations for this important effort are USGS scientists.

- **White-nose Syndrome (WNS) Diagnostic Services and Research.** The National Wildlife Health Center (NWHC) has led and published efforts to characterize WNS, identify the fungus causing the disease (*Geomyces destructans*), define disease pathology, and develop diagnostic tests to facilitate disease research and surveillance. Other lines of research include: the complete genome sequencing of the fungus, its environmental reservoirs and persistence, its phylogeographic origins, investigating environmental conditions that led to the manifestation of the disease, and better describing the infection cycle and transmission of the disease. USGS senior staff and scientists serve on many working groups and committees under the auspices of the WNS National Plan.

- **Disease investigations of wildlife mortality and morbidity events.** NWHC works with partners to find solutions to wildlife health issues and provides training, on site assistance, and recommendations for management of disease outbreaks. The majority of disease investigations focus on Federal lands and resources; the USGS also receives requests for assistance from State and tribal wildlife management agencies. Information collected by NWHC and/or requested by cooperators during disease investigations comprises the largest existing long-term data set of wildlife disease in the United States.

Simpson Q25: Have you thought about adding a line item in the Ecosystems budget for science support for DOI Bureaus, as there is in the Climate Variability budget?

Answer: The USGS Ecosystems budget is currently structured into six budget subactivities:

- **Status and Trends:** measures, predicts and reports the status and trends of the Nation's biological resources.
- **Fisheries: Aquatic and Endangered Resources:** conducts biological investigations on fish and aquatic resources of national importance.
- **Wildlife: Terrestrial and Endangered Resources:** conducts biological research to determine factors influencing the distribution, abundance, and condition of wildlife populations, habitats, and their associated ecosystems.

- **Terrestrial, Freshwater, and Marine Environments:** provides information, models and tools that land and resource managers can use to understand how management alternatives will affect ecosystems and the services they provide under a variety of climate, land use, and other change scenarios.
- **Invasive Species:** provides information on early detection, monitors and assesses invaders, and develops methods and technologies needed for effective responses to invasive species threatening native species and ecosystems.
- **Cooperative Research Units:** a unique cooperative relationship between the USGS, Federal, State, and university partners to promote research, education, and technical assistance focused on fish, wildlife, ecology, and natural resources.

A large portion of the funding associated with these subactivities is used to provide services to Interior bureaus in the form of research, monitoring, and technical support. A conservatively estimated $100.0 million out of the total $161.0 million appropriated for the Ecosystems program in 2011 was spent on direct research support for Interior lands, priority ecosystems, and species of concern, such as endangered species, migratory species, inter-jurisdictional species, and invasive species. Interior bureaus supported include FWS, NPS, BLM, BOEM, Reclamation, and BIA. Many of these projects supported the needs of multiple bureaus, such as research on an endangered species (FWS) within a national park (NPS). In addition, much of this funding was leveraged to obtain additional financial support from partners and collaborators to expand the scope of research in support of bureau interests.

Within the Ecosystem programs there are 19 cyclical funding accounts that are targeted to short-term tactical needs of Interior bureaus. The 2013 budget provides $28.0 million for these accounts. Bureau managers have direct input into the selection of these projects. In 2011, projects conducted with these funds included the NPS Natural Resource Preservation and Park Monitoring Program ($3.9 million) and the FWS Science Support Partnership and Quick Response Program ($4.3 million).

As science support for DOI bureaus is integral to all of the Ecosystems programs of the USGS, it is not shown as a separate line item in the Ecosystems budget. USGS is currently working to identify ways to improve the national coordination and management of these programs and to improve its capacity to deliver world-class science to meet the needs of Department of the Interior and the Nation.

U.S. Senate Interior Appropriations Subcommittee
Hearing on Federal Onshore and Offshore Energy Development Programs in the Department of the Interior
Fiscal Year 2013 Budget
March 14, 2012

Questions from Sen. Dianne Feinstein

Feinstein Q1 - NEPA Reviews:

BLM is now just completing work on the Solar Programmatic Environmental Impact Statement, which has been a four year effort to categorize Federal land into Solar Energy Zones where solar development is encouraged, areas off limits to solar development, and areas where solar development will be allowed only in situations where a variance is awarded.

In theory, this process was supposed to identify zones of BLM land where solar development is appropriate and the permitting process can be done expeditiously.

However, I am concerned that the benefits of this process are still unclear.

First, I don't understand how it will expedite permitting. BLM has not conducted comprehensive field studies of the Solar Energy Zones, so solar development proposed within the zones will still be subject to a multi-year period of field studies, consultation with Fish and Wildlife Service, substantial species mitigation expenses, and likely another Full EIS.

Second, BLM has already permitting numerous projects in the only large zone in California, known as Riverside East, and experts suggest that the transmission capacity to this zone will be used up by the projects already permitted and further development in this area is unlikely.

- What incentives does BLM propose that will ensure that development of solar power on public lands in California is centered on these zones?

Answer: The Supplement to the Draft Solar Programmatic Environment Impact Statement (EIS) describes in detail proposed incentives for developers to site new projects in Solar Energy Zones (SEZs) – including greater certainty of applications being approved and shorter permitting times. This will be further refined in the Final EIS.

The BLM has taken a number of important steps through the Supplement to the Draft Solar Programmatic EIS to facilitate future development in SEZs in a streamlined and standardized manner. Utility-scale solar energy development projects proposed in SEZs will be required to comply with NEPA and other applicable laws, including, but not limited to the Endangered Species Act and the National Historic Preservation Act, and applicable regulations and policies. Nonetheless, much of the environmental analysis completed for the Supplement to the Draft

Solar Programmatic EIS will benefit future development in SEZs by minimizing the level of detailed analyses required for individual projects. In addition to this work, under the Supplement to the Draft Solar Programmatic EIS the BLM is proposing to undertake a variety of additional activities that could help steer future utility-scale solar development to the SEZs. For example, these include faster and easier permitting in SEZs; improvement of mitigation processes; facilitation of the permitting of needed transmission to SEZs; encouragement of solar development on appropriate nonfederal lands; and economic incentives for development in SEZs. For further details please see the Supplement to the Draft Solar Programmatic EIS, Section 2.2.2.2.3 incentives for Projects in SEZs at:
http://solareis.anl.gov/documents/sup/Supplement_to_the_Draft_Solar_PEIS.pdf.

Feinsten Q2 - West Mojave Solar Energy Zone

The Conference Report to the FY2012 interior Appropriations Bill states: *"the Secretary is instructed to complete a report evaluating the possible Solar Energy Study Areas in the West Mojave that respect designated off-road vehicle routes and provide the report to the Committee on Appropriations within ninety days of enactment of this Act."*

- What is the status of this report?

Answer: The Bureau of Land Management's - California State Office (BLM) is currently reviewing a draft report that includes a summary of the BLM's approach and progress in the evaluation of solar energy development in the West Mojave. This evaluation is part of the Desert Renewable Energy Conservation Plan (DRECP). BLM is evaluating Off-Highway vehicle access and other recreational resources as part of the environmental analysis. Recreation and OHV specialists at the BLM State Office, Districts, and Field Offices are involved in this analysis. Some of the alternatives will include potential energy development impacts to OHV Open areas and to designated trails in the West Mojave. The BLM is aware of the importance of access to multiple-use areas on public lands and is working with its Federal, State, and local partners to maintain multiple uses within the DRECP planning area.

- When does BLM intend to create a solar energy zone in the West Mojave to encourage development in this area of lower ecological value?

Answer: Planning and analysis of renewable energy development in the West Mojave is currently underway. Draft environmental documents are expected to be released for public review in mid-September 2012. The final documents are expected to be released in mid-March 2013, and the BLM anticipates making a final decision on the plan in late May 2013.

The DRECP is the largest landscape planning effort in California, covering approximately 22.5 million acres of Federal and non-federal land in the Mojave and Colorado (Sonoran) deserts of southern California. Solar, wind and transmission development are all under consideration for the West Mojave in the DRECP. Alternatives will consider different configurations of development in the West Mojave on both Federal and non-federal land. One possible outcome of the DRECP could be the designation of an additional SEZ in the West Mojave.

Feinstein Q3 - Priority Permitting:

When this Administration took office in 2009, more than 200 applications had been filed to develop renewable energy projects on BLM land in California, but no projects had been permitting, and only two were under formal NEPA review. Objectively speaking, the process for permitting was fundamentally broken.

Over the past three years, this Administration has fixed a broken system. BLM now creates a list of eight to twelve "priority projects" each year on which to focus its work. The projects on this list (1) propose to develop less environmentally sensitive lands in a manner less likely to end up in court, and (2) have developers who have done the necessary work lining up transmission agreements, power purchase agreements and conducting field studies to be considered, for lack of a better term, "ready to go."

Bottom line: BLM has prioritized the permitting of the best projects, and it has been able to permit many good projects expeditiously as a result. The proof is in the pudding. Very few of the projects in California permitted through the priority list process have been challenged in Court. (Brightsource's Ivanpaw, arguably the most controversial project permitted by BLM, was one of the two projects already under formal NEPA review when Obama took office.)

BLM is now just completing work on the Solar Programmatic Environmental Impact Statement, which attempts to categorize Federal land into Solar Energy Zones where solar development is encouraged, areas off limits to solar development, and areas where solar development will be allows only in situations where a variance is awarded.

- How does BLM plan to integrate its highly successful "priority projects" approach to permitting with this new approach?

Answer: Over the past three years, the BLM has implemented a program to prioritize the processing of renewable energy applications. These priority lists were developed in collaboration with the Fish and Wildlife Service, the National Park Service, and the Bureau of Indian Affairs with an emphasis on early consultation. The screening criteria for priority solar and wind projects, developed through BLM policy memoranda issued in February 2011, assisted in evaluating and screening these utility-scale projects on BLM-managed lands. The process of screening for projects is about focusing resources on the most promising renewable-energy projects. One of the likely outcomes of the Supplement to the Draft Solar Programmatic EIS is that some Solar Energy Zones (SEZs) would be established. Projects located within the Solar Energy Zones would be given priority for processing, all other factors being equal, over projects outside these zones. However, even if SEZs are established, there will almost certainly be legitimate reasons for developing certain projects outside of these zones, and BLM will work to ensure that permitting timelines are reasonable for all meritorious projects. As described in the Supplement to the Draft Solar Programmatic EIS (Appendix A, Section A.2.1.1), the BLM will develop and incorporate into its Solar Energy Program an adaptive management and monitoring plan to ensure that data and lessons learned about the impacts of solar energy projects will be collected, reviewed, and, as appropriate, incorporated into the BLM's Solar Energy Program in the future.

Feinstein Q4 - Department of Defense Land

A recent study by the Defense Department found that four military bases in California could produce 7,000 MW of solar power on marginal base lands. The lands cannot be used for training and have little ecological value. However, some of these base lands were "withdrawn" long ago. I understand that BLM and the Interior Department continue to assert that these lands should be returned to BLM management if they are developed for Solar, even though these lands are often surrounded on all sides by the base. Realistically, I think Interior's position will prevent the DoD from opening its bases to solar development if it means giving up control of lands in the middle of military bases.

- Will the BLM agree to work with the DoD to settle, within three months, its legal dispute with regard to management of withdrawn lands developed for solar energy?

Answer: While the development of renewable energy on the public lands is a national priority, providing opportunities for renewable energy development on Department of Defense lands (including BLM withdrawn lands), is also important. We have established a collaborative process with the Department of Defense to address renewable energy development opportunities on BLM-withdrawn land. The Department of the Interior (DOI) and the Department of Defense (DOD) in April 2011 formed an Interagency Land Use Coordinating Committee (ILUCC) to help facilitate that dialogue. The Committee is co-chaired by DOI Deputy Assistant Secretary Sylvia Baca and DOD Assistant Deputy Under Secretary John Conger. The ILUCC members include not only the BLM, but also the U.S. Fish and Wildlife Service, National Park Service, Office of the Solicitor, and the individual DOD services. Several subgroups have been formed under the ILUCC to address various areas of collaboration, including a subgroup that is focused on resolving authorities for the siting and permitting of renewable energy projects on BLM withdrawn lands.

Feinstein Q5 - BLM Solar Supplemental Draft PEIS:

Director Abbey, last October the Bureau of Land Management issued its Draft Supplemental Solar Programmatic Environmental Impact Statement (PEIS), which includes large amounts of "variance" lands outside the solar zones. It is my understanding that while applicants are strongly encouraged to pursue projects within the identified solar zones, BLM will consider permitting development in these "variance" areas. While some flexibility to consider lands beyond the zones may be necessary, I find it highly problematic that an estimated 50,000 acres of land that were donated or purchased with Land and Water Conservation Fund dollars have been included in the variance lands. Given that these lands were intended to be preserved in perpetuity, I do not believe they should be open for development. Can you tell me:

- What is the process by which the BLM will consider and grant permission for solar projects to be constructed on "variance" lands?

Answer: The process for considering solar projects on "variance" lands has been delineated in the Supplement to the Draft Solar Programmatic EIS in detail. However, no final decision has been made. In addition, there might be market, technological, or site-specific factors that make a project appropriate in a non-SEZ area. The BLM will consider variance applications on a case-by-case basis, based on environmental considerations; consultation with appropriate Federal, State, and local agencies, and Tribes; and public outreach. If the BLM determines a variance application to be appropriate for continued processing, the BLM will require the applicant to comply with NEPA and all other applicable laws, regulations, and policies at the applicant's expense. Applicants applying for a variance must assume all risk associated with their application and understand that their financial commitments in connection with their applications will not be a determining factor in BLM's evaluation process.

- Why have donated and LWCF-acquired lands been included among the "variance" lands and what steps are being taken to avoid their development?

Answer: Comments received on the Supplement to the Draft Solar Programmatic EIS have requested that donated and LWCF-acquired lands be identified as exclusion areas for utility-scale solar energy development. The BLM is currently considering this request. However, no decision has been made yet. We would be pleased to brief members of your staff if you so desire.

Questions from Sen. Mary Landrieu:

For Admiral Watson:

Thank you for making time today to appear before this hearing. I realize that you only assumed office on December 1, but I understand that you have already taken time to visit Port Fourchon, a vital supply and support hub for our offshore industry. I am hopeful that we will develop a close working relationship and that you will bring new and effective leadership to BSEE.

Reading through you testimony, a few points caught my attention. First, you mention that the new standards for inspection are much more stringent, reflected in the fact that the timeline for permit approval is now longer and that you have hired more inspectors and engineers. I understand that these steps were taken to account for increased difficulty in permitting, but despite this, I continually hear from industry about the difficulty that they face not only in permit approval, but also the submission process which occurs prior to any technical review of a permit application.

Landrieu BSEE 1. Would it make the permit submission process more streamlined if you were to hire more administrative personnel? I understand that already work is being shifted from district to district to alleviate excessive workload – could this be a function of understaffing on the administrative side of things?

Answer: Permit reviews are addressed by engineers in the bureau's District offices. BSEE is hiring and training new engineers to reduce review and approval time and improve upon the efficiencies that we have achieved over the past year. The variation in workload that we see among our District offices in the Gulf of Mexico Region is a result of the geographic distribution of oil and gas activity in the Gulf of Mexico. The bulk of the activity in the Gulf is occurring in the areas overseen by our New Orleans and Houma District offices. When appropriate, we shift certain high-priority permits from the New Orleans and Houma District offices to other offices that have the ability to provide assistance. Permit applications are submitted and reviewed electronically, so engineers in any district have access to all submitted applications. Administrative personnel are essential to operations in our Regional and District offices, and provide vital support to our engineers who are educated and trained to review or approve permit applications.

Landrieu BSEE 2. I also hear that many of these submissions are being returned for resubmission 8 or 9 times – because of small grammatical errors or the use of footnotes. I understand that you have instituted a workshop for permitting, might it be helpful to these companies to have a workshop focused purely on the guidelines for submission, so that we may avoid these problems. Might it also be beneficial to rewrite the submission process so that permit applications are judged on their technical merits more heavily than their grammar?

Answer: As you point out, BSEE has held permitting workshops for industry that were attended by over 200 offshore industry personnel. In addition, the bureau has also published an Application for Permit to Drill (APD) submission checklist for operators to provide clear guidance to operators about the requirements for submitting a complete APD. Because of these efforts, as well as industry's increasing familiarity with the new safety requirements instituted

after the Deepwater Horizon event, permit review times have decreased significantly over the past year and the number of applications returned to applicants for being incomplete or incorrect has also declined. We return submittals to applicants for substantive reasons, not for grammatical errors. The bureau will continue to work with industry to make the permit application and review process as clear and efficient as possible, while continuing to ensure that every application meets all safety requirements.

Landrieu BSEE 3. I also understand that you plan to update the Interim Drilling Safety rule to increase regulatory clarity, and that you are currently reviewing comments on the Safety and Environmental Management Systems II (SEMS II) rule to increase regulatory clarity and provide for a more streamlined, but still safe, process moving forward. What details can you give me about the changes you are making, and what affects you expect these changes to have?

Answer: The Final Drilling Safety Rule will respond to the comments received on the Interim Final Rule and is expected to be published in the Federal Register in the near term. These changes will provide a considerable amount of clarification and simplification of the regulations featured in the Interim Drilling Safety rule.

The SEMS II Proposed Rule proposes to expand, revise, and add several new requirements necessary to ensuring industry uses robust SEMS programs and to facilitate oversight. The comment period for the SEMS II Proposed Rule closed on November 14, 2011, and BSEE is currently reviewing the comments.

Landrieu BSEE 4. I know that your agency, as well as the others testifying today, is actively involved in developing and implementing a long-term restoration plan for the Gulf of Mexico. I am sure you are aware that the Mabus report on America's Gulf Coast highlighted the need for developing quantifiable performance measures to track progress in the Gulf of Mexico recovery efforts, including an assessment of baseline environmental conditions. The subsequent Gulf Coast Ecosystem Restoration Task Force report echoed these recommendations and further noted the need for a robust data collection regimen. In light of the budget pressures facing your agency, how does the FY 2013 budget support these important baseline environmental data collection activities? Are you considering more cost effective, technologically advanced data collection systems, such as unmanned, persistent propulsion marine robotic vehicles?

Answer: Baseline environmental data collection responsibilities fall under the Bureau of Ocean Energy Management's (BOEM) Office of Environmental Program, and are not BSEE functions. The environmental program under BSEE focuses on environmental compliance and enforcement efforts and relies upon BOEM for necessary environmental analyses.

BOEM's FY 2013 budget request for environmental assessments includes an increase of $700,000 to support environmental data collection for baseline information on species, habitats, and ecosystems. These studies and other scientific information form the basis of environmental assessments and environmental impact statements required under the National Environmental Policy Act prior to development. This increase in funding will enable BOEM to initiate one or two new high priority baseline characterization and monitoring studies. These studies will

expand the scientific basis for informed and environmentally responsible policy decisions at BOEM and the enforcement of environmental regulations by BSEE.

With respect to advanced data collection systems, BOEM has historically used the best available technology in its studies and will consider emerging technologies when looking at future analyses.

Landrieu BSEE 5. The Interior Department administratively issued new guidance for removal of idle iron – unilaterally changing previous regulations for the decommissioning of offshore platforms and wells. Would the Department of the Interior support amending the new idle iron guidance to either allow for structures to be reefed in place or provided an extension of time to remove structure that will eventually be placed in the Rigs-to-Reefs program?

Answer: The regulations regarding decommissioning facilities and wells (Subpart Q of 30 CFR §250) have remained the same since October 30, 2002. The Notice to Lessees and Operators (NTL) No. 2010-G05 was issued on September 15, 2010 to clarify the decommissioning regulations, provide clearer definitions, and allow operators to submit plans for the use of wells and structures that are potentially no longer useful for lease operations. BSEE is currently reviewing plans on a case-by-case basis and working with operators on schedules for decommissioning and future use of wells and structures.

BSEE supports the reuse of obsolete oil and gas facilities. About 12 percent of all platforms decommissioned annually in the Gulf of Mexico are used as artificial reefs through State-sponsored programs. The NTL 2010-G05 does not prevent an operator from reusing a structure. A proposal to reuse a facility as a reef is a complex multi-step process that must comply with several State and Federal regulations as well as engineering and environmental reviews. Consequently, not all structures are good candidates for artificial reefs. The bureau's policy was developed in accordance with its mission and allows for sound adaptive management. We are in close communication with the State artificial reef coordinators, industry, and our Federal partners to ensure that the reuse of obsolete oil and gas facilities remains a viable alternative in the decommissioning process.

Landrieu BSEE 6. It is my understanding that the Federal Fishery Rebuilding Plan for Gulf Red Snapper is based on the critical marine habitat provided by older oil and gas structures in the Gulf of Mexico. Has the Interior Department discussed or coordinated with the National Oceanic and Atmospheric Administration or the National Marine Fisheries Service on the potential devastating impacts to marine life from its idle iron directive?

Answer: The Department of the Interior, through BSEE, has coordinated, and will continue to coordinate with the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) on the decommissioning program and the possible impacts on marine life. The Department, in coordination with NMFS and Louisiana State University's Coastal Marine Institute, has also funded numerous studies regarding the habitat provided by Outer Continental Shelf facilities and the potential impact of decommissioning facilities on fisheries.

For Director Tommy Beaudreau:

Director Beaudreau, thank you also for taking time to appear before this hearing today. In your testimony, you mentioned the efforts that the BOEM is making to increase offshore production, in light of the President's stated desire to increase production. You mention that you aim to open 75% of technically recoverable assets to drilling, and that you have taken steps to increase the percentage of currently leased lands that are producing.

Landrieu BOEM 1. I see that you have scheduled the final lease sale under this five year plan and that you are already looking forward to the next five year plan, under which you aim to open 75% of technically recoverable assets. Since we currently produce on only 2% of the total land in the OCS, what effect will this have on the amount of land being produced on – that is, is an increase to 75% of technically recoverable assets as large a step as the President has stated?

Answer: The Proposed Five-Year Oil and Gas Leasing Program for 2012 to 2017 Program focuses on encouraging exploration and development where the oil is – and the Gulf of Mexico still has the greatest, by a large margin, untapped resource potential in the entire U.S. Outer Continental Shelf. The Gulf of Mexico is the crown jewel of the U.S. OCS, and will remain so for the foreseeable future as developments in seismic and drilling technology have opened new resource frontiers in the Gulf. The Gulf of Mexico, in particular the deepwater, already has several world class producing basins, and just in the past year there have been a number of significant new discoveries.

The 75% represents the portion of BOEM's estimated total "undiscovered technically recoverable resources" on the Outer Continental Shelf that underlie areas being considered for oil and gas leasing in the Proposed Program. Our geological and geophysical data indicate that those resources are not evenly dispersed across the Outer Continental Shelf and that a relatively small area may have very high concentrations of potentially recoverable resources.

According to BOEM's findings, the Central Gulf of Mexico is estimated to hold more than 30 billion barrels of oil and 133.9 trillion cubic feet of natural gas of undiscovered resources. This is nearly double the resource potential of even the Chukchi Sea. The Western Gulf of Mexico is just behind the Chukchi Sea with more than 12 billion barrels of oil and nearly 80 trillion cubic feet of natural gas. BOEM derived the 75 percent figure from an evaluation of the undiscovered technically recoverable resources estimated in the proposed lease areas as a function of this total estimated amount.

Landrieu BOEM 2. You also mentioned the steps you have taken to increase production on the lands which are currently leased, including a proposed $4 per acre fee on non-producing leases, which I do not support – you have raised the minimum bid on deepwater acres, and you have shortened the time that a lease may be held without any production occurring. What has been your feedback from industry on these two steps? What effects do you believe that these steps will have?

Answer: While BOEM implements these measures for offshore leases, we have continued to see robust industry interest in acquiring leases that include these underlying terms. The

increased minimum bid and new lease terms were in place for Western Gulf of Mexico lease sale 218, held in December 2011. The bidding activity in that sale demonstrates that these changes are not having a detrimental impact on industry's interest in acquiring leases in the Gulf.

A $4.00 per acre fee on non-producing Federal leases would provide a financial incentive for oil and gas companies to either get their leases into production, or relinquish them so the tracts can be leased to and developed by new parties. In general, industry has not been supportive of the fee, citing concerns over delays that they argue are out of their control. However, the Administration believes that this legislative proposal is important to encourage energy production on lands and waters leased for development. The $4.00 per acre fee would only apply to new leases and would be adjusted for inflation annually. The minimum bid on deepwater acres encourages prompt development and production, and helps to ensure that the American public receives fair market value for these shared resources. BOEM plans to use the minimum bid as a way to limit the sale size, rather than arbitrarily adjusting the size of the sale. This allows the market to determine which tracts are leased. The minimum bid strategy used will be consistent with the goal of maximizing the economic value of OCS resources.

As you mention, BOEM has taken several specific steps to provide incentives for diligent development and to encourage operators to bid on tracts that they are more likely to develop. These steps include:

- **Increasing rental rates to encourage faster exploration and development of leases:** In the Gulf of Mexico, during the initial term of a lease and before the commencement of royalty-bearing production, the lessee pays annual rentals which either step-up by almost half after year 5 – for leases in water 400 meters or deeper – or escalate each year after year 5 – for leases in less than 400 meters of water. The primary use of step-up and escalating rentals is to encourage faster exploration and development of leases, or earlier relinquishment when exploration is unlikely to be undertaken by the current lessee. Rental payments also serve to discourage lessees from purchasing tracts they are unlikely to actually develop, and they provide an incentive for the lessee to drill the lease or to relinquish it, thereby giving other market participants an opportunity to acquire these blocks. In March 2009, in addition to implementing escalating rental rates, BOEM raised the base rental rates for years 1-5.

- **Tiered durational terms to incentivize prompt exploration and development:** Industry maintains that producing oil is a lengthy process that takes years between the time a lease is awarded and the time energy begins flowing from a well on that lease site. In order to address this concern, BOEM implemented tiered durational terms to incentivize prompt exploration and development for leases in the Gulf of Mexico for certain water depths (400 - 1,600 meters): a relatively short initial lease followed by an additional period under the same lease terms if the operator has already drilled a well. In addition, BOEM maintains lease terms graduated by water depth in order to account for technical differences in operating at various water depths. BSEE also recently informed lessees of a decision from the Department's Office of Hearings and Appeals that reaffirms the requirement that lessees demonstrate a commitment to produce oil or gas in order to be eligible for lease expiration suspensions.

- **Increased minimum bid:** In 2011, BOEM increased the minimum bid for tracts in at least 400 meters of water in the Gulf of Mexico to $100 per acre, up from $37.50, to help ensure that taxpayers receive fair market value for offshore resources and to provide leaseholders with additional impetus to invest in leases that they are more likely to develop. Analysis of the last 15 years of lease sales in the Gulf of Mexico showed that deepwater leases that received high bids of less than $100 per acre, adjusted for energy prices at the time of each sale, experienced virtually no exploration and development drilling.

For Director Robert Abbey:

Director Abbey, thank you as well for taking time to appear. While reading your testimony, I was most interested in what steps you take to increase the percentage of leased onshore lands which are currently producing. We have 38 million onshore acres leased, which is a slight decrease from the previous year, when 41 million acres were leased. On these 38 million acres, only 32%, by your estimate, are currently producing.

Landrieu BLM 1. What is the prime deterrent to production on Federal onshore lands? It certainly is not a shortage of companies able to do the work. In fact, production on private lands has increased drastically – enough to cover the 15 million barrel shortfall from 2010 to 2011. In your opinion, what is holding back the huge amount of companies who want to work onshore from doing so on Federal lands?

Answer: The BLM strives to achieve a balance between oil and gas production and protection of the environment. Facilitating the efficient, responsible development of domestic oil and gas resources is part of the Administration's broad energy strategy that will protect consumers and help reduce our dependence on foreign oil. The BLM is working on a variety of fronts to ensure that development is done efficiently and responsibly—including implementing leasing reforms; continuing leasing activities in the National Petroleum Reserve in Alaska (NPR-A); continuing to process drilling permits in a timely fashion; and improving inspection, enforcement, and production accountability.

Oil and gas drilling and development are market-driven activities, and the demand for leases is a function of market conditions. Market drivers include prevailing and anticipated oil and gas prices, bidder assessments of the quality of the resource base in a given area, the availability/proximity of necessary infrastructure, and the proximity of the lease to local, regional, and national markets and export hubs. The shale formations that currently have high industry interest for development, such as North Dakota's Bakken shale, Texas's Eagle Ford shale, and the Marcellus and Utica shales of the Eastern United States, are primarily in areas with a high proportion of non-Federal land. These areas have seen increased development recently due to a favorable mix of the factors noted above. As drilling priorities shift due to changes in technology or markets, an operator may choose different areas for development. Further, BLM lands are primarily gas-prone. Recent national rig counts (by Baker Hughes) indicate that rigs drilling for gas are at an "all-time low" (by percentage) and the gas is selling at "a record discount to crude." (Wall Street Journal, 5/14/12).

Approximately 38 million acres of Federal land are currently leased for oil and gas development. Approximately 12 million acres are producing oil and gas, and active exploration is occurring on an additional 4 million acres. The BLM has approved approximately 7,000 drilling permits that are not being used by industry.

Landrieu BLM 2. You mention that you plan to take steps to increase production on leased lands, and I see that one step would be a proposed $4 per acre fee on non-producing lands, which I do not support. Do you have any plans to increase regulatory clarity to make the process or permitting and oversight more straightforward? Do you plan to increase the minimum bids for onshore lands or shorten the time leases may be held without production?

Answer: The purpose of the non-producing lease fee is to encourage diligent development of leased parcels. The nonproducing lease fee will provide financial motivation to either put leases into production or relinquish the leases so they can be re-leased.

As part of the BLM's ongoing efforts to ensure efficient processing of oil and gas permit applications, the BLM will implement new automated tracking systems expected to significantly reduce the review period for drilling permits and expedite the sale and processing of Federal oil and gas leases.

The new system for drilling permits, which is expected to be fully online by May 2013, will track permit applications through the entire review process and quickly flag any missing or incomplete information. This will enable operators to communicate with the BLM more promptly to address deficiencies in their applications.

To expedite the sale and processing of federal oil and gas leases, the BLM will launch a new National Oil and Gas Lease Sale System, which will streamline the phases of competitive oil and gas lease sales by electronically tracking the BLM's leasing process from start to finish. This new system will replace numerous stand-alone systems and provide a consistent, easy-to-use electronic process for both the oil and gas industry and BLM employees. The BLM estimates the National Lease Sale System will be ready to begin testing in a pilot State by December 2012.

The Mineral Leasing Act establishes the national minimum acceptable bid and the primary term of an oil and gas lease. The Act provides the Secretary of the Interior with the authority to establish a higher national minimum bid amount. However, the Act does not provide authority to the Secretary to modify the primary term of an oil and gas lease.

Questions for the Record
Subcommittee on the Department of the Interior, Environment,
and Related Agencies
Senate Committee on Appropriations

Hearing on the Fiscal Year 2013 Budget Request
for the Department of the Interior
February 29, 2012

Senator Reed's Questions for the Record

OFFSHORE WIND

Reed Question 1. Rhode Island has been helping lead the way on offshore wind in developing its "pilot-scale" offshore wind project in the state waters off Block Island, which will provide important engineering and environmental expertise for these new technologies in the water. How will Interior partner with Rhode Island on these efforts?

Answer: Rhode Island continues to be a valuable partner at the forefront of offshore renewable energy development with the Department of the Interior (DOI). Rhode Island's work in developing its Special Area Management Plan provided essential information to support the Department's decisions. The Bureau of Ocean Energy Management (BOEM) Rhode Island OCS Renewable Energy Taskforce continues to be an effective means of expanding this partnership at the Federal, State, local and tribal levels. Through its Environmental Studies Program, BOEM is addressing issues and concerns identified by Rhode Island. For example, BOEM is partnering with the University of Rhode Island to develop protocols and modeling tools to support offshore wind development. Ongoing and future studies funded by BOEM through the Environmental Studies Program will investigate changes to recreation and tourism activities that may result from offshore wind energy development. BOEM is also conducting a study of best management practices to foster compatible development of offshore energy with fishing activities. BOEM also engages routinely with the Rhode Island Fishery Advisory Board and Habitat Advisory Board. Finally, to ensure an efficient and responsible environmental review, BOEM is combining its review of the transmission cable system with the U.S. Army Corps of Engineer's review of the pilot project under the National Environmental Policy Act (NEPA) and required consultations under Federal law.

Reed Question 2. Mr. Secretary, I appreciate that the commitment you made in the hearing to expedite BOEM's efforts to process right of way applications for the transmission line between Block Island and the Rhode Island mainland. Would you also make a similar commitment to expedite the consultation of any agency within Interior, such as the National Park Service, with other federal agencies including the Army Corps of Engineers that would have a role in the siting and approval of the state water project?

Answer: Yes. The President has directed that all Federal agencies, including the National Park Service and U.S. Army Corps of Engineers, do everything that can be done to expedite consultation and to be supportive in siting and approving projects in State waters. In these times of fiscal restraint, partnering between Federal agencies ensures that resources are spent more

efficiently and are directed to those areas of greatest concern. Partnering also ensures the maximum use of collaboration between all stakeholders at the Federal, State and local levels. In keeping with our 'Smart from the Start' Initiative, I am committed to accelerating the leasing process changes in order to build a robust and environmentally responsible offshore renewable energy program that also creates jobs here at home.

Questions from Senator Patrick Leahy

Leahy Question 1. Secretary Salazar, an important Interior Department tool that Vermont and many other states, including New York, used during the floods caused by Hurricane Irene were the U.S. Geological Survey (USGS) river and lake gauges. These gauges helped our first responders save lives and property by providing real-time information as the waters rose. In addition, the gauges also provide a long-term value by helping track changes in our rivers and lakes for ongoing water quality control monitoring and improvements. Nonetheless the USGS has flagged 18 river and lake gauges in the Champlain watershed of VT and NY to be discontinued for lack of funding.

a. Do you agree with the assessment that the USGS river and lake gauging network in the United States represents one of the greatest return-on-investments of any dollar spent by your Department? Can you tell me what is needed to avoid any further damage to this critical network in Vermont and nationwide?

Answer: Yes, the USGS streamgaging network provides a great return on the American tax-payer's dollar. Information on the flow of water in America's rivers and streams is fundamental to national and local economic well-being, the protection of life and property, and the efficient and effective management of the nation's water resources. According to the National Research Council (2004), "streamflow information has many of the properties of a public good, because everyone benefits whether they pay or not, and benefits to additional users come at no additional cost." There are many uses of streamflow information including: water resource appraisal and allocations; managing interstate agreements and court decrees; engineering design of bridges, culverts, and treatment facilities; the operation of reservoirs, power plants, and locks and dams; evaluating changes in streamflow due to climate and land use change; flood forecasting (warning) and flood plain mapping (planning); support of water quality evaluations; and assessing in-stream conditions for habitat assessments and recreational safety and enjoyment. For many of the uses of streamflow information, it is difficult or impossible to assign an economic benefit to the information, though in many cases the benefits are evident. The National Weather Service (NWS) is one agency that reports an economic benefit on the use of streamflow data. The NWS reports that over the last 30 years, there has been, on average, 94 deaths and $7.8 billion in damages in personal and public property per year due to flooding on the Nation's rivers. Without streamflow information to calibrate and verify the NWS forecast models, the NWS would be "flying blind" in making flood forecasts, implying that the number of deaths and magnitude of loses to property would be much higher.

The National Streamflow Information Program (NSIP), as authorized in the SECURE Water Act of 2009, was designed to provide stability to the national streamgage network by providing a federally funded 'backbone' network of streamgages to meet Federal needs for streamflow information. This backbone is supplemented with streamgages that are funded through partnerships to more fully meet State, tribal, and local needs for streamflow information. The enacted funding level for FY 2012 for the NSIP is $29.4 million and the proposed funding level for FY 2013 is $32.5 million. This increase during a time of fiscal constraints represents a commitment to increasing funding for the Nation's streamgages and greater implementation of the NSIP as described in the SECURE Water Act.

b. Has the Department's Climate Change Response Council, which you Chair, analyzed the impact of these gauge closures in the face of potential climate change impacts which are likely to bring about new and greater flood risks?

Answer: Yes, the Department takes the issue of climate change very seriously with respect to water and other natural resources and hazards.

The effects of climate change in any given area are often widely debated. It is likely that certain areas of our Nation will be at greater risk of floods, while other areas are at greater risk of droughts, and some may see no change at all. Some of the first scientific work demonstrating the occurrence and consequences of climate change was produced through analysis of long-term streamflow information. For example, it was demonstrated that in the Northeast, river flows were getting higher earlier in the year as a consequence of snow pack melting sooner, and late summer flows were getting lower, while there was no discernible change in the average or peak flows. In other areas, such as the Southwest, it appears that stream flows are decreasing. Without an adequate number of streamgages located in optimal locations and providing comparable high quality data, it will be increasingly difficult to detect and predict the consequences of climate change on water supply and hydrologic extreme hazards.

Leahy Question 2. With regards to white nose syndrome, which is still spreading across the country at a fast rate and has the potential to cost our nation's farmers and consumers billions of dollars, can you tell me how the Department's request to reduce the Endangered Species Recovery account by over $1 million will impact the work being done on white nose syndrome and other important endangered species recovery work?

Answer: While our FY 2013 budget request seeks a net overall reduction of $1.59 million, the decreases are specifically targeted at discontinuing the Wolf Livestock Loss Demonstration Program and reducing funding for the State of the Birds activities in FY 2013 in order to fund higher priority conservation activities elsewhere in the budget request, such as the Cooperative Recovery Initiative. Through the Cooperative Recovery Initiative, the Service is requesting $5.35 million to support a cross-programmatic partnership approach to complete planning, restoration, and management actions addressing current threats to endangered species on and around National Wildlife Refuges. In addition, the Service is continuing to place a high priority on addressing white nose syndrome (WNS) and bat conservation. In FY 2012, the Service will allocate $995,000 in State and Tribal Wildlife Grants for WNS research and monitoring by the States. In addition, $485,000 in Refuge Inventory and Monitoring is estimated to be spent on work related to WNS monitoring and control on Refuges. The total amount being spent by the Service in FY 2012 for WNS research and response activities will be at least $4,855,000. Additional funding may also come from Cooperative Endangered Species Section 6 Grants or Adaptive Science competitive grants, if projects addressing WNS are chosen to be funded.

Leahy Question 3. In August, you announced that the U.S. Fish and Wildlife Service would take full responsibility for sea lamprey control on Lake Champlain. In this context, can you explain when we will see the funding required to implement the program become a part of the President's budget request so that your Department's commitment can be entirely fulfilled?

Answer: The Service funds a wide array of aquatic invasive species control, management, and prevention responsibilities across the country. Protecting the health and vitality of Lake Champlain and the significant fisheries resources, economic benefits and jobs it provides is a high priority for the FWS. The FY 2013 President's Budget includes $380,000 in base funding for Sea Lamprey in Region 5 which supports 3.5 FWS base-funded FTEs and 4 temporary/term FTEs based in the Lake Champlain Fish and Wildlife Resources Office in Essex Junction, Vermont. Through a reimbursable agreement, the Service currently works with the Great Lakes Fishery Commission, which receives funding from the State Department, to administer the Sea Lamprey control program.

Leahy Question 4. The White River National Fish Hatchery remains the best cold water National Fish Hatchery in New England and the Northeast. White River is the lynch-pin to Federal fishery restoration work from Lake Ontario all the way to Maine, but it is currently out of commission and requires approximately $5 million in repairs as a result of damage caused by Hurricane Irene.

Can you confirm that repairs to the White River Hatchery will be a priority? Are sufficient funds requested in your budget proposal, and programed, as needed, for the repairs to this hatchery to proceed without delay?

Answer: The White River National Fish Hatchery (VT) sustained approximately $5.2 million in damages resulting from Hurricane Irene. Repairing White River National Fish Hatchery will be among the highest priorities for the Fisheries Program. Emergency clean-up operations have already been completed. Additionally, the Northeast Region immediately redirected approximately $620,000 in FY 2011 Deferred Maintenance funding to initiate emergency mission-critical repairs. The President's FY 2013 proposed budget includes $1.9 million to reconstruct the water infiltration gallery and to demolish and reconstruct the fish tagging building. Upon completion of the aforementioned projects, one-hundred percent of fish rearing capacity and operational capacity will be restored. An additional $2.6 million in damages to critical support infrastructure (e.g. roads, septic systems) will remain, which will need to be addressed through the application of annual deferred maintenance funds.

Questions from Senator Dianne Feinstein

Feinstein Question 1 - Cadiz

Last November the Interior Department's Solicitors office issued a memorandum known as the "M Opinion" which stated that railroad companies lack authority to permit activities along their right-of-way unless the projects directly benefit railroad operations. The proposed Cadiz water project in the Mojave Desert has proposed using the Arizona & California Railroad's Right of Way to construct a 43 mile long pipeline connecting their project site with the Colorado River Aqueduct. The project's Draft EIR suggests that the water pipeline would benefit the railroad because it would allow them to place fire hydrants along the route for fire suppression. Can you tell me:

- Are fire hydrants typically placed along BLM granted-railroad Right of Ways?

Answer: We are not aware of any hydrants placed on BLM- granted railroad rights-of-way. We would need to review each authorization to determine if hydrants are present.

- Do they exist along any railroad Right of Way in the desert southwest?

Answer: We can only speak to those railroad ROW grants that we approved. We do not know if other railroad grants involve hydrants. The Federal Railroad Administration or Surface Transportation Board may be able to clarify this.

- What steps has Interior to taken to assess Cadiz' proposed use of the Right of Way as it relates to the "M Opinion" or assert its jurisdiction to regulate the use of the Right of Way for non-railroad purposes?

Answer: The BLM is currently in the process of assessing Cadiz' proposed use of the right-of-way as it relates to the "M Opinion." As part of that assessment, the BLM California State Office has taken the following steps:

> On January 10, 2012, the BLM California State Office sent a letter to all railroad companies with rights-of-way authorized under the authority of the 1875 Railroad Act in California, including the Arizona & California Railroad, which has entered into a lease for a pipeline for the Cadiz project. The letter requested the companies to disclose agreements for third-party easements within 30 days. The Arizona & California Railroad responded to this request on February 15, 2012, requesting additional information about specific ROWs and the areas for which BLM is interested.
>
> On February 13, 2012, the BLM California State Director sent a letter commenting on the Draft Environmental Impact Report (DEIR) prepared by the Santa Margarita Water District and Cadiz, to comply with the California Environmental Quality Act. The comment letter requested copies of the plan related to water conveyance along the railroad, the Longitudinal Lease Agreement between Cadiz and the Arizona & California Railroad and all other supporting documentation. The BLM received a response letter from the Santa Margarita Water District which included copies of the Longitudinal Lease

Agreement, an amendment to this agreement and correspondence between the Railroad and Cadiz.

On May 4, 2012 BLM sent a letter to ARZC, along with a copy of the Longitudinal Lease Agreement between ARZC and Cadiz requesting the company provide more information on how the proposed pipeline described in the Agreement furthers railroad purposes, and whether these design features are consistent with standard railroad industry practices.

On May 22, 2012 ARZC provided a response letter to BLM's May 4th request describing the "proposed water pipeline as a unique opportunity to bring fire suppression resources to ARZC's critical rail improvements in an efficient and cost-effective manner, as well as providing collateral rail operating benefits." It also asserts that "with respect to hydrants, fire suppression capability is a chronic and historical challenge in the rail industry, most particularly on rural lines with trestles and bridges." BLM is currently coordinating with the Federal Railroad Administration to understand the feasibility of these water features, and whether they meet the objective of furthering railroad purposes.

Feinstein Question 2 - Private Lands Permitting

Secretary Salazar, I am concerned that the permitting of renewable energy projects on disturbed private lands remains more difficult than the process for permitting a similar project on pristine public land. The Conference Report accompanying the Department of the Interior's Fiscal Year 2012 Appropriations legislation asked you to address this, stating:

"In order to facilitate better species protection and stewardship of public resources, the conferees expect that (the new Renewable Energy Permitting Office in the Fish and Wildlife Service) will develop permitting policies that make it less difficult and time-consuming to permit projects on disturbed private lands than on pristine public lands…. The conferees … support efforts by the Service to establish a pilot fee program using the Service's existing authorities."

- Please describe how the Fish and Wildlife Service has implemented this Congressional directive to date, and please describe the Interior Department's strategy to address this matter during Fiscal Year 2013.

Answer: The Service has met this Congressional directive by realigning support for renewable energy work in the Carlsbad, Ventura, and Nevada Fish and Wildlife Offices (FWOs). The Service opened an office in Palm Springs in August 2011, which is closer to where many renewable energy projects are located. The office covers southwestern San Bernardino County, and all of Riverside and Imperial counties. The Palm Springs FWO works on renewable energy projects in the desert area, including the Desert Renewable Energy Conservation Plan (DRECP). The Service has two offices working on renewable energy permitting in Nevada, one in Reno and one in Las Vegas. The Secretary of the Interior recently signed an agreement to finish the DRECP by 2013. The Service is developing the DRECP to address private lands impacts and to serve as the programmatic permitting mechanism for renewable energy projects in the desert in California while sustaining the conservation of listed species.

To help us be more responsive to renewable energy projects on private lands, the Service recently finalized a package of template documents and instructions that can be used by local Service offices to establish reimbursable agreements with non-federal entities that would provide additional funding. The additional funding can then be used to hire additional staff so that the Service can provide more timely environmental reviews of the projects.

Feinstein Question 3 - Gaming

Mr. Secretary, I am deeply disappointed that the Department was delinquent in responding to this Committee about the two controversial casinos that were approved in California last September. The Consolidated Appropriations Act, 2012 provided a sixty day window to respond; this deadline was missed by over two weeks.

The Committee Report Language gave your Department an opportunity to verify the claim of strong local support for these projects, despite the fact that only three of 33 elected officials or public entities expressed support for the casinos. I find it hard to believe that three support letters constitute "strong local support" as your document claims, particularly when Yuba County voters expressed opposition to one of the casinos in an advisory measure.

Since Californians continue to be puzzled by the claim of "strong local support" for these casinos, I would like to follow up on the Committee Report:

- Of the 33 elected officials and bodies that you are required to consult with, how many have expressed support, in writing, for the casino projects?

Answer: The Department received six express declarations of support from local units of government, with respect to the Enterprise Rancheria's application for a Secretarial Determination under the Indian Gaming Regulatory Act. These statements of support were discussed in the Department's September 1, 2011, decision at page 25. It is important to note that these supportive comments were submitted by the City of Marysville and Yuba County, in which the Enterprise Rancheria's proposed gaming facility would be located. These local units of government would experience the most significant impact of the Tribe's proposed gaming facility. The Department previously provided the Committee with a copy of the September 1, 2011, Secretarial Determination for the Enterprise Rancheria on March 8, 2012, as an appendix to our response to House Conference Report No. 112-331 Directive.

The Department received seven express declarations of support from local units of government, with respect to the North Fork Rancheria's application for a Secretarial Determination under the Indian Gaming Regulatory Act. These statements of support were discussed in the Department's September 1, 2011, decision at pages 43-45. It is important to note that these supportive comments were submitted by the City of Madera and Madera County, in which the North Fork Rancheria's proposed gaming facility would be located. These local units of government would experience the most significant impact of the Tribe's proposed gaming facility. The Department provided the Committee with a copy of the September 1, 2011, Secretarial Determination for the North Fork Rancheria on March 8, 2012, as an appendix to our response to House Conference Report No. 112-331 Directive.

- How many have expressed opposition?

Answer: The Department received three express declarations of opposition from local units of government, with respect to the Enterprise Rancheria's application. These statements of opposition were discussed in the September 1, 2011, Secretarial Determination at pages 26-27.

The Department received two express declarations of opposition from local units of government, with respect to the North Fork Rancheria's application. These statements of opposition were discussed in the September 1, 2011, Secretarial Determination at page 44.

It is important to note that the Department provided a meaningful opportunity for local units of government to comment on the Tribes' applications, pursuant to our regulations at 25 C.F.R. Part 292. A majority of those local units of government declined to submit comments to the Department on the Tribes' applications.

- How much weight was given to Yuba County Measure G, the advisory vote rejecting the proposed casino in Yuba County?

Answer: The Secretarial Determination issued on September 1, 2011 for the Enterprise Rancheria contains a discussion of how the Department considered Measure G in reviewing the Tribe's application at page 25.

- What needs to be done to ensure that county voters and residents can have their voices heard in this process?

Answer: On June 13, 2011, the Assistant Secretary – Indian Affairs issued a memorandum explaining how the Department would consider tribal applications for Secretarial Determinations under the Indian Gaming Regulatory Act. In that memorandum, the Assistant Secretary noted "In my view, IGRA and the Department's regulations, at 25 C.F.R. Parts 151 and 292, adequately account for the legal requirements and policy considerations that must be addressed prior to approving fee-to-trust applications, including those made pursuant to the "off-reservation" exception. Specifically, the recently enacted part 292 regulations require exacting review of requests for off-reservation gaming."

Part 292 regulations were promulgated pursuant to IGRA and other statutory authorities. Under the IGRA's "off-reservation" exception, a Tribe may conduct gaming on lands acquired after October 17, 1988 only if:

1) The Secretary, after consultation with the [applicant] Tribe and appropriate State and local officials, including officials of other nearby Indian Tribes, determines that a gaming establishment on newly acquired land would be in the best interest of the Indian Tribe and its members, and would not be detrimental to the surrounding community.

The Department continues to believe that existing law and regulations ensure a careful review of tribal applications for Secretarial Determinations under IGRA, which will allow for a meaningful opportunity for local communities to participate. It is important to note that Secretarial

Determinations issued pursuant to IGRA are subject to the concurrence of the Governor of the State in which tribal gaming activities would occur.

- Some of the most vocal opposition to these casinos has been from tribes, especially those who believe that new casinos should be built on the tribe's aboriginal lands—not in the most profitable location. This is consistent with the position of the National Indian Gaming Association. To what extent did you engage in consultation with these tribes and how did you respond to their concerns?

Answer: The Assistant Secretary's June 13, 2011 Memorandum on processing tribal applications under IGRA's Secretarial Determination Exception was issued after thorough consultation with tribal leaders throughout the United States over a period of 3 months. Similarly, the Department's regulations at 25 C.F.R. Part 292 were promulgated in 2008 after years of tribal consultation, as well as after a period of public notice and comment.

With respect to the applications of the Enterprise Rancheria and the North Fork Rancheria, the Department adhered to the requirements set forth in governing regulations. In an effort to be transparent and inclusive, the Department even considered comments submitted by Tribes outside the scope of what is required by our regulations. The September 1, 2011, Secretarial Determination for the Enterprise Rancheria contains a discussion of comments submitted by other Tribes at page 27. The September 1, 2011, Secretarial Determination for the North Fork Rancheria contains a discussion of comments submitted by other Tribes at page 45.

- Are the proposed casino sites on land that is within the un-disputed aboriginal territory of the appropriate tribe?

Answer: Neither IGRA nor the Department's regulations, at 25 C.F.R. Part 292, require a Tribe's proposed gaming facility be located within its "aboriginal territory." Nevertheless, the Department's regulations require us to evaluate the existence and extent of a Tribe's "significant historical connection" to a proposed gaming site when making a Secretarial Determination under IGRA. The September 1, 2011, Secretarial Determinations for both the Enterprise Rancheria and the North Fork Rancheria concluded that both Tribes established a "significant historical connection" to their respective proposed gaming sites.
The September 1, 2011, Secretarial Determination for the Enterprise Rancheria contains a discussion of the Tribe's significant historical connection to the proposed gaming site at pages 13-14. The September 1, 2011, Secretarial Determination for the North Fork Rancheria contains a discussion of the Tribe's significant historical connection to the proposed gaming site at pages 11-17.

Feinstein Question 4 - BLM Solar Supplemental Draft PEIS

Last October, the Bureau of Land Management issued its *Draft Supplemental Solar Programmatic Environmental Impact Statement* (PEIS), which includes large amounts of "variance" lands outside the solar zones. It is my understanding that while applicants are strongly encouraged to pursue projects within the identified solar zones, BLM will also consider permitting development in these "variance" areas. While some flexibility to consider lands

beyond the zones may be necessary, I find it highly problematic that an estimated 50,000 acres of land that were donated or purchased with Land and Water Conservation Fund dollars have been included in the variance lands. Given that these lands were intended to be preserved in perpetuity, I do not believe they should be open for development. Can you tell me:

- What is the process by which the BLM will consider and grant permission for solar projects to be constructed on "variance" lands?

Answer: The process for considering solar projects on "variance" lands has been delineated in the Supplemental Draft Solar PEIS in detail. However, no final decision has been made. In addition, there might be market, technological, or site-specific factors that make a project appropriate in a non-SEZ area. The BLM will consider variance applications on a case-by-case basis based on environmental considerations; consultation with appropriate federal, state, and local agencies, and Tribes; and public outreach. All variance applications that the BLM determines to be appropriate for continued processing will subsequently be required to comply with NEPA and all other applicable laws, regulations, and policies at the applicant's expense. Applicants applying for a variance must assume all risk associated with their application and understand that their financial commitments in connection with their applications will not be a determinative factor in BLM's evaluation process.

- Why have donated and LWCF-acquired lands been included among the "variance" lands and what steps are being taken to avoid their development?

Answer: Comments received on the Supplement to the Draft Solar PEIS have requested that donated and LWCF-acquired lands be identified as exclusion areas for utility-scale solar energy development. The BLM is currently considering this request, but no decision has been made yet. We would be available to brief your office directly in more detail at your request.

Feinstein Question 5 - Central Valley Project

Last week the Bureau of Reclamation (BOR) released its initial water allocations for Central Valley Project water users. Given the low precipitation and Sierra snowpack we have experienced in California, the 30% water allocation for agricultural service contractors is disconcerting, but not altogether surprising. Significant carry-over storage appears to have helped boost reservoir supplies, but it is unclear whether those supplies are sufficient to provide all the water necessary to meet the needs of farms and communities for the remainder of the year. Can you tell me:

- If there is not significant additional precipitation in the remaining weeks of the wet season, how will this affect future water allocations for the remainder of the water year?

Answer: The initial 30% allocation to agricultural water service contractors in February 2012, was due to very dry hydrologic conditions. December, typically one of the wettest months in California, ended up being one of the driest on record. The dry pattern continued through mid-March. Since mid-March, improved precipitation in the Sacramento Valley and improved snowpack in the Northern Sierra resulted in increases to the allocation for Central Valley Project

(CVP) San Joaquin Exchange and Sacramento River Settlement Contractors, wildlife refuges, agricultural and municipal and industrial (M&I) water service contractors in April. As of May, the allocation for north of delta agricultural water service contracts was 100%, but the allocation south of delta agricultural water service contractors remained lower at 40%. The lower allocation south of the delta is a reflection of constraints on exports from the Delta and the loss of pumping windows during the winter when conditions were much drier. In the San Joaquin Valley, precipitation did not improve as significantly as it did in the Sacramento Valley. The initial allocation to Friant Class I contractors was 35% which increased to 55% as of May 24. The Friant Class II allocation remains zero.

- What administrative actions can BOR take to help ensure adequate water supplies to San Joaquin and Sacramento farmers this year?

Answer: Reclamation developed a series of actions in the CVP Water Plan 2012 to help support water management efforts this year. The plan, available at http://www.usbr.gov/mp /pa/water, identifies actions related to Joint Point of Diversion, Exchange Contractors' transfers, and California Aqueduct/Delta-Mendota Canal Intertie operations. Reclamation also worked with the water community to identify opportunities for transfers and administrative actions to better manage available supplies.

Feinstein Question 6 - Yurok Funding

Secretary Salazar, Yurok Chairman O'Rourke recently wrote to your Department seeking assistance with the historic and continued under-funding for Yurok tribal government, law enforcement and transportation needs. I share his concerns and hope that your staff will give his request for additional funding all due consideration.
To help clarify some outstanding questions raised by Chairman O'Rourke, I hope that you can provide me with answers to the following questions:

- Has your Department reviewed and analyzed the *Yurok Tribe Justification and Request for Increased Base Funding*, which was provided to the Regional Office and conveyed to the Assistant Secretary earlier this month?

Answer: The Department received and reviewed the "Yurok Tribe Justification and Request for Increased Base Funding." Indian Affairs has examined the request, and we hope that our explanation of the issues raised by the Tribe are addressed in the explanation of Tribal Priority Allocations which are below.

- Do you agree with the conclusions reached in this document, particularly that the tribe is disproportionately underfunded?

Answer: In general, the distribution of TPA funds is sound. Tribes with historically larger populations and/or larger reservations receive proportionately larger shares of TPA funds. Adjustments reflecting treaties, court decisions, executive policy decisions, and congressional acts are also factored into the distributions.

The allocation of resources among the Regions and Tribes is based on a complex set of historical, geographical, demographic, political and programmatic factors. Today, "base funding" identifies the basic contract amount of services on which a Tribe can rely from one year to the next – the base amount from which budget increases or decreases are calculated. The base funding amount is the result of years of legislation, appropriations, and BIA administrative polices.

At various times, especially in the past several decades, the Federal government has emphasized the development of certain natural resources and provided additional funding for those programs. Additional funds were provided only to Tribes owning such resources, and those funds were made part of the Tribe's recurring TPA base funding. On the other hand, several programs were removed from Tribal recurring bases, as well. These programs included the Housing Improvement Program and Road Maintenance program; many Tribes had ranked these programs as top priorities and had allocated a substantial amount of their funding for them. When these funds were reduced or eliminated from the TPA base, Tribes that had these programs listed as top priorities lost significant portions of their base funding.

At various times, the BIA has emphasized certain programs, such as Human Services. At those times, the BIA has requested additional funding for those programs. Tribes with higher populations received a high proportion of these funds, which were then made part of their recurring TPA base to meet ongoing needs. However, increased tribal enrollment, whether through changes in membership criteria, or natural population growth, has not been considered a factor in distributing additional funds for TPA programs. Migration to and from reservations, particularly as economic opportunities change, has not been accounted for in any calculations of TPA funding.

As a result of treaties, court decisions, Executive policy decisions, and Congressional acts, the legal obligations and funding for particular Tribes have resulted in unique recurring funding levels for those Tribes. Additionally, these funds were incorporated into various Tribes' bases to address the prospect of litigation from these Tribes against the Federal government for failure to support certain activities required by treaty, statute, or the Government's trust responsibility.

- What is the minimum per-capita funding that a rural, non-gaming tribe should receive?

Answer: The BIA does not establish a minimum per-capita funding level for any Tribe, regardless of locality or gaming status. However, the Small Tribes initiative was established to address a funding allocation process that consistently failed to take into consideration the basic funding needs of small Tribes. These Tribes have small memberships and most have little or no land or natural resources. The initiative attempts to ensure that all Tribes, regardless of population size, land base, or natural resources, will receive a recurring base of $160,000 for Tribes in the continental United States. The base funding amount is considered sufficient to enable small Tribes to put in place and maintain the management systems necessary to account for funds and ensure compliance with applicable laws and regulations. The funding also permits Tribes to establish and maintain administrative mechanisms sufficient to establish viable Tribal office operations and service delivery systems.

- If a per-capita formula is inappropriate, please explain what formula your Department does use any why it is the more appropriate funding mechanism.

Answer: A per capita formula is inappropriate to use. At one time, the GAO developed an analysis of the TPA base funding per Tribe. Their analysis showed that there is considerable variation in per capita funding between Regions and Tribes. For example, in the comparison between Regions, GAO found the average TPA funding per capita Nationwide was $601; however, in Eastern Oklahoma TPA per capita was $121 and in Northwest TPA per capita was $1,020. This level of analysis, though, ignores that the Eastern Oklahoma Tribes tend to have small land bases while the Northwest Region Tribes have both reservations and significant natural resources held in trust.

The only funding formula that the Department uses for the distribution of base funding is the TPA process. Many difficulties arise in any effort to develop an allocation system that takes into account the relative means of the Tribes. Determining the type, extent, and magnitude of Tribal revenues is the first difficulty. In an era when the BIA had a continuous presence on the reservation and managed an Indian Tribe's affairs, BIA personnel knew about all Tribal business activities. In the current era of Self-Determination and Self-Governance, the BIA often does not know the extent of Tribal businesses. There is no assurance that the financial statements and reports even exist for all Tribal business. Even if they exist, there is no assurance the format and content of the statements and reports may be readily compared or that the tribes would give BIA the information.

The current TPA process is the most appropriate due to the efforts of the BIA in consulting with Tribes and Tribal leaders in the early development stages of the TPA process.

- As a small and needy tribe, what supplemental funding can be identified to address this shortfall?

ANSWER: The Catalog of Federal Domestic Assistance is a valuable resource because it identifies programs which identify Tribal governments as eligible applicants. These programs are available and the BIA has seen increased outreach efforts by a number of Federal agencies, which is an indicator that Tribal participation in these other programs may show steady increases and a bridged gap in shortfalls.

Feinstein Question 7 - San Luis Rey Water Settlement

In 1988 Congress passed the San Luis Rey Indian Water Rights Settlement Act which provided a framework for resolving the decades old water dispute in Northern San Diego County. Within the last two years the five Indian Bands and the cities of Escondido and Vista have reached an agreement on how to proceed, however the Department of Interior—as the bands' trustee—has yet to approve the deal.

- What are the primary unresolved issues which prohibit you from approving this settlement?

Answer: The Department of the Interior ("Department") believes that the proposed settlement agreement drafted by the Bands and the local entities is inconsistent with the 1988 San Luis Rey Indian Water Rights Settlement Act ("Settlement Act") and contemplates obligations for the United States which exceed the authority and intent of the Act. The Department's position on the core issue in dispute, discussed below, was conveyed to the Bands as early as 2004, and has been reiterated multiple times across at least two Administrations.

The central point of contention concerns the scope and effect of the Settlement Act. The Department believes that the Settlement Act fully and finally quantified and resolved all of the Bands' Federal reserved water rights. The Department believes this position is fully supported by both the plain language of the Settlement Act and the congressional record behind the enacted legislation. In full settlement of the Bands' reserved water rights claims and to satisfy the obligations of the United States to the Bands as trustee, the Settlement Act established a $30 million trust fund and also required the Secretary to acquire and deliver 16,000 acre-feet per year of imported water to the Bands. The Bands and local entities disagree with this interpretation and rely on language from, and the legislative history behind, prior unenacted bills to assert that, in addition to the 16,000 acre-feet per year of imported water identified in the Settlement Act, the Bands retain claims to reserved water rights in waters originating within the San Luis Rey River basin.

- What is the timeline for you to resolve these issues?

Answer: The Department is committed to the expeditious development of a settlement agreement consistent with the Settlement Act, should the parties wish to pursue such an agreement. The Department has engaged in dozens of settlement discussions with the parties over the last several years and has offered multiple approaches to fashioning an agreement which would make the benefits of the Settlement Act available to the Bands. The Department views the quantity of water together with the specific exchange authority provided by the Settlement Act as an exceptional asset that holds the potential to provide the Bands with a permanent and reliable water supply unobtainable through any other means. If the parties are willing to pursue an agreement based upon the benefits explicitly set forth in the Settlement Act, the Department is hopeful that a final agreement could be developed this year.

- Does the 16,000 acre/feet of water provided by the Settlement have federally reserved status?

Answer: Congress directed the United States, through the Secretary of the Interior, to acquire and deliver 16,000 acre-feet of water to the Bands in settlement of the Bands' reserved water rights claims. This water cannot be forfeited or abandoned and is federally protected water that, in the Department's view, constitutes a trust asset.

- Under your interpretation of the Settlement Act, does it preclude tribes from using existing ground and surface water on their reservations?

Answer: No. All five Bands have historically used either local surface water, ground water through domestic or community wells, or some combination of both. These uses have never

been challenged. There is no reason that these uses could not continue following implementation of the Settlement Act.

- Does this water have federally reserved status?

Answer: The purpose of the Settlement Act is "to provide for the settlement of the reserved water rights claims of the la Jolla, Rincon, San Pasqual, Pauma and Pala Bands of Mission Indians" by providing the Bands with 16,000 acre-feet per year of supplemental water and a $30 million trust fund. Against the backdrop of this congressional intent, the United States would not assert federal reserved water rights on behalf of the Bands to local water sources.

- The Settlement Act provides the authority to exchange settlement water for water from other sources. Once this exchange occurs, is the federally reserved status of the water maintained?

Answer: The Settlement Act resolved the Federal reserved water rights claims of the five Bands by directing the Secretary to acquire and deliver 16,000 acre-feet of water imported annually to supplement the waters under dispute in the basin. The Department takes the position that this water is a trust asset to which the obligations of the United States attach. Congress further authorized specific and limited authority for exchanges of the imported water for water from other sources for use on the Bands' reservations. If the water provided by the United States is exchanged consistent with the authority of the statute for water from another source, the Department believes that the trust asset character of the water can follow the exchange and be applied to this new source and that the Bands' use of water from this source could be protected as such.

Feinstein Question 8 - Fee to trust process and applications

One of the most common concerns I hear expressed by tribes in California is the length of time it takes the Department to make decisions on fee to trust applications.

In some cases I believe the Department acts responsibly in conducting a deliberative process, especially when gaming is involved. But in other cases, I believe the Department could and should move more quickly. This will require a more open, transparent process, and better communication with local interests.

- How many trust applications are pending in California? How many are for gaming?

Answer: California has 134 applications pending, of which thirteen are for gaming purposes.

- What has been the average length of time it takes to process a trust application for a California tribe in the last 10 years?

Answer: The time it takes complete an application varies depending upon a number of factors, including the stated purpose of the acquisition, comments from interested parties, environmental concerns, and concerns stemming from the Supreme Court's decision in Carcieri v. Salazar. Some applications can be completed in less than 2 years, while others have taken up to 5 years.

- On average, how long does it take the Department to notify the local interests of a new trust application in their area? What steps are you taking to improve notifications?

Answer: On average, it takes the Department 6 months to notify the local interests. Actions that have been taken to improve the notification process include the development of a national policy identifying timeframes associated with the process, revising the Fee-to-Trust Handbook, implementing guidance to process mandatory acquisitions, replacing the Fee-to-Trust tracking system with an improved collaborative system, and developing performance measures for Senior Executives to process applications.

- To what extent do gaming acquisitions slow the process of trust land approvals in general?

Answer: Gaming applications require more work/information/approval levels and require preparation of an Environmental Impact Statement rather than an Environmental Assessment. The Tribe must coordinate processing with the state and local governments and applications generally receive more scrutiny for compliance with the National Environmental Policy Act of 1979, the Indian Gaming Regulatory Act, and applicable gaming and land acquisition regulations.

- Do the same staff analyze both gaming and non-gaming applications? Does this create a situation where non-gaming trust applications receive less staff time because of the more intensive process required for gaming acquisitions?

Answer: Yes, staff does perform work on both gaming and non-gaming applications. The non-gaming applications do compete for staff time as the gaming acquisitions are labor intensive.

- Is it possible for a parcel taken into trust using the non-gaming procedure to ever be used for gaming activities?

Answer: Yes, in some circumstances. Section 20 of the Indian Gaming Regulatory Act provides that for lands that are within reservation boundaries or contiguous thereto, Indian Affairs has the authority to take land into trust that can subsequently be used by a Tribe for gaming purposes. Requests for gaming must still be approved using Section 20 of IGRA, whether the land is being taken into trust for that purpose or it is in existing trust status.

Questions from Senator Landrieu

Landrieu Question 1. I see that inspection fees for offshore oil and gas facilities are being increased from $62 to $65 million. Will this money be used to provide more personnel for inspections, in order to relieve delays? If it is not being used to alleviate delays, what will this increased fee be directed towards?

Answer: The amount of individual inspection fees has not changed. The $3.0 million increase in inspection fee collections is the result of differences in assumptions about the timing of fee collections, not an increase in the fees themselves. In fiscal year 2012, inspection fees were assessed for the inspection of drilling rigs for the first time. The revenue from monthly drilling rig inspections that occur in the last quarter of the fiscal year may not be received until the following fiscal year. In fiscal year 2013, actual receipts will include fees from inspections in the final quarter of fiscal year 2012 and the bureau will therefore receive a full year of inspection fee revenue. It is also important to remember that these are estimates and that actual fee collections will vary depending on changes in the number of applicable OCS operations in a given year. All fee revenue will be used to address important mission-related priorities. As required by the Consolidated Appropriations Act of 2012, not less than 50 percent of the inspection fees collected by the bureau will be used to fund personnel and mission-related costs to expand capacity and expedite the orderly development, subject to environmental safeguards, of the Outer Continental Shelf pursuant to the Outer Continental Shelf Lands Act, including the review of applications for permits to drill.

Landrieu Question 2. With industry still struggling with slow permitting and delays in the permit submission process, and in light of the President's stated desire to increase domestic production, what efforts are you making to fix the problems with the permit process?

Answer: Respectfully, the Department does not agree that the industry is struggling with slow permitting and delays in the permit submission process. As of May 4, 2012, the Bureau of Safety and Environmental Enforcement (BSEE) approved 128 new shallow water permits, 412 deepwater permits requiring subsea containment, and 66 deepwater permits not requiring subsea containment.

BSEE has worked very hard to help industry better understand the permitting requirements and improve the efficiency of the application process. Among the steps taken to improve the process, BSEE has:

- Held permit processing workshops for industry, including one in April 2012, which has improved the quality and thoroughness of applications;
- Published a permit application completeness checklist to make it clear to industry what information is required, and to reduce the frequency with which operators submit incomplete applications;
- Established priorities for reviewing permit applications – assigning the highest priority to permits for ongoing operations or emergency operations;
- Begun to balance workloads for its engineers by taking some permit applications and reassigning them to different districts;

- Allowed authorized users of BSEE's online permit application system to track the status of their applications, which provides operators with greater transparency in the permitting process.

As a result of these steps and the industry's increasing familiarity with the process, permit review times have decreased significantly in the past year.

Landrieu Question 3. In light of the fact that production on public lands and waters have decreased and with federal OCS production dropping 441 million barrels in 2011, down from 588 million in 2010. What is being done to increase the speed at which permits are reviewed and approved? Would it be wiser to direct more of the money allocated to BOEM and BSEE to hire more staff to review permit applications?

Answer: With respect to production from the Federal OCS, the data you reference is incomplete. Production data is not required to be submitted by operators until 45 days after the end of the month of production, so the spreadsheet on BSEE's website presenting production figures as of January 25, 2012, is missing nearly all the production from December, 2011. Furthermore, production is not included in that spreadsheet until after the reported production volumes are verified, which can take several months. The final production numbers for 2011 will be substantially higher than the values you reference.

BSEE intends to hire significantly more personnel with the funding provided by Congress in FY 2012, including a significant number dedicated to reviewing permits. The hiring and training process takes time, and it will be several years before engineers hired this year are fully trained to evaluate the breadth of issues required as part of the full permitting process. However, BSEE is committed to continuously monitoring and improving its permitting process, while conducting thorough reviews to ensure that all safety requirements are met. In the meantime, as indicated by the permit information available on BSEE's website, the bureau is successfully reviewing permit applications and doing so in a timely fashion.

Landrieu Question 4. I see that a fee of $4 per acre is being proposed on non-producing, but leased, Federal lands. I am curious why this fee is being proposed, when it would appear that the greatest impediment to production on these lands is the slow pace of permitting. What was the rationale behind this fee?

Answer: The Administration believes this legislative proposal will encourage energy production on lands and waters leased for development. A $4.00 per acre fee on non-producing Federal leases would provide a financial incentive for oil and gas companies to either get their leases into production or relinquish them so that the tracts can be leased to and developed by new parties. The proposed $4.00 per acre fee would apply to all new leases and would be adjusted for inflation annually. In October 2008, the Government Accountability Office (GAO) issued a report critical of past efforts by the Department of the Interior to ensure that companies diligently develop their Federal leases. This proposal is similar to other non-producing fee proposals considered by the Congress in the last several years and this fee is projected to generate revenues to the U.S. Treasury of $13.0 million in 2013 and $783.0 million over ten years.

Wild Horses:

Landrieu Question 5. Mr. Secretary, since passage of the Wild Free- Roaming Horse and Burro Act of 1971, more than 20 million acres of wild horse habitat has been removed from Herd Management Areas. At least 5 million of those acres could be suitable for reintroduction of wild horses. When the BLM is spending more than $40 million per year on wild horse and burro holding costs and continues to remove almost twice as many animals as it can reasonably adopt each year, why hasn't the BLM reevaluated those 20 million acres and seriously considered reintroducing horses and burros to those areas?

Answer: No specific amount of acreage was set aside for the exclusive use of wild horses and burros under the 1971 Wild Free-Roaming Horses and Burros Act. The Act directed the BLM to determine the areas where horses and burros were found roaming, and then to consider managing the animals within the boundaries of those areas. Of the 22.2 million acres no longer managed for wild horse and burro use, 6.7 million acres were never under BLM management. There are a number of reasons why the BLM has not considered reintroducing wild horses and burros to the remaining acres. These reasons include:

- 48.6 percent (7,522,100 acres) are intermingled ("checkerboard") land ownerships or areas where water was not owned or controlled by the BLM, which made management of wild horses infeasible;
- 13.5 percent (2,091,709 acres) are lands transferred out of the BLM's ownership to other agencies, both Federal and state, through legislation or exchange;
- 10.6 percent (1,645,758 acres) are lands where there were substantial conflicts with other resource values;
- 9.7 percent (1,512,179 acres) are lands removed from wild horse and burro use through court decisions, urban expansion, highway fencing (causing habitat fragmentation), and land withdrawals;
- 9.6 percent (1,485,068 acres) are lands where no BLM animals were present at the time of the passage of the 1971 Act or places where all animals were claimed as private property. (These lands should not have been designated as lands where herds were found roaming and will be removed from the totals in future land use plans.); and
- 8.0 percent (1,240,894 acres) are lands where a critical habitat component (such as winter range) was missing, making the land unsuitable for wild horse and burro use, or areas that had too few animals to allow for effective management.

Landrieu Question 6. Equine geneticists have concluded that a minimum wild horse herd size to sustain genetic viability is 150-200 adult animals. Most wild horse herds are below this minimum level. The BLM budget request includes an additional $2 million with your stated goal of maintaining herd health. Can you provide more information about how BLM intends to address herd health and viability considering herd populations are lower than recommended by experts?

Answer: The proposed number of animals (150-200) in a genetically viable wild horse herd is a size that is estimated by some to minimize genetic loss. Genetic diversity is lost through time in any isolated population of animals, but is slower in larger populations.

Although some of the herds on BLM lands are smaller than this recommended size, there are other factors that make these herds genetically viable. Herds that are associated with or border other herds experience the exchange of genetic material. Many BLM herds fall into this category. A small amount of exchange (through a few individuals) can have a large impact on overall genetic diversity. The exchange of individuals through management intervention is also possible should the need arise.

During gather operations, the BLM frequently collects hair samples from individuals in a herd for genetic testing. The geneticist who does the testing provides BLM with a report evaluating the level of genetic diversity and recommending actions that BLM should take, if any, including when additional genetic monitoring should be conducted. For instance, should a herd genetics report indicate low genetic diversity, the BLM can adjust the herd composition by removing and relocating some of the brothers and/or sisters (genetic redundancy likely to cause genetic malformities) to keep them from breeding. Depending on herd population size relevant to appropriate management level within the herd management area, the BLM may also bring in horses with other genetics from similar herds.

Questions from Senator Ben Nelson

Nelson Q1. Secretary Salazar, could you provide an update on the Platte River Recovery Program?

As you know, Platte River Recovery Implementation is a basin-wide effort undertaken by the Department of Interior in partnership with the States of Nebraska, Colorado, and Wyoming to provide benefits for endangered and threatened species.

I know you've included $8 million for implementation in your request which I appreciate.

I was serving as Governor in 1997 when Nebraska entered into the Cooperative Agreement for Platte River Recovery Implementation. A little over a decade later we were able to successfully authorize implementation as part of the Consolidated Natural Resources Act signed into law in 2008.

I believe the first increment of the program is to last a bit over a decade - wrapping up in 2019. What's the Department's assessment so far? What progress are we making and are we on the right track?

Answer:

What's the Department's assessment so far?

The Platte River Recovery Implementation Program (Program) continues to be a highly successful collaborative process, and also continues to receive broad support from water users, environmental and conservation entities, the states of Nebraska, Colorado, and Wyoming, as well as the U.S. Fish and Wildlife Service and the Bureau of Reclamation.

What progress are we making?

The Program has made significant and steady progress during the first six years of the 13 year First Increment. The most recent Program success has been the completion of the Pathfinder Modification Project, which was declared substantially complete on January 11, 2012. The Pathfinder Modification Project raised the spillway at Pathfinder Dam (a Reclamation facility) by approximately 2.4 feet in order to recover storage space in Pathfinder Reservoir which had been lost to sedimentation. The Pathfinder Modification Project is a contribution to the Program by the State of Wyoming, and no federal appropriations were required to modify the spillway at Pathfinder Dam. The Pathfinder Modification Project's Environmental Account in Pathfinder Reservoir will provide up to approximately 34,000 AF of water for the benefit of the Program's target species.

The Program will implement the Land Plan in order to protect, and where appropriate, restore 10,000 acres of habitat by no later than the end of the First Increment. To date, the Program has acquired an interest in approximately 9,150 acres of land for habitat purposes, leaving approximately 850 acres left to acquire by the end of the First Increment.

The Program will implement water projects under the Water Action Plan capable of providing at least an average of 50,000 acre-feet per year of shortage reduction to target flows, or for other

Program purposes, by no later than the end of the First Increment. The Program, through an agreement with the State of Wyoming, has acquired 4,800 acre-feet of water per year from the Wyoming Account in Pathfinder Reservoir through the remainder of the First Increment; however, the Program and the State are still in the process of determining the final yield of the 4,800 acre-feet for the benefit of the target species at the associated habitat. The Program is also currently negotiating a water service agreement with the State of Nebraska (Nebraska) and the Central Nebraska Public Power & Irrigation District (CNPPID) to acquire water from the proposed J-2 Project. The J-2 Project, if constructed, could have the ability to retime approximately 40,000 AF of excess flows for the benefit of the target species. Under the proposed agreement, the 40,000 acre-feet would be shared 25 percent (approximately 10,000 acre-feet) for Nebraska and 75 percent (approximately 30,000 acre-feet) for the Program. This agreement is a vital aspect of achieving the Program's Milestone of providing at least an average of 50,000 AF per year of shortage reduction to target flows.

Are we on the right track?

The Program continues to be successful, and many of the Program's Milestones have been achieved. The implementation of the Program and the achievement of the Milestones provides measures to help recover the four target species, which in turn provides critical Endangered Species Act compliance for the continued operation of existing water projects in the Platte River Basin. The Program also provides Endangered Species Act compliance for the development of certain new water projects within the Platte River Basin.

Due to the amount of land that the Program has acquired an interest in, it is very likely that the Program will achieve the Land Milestone of 10,000 acres by the end of the First Increment. The one remaining major Program Milestone to be achieved by the end of the First Increment is developing water projects capable of providing at least an average of 50,000 acre-feet per year of annual shortage reduction to target flows. Significant funding from DOI will need to be contributed to the Program over the remaining years of the First Increment for the development of these water projects, including the aforementioned water service agreement with Nebraska and CNPPID. Adequate funding in the future for this project and other water projects will be critical in order to achieve the Program's Water Milestone by the end of the First Increment.

Nelson Q2. I am regularly reminded by Nebraska constituents that additional wind power development will require new investments in the transmission system along with more efficient and flexible operation of the grid. I would appreciate your thoughts on ways the federal government may assist in expanding and improving the transmission system.

Answer: Transmission remains one of the largest barriers to the development of renewable energy potential in this country. This Administration is taking steps to improve coordination and streamline processing of Federal permits through interagency agreements to expedite and simplify permitting on Federal lands. In addition, in 2009, the BLM, the United States Forest Service (USFS), the Department of Defense, and the Department of Energy issued a final Programmatic Environmental Impact Statement that evaluated issues associated with the designation of energy corridors on Federal lands in eleven Western states. Using this information, the BLM designated transmission corridors on BLM lands by amending 92 land use plans in the Western States. Designation of corridors provides preferred locations for developers

to site major linear facilities (such as transmission lines) and specifically identifies lands that are available for that purpose.

The BLM will continue to actively coordinate with the Western Electricity Coordinating Council (WECC) to ensure their transmission planning and grid reliability initiatives are in harmony with BLM initiatives related to land use planning, designation of utility corridors, policy development, and timely review and permitting of high-voltage transmission lines.

The BLM's 2009 transmission corridor designations were limited to BLM-managed lands. The BLM manages only 6,354 acres in Nebraska so it was not practical to designate any corridors in that State.

Question from Senator Tim Johnson

Johnson Question 1. As you know, both EROS Data Center, located in my home state, and the Landsat series of satellites are very important resources, not only for South Dakota, but for our entire nation and the international community. Lead time is required for developing these satellites, and it's important that we look now at how to proceed beyond Landsat 8, which is scheduled for launch next year. The budget request excludes funding for Landsat 9 mission development, which is very concerning to me. How does USGS envision the program to function beyond Landsat 8, and what coordination activities are currently underway with NASA and other agencies in examining how to continue the Landsat Missions program and ensure mission continuity?

Answer: The USGS received $2.0 million in the 2012 Omnibus appropriations bill to support program development activities for Landsat satellites 9 and 10. In 2012, these funds are being used to consider options to obtain, characterize, manage, maintain, and prioritize land remote sensing data and to support the evaluation of alternatives for a Landsat 9 mission and other means for acquiring data. The 2013 budget request includes $250,000 to continue these efforts.

The USGS is working closely with the Landsat user community, the Department of the Interior, the White House Office of Science and Technology Policy, and the National Aeronautics and Space Administration to identify and consider all available options for maintaining the continuity of moderate-resolution land observation data for the Nation. The USGS recently posted a Request for Information to solicit information and options for providing a dependable, long-term source for Landsat-like data to follow Landsat 8. Mission concepts may include revolutionary "clean-slate" technical approaches, as well as evolutionary upgrade approaches. Approaches may involve single- or multiple-satellite acquisitions, commercial data buy arrangements, public/private partnerships, hosted payloads, international collaboration, small satellites, or architectures utilizing combinations of space-based sensors. The USGS is also supporting a National Research Council study on programmatic and operational alternatives for establishing a long-term source of Landsat-like data for the Nation. These efforts include a "Meeting of Experts" to examine the feasibility of new and emerging technology that might be applicable for sustaining global land observations.

Questions from Senator Thad Cochran

Cochran Question 1: States have complained that the length of the Coastal Impact Assistance Program grant approval process is too long and cumbersome. For years I have relayed the frustration Mississippi coastal communities have experienced with this program. Last year, the administration transferred management to the Fish and Wildlife Service stating that this would lead to a more efficient process and expeditious delivery of funds. Can you please provide details on the progress being made in addressing these concerns?

Answer: To address these concerns, the Service began meeting with all of the affected States starting in May 2011, to discuss the issues and develop a transition plan to minimize the impact on States and Coastal Political Subdivision (CPS) operations. As a result of these discussions, on Oct. 1, 2011, the Service began to encourage submission of CIAP applications and the obligation of funds. We centralized the grant administration into the Washington Office and hired and trained a professional grants management team to review and award grants. Additionally, we have added a technical guidance function in each of the States to provide a State Liaison to work closely with the recipients of CIAP funds. Five of the six States presently have a State Liaison, with the sixth in the process of being hired. The State Liaisons in the four Gulf States are co-located with State staffs. In California and Alaska, the liaisons are located in local Service offices in Sacramento and Anchorage, respectively, to encourage communication and expeditious handling of technical questions on planning and proposed project issues. The Washington Office staff is responsible for the technical review, including programmatic and financial aspects that are integral to the grant award process. The State Liaisons are working with the recipients in the pre-award phase to guide the planning process, develop project proposals and to help improve the quality of initial grant application submissions to alleviate the time consuming process of supplemental information requests during review.

In addition, we have held a national webinar and two national teleconferences with CIAP applicants. We have completed a CIAP training session in Alaska and are in the process of scheduling training workshops for States and CPSs for better CIAP grants management. We expect to hold these workshops April through August 2012 in the eligible States.

Cochran Question 2: It is my understanding that the Department has changed the definition of "obligated funds" under the Coastal Impact Assistance Program. Why?

Answer: The Department has not changed the definition of obligated funds.

Cochran Question 3: The administration has been quick to highlight increased levels of domestic oil and gas production. How much of this is attributed to production increases on state and private lands as opposed to federal lands?

Answer: The Department of the Interior does not administer oil and gas from State and private lands. However, as reported by the U. S. Energy Information Administration in its March 2012 report "Sales of Fossil Fuels Produced from Federal and Indian Lands, FY 2003 through FY 2011," production of oil from onshore Federal lands in FY 2011 was 112 million barrels, an increase over the 108 million barrels produced in FY 2010. Natural gas production from Federal

lands in FY 2011 was 2,955 billion cubic feet, nearly level with the 3,068 billion cubic feet produced in FY 2010. Average oil production from Federal lands from FY 2005 through FY 2008 was 103 million barrels. Average oil production increased from FY 2009 through FY 2011 to 108 million barrels. Average gas production from Federal lands from FY 2005 through FY 2008 was 2,892 billion cubic feet. Average gas production, too, increased from FY 2009 through FY 2011 to 3,064 billion cubic feet.

Cochran Question 4: The President has called for an "all-of-the-above" approach to addressing our nation's energy challenges, and while I have always supported energy diversification, it seems to me that this budget and the proposed offshore oil and gas leasing plan for 2012 to 2017 does not reflect that. Can you speak to what the Department is doing to explore and develop new energy resources, in the Gulf of Mexico specifically, that could lower gas prices and strengthen our energy security?

Answer: When President Obama took office, the United States imported 11 million barrels of oil a day. The President has put forward a plan to cut that by one-third by 2025. The Administration is taking a series of steps to execute the *Blueprint for a Secure Energy Future*, a broad effort to protect consumers by producing more oil and gas at home and reducing our dependence on conventional energy resources by using cleaner, alternative fuels and improving our energy efficiency. The *Blueprint* is a plan that calls for an "all of the above" approach. The Administration is moving ahead with a comprehensive energy plan for the country that is enhancing our energy security, creating jobs, and improving protections for the environment. In 2011, American oil production reached its highest level since 2003, and total U.S. natural gas production reached an all-time high.

The Department of the Interior plays an important role in advancing domestic production. Last November, I announced a proposed Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2012-2017 that would make areas containing more than 75 percent of undiscovered technically recoverable oil and gas resources estimated in Federal offshore areas available for exploration and development. The proposed program focuses on six offshore areas where there are currently active leases and/or exploration, and where there is known or anticipated hydrocarbon potential. Three of the six areas are in the Gulf of Mexico, which is and will remain one of the cornerstones of America's energy portfolio and is central to our country's energy security. The Gulf, in particular the deepwater areas, already has several world class producing basins and there have been a number of significant new discoveries in the last year. We estimate that the Central Gulf of Mexico holds more than 30 billion barrels of oil and 133.9 trillion cubic feet of natural gas yet to be discovered. This is nearly double the estimated technically-recoverable resource potential of the Chukchi Sea. The Western Gulf of Mexico is just behind the Chukchi with more than 12 billion barrels of technically-recoverable oil and nearly 70 trillion cubic feet of technically-recoverable natural gas.

We have been providing incentives to spur efficient oil and gas development where possible using administrative action. Offshore, existing authorities make it possible to shorten the base term of leases, where appropriate, and reward diligent development efforts with lease extensions, providing industry with an incentive to develop its existing leases. The proposed 2012-2017 lease sales in the Gulf of Mexico consider offering all the unleased available acreage, including

the small portion of the Eastern Gulf of Mexico Planning Area that is not under Congressional moratorium pursuant to the Gulf of Mexico Energy Security Act of 2006.

Moving ahead with the "all of the above" strategy will reduce dependence on foreign oil, thereby enhancing energy security and helping us as we transition to a cleaner energy future. However, it will not have a direct impact on the price of gasoline, which is overwhelmingly dictated by the global price of crude oil. There are other actions that the Administration has taken that can have longer-term impacts on the demand for gasoline, which is why the President set an ambitious goal that by 2015 we would have 1 million electric vehicles on the road, becoming the world's leader in advance vehicle technologies. To help reach this goal, the President is proposing bold steps to improve the efficiency of all modes of transportation and to develop alternative fuels. The Administration continues to push forward on fuel economy standards for cars and trucks. The President has proposed to speed the adoption of electric vehicles with new, more effective tax credits for consumers and support for communities that create an environment for widespread adoption of these advanced vehicles in the near term. These actions are already helping to lower transportation costs by reducing dependence on oil, provide more transportation choices to the American people, and revitalize the U.S. manufacturing sector.

Cochran Question 5: I am curious to know if the Historic Preservation Fund contains any public-private partnership opportunities to fund bricks and mortar projects, previously carried out by grants from Save America's Treasures program?

Answer: Development (bricks and mortar) projects are an eligible activity under the National Historic Preservation Act (NHPA). State and Tribal Historic Preservation Offices may choose to use their annual Historic Preservation Fund (HPF) grants to fund development activities at National Register listed properties. Additionally, the NHPA requires that States direct ten percent of their annual HPF allotment to Certified Local Governments (CLGs). Each State sets the parameters of the types of projects CLGs can complete with this funding, and may choose to allow CLGs to fund development projects.

Most States and Tribes, however, currently use the majority of their HPF grant funds to carry out non-discretionary activities mandated by the NHPA, including consultation with Federal agencies on the impact of Federal undertakings (Section 106 compliance), survey and inventory of historic properties, listing properties in the National Register, and administering CLGs. After this work has been completed, little funding generally remains to complete development projects. Similarly, few States currently choose to include development projects as an eligible project type for CLGs subgrants, because the amount each state distributes to CLGs is small. The average CLG subgrant in FY 2011 was $2,600. The projects CLGs complete generally include survey of historic properties, National Register listings, and educational resources.

Questions from Senator Lamar Alexander

Alexander Question 1 - U.S. Fish and Wildlife Service

Background: The Minnesota Public Utilities Commission recently denied plans for a 48 turbine wind farm because of concerns about the impact on birds, bats and bald eagles. According to the American Bird Conservancy, this project was the first ever wind farm project to apply to the U.S. Fish and Wildlife Service for a "taking" permit for bald eagles. Thankfully, there is growing awareness that wind turbines kill not just migratory birds and bats, but also bald eagles.

Question A: If the Department moves forward with plans to allow construction of wind farms on public land, how do you plan to address this problem?

Answer: The U.S Fish and Wildlife Service has promulgated a regulation at 50 CFR 22.26 (the Eagle Take Regulation) under the Bald and Golden Eagle Protection Act that authorizes issuance of programmatic eagle take permits to unintentionally take golden eagles, bald eagles, or both, at sites such as wind facilities. However, the permits will be issued only if the Service determines that any take is compatible with the preservation standard for eagles set in the Act by Congress.

The Service established an approach to ensure that permitted take meets the preservation standard in our National Environmental Policy Act (NEPA) analysis for the Eagle Take Rule. Further, the Service has developed *Eagle Conservation Plan Guidance* that provides recommendations for wind developers on how to reduce impacts to eagles by using robust survey techniques to select project sites, establishing appropriate monitoring of eagle use areas, employing adaptive management measures, and if necessary, offsetting impacts to eagles through compensatory mitigation. The Service believes that using the *Guidance* and working with the Service will reduce likely eagle take by wind energy projects to levels compatible with the preservation standard for eagles set in the Act by Congress.

Additionally, the Service is developing training on how to evaluate wind projects in light of Service guidance and regulations. The training will initially be targeted at Service staff, but the Service plans to expand the training and make it available to industry in the near future. The draft training outline was provided to private stakeholders for comment in an effort to ensure it will meet industry's needs.

Question B: Will wind farm projects be expected to apply for a permit to kill bald eagles?

Answer: Take of a bald eagle or a golden eagle without a permit is a violation of the Act. The Service's Guidance relative to Eagle Take Permits applies to both species. The Guidance encourages a wind project developer at a site at which take of bald eagles is predicted to seek an Eagle Take Permit.

Question C: Will wind farm projects be required to submit mitigation plans to make up for the killing of bald eagles?

Answer: Any wind energy facility that receives a permit from the Service will be required to work through the mitigation hierarchy as defined under the Service's Mitigation Policy.

Avoidance and minimization are the essential components of the Mitigation Policy, while compensatory mitigation may be appropriate if avoidance and minimization cannot reduce take to acceptable levels. In order to qualify for a permit, the new regulations require applicants to demonstrate that they have avoided and minimized take of eagles to the maximum degree achievable. In many areas of the country, the Service has determined that some take of bald eagles can be authorized without risk of violating the preservation standard set by Congress. In these locations, additional compensatory mitigation for take is not mandatory, but in other locations compensatory mitigation may be required to qualify for an eagle take permit.

Question D: What about other species that might be endangered or threatened?

Answer: Section 9 of the Endangered Species Act prohibits the take (which includes killing) of endangered wildlife and that prohibition is generally extended by regulation to threatened wildlife. Wind farm projects that are expected to take listed wildlife species would therefore need to receive an authorization to take listed species. Information regarding these procedures may be found in Appendix 5 "Procedures for Endangered Species Evaluations and Consultations" in the 2003 "Service Interim Guidance on Avoiding and Minimizing Wildlife Impacts from Wind Turbines."

Additional information regarding Consultations and Habitat Conservation Plans may be accessed at http://www.fws.gov/endangered/what-we-do/consultations-overview.html and http://www.fws.gov/endangered/what-we-do/hcp-overview.html respectively.

Alexander Question 2 - U.S. Fish and Wildlife Service

Background: Tennessee is home to two very important mitigation fish hatcheries, the Erwin National Fish Hatchery in Erwin, TN and the Dale Hollow National Fish Hatchery in Celina, TN. The Erwin hatchery provides eggs for hatcheries all across the country, and the Dale Hollow hatchery produces 60% of all the trout stocked in Tennessee.

The Department's FY13 budget request proposes to cut $3.2 million from the mitigation hatcheries, and Ed Carter, Director of the Tennessee Wildlife Resources Agency, has said that if these hatcheries close the impact on Tennessee will be devastating.

Question A: Will the Department work with the Corps of Engineers and other federal agencies to continue to fund mitigation hatcheries and ensure that these critical hatcheries will not be closed until a funding solution is in place?

Question B: Has the Department considered the economic benefits of maintaining the fish hatcheries?

Answer: The Fish and Wildlife Service's mission-driven priority is to protect and restore native fish species and habitat. At a time when budgets are tight and available resources limited, we need to focus our resources on these high-priority outcomes. The President's FY 2013 budget proposal would move non-reimbursed mitigation activities toward a user-pay system, similar to the President's FY 2012 budget proposal. This approach puts all of the mitigation hatcheries on

the same footing, and represents a more efficient use of Federal funds. Federal water development agencies are the appropriate entities for mitigating the adverse effects of the projects they operate and the impact of those projects on recreational fisheries. The Department is aware of the significant economic benefits of fish hatcheries and will continue to work with the Corps of Engineers, the Tennessee Valley Authority and other Federal agencies to receive full reimbursement for mitigation activities. We understand that the fish supplied by these hatcheries provide important economic opportunities to States and recreational community, and we support the continuation of mitigation work. Our goal is to keep our mitigation fish hatcheries open, and to continue to provide fish as we have in the past in the most efficient and effective way possible. However, the Service's policy is to move toward a user-pay system.

Alexander Question 3 - U.S. Geological Survey - Disaster Preparedness

Background: Tennessee experienced record flooding in Nashville and Middle Tennessee in May 2010 and in Memphis and West Tennessee in 2011. The U.S. Geological Survey played a critical role in these flooding events, and it is welcome news that the Department is requesting increased funding for the U.S. Geological Survey to prepare for future disasters.

The U.S. Geological Survey has doubled the number of monitoring stations in the Nashville area, and is working closely with local government and other federal agencies to ensure the right information gets to emergency managers as quickly as possible. Other communities in Tennessee, including Chattanooga and Memphis, hope to work with the U.S. Geological Survey to improve their flood management as well.

Question A: Could you tell us how the Department plans to use the additional funds?

Answer: The 2013 proposed budget for the National Streamflow Information Program (NSIP) provides funds to be invested in activities that will help protect life and property from hydrologic hazards, including flooding. These activities include developing and producing streamgages that can be rapidly, but temporarily, deployed to locations that are currently or forecast to be in flood or drought conditions to provide streamflow information over a broader area. This information would be used by forecasters, flood-management agencies, and first responders, who must make decisions regarding flood-fighting and evacuation, and would provide a better understanding of hydrologic extremes. The 2013 proposed budget also provides for activities related to producing flood inundation maps. These maps show the extent and depth of flood waters for streams at USGS streamgages that serve as National Weather Service flood-forecast locations. The maps will assist home owners, business owners, and first responders to anticipate and respond to flooding. Since the recent flooding in the Nashville area, the USGS has been involved in a cooperatively funded pilot project that developed over 1,000 flood inundation maps for that community.

Question B: Will funds be available for additional monitoring stations?

Answer: The proposed NSIP budget for 2013 provides funds for ecosystem restoration activities in the upper Mississippi and Columbia River basins that likely will include providing

streamflow information for use in the design and implementation of techniques and processes to restore ecosystems to more natural conditions.

In addition to these activities the 2013 request includes funding for the operation and maintenance of about 100 streamgages, which are part of the Federal backbone needed for flood forecasting. Many streamgages are currently funded through the Cooperative Water Program (CWP). Reductions in the budget of the CWP could lead to a net loss of 270 to 300 streamgages nationwide. Proposed funding increases in the budget for NSIP will help to bring more stable funding to those 100 streamgages.

Question C: What steps will the Department be taking to address earthquake hazards along the New Madrid fault, which impacts Memphis and West Tennessee?

Answer: The USGS supports a seismographic network in the New Madrid seismic zone in cooperation with the University of Memphis and Saint Louis University. The location, depth, time, and felt area of all earthquakes in the region above approximately magnitude 1.7 are automatically posted to a public USGS website in near real time. The USGS National Seismic Hazard Maps depict the regional elevated hazard in the region. More detailed earthquake hazard maps are currently available for the urban areas of Memphis, Tenn., and Evansville, Indiana and a map of the St. Louis metropolitan area is nearing completion. These maps show the amplification of seismic shaking caused by local geologic deposits. Data from a network of geodetic stations supported by the USGS shows that there is small but significant slow ground deformation in the region capable of producing damaging earthquakes.

Alexander Question 4 - Oil & Gas Lease Revenues

Background: In 2011, the Department generated $11.3 billion from energy production on federal lands – a $2 billion increase over 2010. Since 2008 oil production from the Outer Continental Shelf has increased by 30%. Despite this progress, gas prices are on the rise and domestic production is not keeping up.

Question A: What steps are being taken to expand oil and gas leases on public land?

Question B: What impact will the Department's proposal to impose new inspection fees and raise other collection fees have on oil and gas production?

Answer: Facilitating the efficient, responsible development of domestic oil and gas resources is part of the Administration's broad energy strategy that will protect consumers and help reduce our dependence on foreign oil. The BLM is working on a variety of fronts to ensure that development is done efficiently and responsibly—including implementing leasing reforms; increasing leasing opportunities in the National Petroleum Reserve in Alaska (NPR-A); adopting new processes to process drilling permits more quickly; and improving inspection, enforcement, and production accountability. BLM can only speculate as to why the operators have not produced more on Federal Lands. Oil and gas drilling and development are market-driven activities, and the demand for leases is a function of market conditions. Market drivers include prevailing and anticipated oil and gas prices, bidder assessments of the quality of the resource

base in a given area, the availability/proximity of necessary infrastructure, and the proximity of the lease to local, regional, and national markets and export hubs. The shale formations that currently have high industry interest for development, such as North Dakota's Bakken shale, Texas's Eagle Ford shale, and the Marcellus and Utica shales of the Eastern United States, are primarily in areas with a high proportion of non-Federal land. These areas have seen increased development recently due to a favorable mix of the factors noted above. As drilling priorities shift due to changes in technology or markets, an operator may choose different areas for development. Further, BLM lands are primarily gas-prone. Recent national rig counts (by Baker Hughes) indicate that rigs drilling for gas are at an "all-time low" (by percentage) and the gas is selling at "a record discount to crude." (Wall Street Journal, 5/14/12).

Approximately 38 million acres of Federal land are leased for oil and gas development. Not all leases have equal production potential, and not all leases have optimal transmission capacity where the oil or gas is being extracted. Approximately 12 million acres are producing oil and gas, and active exploration is occurring on an additional 4 million acres. We are encouraged by increasing production on Federal leases. The BLM, specifically, has approved approximately 7,000 applications for permit to drill that are not being used by industry.

The proposed new inspection and enforcement fee is consistent with the principle that users of the public lands should pay for the cost of both authorizing and oversight activities. These fees are similar to fees now charged for offshore inspections, and to numerous cost-recovery fees charged for other uses of Federal lands and resources.

Alexander Question 5 - White Nose Syndrome

Background: In May 2011 the U.S. Fish and Wildlife Service unveiled a national plan to address the growing threat posed by white-nose syndrome, which has killed more than five million bats since it was discovered in 2006. Since then, the fungus has spread throughout the bat population and is now reported in 18 states and Canada, including Tennessee. In 2010, Austin Peay State University's Center of Excellence for Field Biology was tasked by the U.S. Forest Service to monitor white-nose syndrome at Land Between the Lakes, and the Center is currently engaged in a number of research efforts to combat this disease.

The Department has invested millions to support monitoring, research, and the development of protocols to reduce transmission. However, most of this funding has been targeted for northeastern states where the white-nose syndrome was first discovered, but funding is not making it to the states and universities in south, where white-nose syndrome is rapidly expanding.

Question: What is the Department doing to help wildlife researchers in states like Tennessee to reduce the spread of white-nose syndrome?

Answer: White-nose syndrome is a disease associated with massive bat mortality in the northeastern and mid-Atlantic United States. Affected hibernating bats often have white fungal growth on their muzzles, ears, and/or wing membranes as the result of infection by a newly described species of fungus (*Geomyces destructans*), which causes skin erosions and ulcers and

can invade underlying connective tissue. There is no clear indication of any natural resistance to WNS in the affected bat populations.

Since first observed at four bat hibernacula (hibernation areas) in New York in winter 2006-2007, WNS has been detected in sixteen States and four Canadian Provinces. The most recent surveys of hibernacula near the epicenter of the outbreak show that since 2007, mortality is approaching 100 percent at some sites. Six cave-hibernating bat species, including four Federally-listed species, are directly affected or at risk from WNS. The fungus causing WNS is responsible for the death of more than six million bats.

During the winter of 2011-2012 the USGS conducted video-monitoring of bats in caves and mines in New York and Tennessee to test whether fungal skin infection triggers unsustainable energy-consuming behaviors during hibernation. The USGS is working with the Forest Service to conduct detailed characterizations of fungi associated with bat hibernation sites to better understand the microbial ecology of white nose syndrome.

For 2012, the USGS has allocated $692,882 for WNS research studies. Modeling software is being developed by USGS that will help forecast the consequences of alternative actions for the persistence and recovery of bats. The USGS 2013 budget includes a $1.0 million increase that would be used to enhance surveillance and diagnostic capability to detect the continued spread of WNS; bolster research on environmental factors controlling persistence of the fungus in the environment; develop management tools, particularly the development of a vaccine; and conduct research on mechanisms by which WNS causes mortality in bats, focused on immunology and pathogenesis.

In 2012, Congress directed FWS to spend $4.0 million from Endangered Species Recovery funding to combat WNS. FWS has proposed to reprogram $625,000 of this funding to other critical endangered species recovery actions, and to utilize funding from the State and Tribal Wildlife grant program and from the National Wildlife Refuge program for WNS. Under this proposal FWS will dedicate a minimum of $4,855,000 for WNS efforts in 2012. The 2013 FWS budget includes $1.9 million (not including any competitive grants that may be awarded) for work on WNS, including $995,470 to continue funding WNS coordinator positions, and $901,530 to fund critical WNS research.

WNS continues to spread and is projected to appear in the highly dense and diverse bat populations in additional southern and midwestern States in the very near future. Predictions for spread to western States and the affect of WNS on bats there is less certain.

Alexander Question 6 - National Park Service - Maintenance Backlog

Background: The National Park Service budget request for fiscal year 2013 is $2.6 billion, $1 million below the 2012 enacted level. Within this amount, the Department seeks to increase park operations funding by $13.5 million, but proposes to reduce line item construction funding by $25.3 million and funding for National Heritage Areas program by $7.8 million.

Question A: National parks are already underfunded by $600 million each year. What progress is being made to address this issue?

Answer: The National Park Service does not quantify shortfalls in park operations. Funding for the main operating account of the National Park Service has stayed fairly level in nominal dollars since 2010, but there have been unavoidable cost increases in recent years due to inflation, rise in non-personnel fixed costs, and the added responsibility for five new parks. The NPS is focusing funding on programs that are most central to the NPS mission, implementing management efficiencies, and undertaking administrative cost savings to optimize the use of appropriated dollars.

Question B: What is being done to address the deferred maintenance backlog and how long can we continue to ignore the problems facing our national parks?

Answer: The current backlog of deferred maintenance (DM) associated with NPS constructed asset components considered critical to their function, such as roofs, foundations, road surfaces, etc., is approximately $4.1 billion. The 2013 budget request maintains funding for operational DM at 2012 levels. The request includes $71.0 million for the highest priority DM repair and rehabilitation projects and $96.4 million to prevent additions to the DM backlog through cyclic maintenance projects. The line-item construction proposal funds the highest priority construction projects to address critical life safety, resource protection, and emergency needs and does not add any new assets to the NPS asset portfolio. These projects address long-standing DM needs.

Alexander Question 7 - Federal Interagency Council on Outdoor Recreation

Background: According to Tennessee's Commissioner of Tourism, Susan Whitaker, tourism has a $13 billion impact on Tennessee. Tourism supports a lot of jobs in Tennessee, and since the Great Smoky Mountains National Park is our nation's most visited national park, the new Federal Interagency Council on Outdoor Recreation is welcome news.

It is very encouraging to see the Department of Interior working with the Departments of Commerce and Agriculture to boost tourism and outdoor recreation, but one of the biggest challenges our international visitors face is getting a visa. If it takes months to get a visa to come to the United States and only a week to get a visa to go somewhere else, people will go somewhere else.

Question A: Is the Department working with the State Department to decrease the amount of time international visitors have to wait before they can come visit our national parks?

Answer: In the same Executive Order that established the Task Force on Travel and Competitiveness (which is co-chaired by the Secretary of the Interior and the Secretary of Commerce), the President directed the Department of State in conjunction with other agencies and White House offices to take actions to enhance and expedite travel to and arrival in the United States by foreign nationals, consistent with national security requirements.

The Visa Waiver Program (VWP) is the flagship of our national tourism strategy. Over 60% of all travelers to the United States come under the VWP, generating over $60 billion in annual tourism revenue and representing about 60% of all tourism-related expenditures in the United States from overseas travelers. While the Visa Waiver Program remains the largest travel facilitation program, the Obama Administration is also committed to easing travel for the approximately 35% of international travelers who currently require visas and border crossing cards to enter the United States. Building on the progress made over the past several years and in response to the President's Executive Order, the Obama Administration is facilitating legitimate travel to America while maintaining security by:

- **Tracking the Increasing Arrivals.** The Department of Homeland Security continues to monitor the number of arriving travelers. Comparing the first six months of fiscal year 2012 to fiscal year 2011, arrivals of travelers using the Visa Waiver Program have increased by 8 percent and arrivals of travelers from China and Brazil have increased by 33 percent and 18 percent, respectively. Total non-immigrant admissions, travelers not including U.S. citizens and returning residents, have increased by 4.5%.

- **Shortening Visa Interview Wait Times.** Around the world, wait times for visa interviews are generally short, and have dropped dramatically in some of the busiest travel markets where demand for visas has increased. Now, travelers wait just two days for an appointment at U.S. consulates in China, two weeks or less in Brasilia, Recife, and Rio de Janeiro, and 35 days or less in São Paulo. In anticipation of the summer travel season, the Department of State is adding staff and streamlining its operations to continue to reduce wait times.

- **Streamlining the Visa Process.** Tens of thousands of travelers want to visit the United States, and a new pilot program is now underway to streamline processing will help facilitate the demand by freeing up more interview slots for first-time applicants. Consular officers may waive in-person interviews for certain low-risk, qualified individuals, such as those renewing their visas within 48 months of the expiration of their previous visas. Consular officers may also waive interviews for Brazilian applicants below the age of 16 and age 66 and older, but retain the authority to interview any applicant in any category if security or other concerns are present.

- **Building Capacity in China and Brazil to Meet Demand.** The Department of State is doubling the number of diplomats performing consular work in China and Brazil over the next year and is investing approximately $40 million in 2012 on existing facilities in Brazil and $18 million in China – adding interview windows, expanding consular office space, and improving waiting areas. On April 9, President Obama announced that the United States will establish consulates in Belo Horizonte and Porto Alegre, Brazil, while major expansion projects are underway in China.

- **Increasing Consular Staffing and Implementing Innovative Hiring Programs.** To address immediate growth in demand, the Department of State is sending consular officers from all over the world to Brazil and China to adjudicate visa applications. The Department of State is doubling the number of diplomats performing consular work in

China and Brazil over the next year, to ensure that the United States can continue to offer timely visa services to qualified applicants. Similarly, the first group of newly hired consular adjudicators recently arrived at U.S. consulates in Brazil and China. These adjudicators were hired under a landmark program targeting recruits who already speak Portuguese or Mandarin.

Additionally, Interior agencies have made it easier for more partners to become third party vendors of the "America the Beautiful" $80 pass which provides visitor access, including international visitors, to hundreds of public lands destinations nationwide. They are actively reaching out and encouraging partners to both sell the pass online, at trade shows, and in other tourism venues as well as to develop promotions for buying and using the pass. The goal is to increase sales to both Americans and international visitors, who will then have an incentive to visit more destinations and lesser known locations, and to extend their stays.

Question B: How has the Corps of Engineers worked with the Department to support the outdoor recreation initiatives promoted by the interagency council?

Answer: Through the America's Great Outdoors Initiative, seven agencies were identified for inclusion in the Federal Interagency Council on Outdoor Recreation including: USACE, NOAA (Commerce), USFS (Agriculture), NPS, FWS, BOR, and BLM (Interior) to coordinate federal land and water recreation management efforts. The FICOR has worked closely with existing Federal Advisory Committee Act bodies that support recreational activities, including the Wildlife and Hunting Heritage Conservation Council, the 21st Century Conservation Service Corps Committee, the Sport Fishing and Boating Partnership Council, the First Lady's Let's Move! initiative, and the President's Council on Fitness, Sports, and Nutrition to promote better integration and coordination among the Federal agencies in support of providing outdoor recreation opportunities for Americans. FICOR has identified two high priority actions, including support for the National Travel and Tourism Strategy to promote domestic and international tourism on federal lands and waters, and enhancements to the Federal Interagency Recreation website – recreation.gov.

Bureau of Land Management FY 2014 Budget Hearing
May 7th, 2013
Questions for the Record

Questions from Chairman Simpson

Range Management

Simpson Q1: The proposed $1 fee per AUM is a 74% increase on grazing permittees. How did the BLM come up with this number?

Answer: The BLM analyzed several options to recover some of the costs of processing grazing permits/leases from the permittees who are economically benefitting by their use of the public lands. The BLM evaluated the proposed Permit Administration Fee based on a standard fee scenario, an actual permit-processing cost, and a fee based on amount of grazing use. The "standard fee" puts a disproportionate burden on the small permittees; an "actual cost of processing" fee would often be based on issues outside of the permittees' control; so a fee based on actual usage seems most appropriate. The fee, as proposed, would allow BLM to recover a portion of the costs of issuing grazing permits/leases on BLM lands that are tied to resource use. The BLM is asking Congress to enact appropriations language that will allow BLM to collect this Permit Administration Fee since it could be implemented (billed and collected) using the same process as the annual grazing fee.

The fees are proposed to assist the BLM in processing its backlog of pending applications for grazing permit renewals and to cover other costs related to administering grazing permit-related activities, such as monitoring and land health evaluations. There is a wide variability in costs to process a permit depending on location, intensity of public interest, and complexity of issues rather than on the amount of resources used. Some permittees have multiple permits in high-cost areas. Consequently, the average cost of processing permits in each State currently ranges from $900 to $40,000. The proposed fee spreads out the costs over the life of the permit and charging a fee based on AUMs ties the fee to the actual use of the resource and would be more equitable for all permittees.

There is an average of 8.5 million AUMs permitted each year. A $1-per-AUM fee, which would generate $8.5 million, would cover about one-third of what BLM expends each year for processing grazing permits. A "standard" fee to cover one-third of the cost of processing permits would be about $4,000 per permit. For a large permit, this would be less than the $1 per AUM fee. For a small permit, it would be around $4 per AUM or more. On an "actual cost" basis, a small permit (less than 100 AUMs) in a high cost area could cost as much as $40 per AUM per year. To cover one-third of the actual cost would be as much as $13 per AUM per year for a small permit. There are advantages and disadvantages to either a "one time" processing charge or an "actual use" fee, but an "actual-use-based fee" appears most equitable for all permitees.

The pilot period and development of regulations with participation by permittees and interested public gives us an opportunity to assess that the proposed "per AUM" basis of the fee is the most equitable.

Simpson Q2: The BLM states it would like the authority to collect an additional $1 per AUM for three years until it can complete cost recovery regulations. Do you have a current estimate of what the cost recovery fee might be?

Answer: No. During the period of the pilot, the BLM will develop regulations for cost recovery.

Simpson Q3: Why does the BLM's proposed grazing fee charge per AUM rather than per permit when the fee is supposed to offset the cost of permits (similar to oil and gas permits)?

Answer: The proposed Permit Administration Fee would allow BLM to recover a portion of the costs of issuing grazing permits/leases on BLM lands. These fees will assist the BLM in processing pending applications for grazing permit renewals and cover other costs related to administering grazing permit-related activities, such as monitoring and land health evaluations.

There are advantages and disadvantages to either a "one time" processing charge or an "actual use" fee, but a fee charged on the basis of AUMs ("actual use") is the most equitable for permittees. There is a wide variability in costs to process a permit, and charging a fee based on AUMs ties the fee to the actual use of the resource rather than external factors. In addition, this pilot spreads out the cost over a period of years. If the fee were charged on a "by the permit" basis, the cost would range from $900 to $40,000 depending on location, public interest, and complexity rather than on the amount of resource used. The pilot period and development of regulations with participation by permittees and the interested public will give the BLM an opportunity to assess whether the proposed "per AUM" basis for the fee is equitable.

Simpson Q4: The BLM budget request recommends a reduction for range management and only plans to complete 33% of grazing permit renewals. How is the funding increase for FY12 is being utilized?

Answer: The BLM used the $15.8 million increase in 2012 to address numerous challenges, including continuing to reduce the backlog of grazing permit renewals; monitoring of grazing allotments; and strengthening the BLM's environmental documents. Specifically, the funds were utilized as follows:

- $2.1 million was distributed to State Offices and Headquarters for sage-grouse plan amendments;
- $10.2 million was distributed to State Offices for permit processing tasks;
- $2.2 million was distributed for the Idaho Stipulated Settlement Agreement (SSA); and
- $1.3 million was used to restore previous budget reductions to States for the ID SSA, and land health assessment, monitoring, evaluation, and permit processing.

Simpson Q5: How much funding would it take to catch up on the permit backlog?

Answer: The needs of the program are articulated in the President's FY 2014 Budget Request. The renewal of livestock grazing permits and leases (permits) is the highest priority for the BLM's Rangeland Management program, and the agency is working diligently to process grazing permits as they expire and after a transfer of grazing preference. The BLM is continuing to improve permit renewal procedures by prioritizing allotments in environmentally sensitive areas. However, the BLM is facing several challenges that are impacting the agency's ability to reduce the number of unprocessed permits. The processing of permits for allotments with land health concerns or resource conflicts is time intensive and often requires land health evaluations, Endangered Species Act Section 7 consultations, and possible administrative appeals and litigation. Additionally, court decisions affect the time BLM allocates to process permits and complete other work. The BLM is also exploring ways to streamline permit renewal processes through legislation, regulation, and/or policy.

Sage Grouse

Simpson Q6: Amending resource management plans will require buy-in from states—many of which are also facing budgetary challenges. What kind of incentives or assistance are you able to provide states to implement their own plans?

Answer: In implementing State plans, the BLM (through Instruction Memorandum No. 2012-043, Greater Sage-Grouse Interim Management Policies and Procedures) has made the commitment to not apply BLM interim conservation policies and procedures when a State and/or local regulatory mechanism has been developed for the conservation of the Greater Sage-Grouse in coordination and concurrence with the U.S. Fish and Wildlife Service (FWS). In these situations, the BLM is already implementing State conservation measures. This process is in place in Wyoming through the Wyoming Governor's Executive Order 2-11-5, Greater Sage Grouse Core Area Protection which serves as a state regulatory mechanism.

During the formal scoping period for the National Greater Sage-Grouse Planning Strategy, the BLM solicited States impacted by this planning strategy to submit their own Greater Sage-Grouse conservation plans to the BLM so the Bureau could analyze the plans in the range of alternatives for the appropriate subregional Environment Impact Statement (EIS) as part the NEPA process. Nevada, Utah, Oregon, and Wyoming have submitted plans to the BLM and the U.S. Forest Service and the analysis is currently underway. The State of Montana recently announced that it is in the process of organizing an advisory council tasked with creating a statewide plan to conserve the sage-brush grasslands that support Montana's sage-grouse population. The BLM will be an active member on this council.

Simpson Q7: How is BLM coordinating with the FWS and the states to address resource management plan amendments?

Answer: As the BLM works on revising and amending land use plans to address Greater Sage-Grouse, the Bureau is continually working in close coordination with State governments, which manage all resident wildlife, including Greater Sage-Grouse, through their respective wildlife

management divisions or departments. Included in the coordination is full participation with the Western Association of Fish and Wildlife Agencies (WAFWA) sage-grouse executive oversight committee and the Sage-Grouse Task Force. As outlined in BLM's Instruction Memorandum No. 2012-044, the mapping of Preliminary Priority Habitat and Preliminary General Habitat data (in which the land use planning efforts have been basing their action alternative management prescriptions) have been developed through a collaborative effort between the BLM and the respective state wildlife agencies.

Regardless of whether or not an impacted State has submitted its own plan to the BLM for analysis, each of the 10 States' Departments of Fish and Wildlife (or similar institution) impacted by this planning strategy have been invited to be cooperating agencies on these planning efforts. A cooperating agency relationship provides the States with the opportunity to review and comment on the draft and final EIS documents before they are released to the public. The BLM has also established a cooperating agency relationship with the FWS through a formalized memorandum of understanding. Aside from the cooperating agency responsibilities, the FWS Deputy Regional Director Mountain-Prairie Region and a Director of a State fish and wildlife agency within the range of the Greater Sage-Grouse are invited to and are active participants on the BLM's monthly National Policy Team (NPT) meetings. The NPT provides overall national oversight throughout the planning process and verifies that draft and proposed plan amendments and revisions associated with this planning strategy are ready to be reviewed by the BLM Director. Local field staffs from both the FWS and individual State fish and wildlife agencies are also active participants on the individual planning efforts.

Simpson Q8: I continue to hear concerns about overly-restrictive sage grouse interim management guidelines. It seems BLM is focusing on existing uses rather than the major concern with the sage grouse—invasive species and fire. What is the BLM doing to address invasive species and fire?

Answer: While this extensive planning process is underway, the BLM and the Forest Service have also developed conservation measures and policy direction for the interim protection of sagebrush habitat. These measures will help the BLM and Forest Service determine whether to authorize or continue certain activities in Greater Sage-Grouse habitat. They are designed to ensure that Greater Sage-Grouse populations and habitats are maintained or improved and that habitat loss is minimized. The interim management guidelines utilize existing policies and procedures for Greater Sage-Grouse conservation that are consistent with the BLM multiple-use and sustained-yield management direction of the Federal Land Policy and Management Act.

Wildfires are a leading cause of sagebrush loss, and the BLM is addressing the effects of wildland fire on Greater Sage-Grouse habitat by taking appropriate action before and during wildfires. The BLM's aim is to limit the damage to sagebrush by engaging in thorough planning before a fire, taking prompt action during a fire, and employing effective rehabilitation of a burned area after a fire. The BLM has developed national Instruction Memoranda to guide actions in Greater Sage-Grouse habitat for field offices conducting wildland firefighting, hazardous fuels reduction, and post fire treatments.

In September 2012, BLM purchased $23 million in seeds to begin rehabilitating western lands that were burned in the 2012 fire season. All of this seed was focused toward addressing burned sage-grouse habitats. As fall and winter weather allowed, both drill seeding and aerial seeding efforts resulted in the treatment of 406,000 acres across California, Colorado, Idaho, Nevada, Oregon, and Utah. Early spring field monitoring indicated that in most areas, the seed was germinating with plants beginning to grow. Given past experience, it may take up to 20 years to reestablish a thriving Greater Sage-Grouse population. Biological studies suggest it might take even more time for Greater Sage-Grouse to return to burned-over areas.

The first preference of BLM's fire rehabilitation program is to purchase and use native species, although the agency does use non-native seeds depending on site characteristics and seed availability. The BLM works with its partners, particularly in the State fish and wildlife agencies, in developing the seed mixes used.

The BLM conducts restoration efforts with both short- and long-term restoration goals in mind. Over the short-term, the BLM works to:

- Prevent invasive annual grasses and noxious weeds from colonizing burned areas;
- Address the loss of soil due to wind and water erosion; and
- Reduce potential dust and flooding hazards due to the loss of vegetation holding soil and water.

Over the long term, the BLM's goals are to:

- Reestablish native species; and
- Recover important habitat and healthy lands.

Wild Horse & Burros

Simpson Q9: BLM's budget justification shows that the BLM continues to lose ground on keeping wild horse and burro herds at the Appropriate Management Levels (AML). How will this affect the range in a time of severe drought?

Answer: The BLM will conduct gathers in the highest-priority areas based on land-health needs and other resource concerns. The costs to restore or rehabilitate rangelands are much higher than the costs of maintaining rangeland health.

The full impact of the drought and the effects that a large population of wild horses will have on the range is unknown. In principle, as drought affects availability of water supplies, wild horse herds as well as other large animals such as elk and deer tend to concentrate around available open water and developed watering sites. Long-term range health is not usually affected during short-term drought, but over an extended drought period, heavily used sites are at risk of invasive plants becoming established. A recent National Academy of Sciences (NAS) report suggests that range health could be affected and expressed in the form of reduced vegetative cover, shifts in species composition, and increased erosion rates. The NAS report explains that none of these consequences are inevitable.

Simpson Q10: If wild horses are over-grazing the range, how can BLM say it's achieving its duty to keep rangelands healthy?

Answer: If rangeland monitoring, assessments, and/or a land health evaluation indicate that land-health standards are not met, the BLM will work to identify the significant causal factors and take the appropriate action to restore rangeland health. If livestock management or current level of use is a significant factor, livestock use would be adjusted. If a thriving natural ecological balance is not occurring on a broad basis in a Herd Management Area (HMA) due to overpopulation of wild horses, the BLM will take actions to reduce the overpopulation, including planned gathers, or an emergency gather if warranted.

Simpson Q11: This strategy could also be adverse to the sage grouse. Wild horses can easily overgraze the range and damage sage grouse habitat. Is the BLM favoring wild horses over other wildlife?

Answer: The BLM will continue to conduct gathers in high priority areas driven by wild horse over-population, sage-grouse concerns, water and forage availability, and public safety issues. In addition, the BLM is increasing the use of population growth suppression applications which will help balance wild horse and burro populations with the land's ability to support them. At this time the BLM has seen no direct data that would support the claim that wild horses have any greater effect on sage-grouse habitat than other large herbivores. The BLM will continue to monitor the range and utilization rates and make adjustments based on sound rangeland management practices and the best available science to maintain the long-term health of rangeland habitats.

Simpson Q12: What is the cost to administer the fertility vaccine?

Answer: The cost to treat one mare during a "Catch, Treat, and Release" gather is approximately $2,000. The BLM has several HMAs in which mares are being treated with ZonaStat-H, a one-year liquid vaccine, and the cost to administer the vaccine is minimal because these animals are being treated with the assistance of volunteer organizations. The cost to administer the PZP-22, the longer-lasting 22-month vaccine, is higher because the animals need to be captured in order to administer the drug. The cost is approximately $850 per horse to gather and $310 per horse for the vaccine. Since mares of the appropriate age for fertility control treatment cannot selectively be gathered, more wild horses (such as stallions and younger-age horses) must be gathered than are actually treated, which leads to the higher average cost of approximately $2,000 per mare treated.

Simpson Q13: How much does the vaccine cost per animal?

Answer: The cost of ZonaStat-H, the one-year liquid vaccine is $25 per dose. The cost of PZP-22, the 22-month vaccine, is $310 per dose. Each vaccine available to the BLM for potential use in wild horse and burro population growth suppression has specific limitations and costs. ZonaStat-H, a one-year vaccine, costs $25 per dose, but must be applied every year to be effective. PZP-22 is a two-year vaccine, and costs approximately $310 per dose. PZP-22 has not yet been approved by the EPA for broad use outside of research studies. Another vaccine,

GonaCon, is not currently used by the BLM as a fertility control method, but was recently approved by the EPA for use in wild horses. The cost of GonaCon is anticipated to be about $25 per dose. The last vaccine that the BLM is considering is the SpayVac vaccine. Research is currently being conducted in pen trials on the effectiveness of SpayVac in wild horses. It currently costs approximately $200 per dose.

Simpson Q14: How many animals will be treated?

Answer: The number of animals treated by the BLM is dependent on several critical factors including the availability of funding and the number of animals the BLM will have to gather and remove due to emergency conditions or unforeseen issues.

Simpson Q15: How effective is fertility control in wild horses?

Answer: The effectiveness of each vaccine varies. Research conducted on ZonaStat-H, the one-year liquid, has concluded that foaling rates can often be reduced by approximately 90–95%, but this vaccine requires a yearly application to continue the contraceptive effect. PZP-22, the 22-month vaccine. is intended to be a two-year formulation using the same active ingredient as ZonaStat-H; however, recent studies indicate that it could have substantially reduced effectiveness in the second and third year of treatment. GonaCon is currently being used in a study in the Theodore Roosevelt National Park and is believed to have the same efficacy as PZP-22. The BLM is currently evaluating the effectiveness of SpayVac in wild horses as part of a 5-year pen trial that started in March 2011.

Simpson Q16: What studies exist to show the efficacy of fertility control?

Answer: The Humane Society of the United States (HSUS) is currently conducting studies on the Cedar Mountain HMA in Utah and the Sand Wash Basin HMA in Colorado; results of those studies are not yet published. A research study was just completed by HSUS, in cooperation with BLM. Preliminary results to date for the same PZP-22 agent have shown efficacy rates much lower than those previously reported in 2007. There are additional published papers addressing the effectiveness and potential side effects of fertility control in feral horses. Citations for a few of the more important publications are as follows:

Kirkpatrick, J. F., I. K. M. Liu, J. W. Turner, Jr., R. Naugle, and R. Keiper. 1992. Long-term effects of porcine zonae pellucidae immunocontraception on ovarian function of feral horses (Equus caballus). Journal of Reproduction and Fertility 94:437-444.

Liu et al. 1989. Contraception in mares heteroimmunized with pig zonae Pellucidae. JR&F 85:19-29.

Ransom, J.I. 2011. Foaling Rates in Feral Horses Treated With the Immunocontraceptive Porcine Zona Pellucida. WSB 35:343-352.

Ransom, J.I. 2012. Population ecology of feral horses in an era of fertility control management. Dissertation, Univ of Colorado, Fort Collins.

Turner et al. 1996. Remotely delivered immunocontraception in free-roaming feral burros (Equus asinus). JR&F 107:31-35.

Turner, J. W., Jr., I. K. M. Liu, A. T. Rutberg, and J. F. Kirkpatrick. 1997. Immunocontraception limits foal production in free-roaming feral horses in Nevada. Journal of Wildlife Management 61:873-880.
Turner et al. 2001. Immunocontraception in feral horses: one inoculation provides one year of infertility. JWM 65:235-241.
Turner et al. 2007. Immunocontraception in Wild Horses: One Inoculation Provides Two Years of Infertility. JWM 71:662-667.
Turner et al. 2008. Controlled-release components of PZP contraceptive vaccine extend duration of infertility. Wildlife Research 35:555-562.

Simpson Q17: What is the BLM doing to control wild horse populations in the mean time?

Answer: The BLM will continue removals at a reduced level. Removals will occur in the highest priority areas considering rangeland and herd health, sage-grouse habitat conservation, and emergencies related to public safety. The BLM will also continue efforts to increase applications of population growth suppression methods to slow the rate of population growth on the range. These efforts are supported by the continuation of existing research, as well as the initiation of new research, which focus on developing more effective and longer lasting fertility control agents to aid in reducing population growth. Research will also focus on human dimensions of the Wild Horse and Burro Program, including social and economic factors affecting the program.

Hazardous Fuels

Last year there were terrible range fires. The subcommittee worked closely with the BLM and the Department trying to expedite the release emergency stabilization dollars so that the BLM could buy seed and start replanting some of the areas burned by fire. Still, this seemed like a needlessly complicated process.

Simpson Q18: How could this process be improved/streamlined?

Answer: The Wildland Fire Management program, like the rest of the Department, operated under a Continuing Resolution for the first six months of fiscal year 2013 (from October 1, 2012 through March 27, 2013). The delay in the Department's release of Emergency Stabilization funding to BLM last Fall was due to the considerable amount of time it took for each bureau and office (e.g. Office of Wildland Fire Management) to develop Budget Operating Plans and have them approved. Apportionments for each appropriations account then had to be approved before actual transfers of funds from the Wildland Fire Management parent account to the BLM child account could occur. The apportionment process is a normal activitity, but it took longer than usual last Fall because of the workload associated with the Operating Plans. The Department will continue to look for ways to improve and streamline those aspects of the budget process that are under its control.

Simpson Q19: Why don't state directors have the flexibility and funding they need to re-seed and rehabilitate rangelands as quickly as possible?

Answer: The estimated costs for conducting all identified emergency stabilization work can exceed available funding. The availability of seed in the marketplace and the unit price of that seed can also be limiting factors. The BLM prioritizes projects and funding at the national level, across the 11 western State offices. This national-level approach prevents different offices from competing for the same limited seed resources, driving up project cost and reducing the overall emergency stabilization work conducted on the landscape.

Simpson Q20: As you know, the budget proposal reduced hazardous fuels funding by 34%--a cut of $87 million. What does this mean for BLM?

Answer: The BLM's ability to treat hazardous fuels will be reduced. At the request level, the BLM and the other three DOI fire bureaus will continue to use Hazardous Fuels Reduction (HFR) program funding to treat the highest priority projects in the highest priority areas. The HFR program will continue to use the Hazardous Fuels Prioritization and Allocation System as the analytical, decision-making process to determine when and where fuels management activities will be funded. In 2014, the HFR program will more closely coordinate with Bureau natural resources programs to accomplish targeted land and resource management objectives. Natural resources programs will be relied upon to help plan and monitor projects.

Landscape Conservation Cooperatives (LCCs):

Simpson Q21: Please explain what the Department's Landscape Conservation Cooperatives do.

Answer: The Landscape Conservation Cooperatives (LCCs) are applied conservation science partnerships with two main functions. The first is to provide critical landscape scale conservation planning needs by leveraging the science and technical expertise of partners that span multiple organizations and planning areas. Through the efforts of BLM and other agency staff and science-oriented partners, the LCCs are generating the tools, methods and data that managers need to design and deliver conservation more effectively and consistently at a landscape scale. The development of these tools is guided by the leadership of each LCC, including the involvement of Tribal, State, and local governments, non-governmental organizations, and Federal partners. The second function of LCCs is to promote collaboration among their members in defining shared conservation goals. With these goals in mind, partners can identify where and how they will take action, within their own authorities and organizational priorities, to best contribute to the larger conservation effort.

Simpson Q22: How are they funded through BLM's budget?

Answer: BLM leads one LCC, the Great Basin LCC, by housing the Coordinator position and funding project development. The U.S. Fish and Wildlife Service provides funding for the Science Coordinator and project funding. The BLM supports ten other LCCs with staff time on various committees and project review. Additionally, two LCCs are involved with reviewing

BLM's Rapid Ecoregional Assessments in their respective geographic areas. The Colorado Plateau REA is under review by the Southern Rockies LCC and the LCC will be providing a "Challenges and Opportunities" report in the near future.

Simpson Q23: What are their performance measures?

Answer: To build upon and improve on previous measures, the U.S. Fish and Wildlife Service developed the Science Investment and Accountability Schedule (SIAS) to guide the FY 2013 funding allocation. The SIAS was also developed in response to Congressional direction that "the Service establish clear goals, objectives and measurable outcomes for LCCs that can be used as benchmarks of success of the program."

The SIAS is comprised of nine interrelated Conservation Activity Areas (CAA):

1. Organizational Operations
2. Landscape Conservation Planning
3. Landscape Conservation Design
4. Informing Conservation Delivery
5. Decision-based Monitoring
6. Assumption-driven Research
7. Data Management and Integration
8. Science and Conservation Community Integration
9. Conservation Science and Adaptation Strategy

Associated with each CAA are benchmarks for achievement that support the LCC Network's Vision and Mission. The purpose of the SIAS is to provide one component of a performance standards system that can be used to manage all the Landscape Conservation Cooperatives and the National Landscape Conservation Cooperative Network. The SIAS will help specify the investment and participation of each LCC in the LCC Network to ensure effectiveness, efficiency, and transparency. The SIAS also clearly recognizes that the LCC network is a broad partnership relying on multiple investments. The construction of the SIAS reflects many of the values of these partners, and the BLM fully expects and encourages them to help develop other performance expectations to reflect their LCC involvement in future versions of the SIAS.

Simpson Q24: What accomplishments and goals are they meeting?

Answer: The Great Basin LCC has convened several multi-agency, multi-interest group workshops to make LCC science relevant in a management context to benefit land management decisions across jurisdictional boundaries. The new Great Basin Weather & Climate Dashboard is an example of how the LCC worked with public and private stakeholders to design a website to fit specific end-user weather and climate information needs. It has also developed a science strategy and is beginning to implement projects. Five Great Basin projects were recently funded, leveraging over $800,000 of in-kind funds to address topics like cheatgrass die-off, techniques to increase native plant restoration success, and evaluation of species management guidance and monitoring. The LCCs have also recently funded four highly innovative studies which are landscape-scale collaborative processes to address sage-grouse management and conservation across the birds' range.

The Great Basin LCC is also successfully building on existing partnerships to meet goals and interests of a wide variety of participants. For example, it is co-sponsoring a course on Climate Adaptation Planning for Tribes this October.

Oil & Gas

Simpson Q25: What do you anticipate to be the annual costs to the BLM of being able to administer the BLM hydraulic fracturing rule?

Answer: Since the public comment period and tribal consultation are in progress, it is too early in the rulemaking process to accurately determine the budgetary impact of the final rule. The BLM will continue to look for opportunities to increase cost-efficiencies in the Oil and Gas Management program by streamlining processes and employing automation to minimize the need for additional budget resources to implement the hydraulic fracturing rule.

Simpson Q26: Has BLM conducted any budgetary assessment of what impact this new rule might have upon its ability to efficiently process APDs, conduct inspections and enforcement, process applications for renewable energy projects, or even how the increased burden might divert resources from exploding costs for the wild horse program?

Answer: The hydraulic fracturing rule will add complexity to the processing of Applications for Permit to Drill, Notice of Intent Sundry Notices, Subsequent Report Sundry Notices, and variance requests, as these are the vehicles through which applicants will send fracking information to BLM. The BLM will continue to endeavor to implement efficiencies in the Oil and Gas Management program to stay on top of the increased workload associated with the fracking rule without impacting other components and activities in the Oil and Gas Management program.

Simpson Q27: While it is clear that there will be some impact to other programs as BLM diverts its limited resources to duplicate state regulatory efforts, why has BLM not conducted any analysis of how this new regulatory effort might impact ongoing activities that BLM has stated are a priority and this committee has made clear are a priority?

Answer: Since the public comment period and tribal consultation are in progress, it is too early in the rulemaking process to accurately determine the budgetary impact of the final rule. The BLM will continue to look for opportunities to increase cost-efficiencies in the Oil and Gas Management program by streamlining processes and employing automation to minimize the need for additional budget resources to implement the fracking rule.

Simpson Q28: Does BLM plan to hire new personnel to administer this new hydraulic fracturing rule?

Answer: As part of its FY 2014 budget request, BLM is seeking a substantial increase in funding for its Oil and Gas Management program in order to hire new personnel and implement a range of other management improvements to strengthen oversight of oil and gas operations. A

number of variables are still unknown at this time to say with certainty that BLM will plan to hire new personnel specifically to implement this rule.

The FTE needs analysis may be affected by:

- The final proposed rule may have significant changes from the revised proposed rule;
- The level and location of industry oil and gas development activity;
- Many of the requirements in the final proposed rule may be accomplished as ancillary duties for either existing personnel or new personnel that will be hired to perform other tasks; and,
- The number of APDs filed for federal and Indian trust leases.

These are just a few of a wide range of variables which would impact the personnel needs assessment.

Simpson Q29: BLM has had a difficult challenge in attracting people with highly technical capabilities to come to the agency because they can be paid substantially more in industry. Where will these new hires come from?

Answer: The BLM will follow existing protocols for attracting new employees. These efforts typically include broadly advertising vacancies; direct recruitment from universities with the necessary disciplines; veteran initiatives; and using internships while candidates are finishing their academic schooling.

Simpson Q30: Do you expect that the agency will attempt to hire away personnel from state agencies since those agencies have decades of experience already in regulating these activities?

Answer: The BLM will broadly advertise new positions if needed. Just as is the case now, all qualified applicants will be considered, regardless of where they were previously employed.

Simpson Q31: If the BLM does not have the resources to carry out oil and gas lease sales as directed to do by law under the Mineral Leasing Act, such as those sales recently cancelled in California, why is it choosing to add a new regulatory program not directed by Congress that is duplicative of what the state is already regulating?

Answer: BLM has a responsibility under FLPMA to manage the Nation's public land under the principles of multiple use, sustained yield, and environmental protection. This includes regularly reviewing and updating both regulations and oversight of operations on public lands as conditions warrant. Although some States have regulations in place, not all of the States that contain Federal lands under the BLM's jurisdiction have hydraulic fracturing regulations. Some States and Tribes have no regulations for hydraulic fracturing. For those States and Tribes that do, the regulations are not uniform between them. The BLM rule creates a consistent oversight that will apply across all public and Indian trust lands.

Oil and gas companies with leases on Federal and Indian trust lands must generally comply with both BLM and State regulations, and where appropriate Tribal operating requirements, to the extent they do not conflict with BLM regulations. Moreover, BLM will work with States and

Tribes to establish formal agreements that will leverage the strengths of partnerships, and reduce duplication of efforts.

The BLM must also comply with the Federal Land Policy and Management Act (FLPMA) and other Federal laws that provide for public involvement that is not always required in State law. In addition, the BLM has responsibilities for Indian trust resources, and State regulations do not apply to Indian trust lands. Furthermore, States do not uniformly require measures that would uphold the BLM's responsibilities for federally managed public resources, to protect the environment and human health and safety on Federal and Indian trust lands, and to prevent unnecessary or undue degradation of the public lands.

Simpson Q32: Why is the BLM cancelling activities that Congress has directed to take place while proactively choosing to regulate activities where no such direction exists and for which states have already been regulating?

Answer: BLM's responsibility under FLPMA is to manage the Nation's public land under the principles of multiple use, sustained yield, and environmental protection. To meet the present and future needs of the American people for renewable and non-renewable natural resources, BLM's revised proposed hydraulic fracturing rule creates a balance that will allow for developing domestic energy supply in an environmentally sound manner while protecting human health and critical natural resources.

Issues of Tribal sovereignty with respect to State regulations and Secretarial trust responsibility require BLM to develop a set of regulations to ensure the protection of trust assets. The revised proposed hydraulic fracturing rule will establish a baseline minimum level of environmental protection applying to both Federal and Indian trust properties.

Simpson Q33: Please identify any incident of groundwater contamination that directly resulted from hydraulic fracturing that was identified by BLM and served as the catalyst for interjecting a major new rulemaking on top of what states are already doing?

Answer: There have been no conclusive determinations made regarding claims that hydraulic fracturing fluids are the primary source of contamination to shallower freshwater formations. The increased use of hydraulic fracturing, however, over the last decade has generated concerns from the public about surface and subsurface water quality and resources, including heightened calls for improved environmental safeguards for surface operations and the disclosure of chemicals and materials used in fracturing fluid.

As stewards of the public lands and minerals and as the Secretary's regulator for operations on oil and gas leases on Indian lands, the BLM has evaluated the increased use of hydraulic fracturing practices over the last decade and determined that the existing rules for hydraulic fracturing require updating.

Simpson Q34: Given the numerous proposals in the budget for new oil & gas fees combined with the royalty rate increase, current taxes, bids and bonuses, has BLM analyzed the overall comprehensive impact of an increased royalty on the industry?

Answer: The BLM is evaluating options for changes to the royalty rate. Since the evaluation is still ongoing, the BLM has not analyzed the comprehensive impact of an increased royalty rate on industry.

Simpson Q35: Will this discourage domestic development on public lands?

Answer: The BLM does not anticipate that a change in royalty rates will discourage domestic development on public lands as any proposed changes will be competitive with private and state royalty rates.

Simpson Q36: Could this lead to the US losing many of the small 'mom and pop' businesses that bid on and develop onshore leases?

Answer: The BLM does not anticipate that a change in royalty rates will lead to the U.S. losing many of the smaller operators that bid on and develop onshore leases as any proposed changes will be competitive with private and state royalty rates.

Mining

The Department's proposed budget includes funding for increasing renewable energy production yet the budget does nothing to encourage the domestic production of minerals that are critical to renewable energy technologies. For example, a single 3MW wind turbine needs 335 tons of steel, 4.7 tons of copper, 3 tons of aluminum, 700+ pounds of rare earths as well as significant amounts of zinc and molybdenum.

Simpson Q37: How do you reconcile the BLMs significant investments in renewable energy on public lands with the failure to address barriers to domestic development of minerals that are the building blocks of wind, solar and other renewable technologies?

Answer: The BLM has a leading role in the Administration's goals for a new energy frontier, based on a rapid and responsible move to large-scale production of solar, wind and geothermal energy. The BLM also manages Federal onshore oil and gas, minerals and coal, including critical minerals needed for many industries. For all of these resources, the BLM has an obligation to ensure that the potential impact to water, air, and other natural resources are analyzed and properly addressed before the resources are developed. Not all lands with energy or mineral potential are appropriate for development, but the BLM works with permittees and applicants to ensure that proposed projects meet all applicable environmental laws and regulations.

For minerals, the Federal agencies have established systems that ensure adequate reviews of proposals to prospect, explore, discover, and develop valuable minerals on Federal mineral rights. Coordination between Federal land management agencies and regulatory and permitting

agencies is encouraged to ensure efficient and timely review of any exploration or mining plans, including the analysis of the environmental impacts required by the National Environmental Policy Act and any similar laws.

Simpson Q38: The length of time it takes to get a permit to mine on BLM land in the United States is generally twice as long as in other major mining countries with similar environmental standards. What steps does the BLM intend to take to make permitting more efficient and the US mining industry more competitive?

Answer: The BLM processes a plan of operations for exploration and mining as expeditiously as possible. In 2011 the BLM exploration and mining plan processing time averaged 22 months. Although many factors affect plan processing time such as environmental and technical complexity, the time to process a plan of operation improved to 14 months in 2012. In an ongoing effort to increase efficiency the BLM will continue working with State agencies to streamline multiple agency processes and minimize the time necessary to authorize exploration and development activities. As modern mining has become more complex, so too has the permitting of operations, leading to longer time lines to ensure that unnecessary or undue degradation of public lands is prevented. Several factors can lengthen the time it takes to bring a mine into production. Modern mining operations are often large and complex, and require detailed analysis of but not limited to air quality, surface water quality, hydrogeology, geo chemistry, rock characterization, cultural resources, native American and traditional values, hazardous waste, paleontological resources, recreational resources, wilderness resources, social and economic values, visual resources, vegetation, soils, reclamation, noxious weeds, range, wildlife, land use, climate change, noise environmental justice, energy requirements and climate change. Additionally, due to the volatility of commodities prices and other business factors, operators have occasionally had to revise or delay implementing their plans of operations.

Simpson Q39: Why does the BLM continue to defend the multi-month 14 step Federal Register process for review of notices related initiation and preparation of environmental analyses?

Answer: Public awareness and participation are important parts of ensuring that public lands decisions are made transparently and with appropriate stakeholder engagement. BLM has recently taken steps to improve the speed of Federal Register notice publications. In April 2012, the BLM issued IM 2012-094, which expedites the review process for some notices, including Notices of Intent to prepare environmental impact statements. Also, in spring 2013, the BLM started using a new electronic Document Tracking System, which should make it easier to route notices to the various reviewers and to incorporate edits. The BLM anticipates that these steps will substantially reduce the time required to do thorough and complete reviews of these notices before publication.

Simpson Q40: The budget contains a proposed tax, applicable to mining operations on private and public lands, that goes beyond a tax on the amount of minerals removed from the ground to a tax on dirt, rock and other materials moved during the extraction process. The new proposed tax is estimated to cost the mining industry $180 million/year. What steps should the Department/BLM take to reduce our reliance on foreign sources of minerals that are critical to renewable energy and could be produced in the United States?

Answer: The Administration strongly supports the responsible development of rare earth elements and other critical minerals on Federal lands consistent with environmental protection and public involvement in agency decision-making. Under its multiple-use mandate, BLM is working with local communities, Tribes, State regulators, industry, and other Federal agencies to promote environmentally responsible development of mineral resources on Federal and Indian lands with a fair return to the American people.

With regard to the introductory statement, the 2014 Budget proposes to address abandoned hardrock mines across the country through a new abandoned mine lands (AML) fee on hardrock production. Hardrock AML sites pose a serious threat to human health and safety and the environment, and as a matter of fairness, the industry, which has benefitted financially from hardrock mining in the United States, should bear the cost of remediating and reclaiming these sites for which it was responsible for creating. This is the same basis for the existing AML fee that is levied on the coal industry to support the reclamation of abandoned coal sites. The legislative proposal will levy an AML fee on all uranium and metallic mines on both public and private lands. The proposed fee will be charged per volume of material displaced after January 1, 2014. The receipts will be distributed by allocating funds directly to the States, giving each State the flexibility to reclaim the highest priority abandoned sites. The proposed hardrock AML fee and reclamation program would operate in parallel to the coal AML reclamation program as part of a larger effort to ensure the Nation's most dangerous abandoned coal and hardrock AML sites are addressed by the industries that created the problems.

Invasive Species

According to the Department, the BLM budget includes $18M for invasive species in FY14.

Simpson Q41: Considering you manage 245 million acres, how will this funding make a difference?

Answer: Noxious weed and invasive species management is a critical component of the BLM's Rangeland Management Program and its landscape-level efforts to ensure the health of public lands. The BLM invasive species program receives most of its funding from the Rangeland Management Program. Additional funding for weeds and invasive species management is contributed either directly through funding for a project or through program support from other BLM programs such as the Riparian, Forestry, Recreation, Wildlife, and Fisheries Programs. The Range Improvement account also provides funding for invasive species management activities.

The BLM's invasive species funding focuses primarily on early detection and rapid response, prevention, control and management, and habitat restoration. In these efforts, the BLM coordinates and collaborates with partners on the ground in over 70 Cooperative Weed Management Areas and Invasive Species Management Areas in the Western and Eastern U.S. The BLM proudly partners with counties, states and local governments to achieve land health standards by controlling the introduction and spread of invasive species on the public lands.

Simpson Q42: The University of Nevada has been working with landowners to use late-season grazing of cheat grass to bring back native grasses. So far, the efforts have had great success across the Great Basin. Is the BLM working with the UNR and others? This seems like a win-win strategy for controlling cheat grass and feeding livestock with no herbicides needed. I ask the BLM to work with the UNR on these efforts.

Answer: The BLM is coordinating with the University of Nevada, Reno (UNR) on using livestock grazing to control cheatgrass and recover native grasses. The opportunity exists for grazing permittees and the BLM to work together to propose late-season cheatgrass grazing with the goal of recovering native grasses.The BLM must do the proper analysis prior to implementing this approach on any permit. The Bureau continues to pursue other integrated vegetation management options to reduce the need for herbicides, and will continue to coordinate with UNR and grazing permittees as the opportunity arises.

Cost of Litigation

Lawsuits are having a large impact on land management agencies. Appropriators need to know the true cost of litigation to understand exactly what Congress is funding.

Simpson Q43: How can the BLM start accounting for these costs so that Appropriators know what they're funding?

Answer: The BLM is exploring options on how to best track these costs for the future. Our records indicate that in FY 2012, the BLM paid a total of $1.7 million in 15 cases for settlement costs. This is an increase from FY 2011, with 7 cases totaling $500,000 for settlement costs. The figures do not include other costs associated with litigation, such as staffing costs.

BLM Foundation

Simpson Q44: Given sequestration and recent budget cuts, how does the BLM justify establishing a foundation?

Answer: The one-time increase of $1.0 million to establish a congressionally-chartered foundation would afford the BLM an opportunity to more effectively leverage private partnership dollars against appropriated funding in support of the public lands. Historically, the BLM has successfully initiated and maintained partnerships at the local level to achieve land restoration and conservation goals. With the Restore New Mexico initiative, similar projects in Utah, and the Challenge Cost Share program, the BLM has worked with an array of partners to restore habitat and native plants and offer environmental education to the public. However, the scope of BLM resource issues and partnerships has broadened across a larger landscape in recent years, which has affected a wider group of constituencies. The foundation will allow the BLM to broaden its partnership capabilities and employ innovative approaches for leveraging resources

and partnerships on a national scale. This will enable BLM to achieve even more on-the-ground restoration work with its limited resources.

Western Oregon (O&C Lands)

Secretary Salazar recently announced plans to develop new Resource Management Plans for the BLM-managed forests in western Oregon, including the O&C lands. The last resource management plan, completed in 2008 and withdrawn by the Secretary in 2009, took approximately five years and $18 million to develop. The only deficiency identified by the Secretary was a lack of formal ESA Section 7 consultation by the BLM.

Simpson Q45: Why doesn't the BLM initiate consultation on those plans rather than spending tens of millions to develop new plans?

Answer: The BLM is initiating revisions to its existing resource management plans (RMPs) which guide the uses on approximately 2,493,655 acres of land in 6 western Oregon districts (Salem, Eugene, Roseburg, Coos Bay, Medford, and the Klamath Falls Field Office. The land status of BLM-administered lands in the planning area is as follows:

Land status	Acres	% of decision area
O&C lands	2,025,826	81.2
Coos Bay Wagon Road lands	74,598	3.0
Public Domain	384,273	15.4
Acquired lands	8,958	0.4

The purpose of the revisions is to determine how the BLM should manage these lands to accomplish broad policy objectives, which include furthering the recovery of threatened and endangered species; providing clean water; restoring fire adapted ecosystems; producing a sustained yield of timber products; and providing for recreation opportunities. The BLM's revised RMPs address three main issues: the recent U.S Fish and Wildlife Service recovery plan (2011) and critical habitat designation (December 2012) for the Northern Spotted Owl; new science information related to forest health and resiliency; and the socioeconomic needs of western Oregon communities. This new information is best analyzed and used to inform decisions as part of a land use planning process where we can comprehensively examine the mix of land use allocations and planning decisions.

Simpson Q46: Is the Department going to draft a new plan for the O&C lands? If so, does the BLM have the budget to complete this? What is the timeline for a new plan?

Answer: The BLM intends to revise RMPs for six western Oregon districts. The Bureau has placed a high priority on these plans and is allocating available funds. The Operating Plan for 2013 includes funds for planning in Western Oregon, a post-sequester amount of $5.3 million. The President's budget for 2014 includes $7.3 million for Western Oregon Resource Management Planning, a $1.7 million increase over 2012 enacted levels. The BLM initiated the planning effort in March 2012 and anticipates a completion date of June 2015.

Simpson Q47: The Committee understands that BLM timber sales in Western Oregon are being significantly delayed by the Department's inability to respond to administrative protests in a timely manner and lengthy delays by the Interior Board of Land Appeals (IBLA) in deciding appeals. Does Interior agree that a problem exists?

To help us better understand the extent of these delays please provide the following:

Answer: Western Oregon has experienced an increase in protests and appeals in some districts. Since the question does not specify the type of information requested, BLM provides the information in the table below to show, in the aggregate, the timber sales that have been protested and appealed during 2010 – 2012. Information on the extent of the delays caused by protests is addressed in the response to question 48.

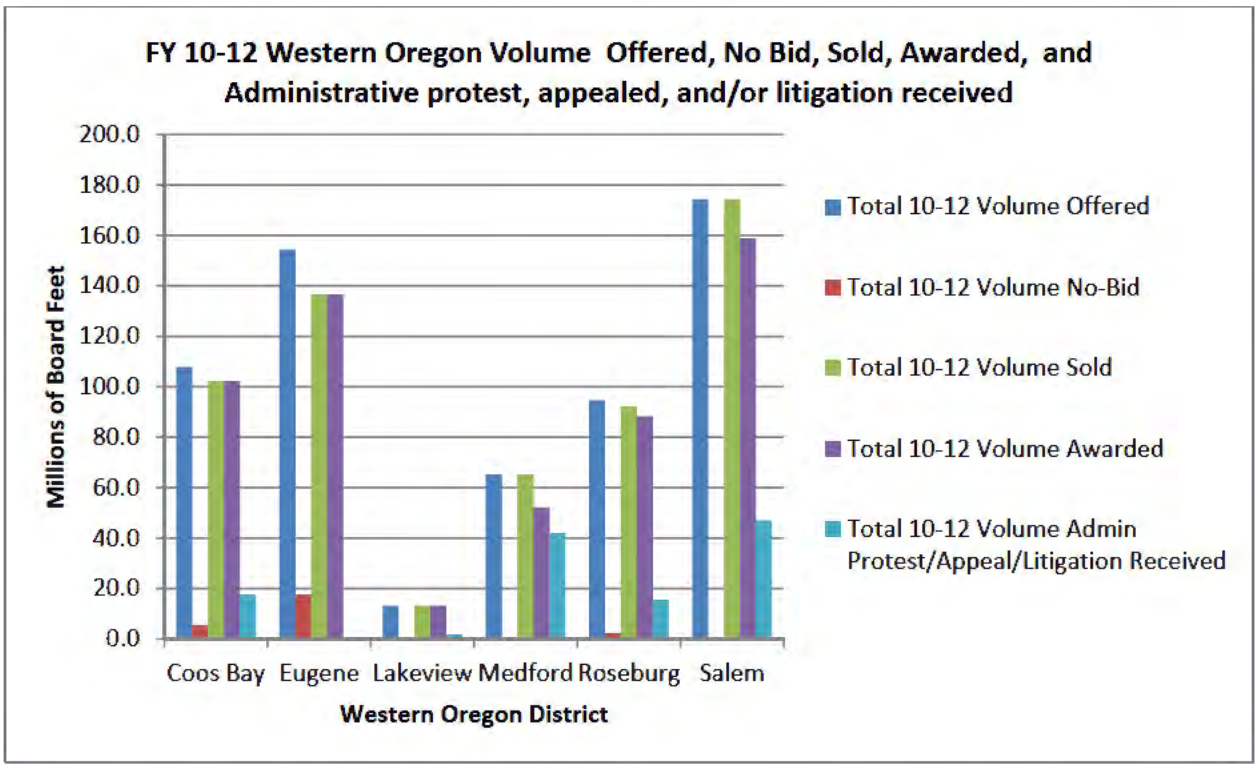
Status of FY10-FY12 Western Oregon Volume Offered / Protested / Appealed / Litigated		
Total FY10-FY12 Volume Offered	**MMBF**	**%**
Total FY10-FY12 Volume Offered	609	Total
FY 10-FY12 No-Bid Sales - Not Reoffered	-26	-4.2%
FY10-FY12 Sold Volume (A high bid received from a Purchaser)	583	95.8%
Total Administrative Proteste/Appeals/Litigation Received:		
FY10-FY12 Sold Volume	583	Total
FY10-FY12 Volume Where Administrative Protest/Appeal/ Litigation Received	-124	-20.4%
FY10-FY12 Volume Where No Administrative Protest/Appeal/Litigation Received	459	78.7%
Present Status of FY10-FY12 Administrative Protests/Appeals/Litigation Received		
FY10-FY12 Volume Where Administrative Protest/Appeal/ Litigation Received	124	Total
FY 10-FY12 Volume Where Administrative Protest/Appeal/Litigation Resolved	92	73.4%
FY10-FY12 Volume Still Unawarded or Awarded/Approved But Presently Suspended Due to Litigation	32	26.6%
Net FY10-FY12 Volume Offered and Purchaser Free to Operate (Not including initial No-Bids)		
FY10-FY12 Sold Volume	583	Total
FY10-FY12 Volume Where No Administrative Protest/Appeal/Litigation Received	459	78.7%
FY10-FY12 Volume Where Administrative Protest/Appeal/Litigation Resolved	92	15.8%
FY10-FY12 Volume Still Unawarded or Awarded/Approved But Presently Suspended Due to Litigation	32	5.5%
Net FY10-FY12 Volume Offered and Purchaser Free to Operate (Not including initial No-Bids)	551	94.4%
Note: Does not include one FY 2009 Timber Sale still in litigation: Rickard Creek	6.9	
Note: Does not include one FY 2013 Timber Sale presently in litigation: Heppsie	3.7	

Simpson Q48: For the past three fiscal years (FY10-FY12) a list of all timber sales that were offered and sold by the BLM. For each timber sale the list should include dates for the following:

- Sale Name
- Volume (mmbf)
- Offer/Sale Date

- Administrative Protest Date (if protested)
- Date Administrative Protest was Resolved/Denied (if protested)
- Date Appealed to the IBLA (if appealed to IBLA)
- Sale Award Date
- Date IBLA made decision on appeal
- Please also denote any projects that were Secretarial Pilots

Answer: The figure below illustrates all timber sales offered by the BLM for the past three fiscal years, FY 2010-2012.



The enclosed spreadsheet, 2014 House QFRs – Simpson 48 (Individual Western OR Timber Sales Data FY10-FY12), shows all timber sales during the period requested, including the sale-specific information requested, such as sale date, protest date, status of protest, and IBLA decision date.

Congressmen Simpson Questions - Western Oregon Timber Sale Information 2010-2012

Sold / Unawarded Timber Sales as of 6/7/2013

No Bid Timber Sales - Not Reoffered

Secretarial Pilot Timber Sales

Awarded Sales Suspended due to litigation

Contract Status	District Name	Contract Name	Mbf Sold	Protested / Appealed Litigated Mbf	Sale Date	Date of Admin Protest	Date Protest - Resolve / Denied / Withdrawn	Date Appealed To IBLA	Date of IBLA Decision	IBLA Decision	Litigated - Yes	Award Date	Approval Date	Sec. Pilot
TERMINATED	Coos Bay	LAVERNE AND FRONA COUNTY PARKS	114.0		12/15/2009							12/15/2009	12/15/2009	
EXPIRED	Coos Bay	BELIEU CREEK CT	3,885.0		03/26/2010							03/26/2010	05/11/2010	
TERMINATED	Coos Bay	BRUMMIT ROAD PRISM	20.0		04/23/2010							04/23/2010	05/11/2010	
TERMINATED	Coos Bay	JERSEY JIM CT	3,634.0		04/23/2010							04/23/2010	05/11/2010	
EXPIRED	Coos Bay	SAWYER CREEK DM	5,357.0		04/23/2010							05/05/2010	07/13/2010	
APPROVED	Coos Bay	LUTS BRIDGE CT	6,167.0		05/26/2010							06/23/2010	09/08/2010	
TERMINATED	Coos Bay	LITTLE PARADISE RIDGE DM	4,105.0		07/30/2010							09/10/2010	11/18/2010	
TERMINATED	Coos Bay	WEATHERLY RIDGE CT	1,257.0		08/27/2010							09/20/2010	11/10/2010	
TERMINATED	Coos Bay	LITTLE STONY BROOK CT/DM	6,062.0		09/17/2010							09/28/2010	12/27/2010	
TERMINATED	Coos Bay	OLD MAN MUNGERS	72.0		09/22/2010							09/22/2010	09/22/2010	
TOTALS	**Coos Bay**	**FY 10**	**30,673.0**	**0.0**										
APPROVED	Coos Bay	CIT GUYLINES	15.6		10/20/2010							10/20/2010	10/20/2010	
APPROVED	Coos Bay	SIGNAL FIRE DM	1,962.0		11/19/2010							11/19/2010	12/22/2010	
APPROVED	Coos Bay	LITTLE CAMP DM	4,370.0		01/28/2011							02/11/2011	03/03/2011	
APPROVED	Coos Bay	RESEED CT	4,430.0		02/18/2011							03/04/2011	04/13/2011	
APPROVED	Coos Bay	CAM SHAFT CT	2,529.0		03/25/2011							04/07/2011	04/27/2011	
TERMINATED	Coos Bay	HIGH VOLTAGE CT	1,482.0		03/25/2011							04/07/2011	04/28/2011	
APPROVED	Coos Bay	EAST YANKEE CT	2,519.0		04/29/2011							05/04/2011	05/26/2011	
APPROVED	Coos Bay	HOLEY FOLEY DM	2,108.0		04/29/2011							05/05/2011	07/06/2011	
TERMINATED	Coos Bay	GREEN CHAIN CT	2,787.0	2,787.0	05/25/2011	5/3/2011	6/16/2011	NA				08/19/2011	08/19/2011	
TERMINATED	Coos Bay	UPPER CAMP SALVAGE	17.4		06/24/2011							07/25/2011	08/18/2011	
TERMINATED	Coos Bay	BOB N WEAVE DM	2,829.0	2,829.0	07/29/2011	9/10/2010	denied 3/3/2011	NA				08/09/2011	08/30/2011	
APPROVED	Coos Bay	McLEE CT	854.0		07/29/2011							08/31/2011	10/11/2011	
APPROVED	Coos Bay	2011 Fish Logs Twc	33.0		08/01/2011							08/01/2011	09/01/2011	
EXPIRED	Coos Bay	2011 Fish Logs	33.0		09/01/2011							09/01/2011	11/02/2011	
TERMINATED	Coos Bay	GOLD CREEK PROJECT	34.0		09/01/2011							09/01/2011	09/01/2011	
APPROVED	Coos Bay	SANDY QUARRY CT	5,823.0	5,823.0	09/16/2011	9/10/2010	denied 3/3/2011	NA				09/28/2011	10/13/2011	
TERMINATED	Coos Bay	WELLS CREEK DM	1,189.0		09/16/2011							10/03/2011	11/02/2011	
TOTALS	**Coos Bay**	**FY 11**	**33,015.0**	**11,439.0**										
APPROVED	Coos Bay	SOUTH CAMP SALVAGE	17.0		10/17/2011							11/02/2011	11/29/2011	
APPROVED	Coos Bay	BROKEN CHINA DMT	899.0		11/18/2011							02/08/2012	03/12/2012	
APPROVED	Coos Bay	SWAYNE CREEK CT	3,607.0		01/27/2012							02/15/2012	03/08/2012	
TERMINATED	Coos Bay	WINTERGREEN CT	4,273.0		01/27/2012							02/10/2012	03/05/2012	
NO-BID	Coos Bay	Golden Burchard DM	5,540.0		02/17/2012									
APPROVED	Coos Bay	WAGON ROAD PILOT	6,140.0	6,140.0	03/30/2012	3 protests 1/27/2012; 1/31/2012; 2/1/2012	2 denied 4/3/2012; 1 denied 4/4/2012	5/9/2012	stay denied 1/8/2013	ruling on merits pending		01/16/2013	02/07/2013	yes
APPROVED	Coos Bay	BLUE RIDGE C & BP	1,205.0		03/30/2012							04/04/2012	05/07/2012	
APPROVED	Coos Bay	WEAVIE WONDER CT	4,794.0		03/30/2012							04/10/2012	06/05/2012	
TERMINATED	Coos Bay	WOOLY MAMMOTH CT	3,374.0		03/30/2012							04/04/2012	05/07/2012	
TERMINATED	Coos Bay	Brushy Bald CT	1,603.0		04/27/2012							05/03/2012	05/29/2012	
APPROVED	Coos Bay	BURCHARD CREEK CT (re-offer)	7,050.0		04/27/2012							05/08/2012	06/07/2012	
APPROVED	Coos Bay	BLUE 25 CT	3,096.0		05/23/2012							06/07/2012	07/13/2012	
APPROVED	Coos Bay	Lost & Found CT	2,274.0		05/23/2012							05/31/2012	06/11/2012	
APPROVED	Coos Bay	SUMNER SUBSTATION	25.3		06/20/2012							06/20/2012	06/20/2012	
TERMINATED	Coos Bay	Later Slater	88.0		07/02/2012							07/02/2012	07/02/2012	
TERMINATED	Coos Bay	JEFF CREEK R/W	36.7		08/01/2012							08/01/2012	08/01/2012	
APPROVED	Coos Bay	Indian Creek Dayligh	74.2		08/06/2012							08/06/2012	08/06/2012	

Contract Status	District Name	Contract Name	Mbf Sold	Protested / Appealed Litigated Mbf	Sale Date	Date of Admin Protest	Date Protest - Resolve / Denied / Withdrawn	Date Appealed To IBLA	Date of IBLA Decision	IBLA Decision	Litigated - Yes	Award Date	Approval Date	Sec. Pilot
APPROVED	Coos Bay	HERB CREEK R/W	17.8		08/22/2012							08/22/2012	08/22/2012	
APPROVED	Coos Bay	LUCHES MOUTH R/W	11.2		08/22/2012							08/22/2012	08/22/2012	
TERMINATED	Coos Bay	WELLS SLIDE	12.0		09/13/2012							09/13/2012	09/13/2012	
TOTALS	**Coos Bay**	**FY 12**	**44,137.2**	**6,140.0**										
EXPIRED	Eugene	WEST 18TH	8,424.0		10/29/2009							11/29/2009	02/03/2010	
EXPIRED	Eugene	Calapooya II/Big Fir Spur	5,267.0		12/17/2009							02/09/2010	02/22/2010	
TERMINATED	Eugene	LEIBO CANYON	1,195.0		03/25/2010							05/18/2010	06/18/2010	
TERMINATED	Eugene	RUSSELL CREEK	5,411.0		03/25/2010							05/13/2010	06/16/2010	
APPROVED	Eugene	TRIP WEST	8,265.0		03/25/2010							05/13/2010	06/16/2010	
TERMINATED	Eugene	NORTH CREEK 4H NEG R/W	23.0		05/13/2010							05/13/2010	05/13/2010	
TERMINATED	Eugene	DUMP TOWER NEG R/W	30.0		05/26/2010							05/26/2010	05/26/2010	
APPROVED	Eugene	STONE PONY	5,497.0		06/24/2010							07/07/2010	09/09/2010	
TERMINATED	Eugene	SIUSLAW 470 NEG R/W	15.3		08/24/2010							08/24/2010	08/24/2010	
APPROVED	Eugene	Raisor Road	3,559.0		08/26/2010							10/26/2010	01/19/2011	
TERMINATED	Eugene	TEN HIGH	2,432.0		08/26/2010							09/03/2010	09/03/2010	
No-Bid	Eugene	Little Stennetts Fawn	8,441.0		09/16/2010									
TOTALS	**Eugene**	**FY 10**	**48,559.3**	**0.0**										
TERMINATED	Eugene	Perkins Creek	352.0		10/28/2010							11/18/2010	01/19/2011	
APPROVED	Eugene	GUNSIGHT	3,414.0		10/28/2010							11/18/2010	12/08/2010	
APPROVED	Eugene	BARLOW CREEK	4,188.0		11/18/2010							01/13/2011	02/28/2011	
APPROVED	Eugene	Upper Cash Resale	5,588.0		11/18/2010							01/27/2011	02/09/2011	
TERMINATED	Eugene	Big London Hazard Reduction	33.0		12/09/2010							12/09/2010	12/13/2010	
APPROVED	Eugene	All Lalone	2,359.0		02/17/2011							03/29/2011	04/28/2011	
APPROVED	Eugene	Cedar Creek	2,762.0		04/28/2011							06/30/2011	12/08/2011	
TERMINATED	Eugene	NUTMEG RESALE	3,379.0		04/28/2011							05/13/2011	06/16/2011	
APPROVED	Eugene	NO BOUNDS	992.0		05/13/2011							07/13/2011	07/25/2011	
APPROVED	Eugene	NORTH CREEK	635.0		06/23/2011							08/01/2011	10/20/2011	
No-Bid	Eugene	HAWLEY CREEK	4,651.0		06/23/2011									
APPROVED	Eugene	Wilson Creek	1,554.0		07/01/2011							08/01/2011	08/24/2011	
TERMINATED	Eugene	OAT CREEK NEG. R/W	27.4		07/11/2011							07/11/2011	07/14/2011	
TERMINATED	Eugene	GALL TURNAROUND NEG. R/W	18.0		07/18/2011							07/18/2011	07/18/2011	
TERMINATED	Eugene	NELSON JUNCTION NEG. R/W	76.0		07/18/2011							07/18/2011	07/18/2011	
TERMINATED	Eugene	SALT WEST NEG. R/W	89.0		07/18/2011							07/18/2011	07/18/2011	
APPROVED	Eugene	Drury Creek	6,888.0		08/25/2011							09/20/2011	11/03/2011	
APPROVED	Eugene	LAURE EDRIS	2,885.0		08/25/2011							10/20/2011	12/15/2011	
APPROVED	Eugene	MJ THIN	376.0		08/25/2011							10/20/2011	11/23/2011	
APPROVED	Eugene	TURNPIKE	725.0		08/25/2011							10/28/2011	11/23/2011	
TERMINATED	Eugene	LEAFY GREEN R/W	19.0		09/08/2011							09/08/2011	09/08/2011	
APPROVED	Eugene	Horsepower	6,581.0		09/15/2011							11/01/2011	01/26/2012	
TERMINATED	Eugene	Wade Creek Hazard Removal	39.0		09/19/2011							09/22/2011	10/25/2011	
TERMINATED	Eugene	Big River Neg. R/W	26.0		09/22/2011							09/22/2011	09/29/2011	
TOTALS	**Eugene**	**FY 11**	**47,656.4**	**0.0**										
TERMINATED	Eugene	KELLY CREEK	3,634.0		11/17/2011							11/30/2011	1/10/2012	
APPROVED	Eugene	BILLY TOWER RESALE	3,241.0		11/17/2011							12/16/2011	02/09/2012	
APPROVED	Eugene	GOWDY VIEW	549.0		11/17/2011							12/16/2011	02/13/2012	
APPROVED	Eugene	KELLY CREEK	3,634.0		11/17/2011							11/30/2011	01/10/2012	
APPROVED	Eugene	BIG CANYON	942.0		03/29/2012							05/25/2012	06/27/2012	
APPROVED	Eugene	JANUARY 9TH	4,225.0		03/29/2012							04/18/2012	05/21/2012	
APPROVED	Eugene	Parsons Resale	5,626.0		03/29/2012							05/01/2012	06/06/2012	
APPROVED	Eugene	Allison Creek	3,697.0		05/24/2012							06/13/2012	06/28/2012	
APPROVED	Eugene	Solomon Creek	1,836.0		06/22/2012							08/23/2012	09/27/2012	
APPROVED	Eugene	A-LINE	3,740.0		06/28/2012							08/13/2012	09/18/2012	
APPROVED	Eugene	CEDAR SHAKE	5,158.0		06/28/2012							08/13/2012	09/20/2012	
NO-BID	Eugene	Boulder Creek	4,620.0		08/23/2012									
APPROVED	Eugene	BOLTON HILL	1,577.0		08/23/2012							09/25/2012	11/05/2012	
APPROVED	Eugene	Wild Jack	4,249.0		08/23/2012							09/12/2012	09/26/2012	
APPROVED	Eugene	Bickmore Creek	7,473.0		09/13/2012							10/03/2012	11/15/2012	
APPROVED	Eugene	POWER UP	1,835.0		09/13/2012							10/18/2012	12/03/2012	
APPROVED	Eugene	SCHAFFER ROAD	2,104.0		09/13/2012							10/05/2012	11/08/2012	
TOTALS	**Eugene**	**FY 12**	**58,140.0**	**0.0**										
TERMINATED	Lakeview DO	5810 Cold Creek Timber Sale	2,757.0	0.0	12/16/2009							12/21/2009	01/20/2010	
EXPIRED	Lakeview DO	5900 Onion Springs	2,649.0	0.0	09/15/2010							10/04/2010	11/08/2010	
TOTALS	**Lakeview DO**	**FY 10**	**5,406.0**	**0.0**										

Contract Status	District Name	Contract Name	Mbf Sold	Protested / Appealed Litigated Mbf	Sale Date	Date of Admin Protest	Date Protest - Resolve / Denied / Withdrawn	Date Appealed To IBLA	Date of IBLA Decision	IBLA Decision	Litigated - Yes	Award Date	Approval Date	Sec. Pilot
APPROVED	Lakeview DO	5900 Replacement Gal	1,714.0	1,714.0	09/14/2011	11/1/2010	1/14/2011 withdrawn via agreement	NA			NOI - FWS BiOp - Resolved	09/15/2011	10/26/2011	
TOTALS	**Lakeview DO**	**FY 11**	**1,714.0**	**1,714.0**										
APPROVED	Lakeview DO	5900 Wildgal	1,446.0	0.0	05/23/2012							05/31/2012	06/25/2012	
APPROVED	Lakeview DO	Spike	603.0	0.0	05/23/2012							05/31/2012	06/29/2012	
APPROVED	Lakeview DO	PVJ	1,266.0	0.0	07/09/2012							07/26/2012	08/21/2012	
APPROVED	Lakeview DO	Mid Spencer (5900)	2,791.0	0.0	09/19/2012							09/26/2012	11/21/2012	
TOTALS	**Lakeview DO**	**FY 12**	**6,106.0**	**0.0**										
EXPIRED	Medford	BALD LICK (5900)	1,610.0		11/19/2009							04/12/2010	04/12/2010	
TERMINATED	Medford	MCGINDY THIN (5810 JE)	443.0		03/26/2010							04/27/2010	06/11/2010	
TERMINATED	Medford	HOMESTEAD GULCH ROW (6310)	50.2		06/21/2010							06/22/2010	06/24/2010	
APPROVED	Medford	FORTUNE BRANCH (5810)	214.0		06/24/2010							07/17/2010	08/19/2010	
TERMINATED	Medford	EAST FORK ILLINOIS (6310)	711.0	711.0	08/26/2010	2 protests 7/27/2010	2 denied 10/5/2011	NA				01/09/2012	01/27/2012	
TERMINATED	Medford	MINI MULE (6310)	1,927.0		09/01/2010							12/28/2010	03/15/2011	
SOLD / UNAWARDED	Medford	SAMPSON COVE (5900)	2,618.0	2,618.0	09/16/2010	2 protests 09/03/2010; 1 protest 08/31/2010	3 denied 12/22/2011	1/20/2012	6/25/2012	dismissed in part; BLM decision affirmed	yes - appeal of District Court decision affirming BLM pending			
APPROVED	Medford	ALTHOUSE SUCKER (6310)	2,248.0	2,248.0	09/16/2010	8/30/2010	12/7/2010	1/9/2011	5/30/2012	appeal dismissed in part; BLM decision affirmed		05/15/2012	06/21/2012	
APPROVED	Medford	SWINNING (5900)	2,707.0	2,707.0	09/16/2010	09/16/2010	8/30/2010	withdrawn via agreement 6/8/2011	NA			06/21/2011	07/25/2011	
APPROVED	Medford	TENNESSEE LIME (6310)	589.0	589.0	09/16/2010	09/16/2010	2 protests 6/2/2010; 6/4/2010	2 withdrawn 1/13/2011; 2/9/2011 per informal negotiation	NA			05/26/2011	07/27/2011	
APPROVED	Medford	TWIN RANCH (6310)	6,735.0		09/16/2010							11/04/2010	12/14/2010	
APPROVED	Medford	WAGNER ANDERSON (5900)	989.0		09/16/2010							11/15/2010	01/27/2011	
APPROVED	Medford	WOLF PUP (5810)	2,747.0		09/16/2010							10/04/2010	01/10/2011	
TOTALS	**Medford**	**FY 10**	**23,588.2**	**8,873.0**										
TERMINATED	Medford	SHALE CITY SALVAGE (5900)	439.0	439.0	11/18/2010	10/28/2010	2/28/2011	NA				04/06/2011	05/19/2011	
APPROVED	Medford	ELK VALLEY ROADWAY (6310)	638.0		04/28/2011							04/28/2011	08/01/2011	
APPROVED	Medford	ROSEBURG RESOURCES ROW (6310)	14.0		04/29/2011							05/18/2011	06/14/2011	
APPROVED	Medford	LITTLE TENNESSEE NEG. (6310)	263.0		06/07/2011							06/13/2011	06/17/2011	
TERMINATED	Medford	HOMESTEAD WEDGE (6310)	22.8		06/21/2011							06/21/2011	06/21/2011	
APPROVED	Medford	REGOR THIN (5810)	961.0		06/23/2011							07/25/2011	08/11/2011	
TERMINATED	Medford	LITTLE LEFT SALVAGE (5900)	113.0		07/06/2011							07/06/2011	07/08/2011	
APPROVED	Medford	SILVER HAUCK ROW (6310)	26.0		07/11/2011							07/15/2011	07/15/2011	
TERMINATED	Medford	NBEN SALVAGE (5900)	27.0		07/19/2011							07/20/2011	08/02/2011	
APPROVED	Medford	DEER NORTH (5900)	1,207.0	1,207.0	07/28/2011	3 protests dated 07/15/2011 and 7/14/2011	denied 2/15/2012 and 4/12/2012	2 appeals dated 3/14/2012 and 4/26/2012	12/3/2012	motion to consolidate granted; appeal dismissed; BLM decision affirmed	yes	07/19/2012	08/09/2012	
APPROVED	Medford	CHENEY SLATE (6310)	1,257.0	1,257.0	08/25/2011	8/15/2011	6/25/2012	7/30/2012	stay denied 5/22/2013	ruling on merits pending		03/25/2013	04/12/2013	
APPROVED	Medford	DOUBLE RUM (5810)	577.0		08/25/2011							08/30/2011	10/04/2011	

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APPROVED	Medford	COTTONWOOD (5900)	3,234.0	3,234.0	09/15/2011	09/07/2011	denied 3/1/2012	4/18/2012	11/7/2012	dismissed in part; BLM decision affirmed	yes	08/10/2012	08/16/2012	
APPROVED	Medford	FAROUT (6310)	5,978.0	5,978.0	09/15/2011	9/7/2011	denied 6/29/2012	7/30/2012; subsequent resolution via agreement and appeal withdrawn 9/6/2012		appeal dismissed		03/12/2013	04/10/2013	
APPROVED	Medford	SKELETON MOUNTAIN (6310)	3,670.0	3,670.0	09/15/2011	9/7/2011	denied 5/2/2012	5/30/2012; subsequent resolution via agreement and appeal withdrawn 6/14/2012	6/21/2012	appeal dismissed		08/14/2012	08/16/2012	
APPROVED	Medford	PILOT JOE (5900)	1,522.0		09/15/2011							10/03/2011	10/18/2011	yes
TOTALS	**Medford**	**FY 11**	**19,948.8**	**15,785.0**										
APPROVED	Medford	SLIM (5810)	1,532.0		11/17/2011							11/22/2011	01/06/2012	
TERMINATED	Medford	LONE PINE SALVAGE (5900)	69.2		11/22/2011							11/22/2011	11/22/2011	
SOLD / UNAWARDED	Medford	MC Thin (5900)	1,041.0	1,041.0	12/22/2011	12/15/2011	5/16/2012	6/13/2012	pending		yes - District Court decision pending			
SOLD / UNAWARDED	Medford	RIO POWER (5900)	631.0	631.0	12/22/2011	3 protests 12/5/2011, 12/6/2011, 12/7/2011	2 denied 6/19/2012, 1 denied 5/31/2012	1 appeal 12/6/2011	1/7/2013	BLM decision affirmed	yes - District Court decision pending			
SOLD / UNAWARDED	Medford	RIO RUMBLE (5900)	1,146.0	1,146.0	12/22/2011	3 protests 12/5/2011, 12/6/2011, 12/7/2011	2 denied 6/19/2012, 1 denied 5/31/2012	1 appeal 12/6/2011	1/7/2013	BLM decision affirmed	yes - District Court decision pending			
APPROVED	Medford	O'LICKETY (5900)	1,278.0		12/22/2011							01/10/2012	03/08/2012	
TERMINATED	Medford	WINDY CORRIDORS ROW (6310)	19.2		01/09/2012							01/09/2012	02/27/2012	
SOLD / UNAWARDED	Medford	RIO SAG (5900)	787.0	787.0	01/30/2012	3 protests 12/5/2011, 12/6/2011, 12/7/2011	2 denied 6/19/2012, 1 denied 5/31/2012	1 appeal 12/6/2011	1/7/2013	BLM decision affirmed	yes - District Court decision pending			
TERMINATED	Medford	WOLF HAZARD (5900)	26.3		02/08/2012							02/08/2012	02/08/2012	
APPROVED	Medford	SHIVER ME TIMBERS ROW (6310)	105.0		05/10/2012							05/10/2012	05/21/2012	
APPROVED	Medford	Shively Sugar ROW (6310)	16.6		06/07/2012							06/11/2012	06/27/2012	
APPROVED	Medford	Boomerang (6310)	1,063.0		06/28/2012							07/26/2012	08/15/2012	
APPROVED	Medford	McKnabe (5810)	311.0		06/28/2012							07/24/2012	09/26/2012	
TERMINATED	Medford	Isabelle ROW	26.7		07/09/2012							07/09/2012	07/09/2012	
SOLD / UNAWARDED	Medford	Speaking Coyote (5810)	6,920.0	6,920.0	09/13/2012	09/13/2012	1 protest 8/30/2012; 8 protests 8/31/2012	1 denied 4/23/2013; 8 denied 5/8/2013	1 appeal 5/15/2013; 8 others pending appeal	pending				
APPROVED	Medford	Vine Maple (6310)	6,755.0	6,755.0	09/13/2012	8/31/2012 (AFRC protest)	voluntarily withdrawn 9/28/2012					10/04/2012	11/01/2012	
TOTALS	**Medford**	**FY 12**	**21,727.0**	**17,280.0**										
TERMINATED	Roseburg	SLIM BIG JIM CT	1,947.0		11/17/2009		10,525.0	11,202.0				01/29/2010	01/29/2010	
APPROVED	Roseburg	MR. BENNET CT	5,923.0		11/17/2009							11/30/2009	01/04/2010	
EXPIRED	Roseburg	BASIN ARIZONA DM	5,060.0		01/26/2010							02/12/2010	03/24/2010	
TERMINATED	Roseburg	BEN BRANCH NEG. RW	23.0		02/04/2010							02/05/2010	02/22/2010	
TERMINATED	Roseburg	LITTLE WOLF THRICE DMS	112.0		03/23/2010							04/29/2010	05/10/2010	
EXPIRED	Roseburg	TIN HORN CT	2,207.0		03/23/2010							04/08/2010	04/20/2010	
EXPIRED	Roseburg	CORVID CT	3,696.0		04/20/2010							04/28/2010	05/19/2010	
APPROVED	Roseburg	SHERLOCK HOME CT	3,578.0		04/20/2010							05/17/2010	05/24/2010	
TERMINATED	Roseburg	TYEE ACCESS OVERLOOK NEG R/W	16.5		04/23/2010							04/26/2010	05/18/2010	
TERMINATED	Roseburg	LITTLE BEAR NEG. RW	12.8		05/27/2010							06/04/2010	06/21/2010	
TERMINATED	Roseburg	HERRINGBONE NEG RW	27.8		06/03/2010							06/18/2010	07/20/2010	

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TERMINATED	Roseburg	LIVE OAK MOUNTAIN NEG RW	37.0		06/03/2010							06/04/2010	07/01/2010	
APPROVED	Roseburg	CRAVEN RAVEN CT	3,086.0	3,086.0	07/13/2010	6/9/2010	denied 9/10/2010	10/8/2010	1/25/2011	BLM decision affirmed		01/31/2011	02/16/2011	
APPROVED	Roseburg	OLD CROW CT	2,917.0		07/27/2010							07/30/2010	08/30/2010	
TERMINATED	Roseburg	LIEUTENANT MURPHY NEG R/W	50.1		08/24/2010							08/26/2010	09/01/2010	
APPROVED	Roseburg	CALAHAN MUDAXLE CT	4,028.0	4,028.0	08/24/2010	2 protests 8/11/2010	2 protests denied 6/17/2011					08/18/2011	09/27/2011	
TERMINATED	Roseburg	MILK SHAKE CT	643.0		08/24/2010							09/09/2010	10/27/2010	
TERMINATED	Roseburg	SHIVELY POOLE NEG RW	109.7		08/31/2010							09/01/2010	09/07/2010	
APPROVED	Roseburg	KRYPTONITE CT	2,030.0		09/14/2010							09/22/2010	10/05/2010	
APPROVED	Roseburg	TREE TOP FLYER CT	2,385.0		09/14/2010							09/23/2010	10/20/2010	
TERMINATED	Roseburg	McDABB NEGOTIATED RW	88.1		09/15/2010							09/16/2010	10/20/2010	
TOTALS	**Roseburg**	**FY 10**	**37,977.0**	**7,114.0**										
APPROVED	Roseburg	PLUG NICKEL CT	1,822.0		11/16/2010							11/22/2010	12/03/2010	
APPROVED	Roseburg	38 SPECIAL CT	1,507.0		12/14/2010							12/20/2010	01/05/2011	
APPROVED	Roseburg	ELK CAMINO CT	1,684.0		12/14/2010							12/20/2010	01/24/2011	
APPROVED	Roseburg	DEVIL'S DEN CT	949.0		02/15/2011							02/16/2011	03/17/2011	
APPROVED	Roseburg	OFF YOUR WALKER CT	5,102.0		03/22/2011							03/29/2011	04/27/2011	
TERMINATED	Roseburg	MT. SCOTT #3 NEG. RW	43.5		04/13/2011							04/21/2011	05/06/2011	
TERMINATED	Roseburg	EMILE MARKER NEG. RW	24.1		04/21/2011							04/25/2011	05/12/2011	
TERMINATED	Roseburg	LAST BOYD CROSSING NEG. RW	20.5		04/21/2011							04/27/2011	05/12/2011	
TERMINATED	Roseburg	FROZEN BRUSH NEG. RW	95.0		06/14/2011							06/15/2011	06/30/2011	
TERMINATED	Roseburg	THUNDER CELL NEG. RW	16.3		06/27/2011							06/29/2011	07/13/2011	
TERMINATED	Roseburg	BOOMER PIECES NEG. RW	67.7		07/22/2011							07/25/2011	08/03/2011	
APPROVED	Roseburg	EAGER WEAVER DM	1,988.0		07/26/2011							08/04/2011	08/30/2011	
TERMINATED	Roseburg	MEADOW CREEK NEG. RW	86.0		08/05/2011							08/08/2011	08/19/2011	
TOTALS	**Roseburg**	**FY 11**	**13,405.1**	**0.0**										
APPROVED	Roseburg	SADDLE UPTO PARADISE CT/DM REOFF	3,282.0		10/25/2011							10/27/2011	11/30/2011	
APPROVED	Roseburg	PASS THE BUCK CT & DM REOFFER	2,444.0		12/20/2011							01/13/2012	02/16/2012	
APPROVED	Roseburg	SIR GALAHAD CT & DM	6,824.0		12/20/2011							01/11/2012	02/13/2012	
TERMINATED	Roseburg	WHATTA FATE SALVAGE	46.7		01/05/2012							01/09/2012	01/10/2012	
TERMINATED	Roseburg	CAMAS HEIGHTS SALVAGE	41.0		01/13/2012							01/13/2012	01/17/2012	
APPROVED	Roseburg	CLEVER BEAVER DM REOFFER	4,782.0		02/14/2012							02/24/2012	04/04/2012	
APPROVED	Roseburg	COQ & DAGGER CT REOFFER	987.0		02/14/2012							02/27/2012	03/15/2012	
APPROVED	Roseburg	RICE CAKE CT REOFFER	1,803.0		02/14/2012							03/01/2012	04/06/2012	
NO-BID	Roseburg	MUD SLINGER CT & DM REOFFER	2,366.0		03/27/2012									
APPROVED	Roseburg	DEEP SIX DM REOFFER	2,186.0		04/24/2012							05/10/2012	06/05/2012	
APPROVED	Roseburg	HOLY WATER CT & SALVAGE	449.0		04/24/2012							05/10/2012	05/25/2012	
APPROVED	Roseburg	ROOT CANAL CT	2,340.0		04/24/2012							05/04/2012	05/22/2012	
APPROVED	Roseburg	RED BUTTE CT	2,248.0		05/22/2012							06/04/2012	07/12/2012	
APPROVED	Roseburg	MEADOW CREEK #2 NEGOTIATED R/W	82.9		06/05/2012							06/11/2012	06/19/2012	
APPROVED	Roseburg	JOHN DAYS NEGOTIATED R/W	69.4		06/13/2012							06/14/2012	07/17/2012	
TERMINATED	Roseburg	SHIVELY RIDGE NEGOTIATED R/W	111.5		06/13/2012							06/15/2012	07/17/2012	
TERMINATED	Roseburg	J220628 NEGOTIATED R/W	30.0		06/14/2012							06/18/2012	06/26/2012	
APPROVED	Roseburg	GREEN TOM NEGOTIATED R/W	106.1		06/19/2012							06/26/2012	07/12/2012	
APPROVED	Roseburg	EL WATT SALVAGE	126.3		06/21/2012							07/03/2012	08/27/2012	
APPROVED	Roseburg	LANE MTN. CROSSING #1 NEGOTIATED R/W	18.7		06/29/2012							06/29/2012	07/13/2012	
APPROVED	Roseburg	LEFT LANE NEGOTIATED R/W	50.0		07/02/2012							07/03/2012	07/13/2012	
TERMINATED	Roseburg	SANDS CROSSING	19.5		07/02/2012							07/03/2012	07/13/2012	
APPROVED	Roseburg	BUCK RISING VRH	2,024.0	2,024.0	07/24/2012	2 protest 7/11/2012	2 protests denied 8/7/2012. 8/10/2012	1 appeal 9/5/2012	stay denied 3/14/2013	ruling on merits pending		11/28/2012	12/04/2012	yes
APPROVED	Roseburg	CANCOON CT	2,692.0		07/24/2012							08/09/2012	10/01/2012	

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APPROVED	Roseburg	ST. JOHNS CR. NEGOTIATED R/W	131.5		08/07/2012							08/08/2012	08/24/2012	
TERMINATED	Roseburg	LIVELY SHIVELY NEGOTIATED R/W	45.0		08/17/2012							08/21/2012	09/11/2012	
APPROVED	Roseburg	SLOW CEDAR LANE SALVAGE	111.0		09/05/2012							09/11/2012	09/19/2012	
SOLD / UNAWARDED	Roseburg	WHITE CASTLE VRH	6,395.0	6,395.0	09/11/2012	2 protests 8/29/2012;	2 denied 11/2/2012; 12/19/2012	2 appeals 11/30/2012; 1/30/2013	3/13/2013 stay denied	ruling on merits pending		5/17/2013	6/10/2013	yes
APPROVED	Roseburg	BAKER STREET CT	1,364.0		09/11/2012							09/17/2012	10/01/2012	
TOTALS	**Roseburg**	**FY 12**	**43,175.6**	**8,419.0**										
TERMINATED	Salem	Cold Springs Thir	4,323.0		11/18/2009							11/20/2009	12/09/2009	
TERMINATED	Salem	LONGHORN	704.0		12/02/2009							12/03/2009	01/26/2010	
EXPIRED	Salem	Fan Creek Timber Sale	1,722.0		12/02/2009							04/06/2010	05/17/2010	
TERMINATED	Salem	DELPH CREEK RETHINNING	3,458.0		04/21/2010							04/29/2010	06/22/2010	
TERMINATED	Salem	Green Peak II	2,551.0		04/21/2010							05/14/2010	06/16/2010	
TERMINATED	Salem	FAIRCHILD BYPASS NEG R/W	73.0		05/27/2010							05/28/2010	06/17/2010	
TERMINATED	Salem	LAUGHLIN SPUR NEG. R/W	69.0		05/27/2010							05/27/2010	06/17/2010	
TERMINATED	Salem	HONEYGROVE NEG. SALE	22.0		06/07/2010							06/07/2010	06/07/2010	
TERMINATED	Salem	HILLOCK TAKE 2	1,065.0		06/23/2010							06/24/2010	08/02/2010	
APPROVED	Salem	GORDON CREEK THINNING II	9,545.0	9,545.0	06/23/2010	6/9/2010	withdrawn via agreement 8/23/2010	NA				09/02/2010	09/30/2010	
APPROVED	Salem	BUMMER RIDGE TIMBER SALE	7,068.0		06/23/2010							07/26/2010	08/23/2010	
TERMINATED	Salem	Gibb Negotiated R/W	110.0		07/23/2010							07/23/2010	07/27/2010	
APPROVED	Salem	Four Corners	3,674.0		07/23/2010							08/17/2010	09/08/2010	
TERMINATED	Salem	East Ridge Crossing Neg. R/W	61.0		09/13/2010							09/13/2010	09/13/2010	
TERMINATED	Salem	Alsea Falls Park Thinning	250.0		09/14/2010							09/14/2010	09/14/2010	
APPROVED	Salem	HIGHLAND FLING	9,620.0	9,620.0	09/15/2010	4 protests 9/1/2010 and 9/2/2010	denied 12/8/2010	NA				01/27/2011	02/17/2011	
APPROVED	Salem	BOTTLENECK	6,060.0		09/15/2010							09/17/2010	10/13/2010	
APPROVED	Salem	Cruiserhorr	965.0		09/15/2010							09/27/2010	10/28/2010	
APPROVED	Salem	LOST LULAY THINNING	7,494.0		09/15/2010							09/24/2010	11/03/2010	
TERMINATED	Salem	Gold Rush Neg. R/W	75.0		09/29/2010							09/29/2010	09/29/2010	
TOTALS	**Salem**	**FY 10**	**58,909.0**	**19,165.0**										
APPROVED	Salem	HIGHLAND FLUNG THINNING	1,905.0		12/15/2010							12/21/2010	01/12/2011	
TERMINATED	Salem	Buckner Creek Thinning	759.0		02/16/2011							02/17/2011	02/23/2011	
APPROVED	Salem	MISSOURI RIDGE THINNING	2,841.0		03/23/2011							03/30/2011	05/11/2011	
APPROVED	Salem	GORDON CREEK THINNING III	12,470.0	12,470.0	05/25/2011	5/11/2011	withdrawn via agreement 8/23/2010	NA				11/29/2011	12/19/2011	
APPROVED	Salem	Baked Tater	6,822.0		05/25/2011							06/01/2011	07/19/2011	
TERMINATED	Salem	Hampton Negotiated R/W	148.0		06/06/2011							06/22/2011	06/22/2011	
TERMINATED	Salem	Ernest Creek Falls Neg. R/W	140.0		07/12/2011							07/12/2011	07/12/2011	
SOLD / UNAWARDED	Salem	North Fork Overlook	12,364.0	12,364.0	07/27/2011	4 protests 7/12/2011; 7/18/2011; 7/19/2011	4 denied 10/24/2011; 10/31/2011	11/18/2011	2/14/2012 stay denied	pending	yes			
TERMINATED	Salem	Blue Bird Neg. R/W	72.0		07/27/2011							07/27/2011	07/27/2011	
TERMINATED	Salem	Incense Cedar Neg. R/W	17.0		07/27/2011							07/27/2011	07/27/2011	
TERMINATED	Salem	Mill Creek Mainline Neg. R/W	84.0		08/10/2011							08/10/2011	08/24/2011	
APPROVED	Salem	Buck Roberts	7,254.0		08/24/2011							09/08/2011	10/05/2011	
APPROVED	Salem	Trigger Finger	3,592.0		08/24/2011							08/31/2011	12/15/2011	
TOTALS	**Salem**	**FY 11**	**48,468.0**	**24,834.0**										
APPROVED	Salem	Parker Bear Reoffer	6,430.0		11/16/2011							11/23/2011	12/19/2011	
SOLD / UNAWARDED	Salem	Airstrip	3,016.0	3,016.0	02/15/2012	1/26/2012	denied 6/27/2012	7/27/2012	5/15/2013 show cause order	pending	yes			
APPROVED	Salem	Wilkenson	3,276.0		02/15/2012							04/17/2012	05/18/2012	
APPROVED	Salem	Rockhouse	279.0		03/22/2012							05/08/2012	06/12/2012	
APPROVED	Salem	Fanno Negotiated R/W	221.0		06/14/2012							06/14/2012	06/14/2012	
APPROVED	Salem	Cruiser Fly Re-Offer	1,052.0		06/25/2012							07/03/2012	07/20/2012	
APPROVED	Salem	Hoag Heaven	1,770.0		06/27/2012							07/17/2012	08/21/2012	
APPROVED	Salem	Panther Creek	494.0		06/27/2012							07/11/2012	08/13/2012	
APPROVED	Salem	Potter Elk	13,079.0		06/27/2012							07/11/2012	09/06/2012	
TERMINATED	Salem	Claymore Neg. R/W	20.0		07/09/2012							07/09/2012	07/09/2012	

Contract Status	District Name	Contract Name	Mbf Sold	Protested / Appealed Litigated Mbf	Sale Date	Date of Admin Protest	Date Protest - Resolve / Denied / Withdrawn	Date Appealed To IBLA	Date of IBLA Decision	IBLA Decision	Litigated - Yes	Award Date	Approval Date	Sec. Pilot
TERMINATED	Salem	Baker Neg. ROW	46.0		08/10/2012							08/10/2012	08/10/2012	
TERMINATED	Salem	Giustina Negotiated R/W	165.0		08/20/2012							08/20/2012	08/20/2012	
APPROVED	Salem	Apple Rock	1,042.0		08/22/2012							08/30/2012	12/10/2012	
APPROVED	Salem	Even Keel	11,545.0		08/22/2012							08/28/2012	10/01/2012	
APPROVED	Salem	Super Snap!	10,929.0		08/22/2012							11/08/2012	12/06/2012	
TERMINATED	Salem	Baskin Lucas Negotiated R/W	89.0		09/25/2012							09/25/2012	09/25/2012	
TERMINATED	Salem	Head East reoffer	6,631.0		11/28/2012							12/20/2012	03/01/2013	
TERMINATED	Salem	Powermill	6,751.0		11/28/2012							12/13/2012	1/17/2013	
TOTALS	**Salem**	**FY 12**	**66,835.0**	**3,016.0**										
Note: Data queried from BLM's Timber Sale Information System for FY 2010-FY 2012														
FY 10-12 Date Only				31,757.0										
FY 2013														
Unapproved	Medford	Heppsie	3,693.0	3,693.0	01/07/2013						yes			
FY 2009														
Unapproved	Salem	Rickard Creek	6990	6990.0	6/24/2009						yes			
				42,440.0										
				11.0										

Simpson Q49: For the BLM Western Oregon timber sale program please provide the following statistics for the past three fiscal years (FY10-FY12). Please break this information out by year and by BLM district and totals for western Oregon.

- Volume offered
- Volume sold
- Volume awarded
- Total volume for which an administrative protest was received.

Answer: The table below provides statistics for the BLM Western Oregon timber sale program for the past three fiscal years, FY 2010-2012.

Summary - Western Oregon FY10-12 Offered, Sold, Awarded Timber Sale Data & Status of Protest/ Appeals/ Litigation Received

	District Office - Volume In Millions of Board Feet (MMBF)						
Category	Coos Bay	Eugene	Lakeview	Medford	Roseburg	Salem	Totals
FY 10 Volume Offered	30.7	48.6	5.4	23 6	38 0	58.9	205.2
FY 10 Volume No-Bid	0.0	8.4	0.0	0 0	0 0	0.0	8.4
FY 10 Volume Sold	30.7	40.1	5.4	23 6	38 0	58.9	196.7
FY 10 Volume Awarded	30.7	40.1	5.4	21 0	38 0	58.9	194.1
FY 10 Volume Admin Protest/ Appeal/ Litigation Received	0.0	0.0	0.0	8 9	7.1	19.2	35.2
FY 11 Volume Offered	33.0	47.7	1.7	19 9	13.4	48.5	164.2
FY 11 Volume No-Bid	0.0	4.7	0.0	0 0	0 0	0.0	4.7
FY 11 Volume Sold	33.0	43.0	1.7	19 9	13.4	48.5	159.6
FY 11 Volume Awarded	33.0	43 0	1.7	19 9	13.4	36.1	147.2
FY 11 Volume Admin Protest/ Appeal/ Litigation Received	11.4	0 0	1.7	15 8	0 0	24.8	53.8
FY 12 Volume Offered	44.1	58.1	6.1	21.7	43 2	66.8	240.1
FY 12 Volume No-Bid	5.5	4 6	0.0	0 0	2.4	0.0	12.5
FY 12 Volume Sold	38.6	53 5	6.1	21.7	40 8	66.8	227.6
FY 12 Volume Awarded	38.6	53 5	6.1	11 2	36 8	63.8	210.0
FY 12 Volume Admin Protest/ Appeal/ Litigation Received	6.1	0 0	0.0	17 3	8.4	3.0	34.9
Total 10-12 Volume Offered	107.8	154.4	13.2	65 3	94 6	174.2	609.4
Total 10-12 Volume No-Bid	5.5	17.7	0.0	0 0	2.4	0.0	25.6
Total 10-12 Volume Sold	102.3	136 6	13.2	65 3	92 2	174.2	583.8
Total 10-12 Volume Awarded	102.3	136 6	13.2	52.1	88 2	158.8	551.3
Total 10-12 Volume Admin Protest/ Appeal/ Litigation Received	17.6	0 0	1.7	41 9	15 5	47.0	123.8
Total 10-12 Volume Still Unawarded or Awarded And Suspended	0.0	0 0	0.0	16.4	0 0	15.4	31.8

Simpson Q50: Please provide this Committee an update on the barred owl removal efforts related to the recovery of the Northern Spotted Owl (NSO). Given that the USFWS has conceded that the NSO will go extinct if nothing is done to control barred owl populations, the Committee is concerned that the USFWS appears to have very little urgency in implementing barred owl removal.

Answer: The Service takes the plight of the spotted owl very seriously. Beginning in 2008, an interagency Barred Owl Work Group was established to assess the nature and scope of existing information related to barred owl/spotted owl interactions and determine what is still needed, design a barred owl-specific survey protocol, update and revise the spotted owl survey protocol used and help guide forest management activities and design a scientific barred owl removal experiment. The Service has since created a Barred Owl Stakeholder Group and sought public comments from environmental, animal welfare and industry groups, American Indian tribes, professional societies, government agencies and zoological parks and well as from individuals on how to address this problem. This process led to the Service looking into experimental removal of barred owls, which necessitated an Environmental Impact Statement.

Simpson Q51: When will the USFWS issue a decision on barred owl removal?

Answer: We anticipate completion of the final EIS in late June or early July 2013 and the Record of Decision 30 days thereafter.

Simpson Q52: When is the earliest barred owl removal activities will begin on federal lands?

Answer: On Federal lands, the earliest date for barred owl removal would be fall 2014. The Service's current plan is to attempt to initiate barred owl removal on the Hoopa Valley Indian Reservation in California beginning in fall 2013, as extensive barred owl surveys have already been conducted on this study area.

Simpson Q53: What are the estimates do the USFWS on the cost of barred owl removals on federal lands?

Answer: The estimated cost of actual barred owl removal of the preferred alternative on Federal lands is currently estimated to be $199,000 for Cle Elum, $397,000 for the Oregon Coast Range/Veneta, and $450,000 for Union/Myrtle Study Areas. Figures in the EIS appear higher because they include the extensive surveys for barred owls and spotted owls that are necessary for the study design but that are not directly associated with removal of barred owls.

Questions from Ms. McCollum

Management of Bureau of Land Management Lands Adjacent to Tribal Lands

McCollum Q1: How is the United States Bureau of Land Management coordinating and consulting with tribal leaders on land management issues when tribes have land adjacent to Bureau of Land Management Lands?

Answer: As with all Federal agencies, the BLM consults with Indian tribes on a Government-to-Government basis. Executive Order 13175, and the Department of the Interior Tribal Consultation Policy, issued on December 1, 2011, under Secretarial Order 3317, emphasizes the agency's consultation responsibilities. The BLM coordinates Tribal consultation with its compliance with Section 106 of the National Historic Preservation Act that compels the review of proposed land uses that may affect historic properties, as well as its compliance with the National Environmental Policy Act in assessing the potential environmental effects of proposed actions.

Tribal Youth Programs

McCollum Q2: What is the United States Bureau of Land Management doing to develop and implement the Youth in the Great Outdoors initiative with young people in tribal nations? If a tribe would like to establish something like a Reserve Ranger Program for tribal youth or a summer Conservation Corps program, what resources and programs does BLM have to support that?

Answer: The BLM is implementing the Youth in the Great Outdoors Initiative by providing a continuum of programs that offer hands-on educational experiences, long-term engagement and stewardship opportunities, as well as introductions to careers in natural and cultural resource management. The BLM's commitment to Indian tribes and Alaska Natives is illustrated by various initiatives in BLM States to educate, engage, and employ tribal and Alaska Native youth. BLM States work in partnership with numerous Tribes to sponsor camp programs and other educational experiences that strengthen ties between native youth and their heritage and their public lands. The Ute Learning Garden, near Grand Junction, CO, engages tribal youth and elders in planting and maintaining a garden with traditional plants and educating the public about the importance of these plants in tribal culture. Numerous partners are involved in this effort, including the BLM and the Ute Indian Tribe of the Uintah and Ouray Reservation. Other examples include Bridging the Divide in Montana and the Yevingkarere Southern Paiute Cultural youth camp in Arizona. For the past few years, the National Historic Trails Interpretive Center has sponsored exhibits of sculptures, prints, paintings, and ceramics created by Wyoming Indian High School youth from the Wind River Indian Reservation.

The BLM is also creating training opportunities and employment pathways for Indian and Alaska Native youth. Youth from the Wind River Reservation have worked as part of a resource field crew for the Casper and Lander Field Offices over the course of several summers. BLM Arizona has hired students involved in the American Indian Science and Engineering program to

assist with a variety of projects during 10 weeks of summer employment. Native youth have been involved in historic preservation projects in Arizona and have helped to construct safety shelters on the Iditarod National Historic Trail in Alaska. BLM Alaska is also working with indigenous and interagency partners on a long-term Alaska Native Science and Engineering program, which supports education and employment opportunities from high school through early career. The goal is to increase the number of Alaska Native youth pursuing careers in Science, Technology, Engineering, and Mathematics. The BLM is committed to increasing education, engagement, and employment opportunities for youth from diverse backgrounds and looks forward to continuing to expand partnerships with Indian tribes and Alaska Natives.

Questions from Mr. Valadao

Oil and Gas Lease Sales in California

Recently the BLM announced it would be suspending oil and gas lease sales in California originally scheduled for May 22, 2013.

Valadao Q1: Why did the BLM make the decision to suspend these lease sales? Please provide the committee with an estimate of the costs that would have been incurred by BLM had the lease sale been held.

Answer: A large amount of time is invested into preparing for a lease sale. Given the current budget climate, the BLM-CA is concentrating on the management of those areas where a majority of Federal oil and gas Application for Permits to Drill are being processed and where production and safety Inspection and Enforcement activities are taking place. The BLM estimates the costs associated with the May 22 lease sale would have been approximately $250,000. The estimate includes staff time, administrative and travel costs for the environmental analysis, response to public comments, protest resolution, lease sale preparation, adjudication, auction, and other required functions.

Valadao Q2: Does the BLM have estimates of how much in royalties, bids and bonuses might have been collected from the May 22 lease tracts? If so, please provide them to the committee. If not, please provide the committee with a report of revenues generated by similar tracts within the same production area as the May 22 lease tracts.

Answer: BLM-CA estimated the rental and bonus bids from the May 22 lease sale might have reached approximately $25,000. The projected oil production for these leases is unknown. These parcels have been previously leased but have never been developed. Many leases sold never go into production and the BLM does not verify the presence of oil or gas in the leases to be sold so it is difficult to estimate the royalties. Royalties actually received are dependent upon a variety of factors, including oil/gas price on the date of sale, oil/gas quality and quantities and deductions such as transportation or processing allowances.

Sage Grouse

The open space provided by ranching and the benefits provided by grazing are critical to the conservation of Sage Grouse habitat.

Valadao Q3: How will you use funds allocated in 2014 to ensure that ranchers are rewarded for their efforts, and to help them stay in business, so that they may continue preserving Sage Grouse habitat?

Answer: The BLM is committed to working with public land users to discuss their concerns throughout the sage grouse planning process. The Department of Agriculture's Natural Resources Conservation Service provides incentives for ranchers to complete habitat improvement projects on private lands through their Sage-Grouse Initiative. The U.S. Fish and

Wildlife Service (FWS) can also provide assurances for activities on private lands through Candidate Conservation Agreements with Assurances.

The BLM believes that good rangeland management equals good sage grouse habitat, and that good land stewardship by permittees will result in maintaining ranching on the landscape. The funds allocated in 2014 to improve sage grouse habitat that will concurrently improve land health for other herbivores will be used to conduct restoration projects including removing conifers encroaching on sage habitats, seeding disturbed sites to re-establish native sage plant communities, protecting and restoring wet meadows and springs; and to continue broad-scale sage grouse habitat monitoring activities to ascertain the effectiveness of habitat management and the effect of land use authorizations.

Valadao Q4: How are you working with U.S. Fish and Wildlife Service to ensure your planning strategies are on track to prevent a listing—and prevent the extinction of ranchers? Would additional time be useful for implementing RMP revisions and other conservation efforts in order to avoid a listing? If so, how much additional time do you feel is appropriate?

Answer: The BLM is committed to taking the actions necessary to make a sage grouse listing unnecessary, and recognizes the importance of livestock operations to the economic well-being and cultural identity of communities across the West. To improve interdepartmental coordination on sage grouse conservation, the BLM has established a cooperating agency relationship with the FWS through a formalized Memorandum of Understanding for this National Greater Sage-Grouse Planning Strategy. In addition to cooperating agency responsibilities, the FWS Deputy Regional Director of the Mountain-Prairie Region is an active participant at the monthly National Policy Team (NPT) meetings. The NPT provides national oversight throughout the planning process and verifies if draft and proposed plan amendments/revisions associated with this planning strategy are ready to be reviewed by the BLM Director.

The BLM's National Greater Sage-Grouse Planning Strategy plans to incorporate necessary regulatory mechanisms into BLM land-use plans to address conservation of sage grouse in cooperation with the FWS. As many as 98 BLM Resource Management Plans in 68 planning areas will be amended through 15 separate EISs in California, Oregon, Idaho, Nevada, Utah, Colorado, Wyoming, Montana, North Dakota, and South Dakota. Local field staffs from both the FWS and individual State fish and wildlife agencies are active participants on each of BLM's 15 EIS individual inter-disciplinary teams. These teams are responsible for developing the range of alternatives and their associated NEPA analysis.

The BLM is committed to working with ranchers and other public land users to discuss their concerns throughout the sage grouse planning process. In this process, the BLM will strive to maintain uses of public lands that are compatible with conserving sage grouse.

Additional time for plan revision implementation is not needed if funding requested in the President's fiscal year 2014 budget is provided, and range-wide natural disasters do not occur.

Equal Access to Justice Act

Valadao Q5: What is your estimation of the BLM's annual payments to environmental litigators through the Equal Access to Justice Act?

Answer: The BLM does not budget for expenses under the Equal Access to Justice Act (EAJA) for two reasons. First, it is not possible to predict the number of lawsuits that Bureau will encounter in a given year. Second, the BLM does not plan on losing its lawsuits. The agency works with the Office of the Solicitor to vigorously defend Bureau decisions. Our records indicate that in FY 2012, the BLM paid a total of $1.7 million in 15 cases. This is an increase from FY 2011, with 7 cases totaling $500,000.

Valadao Q6: Would you agree that this litigation is detracting from your agency's ability to do its job of managing the land? Do you have an account of how much of that litigation cost can be attributed to challenges to NEPA?

Answer: Litigation can detract from BLM's ability to perform important on the ground work by tying up staff and budgetary resources. BLM endeavors to do as much as possible to keep decisions from being litigated by improving the quality of our analysis, improving our public outreach efforts, and working upfront with stakeholders on solutions. Currently, the BLM manually tracks these costs and is exploring options on how to best track these costs for the future.

Grazing Fees

The President's budget proposes to levy a tax on western ranchers' grazing permits that constitutes an effective 74% increase in the grazing fee.

Valadao Q7: Is it this Administration's intent to pay for endless environmental litigation and the cost of bureaucratic red tape by levying a tax on ranching families?

Answer: The proposed Grazing Administrative Processing Fee is designed to recover some of the costs incurred by the BLM in processing grazing permits/leases for permittees who are economically benefitting from the use of public lands. This is the same concept used in the Oil and Gas program and Rights-of-Way program, where users of public lands pay a fee for the processing of their permits. Costs of litigation increase the overall costs for processing grazing permits/leases. However, 2012 collections covered less than half of the federal expenditures on the program; the BLM spent approximately $30 million processing and administering permits and leases, evaluating range health, and monitoring allotments, yet collected only approximately $12.9 million in grazing fees for forage. These receipts were divided between states and the BLM's Range Improvement program, which does not provide funding for any administrative activities related to grazing. The proposed fee would therefore provide a necessary cost recovery tool to assist the BLM in processing grazing permits.

Valadao Q8: Research shows that most public land ranchers already pay more than market price for their federal permits, considering factors such as added regulatory costs, ownership of water rights, maintenance of improvements, and the difficulties of managing livestock in rough, arid rangelands.

Have you analyzed how many ranching operations would go out of business in light of this arbitrary grazing tax? Or what the cost would be to BLM if ranchers were not there to provide land management services, such as fuels reduction and fire prevention, open space, noxious weed control, and water improvements for wildlife?

Answer: The proposed Grazing Administrative Processing Fee is designed to recover some of the costs to taxpayers for issuing grazing permits/leases on BLM lands. The BLM has proposed a 3-year pilot period to assess any potential impacts from the fee.

Range Budget

Congress decided to increase the range budget in the last appropriations bill, to help your agency carry out its statutory duties and lessen the instances where you are vulnerable to environmental lawsuits because of a lack of resources.

Valadao Q9: Why would the administration now propose to cut that budget by over $12 million – almost 15%?

Answer: The FY 2014 President's budget request reflects difficult choices and focuses funding increases on the highest priority programs. While the budget request proposes a reduction of $14.1 million in grazing administration compared to the 2012 enacted level, the impact of this funding decrease will be partially mitigated by the proposed Grazing Administrative Fee, which will generate an estimated $6.5 million in 2014. The proposed fee is designed to recover some of the costs for processing grazing permits/leases for the permittees who are economically benefitting from use of the public lands. This is the same concept used in the BLM Oil and Gas program and Rights-of-Way program, where the users of public lands pay a fee for the processing of their permits.

Valadao Q10: How do you propose to cut the budget and keep pace with range monitoring, NEPA review on grazing allotments up for renewal, and other activities that will prevent litigation against you?

Answer: The BLM is committed to both ensuring the integrity of public rangelands and issuing grazing permits in the year they expire. The proposed Permit Administration Processing Fee will partially offset the reduction in requested appropriations, allowing BLM to recover some of the cost of completing grazing permit renewals, monitoring of grazing allotments, and strengthening the BLM's environmental documents. The BLM is also working to find additional efficiencies in the program as the permit backlog is reduced.

In recent years, a significant portion of the program's budget has been devoted to reducing the permit backlog. The FY 2014 President's budget requests that the Extension of Grazing Permits

General Provision be extended for 1 year to assist the BLM in further streamlining the permit process and allow the BLM to focus its grazing analysis and review on the most environmentally sensitive allotments in 2014.

Land and Water Conservation Fund

The President has proposed millions of dollars in decreases to programs that provide economic benefit to the country, while simultaneously proposing to fully fund by 2015—at $900 million in mandatory spending—the Land and Water Conservation Fund.

Valadao Q11: How do you juxtapose managing more land while dealing with an even smaller management budget?

Answer: The Land and Water Conservation Fund (LWCF) program is a high priority for the American people and the Administration. Through nearly four years of listening sessions and public input as part of the President's America's Great Outdoors initiative, we have continually heard a powerful consensus that outdoor spaces—public and private, large and small, urban and rural—remain essential to our quality of life, our economy, and our national identity. Americans care deeply about our outdoor heritage, and are willing to take collective responsibility to protect it for their children and grandchildren. AGO respondents and audiences consistently asked that we pursue robust funding for LWCF, including for land acquisition, and we agree that it is good policy to do so.

The Department's LWCF request, including that for BLM, will enable Interior to make strategic investments in both land acquisition and easement acquisitions to protect threatened and endangered plants, fish, and wildlife; ensure terrestrial ecosystem and watershed health; ensure resiliency, connectivity, and climate change adaptation; support working farms, ranches and forests; enhance recreational access; and protect rivers and waterways. The Department has been mindful of operations and maintenance costs that could be associated with acquisitions; in fact, acquisition of inholdings often helps lower O&M costs by making it simpler to engage in critical land management duties such as wildland fire management, law enforcement, and invasive weed control. The strategic acquisition of lands from willing sellers frequently results in reduced costs to the BLM through land consolidation and efficiencies. The new acquisitions have many benefits including improved access to trailheads, prime hunting and fishing areas, and recreation areas.

Valadao Q12: How would you rate your ability to keep up with current land management duties, such as catastrophic wildfire control, grazing permit renewals, and wild horse management? Common sense seems to suggest that the agency will have difficulty managing all of these responsibilities on more land, with fewer dollars.

Answer: It is frequently the case that the acquisition of lands through the LWCF program results in the more efficient use of limited Federal dollars. By consolidating land patterns through the acquisition of inholdings from willing sellers, the BLM can more efficiently manage the public lands. All of the BLM's proposed LWCF acquisitions for fiscal year 2014 are either

within or immediately adjacent to existing BLM units and will increase public access for hunting, fishing, hiking and other recreational pursuits.

U.S. House of Representatives
Committee on Appropriations
Subcommittee on Interior, Environment, and Related Agencies
FY14 Budget Hearing: U.S. Fish and Wildlife Service
April 18, 2013

Questions for the Record for Director Ashe

Priorities

I posed these questions in my opening statement, and now I'd like to give you the opportunity to answer them.

Simpson Q1: In your opinion, what are the Fish and Wildlife Service's "have-to-do's"?

Answer: The Service has a number of "have-to-dos," but there are several overriding priorities in our work. One is to take care of our lands. The Service has been entrusted with nearly 150 million acres of land and waters that are used for wildlife habitat and recreation. These acres are the property of the US taxpayer, and one of the Service's most important obligations is to take care of them for the taxpayer. Second, our must-do list includes conserving species. We have obligations under the Endangered Species Act, the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, CITES, and other statutes and treaties, to conserve species. The Service takes this obligation very seriously, and works through all of its programs to achieve conservation. In addition, the Service believes that Endangered Species Consultations and other environmental clearances provided by the Service are must-dos. The Nation's goal to achieve energy independence and the resurgence of growth with a strengthening recovery are requiring the review of more projects every year. The Service wants to help developers of these projects design environmentally friendly projects that can be quickly approved. Our assistance is necessary for that to occur. The Service is appropriated a great deal of funding that goes to States and others for the conservation of fish and wildlife. These funds are also a priority so our partners can continue to make their essential contributions to conservation. Finally, the Service has many other programs that are must-dos, each of them important in their own respect. We have no programs that are low priority, although we can easily identify the most important of our priorities.

Simpson Q2: Of those with expired authorizations, why should we continue to fund them?

Answer: Congress should continue to fund programs with expired authorizations because even though the authorizations may have expired, the requirements of the laws are still in effect. The Service will still have the responsibility to list species, and consult with other Federal agencies about whether their actions may have an adverse effect on listed species. The Service will still have the obligation to issue permits for take and import of listed species. The Service will retain all of the other requirements imposed on it by law. Without funding to implement these requirements, the courts would look to Service funding in other areas for redirection to legal required activities.

Simpson Q3: Do you believe that continuing to fund expired programs reduces or removes the incentive for stakeholders to compromise in order to achieve reauthorization and future appropriations?

Answer: No, leaving programs funded and operating as directed by Congress will have the greatest impact on the impetus to reauthorize programs. To the extent Congress wishes to change the program, legislation will need to be passed.

The Service's FY14 budget justification lists 128 authorizing statutes, Executive Orders, and major treaties and conventions governing the agency's activities. Some like the Fish and Wildlife Act of 1956 provide broad authorities, while others like the Endangered Species Act of 1973 mandate specific actions. Some have expired, while others never expire. The budget fails to list the numerous court orders and other mandates that are no doubt driving what the agency does.

Simpson Q4: Do you consider all of these statutes, orders, and agreements to be "have-to-do's", or are some of them optional?

Answer: The Service considers all legal requirements "have-to-dos". In addition, the Service believes it has a legal obligation to conserve threatened and endangered species and take care of the lands that have been entrusted to us.

Twice in your written testimony you mention remaining relevant in today's changing American society.

Simpson Q5: What do you mean by that?

Answer: We have obligations under the Endangered Species Act, the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, CITES, and other statutes and treaties, to conserve species. The Service takes this obligation very seriously, and works through all of its programs to achieve conservation. In addition, the Service believes that Endangered Species Consultations and other environmental clearances provided by the Service are must-dos. The Nation's goal to achieve energy independence and the resurgence of growth with a strengthening recovery are requiring more projects every year to be reviewed. The Service wants to help developers of these projects design environmentally friendly projects that can be quickly approved. Further, the Service believes that we have been entrusted with land used for wildlife habitat and recreation. These lands are the property of the US taxpayer, and one of the Service's most important obligations is to take care of these resources.

Simpson Q6: What is changing about American society that is changing what the agency has to do?

Answer: Our Nation's population has been changing rapidly, becoming more diverse and urban. Americans are also living longer, creating new opportunities and challenges to engage them in volunteer work on our lands and offer accessible programs that appeal to diverse populations. Located near thousands of communities across the country, the National Wildlife Refuge System is well situated to engage large segments of the American population in our conservation work and outdoor recreation programs. The Service is also mindful of the dramatic shifts in how our population communicates, relying more on digital media to learn and share information, and the needs of younger Americans to find meaningful work experiences to enhance their career opportunities. As part of the Refuge System's long-term strategic planning effort, "Conserving the Future: Wildlife Refuges and the Next Generation," we are developing a variety of strategies to help respond to these large scale societal changes and their effects on our conservation and engagement programs. We are engaging key urban audiences by developing the use of digital media to enhance our long standing education and interpretive programs to benefit youth, millions of visitors, and nearby schools and communities. Our Urban Refuge Initiative will create an urban presence through cooperation and partnerships with other urban land management entities such as parks and nature areas.

The Service has a responsibility to inform the public through our education and outreach programs about the realities of a changing climate and its effect on fish and wildlife, and what individuals can do to help mitigate the buildup of greenhouse gases in the atmosphere. The Service has made this a priority.

Population and development increases, have led the Service to be even more strategic in our wildlife conservation efforts, focusing resources and funding on high priority areas which are likely to have a greater conservation benefit for the investment. For example, the Service has initiated an aggressive inventory and monitoring program to more thoroughly identify and conduct long-term monitoring of species on refuges and is leveraging funding through its citizen science initiative in which Service personnel train volunteers to conduct biological activities such as wildlife surveys, habitat monitoring, and invasive species control. The Service is also positioning itself to be more nimble and better able to respond to changing conditions by working under the framework of the Strategic Habitat Conservation (SHC) initiative that implements a landscape approach to conservation that is more strategic, science-driven, collaborative, adaptive, and understandable.

Sage Grouse

The Fish and Wildlife Service must make a decision about whether or not to list sage grouse as an endangered species by the end of FY15. The BLM and western states have been working to meet an FY14 deadline to have robust plans in place to protect the bird and, hopefully, prevent a listing.

Simpson Q7: Say FY15 comes and you determine that the sage grouse should NOT be listed. What assurances will the BLM, the states, and land users have that this decision will be final and

that another lawsuit from the same groups won't render all the work done by the states and the BLM irrelevant and force land users back into uncertainty?

Answer: If, following a review of the best scientific and commercial information available and after taking into consideration the conservation measures afforded the species and its habitat, the Service determines that the sage-grouse does not meet the definition of an endangered or threatened species under the Act, the Service would publish this decision in the Federal Register. Because this determination would constitute the final agency action for the sage-grouse, it would be judicially reviewable and could be subject to litigation. However, any challenge or resulting court action would not render the work done by BLM, States, private owners and others to address the threats to sage-grouse as "irrelevant." In a legal challenge, the Service would defend its decision. The efforts by States, BLM, private landowners, and others contribute significantly to the long term conservation of the sage-grouse, and are an important part of the information considered during the listing decision-making process.

Simpson Q8: It's my understanding that the greatest threat to sage grouse is not grazing, but wildfire. Is this your understanding as well?

Answer: As reported in our 12-month finding in 2010, sage-grouse warranted listing based on two factors – habitat fragmentation and loss, and the inadequacy of the existing regulatory mechanisms. In the Great Basin portion of the species' range, wildfire fueled by the continuing invasion of non-native plants in the sagebrush understory (such as cheatgrass) is currently the most significant impact to sage-grouse habitats. There are few effective tools to currently manage these synergistic threats. However in other portions of the species' range, other threats to the species' habitats such as energy development and poor livestock management are more significant. In respect to livestock management, we are working with our partners to improve rangeland management practices.

As you know, the House has made it a priority to fund wildfire suppression. Unfortunately, in its CR the Senate decided that this isn't a priority.

Simpson Q9: What impact will these cuts have on the Fish and Wildlife Service in general and on sage grouse efforts in particular?

Answer: Fire suppression in important sage-grouse habitats is essential for the conservation of the species. We work closely with our land management partners and on our National Refuge System lands to develop and implement an annual strategic plan to address wildfire in important sagebrush systems after all human safety and property concerns have been addressed. Lack of funding to implement fire management and effective rehabilitation, including the acquisition of native seed, are concerns. In addition, funding for research on techniques for effective restoration, and new suppression/prevention options is critical to the conservation of the sage-grouse.

Wolves

Lately the Service has been playing a game of "hot potato" with the wolf livestock loss demonstration program—a program which was specifically authorized in P.L. 111-11. We can agree to disagree over whether this program is a high enough priority in FY14, *and* whether the Service had the authority to terminate the program in FY13 under the terms of the continuing resolutions. However, I take issue with the fact that the Service still has not spent the funds appropriated in FY12, and with rumors that the Service intends to reprogram those FY12 funds without seeking approval from the Appropriations Committees, as is required under the FY12 reprogramming guidelines.

Simpson Q10: Please clarify what's going on with this program.

Answer: As authorized by Congress in the FY 2012 Interior and Related Agencies appropriations, the Service initiated program development of the Wolf Livestock Demonstration Project Grant Program (WLDPGP) in FY 2012. On April 2, 2012, the Service published in the Federal Register (77 FR 19682) a Notice of our intent to request that the Office of Management and Budget (OMB) approve our Information Collection Request (ICR) on the WLDPGP. In that Notice, we solicited public comments for 60 days, ending on June 1, 2012.

On October 25, 2012, our second Notice and 30-day comment period was published in the Federal Register (77 FR 65203). With that Notice, the ICR was sent to OMB for review and approval. We received OMB approval of the ICR on December 26, 2012.

The Service will solicit the submission of grant proposals from eligible States and Indian Tribes for the Wolf-Livestock Demonstration Project Grant Program through the Grants.gov web portal by May 31, 2013. Grant awards from this program will support States and tribal governments that assist livestock producers in undertaking proactive, non-lethal activities to reduce the risk of livestock loss due to predation by wolves or to compensate livestock producers for livestock losses caused by wolves. Grant awards will be made in accordance with the Omnibus Public Lands Management Act of 2009 (P.L. 111-11) (Act). The Act requires the funding for the program be expended equally (50:50) between proactive and compensatory projects, and the Federal cost-share is not to exceed 50 percent of the project cost. The Service will award the grants divided equally among the two project types. The Service will announce the grant awards by August 1, 2013.

Maintenance Backlogs

I believe there's merit in the argument that the Federal government ought to be taking better care of what it already has before taking on additional financial burden, but I also recognize that "better care" is a subjective call.

Simpson Q11: What are the maintenance backlogs at national wildlife refuges, national fish hatcheries, and other Service-owned facilities?

Answer: As of September 30, 2012, the deferred maintenance backlog for the National Wildlife Refuge System was $2.4 billion and for the National Fish Hatchery System was $178 million.

Simpson Q12: What are the recent trends of these respective backlogs, i.e. have they been increasing or decreasing?

Answer: In the past three fiscal years, FY2010 to FY2012, the Refuge System's list of deferred maintenance projects decreased from $2.7 billion to $2.4 billion. Repairs to roads and parking lots, bridges and trails, dams, levees, and other water control structures are among the most common deferred maintenance needs.

The Deferred Maintenance backlog for the National Fish Hatchery System has remained relatively flat over the past few years with a slight increase from $170 million to $178 million from FY2010 to FY2012. Repairs to wells, water lines, ponds, fish production raceways and other facilities that keep aquatic species alive and thriving are among the most important maintenance needs.

Simpson Q13: If Congress appropriates the requested funding in FY14 for maintenance and construction, will these backlogs increase or decrease?

Answer: Funding at the FY2014 Request level would allow the Service to complete roughly 200 deferred maintenance projects. At this level, the Service will maintain the current downward trend in the backlog barring any unforeseen events. For example, damages from major natural disasters will add to the backlog unless Congress provides Emergency Supplemental Funding.

Simpson Q14: Do the existing backlogs influence any of the following Service activities: fish production; public visitation; recovery plan implementation; or deferred maintenance and construction?

Answer: As infrastructure investment directly supports the Service's wildlife and habitat mission, available funds are prioritized to meet highest priority needs and the Service continues to work towards reducing the deferred maintenance backlog by refining its condition assessment process, using maintenance action teams, actively pursuing local partnerships, and disposing of unneeded assets.

Endangered Species

Your budget proposes to spend $9.4 million to incentivize Fish and Wildlife Service programs to work together to recover listed species—an initiative started in FY13 despite prohibitions of new starts in the Continuing Resolutions. According to your budget, the Service will consider proposal submissions from its various programs, and "criteria have been developed for evaluating project proposals and monitoring outcomes."

Simpson Q15: Why would you ever need a financial incentive to get your own agency programs to cooperate?

Answer: Through the cooperative recovery initiative, the Service is combining the expertise of multiple Service programs and providing project funding to address urgent endangered species conservation needs for listed species found on or near national wildlife refuges. Available resources to address large scale collaborative projects has been limited, and this initiative provides funding for projects between $500,000 to $1 million in scale, that can be completed in one to three years, and will significantly advance conservation of a species. By working across programs to fund these efforts, the Service maximizes the conservation impact of its resources to achieve specific, collaborate conservation needs. These projects are not new starts, they build on current recovery efforts and could have been funded normally through recovery or refuge funding.

Simpson Q16: If recovery is a high enough priority, then why do you have to incentivize your programs to focus on it?

Answer: Both the Recovery and the Refuges program have limited funding available for on-the-ground projects. Setting aside these funds to address urgent endangered species conservation needs allowed the Service to make substantial progress toward recovery of several species. The Service undertook a national, proposal-driven process to identify and implement the highest priority projects. From the 24 projects submitted Nationwide, ten were selected based on their likelihood of achieving recovery on the ground for these imperiled species. The Service continues to seek efficient and effective approaches to maximize its conservation impact to achieve species recovery.

Simpson Q17: How much are you proposing to spend Service-wide to recover listed species? Please list by program element for the record.

Answer: As noted in the FY 2011 Expenditure Report (the most recent available report), the Service-wide expenditure related to listed species was $175,449,080. While this comprehensive amount is not broken out by service areas or activities, specific recovery highlights in the FY 2014 budget include:

Cooperative Recovery	FY 2014 President's Budget Request
Ecological Services	$ 1,900,000
Partners	$ 1,483,000
Refuges	$ 3,200,000
Fisheries	$ 1,500,000
Migratory Birds	$ 500,000
Science	$ 770,000
Subtotal CRI	$ 9,353,000
ES Recovery	$ 84,643,000
TOTAL	$ 93,996,000

Simpson Q18: Your budget states that, "Project teams must show their efforts have improved the status of target species within three years." Are you applying this same standard agency-wide?

Answer: The call for proposals for Cooperative Recovery Initiative projects was issued by the Director's office to all Regional Directors. The same process and requirements were used for all project submissions. Because of the uncertainty of long-term funding, the objective of the FY 2013 Cooperative Recovery Initiative was to make a difference with the funding as provided with a reasonable amount of time to achieve success. While this specific requirement limited the number of project submissions, the Service wants to show results in the near term.

Simpson Q19: Is making your own programs compete for project funding the best way to budget for results? If not, then why do it with this money? If so, then why not apply the same model across the agency? Is this where you're headed?

Answer: In times of more limited resources, the Service believes that it needs to focus its resources where it can make the most difference. The Cooperative Recovery Initiative (CRI) is one step in realigning resources to achieve two of the Service's highest priorities: threatened and endangered species recovery, and wildlife and habitat management on National Wildlife Refuges. At the same time, the Service still needs to retain funding to achieve program specific goals such as recovery planning, refuge maintenance, etc., that meet specific mandates or directives for each program. An initiative such as the CRI allows the Service to develop a balance between collaborative, cross-program, large-scale investments while retaining program specific funding to meet the highest program specific priorities. Through this balance, Service programs will continue to contribute to listed and candidate species recovery to the best extent possible given the various mandates and needs within the various programs.

Science

Your budget proposes to "separate funding for Cooperative Landscape Conservation [LCC's] from Science Support to *enable broader application of funding* for scientific activities across the Service and LCC's."

Simpson Q20: What is the specific problem you are trying to fix with this proposed budget reorganization? Are you also proposing to reorganize personnel?

Answer: The Service is trying to develop a permanent science line item in the budget that is dedicated to science needs across the entire bureau, exclusive of the science funds that are LCC related. For example, the Service needs funding for science related to eagles and desert tortoise to inform renewable energy permitting activities, research on white-nose syndrome, sylvatic plague, and other wildlife diseases, Spotted owl/Barred owl research, etc. Currently, basic science needs are funded on a case-by-case basis through different programs and sub-activities, at the expense of other conservation actions. This activity does not require any reorganization since most of these science needs are fulfilled through contracts, grants, or agreements with established research institutions outside of the Service.

You are proposing to spend some of this science funding at Cooperative Fish and Wildlife Research Units located at various universities across the country. As you know, these Research Units are primarily funded through the USGS budget.

Simpson Q21: What is the USGS overhead rate for services purchased at these Research Units? What is the USGS overhead rate for services purchased at USGS facilities?

Answer: The Cooperative Research Units indirect cost rate is a standard 6%, and the partner university usually applies an additional 15%. The average indirect cost rate at other USGS facilities is 45%.

Requesting your own funds for science clearly implies that you are not getting the services you need from USGS, which, ironically, was the recipient of significant FWS personnel and funding during the massive science reorganization during the Clinton Administration.

Simpson Q22: Is it fair to say that that reorganization experiment didn't work?

Answer: The Department of the Interior is committed to delivering the right science at the right time to inform decision making and its 2014 budget reflects that commitment. The Department is also working to improve its processes to identify science needs and collaboratively plan to address them, with each bureau bringing their resources and best capabilities to bear, in order to inform management decisions.

USGS provides exceptional support to the Service. However, the conceptual model that all science should be consolidated into one bureau has not worked as intended. USGS alone cannot provide for all of Interior's scientific needs. Bureaus have their own science needs apart from what USGS can deliver and USGS does not have the funding to address all of the needs of the bureaus. The Department must develop a new conceptual model that relies on working collaboratively to address natural resource issues.

The science model the Department is promoting establishes answering natural resource questions as a shared responsibility. The bureaus need to work collaboratively to address critical issues by employing their specific expertise and resources to identify issues and inform management decisions. This will create synergies that accelerate the understanding of key factors and sound management practices.

The USGS and Interior bureaus must work collaboratively to find the answers needed for important natural resource management questions. Science funding at the bureau and office level allows bureaus and offices to participate more fully in that collaboration, providing required resources to purchase studies, models, and expertise, and to hire scientists to help managers interpret the vast body of knowledge generated by the USGS, universities, and other scientific institutions. This science helps answer imminent and important natural resource

management questions and provides near-term solutions to address urgent and emerging issues such as the white-nose syndrome in bats.

Simpson Q23: If FWS wants to rebuild its science capacity, why shouldn't we pay for it by shifting the money out of USGS and back to the FWS where it was in the first place?

Answer: There is no duplication of effort between what the USGS can do, and what the Service needs. However, to be most effective, the Service needs to have a nimble and separate source of science funding to address emerging management and policy decisions and USGS does not have funding available for this purpose. The Service is pursuing broad scientific collaborations with both USGS and other research institutions. The work is coordinated in advance to ensure there is no duplication of effort and that the results are shared. The requested funding for the Service will provide the capacity to fund research institutions to deliver science needed to make resource management decisions.

Simpson Q24: The budget proposes $1M for biological carbon sequestration. How will this not duplicative of what USGS is already doing?

Answer: Work identified for the $1 million in biological carbon sequestration would not in any way duplicate USGS efforts. Rather, this work represents a true collaboration between the Service's managers and USGS scientists to apply decision-support tools previously developed by USGS to current, on-the-ground biological carbon sequestration efforts on high-priority National Wildlife Refuge System lands.

Endangered Species

Calvert Q1: Why did the US Fish and Wildlife Service propose to designate critical loggerhead habitat without first conducting an economic analysis supporting such a proposed designation? How can the public properly evaluate USFWS' proposed designation without a full understanding of its impact on the economy?

Answer: The current regulation at 50 CFR 424.19 states: "The Secretary shall identify any significant activities that would either affect an area considered for designation as critical habitat or be likely to be affected by the designation, and shall, after proposing designation of such an area, consider the probable economic and other impacts of the designation upon proposed or ongoing activities."

FWS has interpreted 'after proposing' to mean after publication of the proposed critical habitat rule. We are currently developing the draft economic analysis for the proposed critical habitat designation. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will reopen the public comment period on the proposed critical habitat rule to allow the public to review and provide comment on the draft economic analysis and the proposed critical habitat designation.

In addition, we have proposed a revision to the 424.19 regulations to change the timing of the economic analyses for critical habitat proposals in the future, making them available when draft critical habitat proposals are available for public comment. We will follow our current practice until such regulation revision is finalized.

Calvert Q2: Some coastal areas proposed as critical habitat are immediately adjacent to other coastal areas that were not given that designation. What was the cutoff for the number of nests that kept an area from being designated as critical habitat?

Answer: For the Northern Recovery Unit, we divided beach nesting densities into four equal groups by State (North Carolina, South Carolina, and Georgia) and selected beaches that were within the top 25 percent (highest nesting densities) for designation as critical habitat. These high nesting density beaches along with the beaches adjacent to them as described below encompassed the majority of nesting within the recovery unit. The reason we determined high-density nesting beaches within each State, rather than the entire Northern Recovery Unit, was that doing so allowed for the inclusion of beaches near the northern extent of the range (North Carolina) that would otherwise be considered low density when compared with beaches further south (Georgia and South Carolina), thus ensuring a good spatial distribution.

For the Peninsular Florida Recovery Unit, we took a similar approach to the one used for the Northern Recovery Unit. However, we used recent information on loggerhead genetics within the recovery unit to break the unit into smaller regions for the purpose of assessing beach nesting densities (analogous to assessing nesting densities by State for the Northern Recovery Unit). Therefore, we split the Peninsular Florida Recovery Unit into the following five regions for an assessment of nesting densities based on recovery unit boundaries and recent genetic analyses:

(1) Northern Florida – Florida–Georgia border to Ponce Inlet;
(2) Central Eastern Florida – Ponce Inlet to Fort Pierce Inlet;
(3) Southeastern Florida – Fort Pierce Inlet to Key West in Monroe County;
(4) Central Western Florida – Pinellas County to San Carlos Bay off Lee County; and
(5) Southwestern Florida – San Carlos Bay off Lee County to Sandy Key in northwest Monroe County.

Once we defined the beaches within these five regions of the Peninsular Florida Recovery Unit (which is described in the proposed rule), we used the same approach described above for the Northern Recovery Unit. We divided beach nesting densities into four equal groups by region and selected beaches that were within the top 25 percent (highest nesting densities) for designation as critical habitat. The reason we determined high-density nesting beaches within each region (rather than the entire Peninsular Florida Recovery Unit) was to ensure the inclusion of beaches that would otherwise be considered low density when compared with beaches along the southeastern Florida coast and thus ensure a good spatial distribution of critical habitat units within the recovery unit.

For the Northern Gulf of Mexico Recovery Unit, once we defined the beaches by State (which is described in the proposed rule), we used a similar approach as the one described above for the Northern Recovery Unit. For Mississippi, nesting data are not collected regularly or in a standardized manner; however, based on existing data, Horn and Petit Bois Islands have had the most nests and were selected for inclusion as proposed critical habitat. For Alabama and the Florida Panhandle, we divided beach nesting densities into four equal groups by State and selected beaches that were within the top 25 percent (highest nesting densities) for designation as critical habitat. The reason we determined high-density nesting beaches within each State (rather than the entire Northern Gulf of Mexico Recovery Unit) was that it allowed consideration for the inclusion of beaches near the western extent of the range that would otherwise be considered low density when compared with beaches in Alabama and the Florida Panhandle, thus ensuring a good spatial distribution.

Within each of the Recovery Units, we also identified adjacent beaches for each of the high-density nesting beaches based on current knowledge about nest site fidelity. Given what we know about loggerhead internesting movements and nest site fidelity (which is described in the proposed rule), FWS has determined that it is important to include the areas adjacent to high-density nesting units as critical habitat to ensure nesting loggerheads have nearby beaches to nest on should their highest density nesting beaches be lost.

Calvert Q3: To what extent, if any, did the US Fish and Wildlife Service consider existing regulations and programs at state and local levels that ensure that loggerhead habitat is protected and maintained? Will this proposed rule potentially use federal funding for efforts already being performed by state or local agencies?

Answer: FWS is supportive of beach communities, local governments, and State and Federal lands that have management plans or agreements, permit conditions, laws, regulations, ordinances, or educational campaigns that address threats to the loggerhead sea turtle and its

habitat. These may cover recreational beach use, beach driving, predation, beach sand placement activities, artificial lighting, and coastal development.

A critical habitat designation does not require the use of Federal funds for conservation efforts, and the FWS would not duplicate efforts already being performed by State or local agencies. Some Federal funding is, however, available to support conservation and recovery of listed species, such as the loggerhead.

Calvert Q4: Why is USFWS proposing to designate critical habitat now, approximately 35 years after the loggerhead sea turtle was listed as endangered?

Answer: The loggerhead sea turtle was originally listed worldwide under the Endangered Species Act (Act) as a threatened species on July 28, 1978 (43 FR 32800). No critical habitat was designated for the loggerhead sea turtle at that time. The Endangered Species Act of 1973 referred to the concept of critical habitat, requiring that Federal agency actions not modify or destroy habitat determined to be critical. However, the 1973 Act did not define critical habitat or specify a procedure for its designation (Pub. L. 93-205, 87 Stat. 884, codified at 16 U.S.C. 1536). Amendments to the Act, enacted on November 10, 1978, defined "critical habitat" and provided that critical habitat "may be established" for species listed prior to the date of enactment of the 1978 amendments, but did not make designation mandatory nor set a certain timeframe for designation (Pub. L. 95-632, section 2(2), 92 Stat. 3751).

In 1982, amendments to the Act established the requirement to designate critical habitat at the time of listing to the extent such designation was prudent and determinable, but excluded from that requirement any species listed prior to November 10, 1978 (Pub. L. 97-304, sections 2(a), 2(b) (4), 96 Stat. 1411 (1982)). Therefore, for species listed prior to the 1978 amendments, such as the loggerhead sea turtle, USFWS is not required to retroactively designate critical habitat.

On July 12, 2007, USFWS and the National Marine Fisheries Service (NMFS) (collectively referred to as the Services) received a petition to list the “North Pacific populations of loggerhead sea turtle” as an endangered species under the Act. NMFS, with USFWS concurrence, published a notice in the Federal Register on November 16, 2007 (72 FR 64585), concluding that the petitioners (Center for Biological Diversity and Turtle Island Restoration Network) presented substantial scientific information indicating that the petitioned action may be warranted. Also, on November 15, 2007, the Services received a petition to list the “Western North Atlantic populations of loggerhead sea turtle” as an endangered species under the Act. NMFS, with USFWS concurrence, published a notice in the Federal Register on March 5, 2008 (73 FR 11849), concluding that the petitioners (Center for Biological Diversity and Oceana) presented substantial scientific information indicating that the petitioned action may be warranted.

In early 2008, a Loggerhead Biological Review Team (BRT) was assembled to complete a status review of the loggerhead sea turtle. The BRT was composed of biologists from USFWS, NMFS, the Florida Fish and Wildlife Conservation Commission, and the North Carolina Wildlife Resources Commission. The BRT was charged with reviewing and evaluating all relevant scientific information relating to loggerhead population structure globally to determine if any

population met the criteria to qualify as a Distinct Population Segment (DPS) and, if so, to assess the extinction risk of each DPS. The findings of the BRT, which are detailed in the "Loggerhead Sea Turtle (Caretta caretta) 2009 Status Review under the U.S. Endangered Species Act" (Conant et al., 2009; hereinafter referred to as the Status Review), addressed DPS delineations, extinction risks to the species, and threats to the species. The Status Review underwent independent peer review by nine scientists with expertise in loggerhead sea turtle biology, genetics, and modeling. The Status Review is available electronically at http://www.nmfs.noaa.gov/pr/species/statusreviews.htm.

On March 16, 2010 (75 FR 12598), the Services published in the Federal Register combined 12-month findings on the petitions to list the North Pacific populations and the Northwest Atlantic populations of the loggerhead sea turtle as DPSs with endangered status, along with a proposed rule to designate nine loggerhead sea turtle DPSs worldwide and list two of the DPSs as threatened and seven as endangered. The Federal Register notice also announced the opening of a 90-day public comment period on the proposed listing determination.

On March 22, 2011 (76 FR 15932), the Services published in the Federal Register a notice announcing a 6-month extension of the deadline for a final listing decision. At this time, we solicited new information or analyses from the public that would help clarify this issue. The public comment period was open for 20 days, and closed on April 11, 2011.

On September 22, 2011 (76 FR 58868), the Services jointly published a final rule revising the loggerhead's listing from a single worldwide threatened species to nine distinct population segments listed as either endangered or threatened species (50 CFR 17.11(h)). The 2011 final rule listed the Northwest Atlantic Ocean DPS of the loggerhead sea turtle as a threatened species.

Pursuant to section 4(a)(3)(A) of the Endangered Species Act, critical habitat shall be designated to the maximum extent prudent and determinable at the time a species is proposed for listing under the Act. At the time of listing the nine DPSs of the loggerhead sea turtle, we lacked the comprehensive data and information necessary to identify and describe physical and biological features of the terrestrial and marine habitats of the loggerhead and found critical habitat to be "not determinable." However, in the final listing rule, we stated that we would later propose to designate critical habitat for the two DPSs (Northwest Atlantic Ocean and North Pacific Ocean) in which loggerheads occur within the United States' jurisdiction.

On March 25, 2013, FWS published a proposed rule to designate areas in the terrestrial environment as critical habitat for the Northwest Atlantic Ocean DPS of the loggerhead sea turtle (78 FR 17999). In total, 1,189.9 kilometers (km) (739.3 miles) of loggerhead sea turtle nesting beaches are being proposed for designation as critical habitat in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, and Mississippi. These beaches account for 48 percent of an estimated 2,464 km (1,531 miles) of coastal beach shoreline, and account for approximately 84 percent of the documented nesting (numbers of nests) within these six States. FWS has jurisdiction over sea turtles on the land, and loggerheads come on land only to nest; therefore, the only terrestrial habitat they use is for nesting.

Lesser Prairie Chicken

The state wildlife directors of Oklahoma, Kansas, Texas, Colorado and New Mexico—acting under the auspices of the Western Area Fish and Wildlife Association (WAFWA)—recently filed a Range Wide Plan for the conservation of the Lesser Prairie Chicken (LPC). That RWP represents a first for the protection of any multi-state species and is designed to eliminate the need to list the LPC as a threatened species.

Cole Q1: How quickly do you intend to process and approve the Candidate Conservation Agreements with Assurances that are a core element of that plan so that the sponsors can enroll acreage under those CCAAs in time to consider that protected acreage in any final determination you will make in this matter?

I note that FWS references the need to make a decision on the LPC proposed listing by September 30, 2013, which appears to be tied to the end of the federal government's fiscal year. However, the standard rules for a proposed listing provide 12 months for the public comment period and review of the comments, which in the case of the LPC would put that decision date at December 11, 2013, one year from the date of the Federal Register notice on the proposed listing of the LPC.

Answer: Currently, the States have released a draft of their rangewide plan for public review and comment. We recently re-opened the comment period for the proposed listing rule to accept any new information that may inform our final listing decision, including comments regarding the States' rangewide plan and how it may inform our listing determination. At the same time, we also proposed a 4(d) special rule that would allow for take of the lesser prairie-chicken incidental to activities conducted pursuant to a comprehensive conservation program that was developed by or in coordination with a State agency and that has been determined by the Service to provide a net conservation benefit to the species. Following the close of the comment period in June, we will continue to work closely with the States to assist in addressing Service comments on their plan as well as other comments submitted by the public to the States. We anticipate that the States will submit the final plan to the Service in June or July. The Service would then determine whether the plan could be covered under a final 4(d) rule should the species need to be listed and advise the States so that they can begin to enroll participating landowners.

Cole Q2: Why is the December 11 date not the appropriate date?

Answer: Pursuant to a settlement agreement with WildEarth Guardians, a proposed listing determination was to be submitted to the Federal Register on or before September 30, 2012. We found it necessary to seek a 90 day extension on that deadline, but were unable to extend the original final deadline. So the final listing determination is due September 30, 2013, unless the Secretary finds that substantial disagreement exists regarding the sufficiency or accuracy of the available data relevant to the listing determination, in which case the final listing determination is to be submitted to the Federal Register on or before March 31, 2014.

Cole Q3: Given the intense interest in this matter and the strenuous efforts of the WAFWA group and numerous others to create a RWP that will obviate the need for a listing, why would you not avail FWS and all the interested parties with the additional time between September 30 and December 11 to get to a fully informed and scientifically justified decision in this matter?

Answer: We are required to complete the rulemaking under the deadlines set forth in the settlement agreement with WildEarth Guardians.

Cole Q4: What are the specific timelines for public comments on the FWS proposed listing of the LPC?

Answer: The proposed listing rule had a 90-day comment period that ended March 11, 2013. We also held public hearings in order to accept formal oral comments in Woodward, Oklahoma, on February 5, 2013; in Garden City, Kansas, on February 7, 2013; in Lubbock, Texas, on February 11, 2013; and in Roswell, New Mexico, on February 12, 2013. Further, FWS reopened the comment period on the proposed listing rule on May 6 with a 45-day comment period associated with that reopening.

Cole Q5: If FWS proceeds to list the LPC as a threatened species, when will the recovery plan and critical habitat determinations be done?

Answer: If a listing occurs for the LPC, critical habitat will need to be finalized one year after the date of the final listing determination. Our regulations provide for 18 months for a draft recovery plan and another year for a final recovery plan. We do our best to meet these target dates based upon available staff and resources.

Cole Q6: How many FWS staff will need to be assigned to do the necessary federal permitting for Section 7 Biological Opinions and Section 10 Habitat Conservation Plans?

Answer: This will depend upon the outcome of the listing determination and whether the Service finalizes a 4(d) special rule that may relax the take prohibitions as necessary and advisable for the conservation of the LPC. Also, see responses to Q7 and Q8 below.

Cole Q7: How many FWS personnel do you currently have working on Section 7 and Section 10 permits in the five states impacted by the LPC issue?

Answer: The Service has one FTE as the conservation lead for the LPC who is working primarily with the States on the rangewide conservation plan for the species. The conservation lead has support from FWS biologists in the five State field offices plus Regional Office support from Regions 2 and 6, our Southwest and Northern Rocky Mountain regions. The Service also has a team of six staff working part-time on section 7 conference opinions with the Natural Resource Conservation Service (NRCS) and the Farm Services Agency (FSA) to cover incidental take associated with landowners participating in the NRCS-LPC Initiative and the Conservation Reserve Program, should the LPC be listed.

Cole Q8: Understanding that a listing of the LPC entails a huge additional workload in biological consultations and permitting, how many FTEs would need to be allocated for the work necessitated by a listing of the LPC?

Answer: This will depend upon the outcome of the listing determination and whether the Service finalizes a 4(d) special rule that may relax the take prohibitions as necessary and advisable for the conservation of the LPC. If the LPC is listed, we anticipate having the consultation with NRCS and FSA completed such that incidental take coverage is in place at the time of listing and no additional section 7 consultation is needed for those federally funded activities.

Cole Q9: Would you agree that as a matter of policy strong state-lead conservation strategies are preferable to federal administration of conservation strategies?

Answer: States play a vital role in the conservation of species throughout our Nation. With respect to the LPC, the Service has been working closely with the five States in the range of the LPC for over a decade on multiple fronts to protect and enhance habitat for the species across its range. The Service strongly supports the States' rangewide planning effort for the LPC and has worked closely with them as they developed their plan. We hope that the rangewide conservation plan can serve as the foundation for LPC conservation into the future and as a successful model for other plans. The Service is committed to working closely with States, other Federal agencies, private landowners, industry and others to conserve the LPC and its habitat.

Cole Q10: If FWS were to list the LPC or any other of the 250-or-so species that are the subject of the settlement agreements with various petitioners, in the absence of agreements with the private sector and the state and local governments to fund conservation activities and perform best practices on the relevant habitat does FWS have the financial and personnel resources to conduct the conservation that would protect any of the species and their habitat from further risk and would those federal resources be sufficient to rehabilitate the species to the point where they could be de-listed?

Answer: Once a species is listed, FWS uses the funding provided for Endangered Species Consultations and Habitat Conservation Planning and Endangered Species Recovery to work towards recovery of the species. For example, Recovery program funding supports the development of the interim recovery strategy or outline that guides conservation until the recovery plan is drafted and finalized. Recovery funding also supports recovery actions identified by the recovery strategy or recovery plan needed to minimize or eliminate the threats to the species that are causing its imperilment. In addition, FWS uses its other authorities, such as the Partners for Fish and Wildlife and the National Wildlife Refuge System's Wildlife and Habitat Management program, and other partners to support conservation and recovery of listed species. Service resources are rarely sufficient to support the recovery of a listed species alone. It usually takes the resources of many agencies, organizations, and landowners to achieve recovery of a listed species.

Cole Q11: The average administrative cost of listing a species under the Endangered Species Act is $16 million. What impact will sequestration and other budget challenges have on a potential listing of the Lesser Prairie Chicken, and how does the Fish & Wildlife Service plan to carry out such a complex and geographically massive listing in this constrained budget environment?

Answer: The average package cost for a stand-alone listing determination is $225,500; the Service requests a total of $15.012 million in FY 2014 to conduct listing determinations as well as critical habitat designations identified on its FY 2014 work plan. While sequestration has created management challenges for the Service this year, the Service has prioritized our work plan to ensure that we have the resources to get a final listing determination completed for the Lesser Prairie Chicken as scheduled.

Cole Q12: With respect to the LPC specifically, what is your estimate of the annual cost to federal taxpayers to conserve that species and how would FWS fund that activity in the absence of CCAAs and other agreements with the private and public sector?

Answer: The Service does not currently track the cost to conserve species that are not yet listed. For the LPC, the Service does not currently have an estimate of the annual cost to conserve the species. The Service utilizes the limited resources it has, through its Candidate Conservation funding, Partners for Fish and Wildlife program funding, and other resources to support as much conservation for the species as possible. Conservation of imperiled species requires engagement and support of multiple partners.

Cole Q13: Under current federal budgetary constraints that appear to project into the indefinite future, does listing of a species make any sense from a federal financial and personnel resources perspective if there are no funds and conservation behaviors coming from non-federal parties?

Answer: The Endangered Species Act calls for utilizing the authorities and resources of all partners to achieve conservation of listed species. Much of the recovery and conservation actions currently funded are through States, non-governmental organizations, and other non-Federal partners. Many private individuals, businesses, and organizations continue to support conservation of imperiled species in recognition of conserving America's unique biological ecosystems and species.

Cole Q14: Compared to the state and regional efforts currently underway that bring in money for conservation, how much money does Fish & Wildlife Service expect commit to conservation and recovery programs specific to the Lesser Prairie Chicken?

Answer: As noted above, once a species is listed, the Service uses the funding provided for Endangered Species Consultations and Habitat Conservation Planning and Endangered Species Recovery to work towards recovery of the species. For example, Recovery program funding supports the development of the interim recovery strategy or outline that guides conservation until the recovery plan is drafted and finalized. Recovery funding also supports recovery actions identified by the recovery strategy or recovery plan needed to minimize or eliminate the threats to the species that are causing its imperilment. In addition, the Service uses its other authorities, such as the Partners for Fish and Wildlife and the National Wildlife Refuge System's Wildlife

and Habitat Management program, and other partners to support conservation and recovery of listed species. Service resources are not sufficient to support the recovery of all listed species alone. It takes the resources of all agencies, organizations, and landowners to achieve recovery of a listed species.

Invasive Species

McCollum Q1: Mr. Ashe, what is the Fish and Wildlife Service doing to coordinate with States to address the impact caused by invasive species?

Answer: Operating under the provisions of the Nonindigenous Aquatic Nuisance Prevention and Control Act, as amended by the National Invasive Species Act (NISA), the Service's Aquatic Invasive Species (AIS) Program nationally coordinates and integrates activities to prevent and control AIS. A major component of this work includes providing a national and regional coordination role to the Aquatic Nuisance Species Task Force (ANSTF) and its regional panels, other program partners, and States in three key ways:

1. **State ANS Management Plans** – Working with the ANSTF, the Service provides technical and financial assistance to support State and Interstate ANS Management Plans (State Plans). These plans identify feasible, cost-effective measures for States and cooperating entities to effectively manage their AIS infestations. There are currently 40 approved State Plans with more under development or revision.

2. **Regional AIS Coordinators** – The Service has at least one AIS Coordinator in each Region to maintain excellent working relationships with the States, work closely to coordinate and integrate State and Federal activities, prevent duplication, and effectively and efficiently manage AIS within each region.

3. **ANSTF Regional Panels** – Through NISA, the Service supports a series of six regional panels of the ANSTF as the working arms of a regionally coordinated program. They bring together States and their partners to discuss regional issues and coordinate work activities. The Service annually provides $50,000 to each Regional panel.

The Service also has representatives actively participating on State and Territorial Invasive Species Councils. For example, a Cross-Program Invasive Species Team includes Fish and Wildlife Service representatives on every State Invasive Species Council in the Pacific Region. In addition, the Service has worked with AFWA (Association of Fish and Wildlife Agencies) on specific invasive issues. The Service also has six Invasive Species Strike Teams (ISST) located in the Pacific Islands, Southwest and Lower Colorado River area, Oklahoma and Texas, Upper Missouri/Yellowstone/Columbia River, North Dakota, and the Florida Everglades.

McCollum Q2: Does Fish and Wildlife Service need additional statutory authority to better address plant, insect, and aquatic invasive species? If so, what?

Answer: Recognizing the invasive species threat, the limited tools that are available, and the need to take proactive action, the Service is conducting an internal review of recommendations to address the current regulatory tools under the injurious wildlife provisions of the Lacey Act. If the Service determines that additional authority is necessary, it will convey that information.

McCollum Q3: How does the Fish and Wildlife Service Strike Team handle invasions on adjacent private land?

Answer: Currently, the Service has six Invasive Species Strike Teams (ISST) located in the Pacific Islands, Southwest and Lower Colorado River area, Oklahoma and Texas, Upper Missouri/Yellowstone/Columbia River, North Dakota, and the Florida Everglades. The ISST program mission seeks to contribute to the restoration and maintenance of native plant and wildlife communities on refuge lands and neighboring landscapes by reducing impacts from invasive species. In some cases, ISSTs assist neighboring landowners to manage invasive species through education and project partnerships.

In Florida, the Partners for Wildlife and Private Lands program addresses invasive species control on adjacent lands. Also, the multi-agency Florida Invasive Species Partnership (FISP), on which the Service has a committee representative, has been instrumental in forming regional Cooperative Invasive Species Management Areas (CISMAs). Most of the regional CISMAs, when requested, have conducted field workdays in some regions on adjacent private lands. There are some limitations on agency personnel conducting field work on non-agency lands and some personnel are prohibited from doing so, but FISP is trying to develop standard operating procedures to permit such activities in case of injury, liability, etc. that may occur on private land.

The New Mexico Invasive Species Strike Team is developing closer relations and looking for opportunities to work with Partners for Fish & Wildlife, State Wildlife granting programs, and other natural resource protection and improvement programs (based on above mentioned landscape analysis of threats being developed for priority work, Early Detection and Rapid Response) to work on adjacent and/or priority private lands. Outreach to landowners is beginning to be coordinated with the local Soil and Water Conservation Districts, local weed districts, and NRCS.

McCollum Q4: Do you think that the Fish and Wildlife Service Invasive Species Strike Team is something that can be replicated in other federal agencies and possibly state and local agencies?

Answer: Invasive species pathways go beyond refuge boundaries and across borders. The Fish and Wildlife Service does collaborate with State, local and tribal agencies to identify shared invasive species concerns and work cooperatively to solve them.

There has been some discussion of possibly forming a DOI Strike Team - combining a NPS-Exotic Plant Management Team and a FWS- Invasive Species Strike Team within Florida. The combined team would work with Everglades Restoration and other serious invasive species problems in South Florida. An Everglades Invasive Species Strike Team would better coordinate invasive species activities in South Florida in a cost efficient manner.

The Florida Fish and Wildlife Conservation Commission - Invasive Species Management Section (STATE) and Palm Beach County-Environmental Resource Management both have implemented invasive vine strike teams as of the early 2000s. Utilization of these 'Teams' is

dependent upon target species, density (infestation levels) and infestation acreage, and has been successfully implemented in Florida at the State and County levels.

The ISST in New Mexico is modeled after the NPS Exotic Plant Management Team, but with improved capacity for Inventory and Monitoring and analysis of treating invasive species on the larger landscape. One benefit to the FWS team is that the crew returns yearly to the sites treated which develops a stronger sense of changes on the landscape (yearly climate patterns, land use changes, etc.) so the team can assist refuge management in addressing invasive issues in a concerted way.

International Program/Law Enforcement

McCollum Q5: Mr. Ashe, what is the Fish and Wildlife Service doing to stop the illegal trade and slaughter of African Elephants and Rhinos, both abroad and here in the United States?

Answer: The poaching rates of African elephants and rhinos for ivory and horn exceed the levels before the ban on new ivory trade. The U.S. Fish & Wildlife Service (Service) is committed to working across federal agencies with foreign governments, international organizations, nongovernmental organizations and the private sector to curb the illegal trade and protect these iconic species. Increasingly, we are striving to address this problem throughout the trade chain, which includes focusing on demand reduction in key consumer countries. We approach the conservation of elephants and rhinos through four different points of intervention: in situ activities to protect the species and their habitats in the African range states; focusing coordinated international attention and action through the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); addressing illegal wildlife trade through coordinated law enforcement activities; and measures to control and reduce the demand for illegal wildlife products in consumer countries, especially in Asia.

The Service has developed strong partnerships around the globe and established itself as a leader in the fight against wildlife trafficking. Within the Multinational Species Conservation Fund, the African Elephant Conservation Fund and the Rhino Tiger Conservation Fund, both administered by the Service, provide range states with financial assistance for essential protection activities, including anti-poaching efforts. The Service is the world's premiere wildlife law enforcement agency with a long history of conducting highly successful investigations of international wildlife trafficking. In 2011, the Service launched Operation Crash – an ongoing nationwide and international investigation of rhino horn trafficking that has already secured 13 arrests, six convictions, and the seizure of more than 40 rhino horns and horn products, more than $1 million in cash, and $1 million in gold. At the recent 16th Meeting of the Conference of the Parties to CITES, the United States delegation, led by the Service, played a major role in the development of decisions and actions to strengthen controls on illegal trade in ivory and rhino horn and hold countries accountable for their implementation. The 2014 budget request for the Multinational Species Conservation Fund provides critical support for these actions.

McCollum Q6: What can the Fish and Wildlife Service Office of Law Enforcement do to help other countries do a better job of combatting illegal wildlife trade?

Answer: Recognizing this need, the FY 2014 budget request includes funding to provide for better support to other countries in combatting the illegal wildlife trade with the proposed agent/attaché program. This agent/attaché will function on a regional basis to create, maintain, and utilize government-to-government relationships to combat wildlife crime and build wildlife crime enforcement capacity in the host country and region.

Wildlife trafficking is increasingly a transnational crime involving illicit activities in two or more countries and often two or more global regions. Wildlife crime is a threat not only to global environments and ecosystems but also to international stability, the rule of law, and civil society. Cooperation between nations is essential to combat transnational crime.

Research studies conducted over the past 10 to 15 years have documented the effectiveness for U.S. and other national law enforcement agencies of stationing liaison officers overseas where they can facilitate inter-organizational relationships and provide a consistent communication mechanism with both governmental, international, and NGO entities. Foreign attaché programs for agencies with international investigative responsibilities such as the Federal Bureau of Investigation, the Drug Enforcement Agency and Immigration Customs and Enforcement have proven effective. They have also been used effectively by other countries such as Australia and New Zealand. The Service's proposed program would provide agents to plan, conduct, and coordinate investigations of complex and highly sensitive transnational crimes with officials from one or more other countries and multiple agencies or levels of foreign and U.S. government. Attachés will serve as an official Service representative to foreign governments and organizations. They will identify and address training deficiencies in wildlife crime enforcement within the region, eliminating the need for the Office of Law Enforcement to staff and send training teams overseas as has become standard practice.

Budget Reductions

Mr. Ashe, the Fish and Wildlife Service has been asked to do more with less for years.

McCollum Q7: What impact has the long-term reductions in Fish and Wildlife Service funding had on the agency's ability to fulfill its mission?

Answer: Realizing we are operating in times of constrained budgets, the Service has focused resources on our highest priority projects and worked cooperatively with partners to leverage funding and resources whenever possible to achieve our conservation mission.

The Service has a backlog of permitting and other approvals needed to clear economic development and energy projects. We are currently operating significantly below our request levels for these activities. In particular, renewable energy projects are a major portion of our increasing workload. Renewable sources of energy are supplying an increasing portion of our energy needs. In 2012, new wind energy generating capacity represented 44 percent of all new energy capacity in the U.S.—more than coal and nuclear generation combined. Energy

development is a strategic priority for the Department, and the Nation, as the Service seeks to address economic, environmental, and national security challenges related to energy production and use. These activities have a direct impact on fish, wildlife, plants and their habitats, and have the potential to affect public recreational opportunities and experiences on national wildlife refuges. In terms of the Department's goal to "…increase approved capacity for production of renewable (solar, wind, and geothermal) energy resources on Department of the Interior managed lands, while ensuring full environmental review…" the Service has a clear role in providing environmental review, especially in the area of Endangered Species Act compliance. The Service's ability to conduct consultations and planning activities are critical to ensuring that the Nation can expand the production of renewable energy and create jobs without compromising environmental values.

Equally, recovery of threatened and endangered species is a Service priority. Human demands on the environment combined with environmental stressors are creating an urgent need for conservation actions. The scale of issues and challenges we face is unprecedented. Without additional funds for recovery, and in particular for on-the-ground recovery projects, species will remain on the list longer, costs to recover species will be higher as time passes, and overall we will invest more to achieve the same outcome.

The National Wildlife Refuge System (NWRS) comprises approximately 150 million acres of land and waters, including 54 million acres of submerged land in six Marine National Monuments. These lands and waters provide habitat for species of fish, wildlife, and plants, and sanctuary for hundreds of threatened and endangered species, and secure spawning areas for native fish. With nearly 300 listed species located in or around units of the NWRS, the ecosystem surrounding refuges provide important habitat for listed species, and can provide essential connectivity for species conservation. Funding for these programs is limited, and the Service could accomplish much more with additional funding.

Fundamental to the Service's ability to make good decisions as a natural resource agency is sound science. Current budget cuts have eroded our ability to fund science to back up our decision making.

We need funding to support applied science directed at high impact questions surrounding threats to fish and wildlife resources, and to provide the answers needed to manage species to healthy, sustainable, desired levels.

Endangered Species

Herrera Beutler Q1: Mr. Ashe, can you provide an update on the many FWS ESA listings driven by the legal settlement in WildEarth Guardians v. Salazar…especially where there are some differences in scientific opinion on the need for such listings, such as in Washington State over the proposed listing of the Mazama Pocket Gopher? Have you approved the extensions of time requested for these circumstances, and if not, why not?"

Answer: Section 4(b)(1)(A) of the Act requires that listing determinations be made on the best scientific and commercial data available after taking into consideration any efforts made by States, local jurisdictions, and others to protect or conserve a species or its habitat. Following the publication of a proposal, a 60-day public comment period is opened to allow the public to review and comment on the proposal, including the underlying data, analyses and conclusions. Following, a final listing determination is to be developed within one-year of the publication of the proposal that takes into consideration any relevant, substantive information provided by the public during the comment period or that otherwise has become available. The determination in the final rule can be one of the following: (1) finalize the determination, (2) withdraw the proposed determination, or (3) invoke the statutory extension of up to six months if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination. If the statutory extension is invoked, then a new comment period will be opened to inform the public of the extension. That notice will include a request for specific information concerning the issues of disagreement and there needs to be a reasonable likelihood of resolving the disagreement within the time period. Most recently, the Service has invoked this six month extension for the dunes sagebrush lizard to evaluate and analyze additional scientific information that became available during the public comment period on the proposal.

With regards to the final listing determination for the Mazama pocket gophers, the Service is currently considering the information provided through the public comment period and from other sources concerning the species. At this time, there has been no decision to invoke the six month statutory extension for the listing determination. If it is determined that there is substantial disagreement regarding the science used in the listing determination, then the Service may invoke the extension.

Oil and Gas Leasing

Programs such as the NAWCA and LWCF have provided resources to help us protect and conserve land, and I wish to keep these programs adequately funded moving forward. However, I've heard from the non-profit sector that there is confusion within the FWS about how to deal with oil and gas leases. Fish and Wildlife funds are not being utilized in some areas of the country with oil shale deposits. I believe that it's in our national interest to find domestic sources of oil and gas, and as far as I know, no one has presented strong evidence that horizontal drilling which takes place thousands of feet underground will impact the habitat, breeding grounds and wetlands on the surface level.

Joyce Q1: Can you discuss what actions the FWS is taking to clarify the confusion that organizations are facing when it comes to leases for oil and gas drilling?

Answer: FWS has review responsibility for oil and gas development outside of National Wildlife Refuges, if there are trust resources issues (e.g., threatened or endangered species, migratory birds, bald and golden eagles, impacts to plants or wildlife on Wildlife Refuges). For example, under Section 7 of the Endangered Species Act, Federal agencies must consult with the Service when any action the agency carries out, funds, or authorizes (such as by issuing a permit) may affect a listed endangered or threatened species. The FWS Endangered Species program provides formal and informal consultations, including recommendations to avoid, minimize or mitigate the effects of oil and gas development on threatened or endangered species.

FWS is conducting a national assessment of oil and gas activity on National Wildlife Refuges (both private and Federal minerals) and evaluating the environmental effects. Preliminary data analysis indicates there are over 7,000 wells (including active and inactive oil and gas wells, disposal wells) and over 3,000 miles of pipeline across 260 refuges. Of those 7,000 wells, there are about 2,000 active wells that occur on 124 National Wildlife Refuges. Most of these wells are associated with private mineral owners that have a right to develop their resources.

Over the last 10 years, FWS developed training, official guidance (i.e. handbooks) and provided support to field staff to best allow oil and gas development while limiting its effect on wildlife resources and the public's enjoyment of refuges. Current efforts to clarify oil and gas management include exploring revisions to existing regulations for permitting private minerals development on refuge lands, and establishing a Memorandum of Understanding with the Bureau of Land Management on leasing of Federal minerals associated with refuges.

Invasive Species

Joyce Q2: Can you give us an update on what preventative actions the FWS is taking on invasive species, particularly Asian Carp, and how funds from this budget are being used in conjunction with other agencies also working to prevent Asian Carp from entering the Great Lakes?

Answer: The Service is working with State, provincial, U.S and Canadian Federal, and other partners in the Great Lakes basin to prevent the establishment of Asian carp. These actions are

conducted through goals specified within the Great Lakes Restoration Initiative (GLRI), GLRI Asian Carp Framework, and base allocations operating under the aegis of the National Asian Carp Management and Control Plan. For FY 2014, the Service is requesting an increase of $5.9 million from FY 2012 enacted for Asian Carp. The Service will build upon our initial investment of funds in FY 2012 for work inside the Great Lakes and continue work initiated in FY 2013 for Asian carp activities outside the Great Lakes. The goal of the activities outside the Great Lakes is to prevent Asian Carp from continuing their spread into new areas where they can alter the existing ecosystem and cause harm.

Included in the requested increase is $903,000 to support critical monitoring, prevention and control actions in the Great Lakes as identified in the Asian Carp Control Strategy Framework.

Inside the Great Lakes, the Service also continues:

- Using environmental DNA (eDNA) to monitor the Chicago Area Waterway System to document Asian carp potential range expansion and life stages present, for implementing a comprehensive early detection and rapid assessment surveillance program for areas of high concern in the Great Lakes, and for combining with traditional sampling gears to support integrated pest management for incipient invasions.
- Increasing Lacey Act enforcement of illegal transporting of live carp to minimize risk.
- Continuing public outreach and education to inform and engage the public in helping reduce the risk of Asian carp spreading.
- Working with the States of Illinois and Indiana through cooperative agreements to implement the Asian Carp Framework; and,
- Supporting approved State and Tribal Aquatic Invasive Species Management Plans that address Asian carp and other invasive species issues.

Bay Delta Conservation Plan

Valadao Q1: The Bay Delta Conservation Plan (BDCP) addresses problems that are vitally important to the State and nation. With the change in leadership at Interior, do you see the Administration and Fish and Wildlife Service maintaining it as a high value, high priority initiative? If not, why?

Answer: The Fish and Wildlife Service agrees that the resource conflicts and environmental degradation of the Bay Delta are critical problems of vital importance to the State and nation. The Service will remain committed to helping our State partners develop a sound and defensible Bay Delta Conservation Plan. We will continue to provide technical assistance and policy level support as we work through the critical technical and regulatory issues of the permit. The Service's Bay Delta Fish and Wildlife Office was created to support the State and Federal water projects and will continue to provide staff and expertise needed to ensure that Federal and State Bay-Delta initiatives are successful.

Valadao Q2: The Administration has been ardent about science leading decision making but, on many issues, science has failed to deliver a clear answer and decision making has been stymied. How would you propose to make decisions in the face of scientific uncertainty when maintaining the status quo is simply untenable, such as in the California Bay Delta? What do you see is the potential for problem solving through scientific collaboration between federal agencies, state agencies, and other regional or local interests with appropriate expertise?

Answer: Conservation questions can be complex and difficult to answer to a high level of certainty. Estuarine conservation studies, in particular, often require the simultaneous engagement of multiple scientific disciplines and considerable time for modeling, field work, and analysis.

The Service agrees that decisions about the Bay Delta need to be made. The present situation is unsustainable. Because of this, we consider adaptive management to be essential to efforts to manage the Bay-Delta system. Adaptive management provides a widely accepted means to make initial decisions while actively collecting information to improve those decisions, including permitting decisions. Adaptive management in the Bay-Delta context would allow the agencies and stakeholders to collaboratively explore new management approaches that have the potential to more efficiently deliver water for beneficial uses while contributing to the recovery of native fish, and otherwise preserving the unique natural legacy of the Bay Delta.

The Service is committed to collaborative science and adaptive management for the Bay Delta. The Service is taking a lead role along with the other Federal and State agencies to engage other interests in a new collaborative science effort. A truly collaborative approach to science in the Bay Delta should accelerate efforts to identify more widely acceptable solutions to management challenges. Our recent progress assessment of the BDCP highlighted the substantial progress California has made on revisions to the plan. In addition to remaining technical and analytical issues, we identified a few remaining concerns related to how the plan incorporates adaptive management. When the plan adaptability issues are resolved, the Service will be confident that

the BDCP has the necessary flexibility to adjust in response to new scientific information, ensuring that the plan will meet its conservation goals.

National Ocean Policy

Recommendations adopted in Executive Order 13547 stated that Coastal and Marine Spatial Planning will require "significant initial investment of both human and financial resources," and in early 2012 the National Ocean Council noted that federal agencies had been asked to provide information about how "existing resources [can] be repurposed for greater efficiency and effectiveness" in furtherance of the National Ocean Policy. Furthermore, according to the Interior Department, U.S. Fish and Wildlife Service officials in the Alaska, Caribbean, Great Lakes, Gulf of Mexico, Mid-Atlantic, Northeast, Pacific Islands, South Atlantic, and West Coast regions have been involved in Coastal and Marine Spatial Planning activities.

Valadao Q3: Please describe how many USFWS resources and personnel have been directed toward activities specifically in support of the National Ocean Policy to date, and how many resources and personnel are being requested to support such activities in the FY 2014 budget request.

Answer: While the U.S. Fish and Wildlife Service will devote approximately $245.8 million in FY 2014 to activities related to Oceans, the Service has no dedicated resources for work on the National Ocean Policy. Several U.S. Fish and Wildlife Service personnel have been and are currently working on activities that relate to the National Ocean Policy since some existing activities fall under the policy; however these positions are not dedicated solely to implementing the Policy. Many of the activities these staff undertake would be conducted irrespective of the Policy. No additional financial or human resources are being requested in the Service's FY 2014 budget to support the National Ocean Policy. For example, Regional Service staff are supporting Federal interagency working groups that are evaluating opportunities to conduct marine planning in the mid-Atlantic region.

Valadao Q4: Please describe the USFWS response if any to the National Ocean Council inquiry about the repurposing of existing resources, and any actions that USFWS has taken or plans to take in this regard.

Answer: The National Ocean Council has not asked the U.S. Fish and Wildlife Service to repurpose existing resources to accomplish actions in support of the National Ocean Policy.

Section 6(b) of Executive Order 135474 that established the National Ocean Policy in July 2010 requires "[e]ach executive department, agency, and office that is required to take actions under this order shall prepare and make publicly available an annual report including a concise description of actions taken by the agency in the previous calendar year to implement the order, a description of written comments by persons or organizations regarding the agency's compliance with this order, and the agency's response to such comments."

Valadao Q5: Pursuant to this requirement, has USFWS been asked to prepare and/or actually prepared a summary of such activities for calendar years 2010, 2011, or 2012?

The recommendations adopted by the National Ocean Policy Executive Order state that effective implementation will require "clear and easily understood requirements and regulations, where appropriate, that include enforcement as a critical component." In addition, the Executive Order requires federal entities including the Interior Department to implement the policy to the fullest extent possible. At the same time, the National Ocean Council has stated that the National Policy "does not establish any new regulations or restrict any ocean uses or activities."

Answer: The actions in the National Ocean Policy Implementation Plan are assigned to the Cabinet-level members of the National Ocean Council, including the Department of the Interior. The bureaus in the Department of the Interior, including the U.S. Fish and Wildlife Service, are supporting the Department's implementation of the National Ocean Policy. Since 2010, the National Ocean Council Office within the Council of Environmental Quality has periodically asked the Department to report on activities that support the National Ocean Policy, and the Service contributed information to reports such as the Federal Ocean and Coastal Activities Report to the U.S. Congress.

Valadao Q6: What if any commitment can you make that USFWS will not issue any regulations or take any actions having a regulatory impact pursuant to the National Ocean Policy, including Coastal and Marine Spatial Planning?

Answer: The U.S. Fish and Wildlife Service has no plans to take any actions in support of the National Ocean Policy or marine planning that would have a regulatory impact and it does not anticipate that such actions will be necessary.

U.S. House of Representatives
Committee on Appropriations
Subcommittee on Interior, Environment, and Related Agencies
Budget Hearing: National Park Service
April 12, 2013
B-308 Rayburn HOB

Questions for the Record – Director Jonathan Jarvis

Questions from Mr. Valadao

The National Park Service is currently taking public comments on the Merced Wild and Scenic River Draft Comprehensive Management Plan and Environmental Impact Statement. The Service's preferred alternative retains significant recreation experiences, but also proposes the closure of the Curry Village ice skating rink, the bike rental facilities and several other structures, facilities many of my constituents and their families have enjoyed for many years. I encourage you to continue working with the public to identify how to preserve these uses in the Final Plan.

Valadao Q1: I understand, due to the amount of information included in the draft management plan and Environmental Impact Statement, the Service has been contacted by members of the public asking for an extension of the comment period. Has the Service begun to consider those requests for and extension? And do you intend to grant the extension?

Answer: We agree that Yosemite National Park (Yosemite) is one of the crown jewels of the National Park System and believe that thorough public input is a fundamental and important component of long-term park management. Yosemite's process to notify and inform the public, partners, stakeholders, and gateway communities about this planning process has, we believe, been robust, transparent and inclusive. The National Park Service (NPS) has conducted over 50 public meetings on this planning effort, including ten specific meetings on the proposals in this draft plan. In addition, the comment period was set at 100 days which is 40 days longer than required by policy.

As of April 15, 2013, the NPS has received over 22,000 comments on the draft documents. This is 10,000 more comments than received during the previous comment periods on previous Merced River planning efforts.

We extended the comment period until April 30, 2013, which provided additional time for the public to review and respond. Information about this extension has been sent to the public and media. The NPS is under a court-ordered settlement agreement to complete the final plan by

July, 2013, which prevents us from extending the comment period beyond April 30, 2013. To change that date would require agreement from the Merced River Plan plaintiffs and the settlement agreement judge.

Sports Facilities in the National Capital Region

Valadao Q2: Given the difficult fiscal climate and the always high demand for athletic field access, have you instructed your staff to develop community partnerships that support the maintenance of athletic fields in the Park Service's National Capital Region?

Answer: The National Mall Plan, released by the Park Service in 2010, noted that "portions of West Potomac Park will forever be a public park for the recreation and enjoyment of the people," and confirmed that at the park "Opportunities will be improved for active sports." As the Let's Move Campaign emphasizes, active sports are essential to healthy childhood development, and I want to encourage the Park Service to seek new ways to help children be active. Unfortunately, given the difficult fiscal climate, it may be difficult for the Park Service to fund capital improvements for active sports on its own. I understand that organized sport clubs in the National Capital Region have consulted Congress, the District of Columbia government, and the Park Service in an effort to provide such capital improvements that would better accommodate their sports and improve field conditions for all users of the facilities.

Valadao Q3: What steps has the Park Service taken to take advantage of offers of privately supported capital improvements such as these?

Answer: Within the last two years, groups such as the Columbia Doubles Volleyball, the Aussie Football Club, George Washington University Athletic Department and a cricket club have requested exclusive use of fields in exchange for providing turf rehab and volunteer services through a partnership. These groups have been advised that the National Mall and Memorial Parks (NAMA) must provide field use opportunities to all users and that the park stands ready to work with them on improving the fields, so long as they realize that the National Park Service cannot grant any right of exclusive use to said fields. Granting exclusive use to any party for these recreational fields would not best serve the public.

Most recently, NAMA has met with the Aussie Football Club and George Washington University, and are exploring all options available to engage their support. The NPS hopes to work collaboratively with partners to improve fields for all users.

U.S. House of Representatives
Committee on Appropriations
Subcommittee on Interior, Environment, and Related Agencies
Oversight Hearing: Indian Education
February 27, 2013
B-308 Rayburn HOB

Questions for the Record for Mr. Washburn

Questions from the Subcommittee

Simpson Q1. As the Congress is demonstrating perfectly this week, once laws are enacted they are difficult to change. The same is generally true of Appropriations law, even though new bills are written annually.

A tribe recently brought to our attention the real-life impacts of language this subcommittee has carried since fiscal year 1995, prohibiting the expansion of grades at existing schools.

The language forces this particular tribe to bus its 6th grade students off-reservation to the nearest public school—for just one year—before returning to school on the reservation for 7th through the 12th grade. Common sense tells us this isn't fair, and that it is an unintended consequence of the law.

What are the consequences of simply removing this prohibition in the fiscal year 2014 bill?

Answer: The extent of the consequences of removing this prohibition are largely unknown beyond anticipating that it would create increased costs for staffing, school operations and maintenance. If budgetary limits remain the same without a corresponding increase for expanded grade levels, then existing budgets must absorb the costs, which would affect all school operations.

Is the solution to modify the language to give you the authority to grant waivers for situations such as these?

Answer: One solution would be to modify the language to provide the authority to grant waivers in cases where circumstances with the existing schools have changed and it is necessary to re-scope services to advance education goals and to meet local needs. Another solution would be to modify the appropriations language on a case by case basis to address specific exceptions to the current language.

Simpson Q2. How would you characterize the state of Indian education today?

Answer: There is currently a significant opportunity to improve Indian education. There has been a convergence of initiatives that makes the future outlook for Indian education optimistic. The development of Common Core State Standards affords all American Indian and Alaska Native students enrolled in BIE-funded schools the opportunity to be taught at a common

standard. Because of such standards, schools, states and the BIE are taking a systematic approach to improving learning. This means a focus on the fundamentals of instruction and not simply on the latest programs. Tribes are also in a better position to be partners in the education of tribal members. There is a long way to go, but more people are on the same page than ever before.

Simpson Q3. What grade would you give the Department of the Interior in terms of how well it is doing its job delivering a quality education?

Answer: With regards to the dedication and service provided by our teachers and supporting faculty staff, BIE earns an "A" in their unyielding commitment to providing a quality education to our students. These dedicated public servants give their all each school day in striving to do their best to help each student establish a learning foundation to achieve future dreams. The challenges facing most of Indian Country, including poverty, substance abuse and crime are contributing factors that lower grade rankings. We provide a quality education but the benchmark is having schools make the Adequate Yearly Progress, and by that measure, BIE needs improvement.

Simpson Q4. In addition to "supporting the President's budget", what are the two or three things that this subcommittee can do to help you succeed in leading the organization?

Answer: Thank you for the subcommittee's offer to help us succeed. We appreciate the Subcommittee's interest in Indian Education and would first ask that we continue to keep our lines of communication open on how best to improve Indian Education. As we undergo our independent evaluation, new ideas may be presented that could greatly improve our organization. In addition, it is anticipated that the tribes will take over several more schools in the next several years, which will provide additional opportunities to make changes to our structure.

Simpson Q5. The 1999 National Academy of Public Administration report on the BIA, and the 2012 "Bronner" report on BIA and BIE administrative support structure identified significant shortcomings in the administration of the BIA and BIE. What changes were made or are you considering making as a result of these two reports?

Answer: The 1999 NAPA study included many recommendations to help strengthen the delivery of administrative services to all organizational components of Indian Affairs. The core of these recommendations was to eliminate the decentralization of functions at many levels of the organization structure and centralize these functions to maximize resources to address many of the findings in the NAPA study identified as lack of internal controls. This was achieved and made a significant difference in the delivery of administrative services and the ability of Indian Affairs to meet its federal reporting obligations.

Yet as with any effort, there is always room for improvement and to address the changing needs of today. Recognizing this, Indian Affairs called for a follow up study to evaluate the effects of the changes following the 1999 report. This follow up study, commonly referred to as the Bronner report, focused on providing a balanced approach that seeks to maintain the centralization of some responsibilities pertaining to such areas as policies and procedures and

internal controls, while decentralizing other functions to Senior Managers in the field. Efforts are ongoing within the agency to make final determinations on implementation of such changes in the management of administrative functions.

How are you consulting with Tribes on these changes?

Answer: Pursuant to the Executive Order 13175, Consultation and Coordination with Tribal Governments, Tribal consultations were conducted at seven sites across the nation during April and May, 2012 on the findings of the Bronner study. Information was made available to Tribal leaders on the study, requesting their input. In addition, Indian Affairs had information available on its website to the general public on the Study and the consultation sessions.

What other sources of expertise outside of the agency and the Tribes do you intend to enlist to help the agency through future organizational change?

Answer: The Assistant Secretary - Indian Affairs has requested input from all national Tribal organizations on organizational changes; if specific programmatic needs are identified, the agency will obtain professional services from third parties specializing in the target area(s.)

Simpson Q6. In your view, what are the primary factors contributing to the significant turnover in leadership among the different offices within Indian Affairs

Answer: Departures from positions in any organization are largely personal in scope as each individual decides what is best for him/her in the pursuit of career aspirations. Further, agency positions located in certain locations in Indian Country are viewed as not the most desirable for a number of reasons. There is an inherent tension within those who leave Indian Country and move to Washington, DC. For example, the best field personnel have through the years turned down job opportunities in the Nation's Capital as they prefer life outside the Beltway or quickly left Washington, DC for the same reason. In addition, some employees have expressed frustration with the pace of "getting things done" in Washington, DC.

Simpson Q7. We are aware that OPM and the Bronner Group have conducted surveys of Interior's Indian Affairs' employees that have shown low morale and a lack of confidence in leadership.

How does Indian Affairs use the results of these surveys to identify specific areas for improvement?

What actions, if any, have you taken to improve employee morale issues?

Answer: The Bronner Group's surveys helped focus Indian Affairs on areas needing improvement, such as improved or more detailed policies and procedures for the field. Improved daily management oversight of staffing in the field was also another finding from the survey.

These findings provided the scope for the framework in which to focus the Bronner recommendations for an improved organization from the ground level up to top management.

One of the key areas recognized as making a difference in employee morale was to improve our communication with employees. Through updated websites and increased internal communication such as email to employees from the Assistant Secretary – Indian Affairs, we've taken steps forward in keeping employees abreast of changes and events in Indian Affairs.

Simpson Q8. To what extent has Indian Affairs identified BIE's workforce needs and determined whether it has the appropriate number of staff with the requisite skills to support BIE's mission?

Answer: Within BIE itself, the last DOI Workforce Analysis conducted was issued in 2001. A new analysis will be conducted for BIE as schools continue to go into grant status under P.L. 100-297, which affects the size of the Federal workforce. The Bronner Study also interviewed a large sector of BIE personnel during its development, whereby these employees expressed their needs in achieving program goals concurrent with support from the administrative support functions. BIE staff are actively participating with staff from the BIA and Office of the Assistant Secretary – Indian Affairs (ASIA) to further hone the needs of the organization to improve the delivery of administrative support services. This is a critical step in the planning and management of BIE programs and there is room for improvement in this area. Workforce analyses should be done continually depending on student enrollment and the critical needs of students.

Simpson Q9. How does Indian Affairs involve BIE and its schools in its strategic planning process?

Answer: BIE leadership provides BIE's views by directly participating in the strategic planning process, including development of the strategic plan. When appropriate, BIE also communicates the views of BIE schools and other stakeholders gathered through locally-based interactions. In particular, the Department of the Interior, in establishing its Strategic Plan for Fiscal Years 2011-2016, incorporated the views of its stakeholders, including Tribes and the agencies (e.g. BIE) themselves. The strategic plan mission area to Advance Government-to-Government Relationships with Indian Nations includes a component on strengthening Indian education and uses performance measures that include measuring how BIE schools achieve AYP, a key focal point for BIE in evaluating the quality of education it provides to our students. In addition, BIE needs to further enhance its strategic planning through the further use of performance management and will explore this option. Strategic plans and outcome goals need to be reviewed on a regular basis with the active use of measures to manage and make decisions.. Further, funds are requested ($2 million) in the FY 2014 President's Budget Request to conduct an independent evaluation of BIE; this will greatly assist in determining the current state and options for future direction of BIE.

Simpson Q10. What steps has Indian Affairs taken to develop performance measures to gauge the effectiveness of its reorganization of administrative functions?

Answer: BIE is looking to enhance its use of performance management as it evaluates it administrative functions. Indian Affairs is currently in the development phase of implementing some of the Bronner recommendations. One of the considerations to have in place to evaluate the effectiveness of any realignment is the development and execution of performance measures for the delivery of administrative support functions. In addition, the FY 2014 President's Budget includes funding ($2 million) for an independent evaluation of the BIE to help assess the current state of effectiveness and possible options for the future.

Simpson Q11. Why are there three different entities within Indian Affairs responsible for facilities construction and maintenance? What effect does this have on efficiency and oversight of this function?

Answer: Although George A. Scott, Director of the GAO's Education, Workforce and Income Security Issues, testified before the Subcommittee on February 27, 2013 and noted that there were three entities with responsibilities for construction and maintenance within Indian Affairs, the Office of Facilities Management and Construction (OFMC) has the delegated responsibility for the construction program on the whole. OFMC works in partnership on construction improvement and repair and operation and maintenance with the Bureau of Indian Affairs and the Bureau of Indian Education to determine priorities and the needs of the respective programs.

Simpson Q12. This subcommittee has been pushing for several years now for the agency to update its construction list so that, when we've completed the projects on the 2004 list, we can begin to invest in projects on the new list. When will you release a new Construction Priority List?

Answer: Indian Affairs (IA) is reviewing and testing the ranking criteria recommendations put forth by the No Child Left Behind (NCLB) committee report. Once the criteria testing are complete and the NCLB evaluation process is approved, IA will move forward with implementing procedures to develop a new Construction Priority List. We anticipate the process will require approximately six months to establish a new list. The schools on the list will then be presented at a public meeting for feedback before a final priority ranking list is approved.

In addition, the FY 2014 President's Budget requests $2 million for a major, independent evaluation to determine the structure and needs of the overall school system. The results of the study may inform the construction priority list.

Simpson Q13. To what extent are there protocols in place to help schools know which office in Indian Affairs to contact for questions regarding administrative support, such as requests for facilities' repairs?

Answer: The Office of Facilities Management and Construction has published processes and procedures for Minor Improvement and Repair including the Emergency reimbursement program. The schools are provided administrative support from their Agencies and Regional facilities program to request funding for repairs and technical assistance.

Simpson Q14. To what extent has Indian Affairs explored alternative models for how it provides administrative support to BIE schools?

Answer: The current effort underway is following up on the Bronner Study recommendations. The focus of the recommendations is to improve and decentralize administrative services functions to not only improve the organization as a whole but to also improve the delivery of services to its stakeholders. The Bronner Study examined peer agencies' administrative operations to evaluate other support service delivery models that could be used to assist in meeting the challenges of Indian Affairs. In addition, the FY 2014 President's Budget requests funding for an in-depth, independent review of the BIE school system, which can look at alternative models.

Simpson Q15. What mechanisms are in place to ensure close coordination and communication among BIE and the other offices within Indian Affairs responsible for serving BIE schools?

Answer: This is an area which will be more formalized as some of the Bronner Report recommendations are implemented such as in the area of Service Level Agreements and increased efforts to strengthen the working partnership between the various layers of the organization.

Simpson Q16. To what extent does Indian Affairs have performance measures in place to track the amount and quality of services it is providing to BIE schools?

Answer: Indian Affairs (IA) has annual GPRA performance measures to ensure progress in correcting deferred maintenance backlogs at schools. Indian Affairs also has annual Internal Control Reviews to establish action plans, when needed, to address identified issues in providing services to BIE schools. Efforts also are underway to develop and implement more performance based reporting to enhance the administrative services for BIE.

Simpson Q17. The Family and Child Education (FACE) Program within the BIE is an early childhood/parental involvement program designed to provide culturally responsive education, resources and support for American Indian families with children from birth to five years of age.

Do you consider home literacy, parent engagement, and early childhood education - overall early interventions that target the whole family – to be a key intervention strategy to increase the educational outcomes for the populations that you serve?

Answer: A study of impacts of the FACE program revealed that children whose mothers did not have a high school diploma at the time of their child's birth and who participated in the FACE program enter school with average preparation for kindergarten. Children whose mothers did not have a high school diploma and who did not participate in the FACE program enter school with below average preparation. Below average preparation equated to a reading score that is 1.5 standard deviations lower than the average performance. This is a sizable gap at school entry that presents a formidable challenge for early elementary education in BIE schools when children and parents do not receive early education services; however, not all children in the FACE program attend the BIE schools. Additionally, there are no studies that have longitudinal

analysis of the effects of FACE on students in later years. This is a key missing piece of the strategy.

Do you have plans to expand the FACE program into other sites?

Answer: The Bureau of Indian Education currently has 44 FACE sites in operation. Efforts have focused on maintaining the programs with high expectations of implementation, fidelity to the FACE model, and accountability. There are currently no plans to expand the FACE program.

Are there any plans to expand the program into the elementary grades given the state of elementary education?

Answer: The FACE program currently supports both components (home and center-based), in locations the program exists, that extend the family literacy/family engagement concept into the elementary school through a Parent and Child Together (PACT) Time component in grades K-3. This parent-child interaction component, supported through research, shows that when parents are more directly engaged in their children's educational processes, children are more likely to achieve academic success.

There are two initiatives currently in process within the BIE that directly address family (parent) engagement in the elementary school – the BIE Striving Readers initiative and the BIE Birth to Age 8 Comprehensive Early Childhood Plan. While the FACE program has had direct connections to both of these initiatives, serving on the committee to write the Striving Readers plan and facilitating the work of the early childhood workgroup, not all FACE children enter into the BIE school system. The guidance provided in the Birth to Age 8 plan for supporting high-quality parent-child interaction (PACT Time) experiences and intentional family engagement to support children's academic achievement in elementary schools, will be available to all FACE and BIE-funded schools in May 2013. Schools will be encouraged to replicate this model and expand family engagement efforts in their elementary schools.

The concept and philosophy of engaging both the adult and young child in a high quality educational setting, simultaneously meeting the educational needs of both is a key ingredient in the success of the FACE program and model.

Will you keep us updated on any possible adjustments, changes or expansions to the FACE program?

Answer: It will be my pleasure to keep the Committee informed of any modifications to the FACE program. BIE maintains a website, FACEresouces.org, for current information about the program.

Simpson Q18. Last June, the Supreme Court issued its final ruling in the case of *Salazar versus Ramah Navajo Chapter*. The Court held that the government must pay each Tribe's contract support costs in full despite the limited appropriations. The BIE budget contains a line item for education contract support costs, which in recent years has only been sufficient to cover an estimated 65 percent of the need.

How will the Supreme Court's *Ramah* decision impact the BIE budget?

Answer: The Bureau of Indian Affairs' Contract Support funds and the Bureau of Indian Education's Tribal Grant Support Funds (previously known as Administrative Cost Grant Funds) are distinct and separate funds in the Indian Affairs appropriations and in the authorization legislation. Therefore, the Supreme Court's Ramah decision will not impact the Bureau of Indian Education (BIE) budget as the Tribal Grant Support Funds are not subject to its order and follow the statutory requirements as outlined below.

Section 1128 (Administrative Cost Grants) of Public Law 100-297, as amended by Public Law 107-110, contains provisions that:

- Establish the administrative cost grant formula.
- Specify that funding for administrative cost grants is subject to the availability of funds.
- Enable tribes and tribal organizations operating BIE-funded schools, without reducing direct program services, to provide all related administrative overhead services and operations.
- Amounts appropriated for the administrative cost grants shall be in addition to, and shall not reduce the amounts appropriated for programs.

The annual Indian Affairs Appropriations also contain the following language that limits the payment of administrative cost grant funds to the amount specified by the Congress:

> "Provided further, That notwithstanding any other provision of law, including but not limited to the Indian Self-Determination Act of 1975 and U.S.C. 2008, not to exceed [dollar amount] within and only from such amounts made available for school operations shall be available for administrative cost grants associated with ongoing grants entered into with the Bureau prior to or during fiscal year 2012 for the operations of Bureau funded schools, …"

Simpson Q19. You testified that you sent a report to Congress about the challenges in school construction, soon after you started as the Assistant Secretary. Please i provide a copy of that report for the record.

Answer: The No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee Report is provided in Attachment 1.

Simpson Q20. You testified that BIE teachers perform as well as teachers at state public schools that serve similar populations with similar challenges. Please provide the information upon which that conclusion is based.

Answer: The information is based upon the data extrapolated from both the 2009 and 2011 *National Indian Education Study* (NIES) conducted through the National Assessment of Educational Progress (NAEP) within the National Center for Education Statistics (NCES). The NIES data addressed teacher performance as it relates to language and culture. In general, the percentage of Bureau of Indian Education (BIE) students responding reported that having some or a lot of knowledge about American Indian and Alaskan Native history and traditions was higher than their peers in public schools.

Simpson Q21. You testified that soon the BIE will only be running about a dozen schools and the rest will be run by tribes directly, and that this increasing proportion of tribally-run schools will be an improvement. How do you know it will be an improvement?

Answer: Self-governance is the principle that important decisions for tribal communities will be made at the tribal level. The Federal Government's increasing adherence to this principle reflects the most successful innovation in Federal Indian policy in 200 years. In education, having tribes run their own schools is an improvement over the status quo in the sense that more decisions involving the education of Indian children will be made at the local level by tribes and their local school boards. This is a true tenet of self-governance, a principle which reflects the single most effective change in policy in the last 50 years of Government to Government relations with Tribal Nations. Additionally, as the BIE transitions from operating schools to providing technical assistance, tribes are transitioning from being passive participants of education to being the driving force in their own education system.

What can this subcommittee do to encourage a greater proportion of tribally-run schools?

Answer: Given that the Navajo Nation will soon be assuming control of 31 schools, the percentage of tribally run schools will increase from 68% to 85%. The BIE will continue to look for ways to encourage the Tribes to contract the remaining schools; however, as we have seen with other programs, some Tribes prefer that the Federal Government provide the services.

Mr. Scott testified that school governance remains an issue and that BIE's influence is limited because most schools are tribally run, which seems to contradict your statement about more tribally-run schools being an improvement. If BIE could exert more influence, would tribally-run schools improve?

Answer: Tribally-run schools improve their ability to provide quality education due to the investment and commitment of "taking care of its own." They are the best decision-makers in recognizing and integrating standard education curriculum with cultural needs such as language immersion classes. While Indian Affairs wholeheartedly supports Tribal sovereignty and the

options provided to Tribes under P.L. 100-297 for operating BIE-funded schools under grants, like other federal statutes, there are at times a conflict of priorities and expectations that do not always coincide. To fulfill the federal mandates under P.L. 93-638, as amended, and P.L. 100-297, it must be recognized that Tribes are empowered to operate schools subject to these laws. Recognizing this authority provided by the Congress to Tribes, BIE works within these parameters.

Simpson Q22. The Cobell v. Salazar class action settlement creates an Indian Education Scholarship fund that is intended to assist Indian students in attending college or vocational schools. Is the amount of money that will be available to Indian students under this fund partially dependent on how quickly and efficiently the Department can repurchase fractionated interests under the $1.9 billion Indian Land Consolidation Program (ILCP), and, if so, why?

Answer: The Department must transfer required funds to the American Indian College Fund quarterly with a public report outlining the number of allottee interests conveyed, the purchase price for each conveyance, and the corresponding contribution to the Scholarship Fund based on the formula as set forth in the Cobell Settlement. Contributions to the fund are based on the payments made for fractionated land interests through the Buy-Back program, according to the Cobell Settlement formula. If the amount of the land purchase is less than $200, $10 will be paid to the holding fund; if between $200 and $500, a $25 transfer will be made; if greater than $500, five percent of the purchase price will be donated to the fund.

The timing and size of the contributions will be based on the pace and amount of land purchased in the consolidation effort. The Buy-Back program's funds expire after a period of 10 years pursuant to the Settlement. In addition to the maximum $60 million that can be used from the Buy-Back program funds, the principal amount of any class member funds in an Individual Indian Money (IIM) account for which the whereabouts are unknown and left unclaimed for five years, after final approval of the Settlement, will be transferred to the American Indian College Fund.

Similarly, any leftover funds from the administration of the Settlement (after all payments under the Settlement are made) will be deposited into the Scholarship Fund. The Scholarship Fund will help students across Indian Country receive a higher education, whether it's through college, graduate school, or vocational certifications. The American Indian College Fund will play an important role in providing Native American students with the post-secondary training and education they need to succeed in the workplace, marketplace, professional fields, and government.

As the recipient organization, the American Indian College Fund will devote the funds it receives to scholarships for vocational certifications, 4-year accredited bachelor degree colleges and universities, including tribal colleges that award such degrees, and graduate degrees.
The American Indian College Fund will be responsible for establishing the eligibility criteria for the award of scholarships as well as for managing and administering the Scholarship Fund.

The Secretary also stipulated that 20 percent of the annual scholarships be awarded by the American Indian Graduate Center to encourage Native American college graduates to strive for

professional and doctoral degrees. The Fund will be overseen by a special five member Board of Trustees - two selected by the Secretary, two selected by the Lead Plaintiff and one selected by the non-profit.

Simpson Q23. You testified about the important role of charter schools in providing diversity and specialization in education, as opposed to uniformity. Do you recommend that Congress continue the appropriations language prohibiting charter schools in Indian Country, and, if so, why?

Answer: Yes, Indian Affairs supports the continuation of this language as included in the President's budget request. In effect, Tribes already have the same options for operating a charter school with the existing authorities for a grant school pursuant to P.L. 100-297. P.L. 100-297 authorizes Tribes to operate BIE-funded schools pursuant to their needs, including curriculum choices such as language immersion courses.

Simpson Q24. Once the next school replacement construction list is published, when and why would it ever change until the last school on the list is replaced?

Answer: The school replacement construction list is an important part of the success of the BIE system. However, we cannot simply rely on the list. Communities need to examine their active enrollments in their schools and determine the best avenue to achieve better outcomes.

The No Child Left Behind (NCLB) committee has recommended that the list be reviewed and validated every five years

If a tribe makes repairs to a school, should that school be penalized by being moved down on the school replacement construction list?

Answer: The overall requirement and goal of the construction and maintenance program is to provide good quality schools for all Indian students to attend. There is a potential if the tribe makes significant repairs to a school and the FCI improves from a "poor" to a "good" or "fair" condition, the school ranking may change. In addition, Indian Affairs provides $150 million annually to improve and repair schools. The overall goal of this funding is to make schools safe for children to attend.

Additional Questions from Ms. McCollum

McCollum Q1. Mr. Washburn, your testimony included reference to the Bureau of Indian Education's (BIE) plan to move toward "a unified system of standards" for assessing adequate yearly progress (AYP). As the BIE moves toward establishing these common competency standards, a valid concern has been raised in the Indian education community regarding the potential impact on curriculum.

As we have seen in schools across this nation, one of the unintended consequences of the strict AYP standards laid out in No Child Left Behind has been a narrowing of the curriculum. As schools have been forced into a greater focus on testing, they have prioritized the common test subjects of reading and math. This has marginalized education in the arts, history, and languages for America's youth.

Within BIE schools, tribal communities have placed a priority on the education of their students in Native languages, culture, and history. I've heard from teachers and students throughout Indian Country about the strong sense of identity and community that these programs provide, which also leads to improved academic motivation and achievement.

Can you tell me how the Department of the Interior intends to maintain the integrity of tribal communities' investments in Native languages and culture within the school curriculum?

How will the development of new unified standards be undertaken with these concerns in mind?

Answer: The Bureau of Indian Education (BIE) provides approximately $25 million annually to BIE-funded schools from the nearly $400 million in the Indian School Equalization Formula (ISEF) funds "to implement Language Development programs that demonstrate the positive effects of Native language programs on students' academic success and English proficiency" (25 CFR § 39.130). The commitment of the BIE to support Native Language programs is not expected to change in light of reform initiatives sweeping the Nation that adopt common academic standards and assessments.

The BIE is also currently required by NCLB to utilize an accountability system based on reading/language arts and math academic standards and accompanying assessments utilized by the 23 states where BIE schools are located. The BIE has proposed in a Flexibility Request submitted to the U.S. Department of Education that BIE adopt a unitary accountability system based on a single set of academic standards – i.e., Common Core State Standards (CCSS) – and a single set of assessments consistent with reforms being implemented across the nation. Adoption by the BIE of a unitary accountability system does not preclude the teaching of Native languages or cultures, in fact it will enhance tribes' ability to implement Native curriculum systemically for the first time. Fifteen percent of the program under flexibility can be developed for local use, which governing school boards or tribes of tribally-controlled schools could use for Native Language and/or cultural standards and assessments. In addition, the FY 2014 President's Budget requests $2 million for an independent evaluation of the BIE-funded schools. Once the evaluation is completed, BIE will be in a better position to determine the future direction of the school system.

Additional Questions from Mr. Valadao

Valadao Q1. Mr. Washburn, with respect to Bureau of Indian Education (BIE) operated or funded non-boarding schools, what is the BIE's per pupil spending?

Answer: In 2011, an internal study was released by Indian Affairs which compared the per pupil costs of BIE-funded day and boarding schools with public school data from the National Center for Education Statistics. For FY 2010 cost data, Bureau of Indian Education (BIE)-funded day schools expended approximately $13,000 per pupil in day schools and $15,500 per pupil in boarding schools, not including more than $203 million from the Department of Education and funds contributed by the states and the tribes themselves. Public schools averaged $10,176 per pupil. The study identified reasons for the increased costs in BIE-funded schools such as, isolation and transportation issues in Indian Country for BIE schools, limited English speakers coming into kindergarten and no economies of scale in rural Indian communities.

How does this compare to per pupil spending in other federally operated education systems and accepted benchmarks for district operated school systems?

Answer: In previous studies, the Government Accountability Office (GAO) has found that it is difficult to compare costs from BIE funded schools to the Department of Defense schools or public schools. All three school systems use different accounting categories to capture expenditures, making true comparisons almost impossible. While only 7% of Native American children attend BIE schools, BIE cannot close and consolidate schools to make the system more efficient unless a tribe agrees to the change.

Does the BIE feel its per-pupil funding is at an adequate level?

Answer: BIE supports the funding levels outlined in the FY 2014 President's Budget.

Assuming federal appropriations were made available, would the BIE prefer to see its per-pupil spending increase, decrease or neither?

Answer: BIE supports the funding levels outlined in the FY 2014 President's Budget.

Valadao Q2. Mr. Washburn, your testimony seems to indicate that each BIE school will have independent discretion to adjust its budget in response to sequestration. Are you concerned that differing funding decisions will cause the quality of education to vary greatly from school to school?

Answer: For over three decades, local Indian school boards and the school administrators have had the authority to revise local budgets to meet their respective school operations requirements. Each school will have to adjust its spending pattern accordingly under sequestration and each school board can have input into how their education services will be reduced. Funding is just

one issue for improving the quality of education, and we will work with the local school boards to ensure the quality of education is protected even if funding is reduced.

How do you plan to mitigate for this?

Answer: Fortunately, the bulk of BIE-funding is forward funded, which allows school leaders to address immediate expenditures with the ability to plan for education and operational impacts, but this will not allow much mitigation for loss of funds. The BIE is directed to reduce funding in all line items by five percent under sequestration. Unfortunately, we won't know the true impacts of the sequester in the classroom until after the start of the new school year.

Broken Promises, Broken Schools:

Report of the No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee

December 2011

TRIBAL REPRESENTATIVES

and Federal representatives from the following offices of the Department of the Interior:

Office of Regulatory Affairs and Collaborative Action

Office of Facilities Construction and Management

Bureau of Indian Education

Office of the Solicitor – Division of Indian Affairs

Broken Promises, Broken Schools: Report of the No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee[1]

Contents

1 See Appendix A for a list of Committee members and their biographies.

Chapter 1 Includes:

- An overview of the Committee, its task, and its process
- The Federal Government's historical duty to educate native children
- Bureau-funded schools and their unmet facility needs
- Lack of transparency in the funding allocation process
- A summary of all of the Committee's recommendations from this report

Chapter 1: Introduction

The No Child Left Behind Act of 2001 (NCLB or the Act) includes provisions to improve the education of Native American children[2]. One of those provisions directed the Secretary of the Interior to employ the mechanisms delineated by the Federal Advisory Committee Act[3] and the Negotiated Rulemaking Act[4] to assemble a committee for the specific purpose of preparing a report to Congress and the Secretary of the Interior. As elaborated in 25 U.S.C. § 2005(a)(5), this report is intended to provide Congress and the Secretary comprehensive information about the conditions and funding needs for facilities at Bureau-funded schools.

Specifically, NCLB directed the committee to prepare and submit to the Secretary:

- A catalog of school facilities that:
  - incorporates the findings from the Government Accountability Office study evaluating and comparing school systems of the Department of Defense and the Bureau of Indian Affairs;
  - rates such facilities with respect to the rate of deterioration and useful life of structures and major systems;
  - establishes a routine maintenance schedule for each facility;
  - identifies the complementary educational facilities that do not exist but that are needed; and
  - makes projections on the amount of funds needed to keep each school viable, consistent with the accreditation standards required pursuant to this Act.
- A report on the school replacement and new construction needs of Bureau-funded schools, and a formula for the equitable distribution of funds to address those needs.
- A report on the major and minor renovation needs of Bureau-funded schools, and a formula for the equitable distribution of funds to address such needs; and
- Revised national standards for heating, lighting, and cooling in home-living (dormitory) situations.

Per the requirements of NCLB, in the fall of 2006, DOI sought assistance from the U.S. Institute for Environmental Conflict Resolution (U.S. Institute) to convene a committee. The U.S. Institute, working with neutral contractors, conducted a convening assessment. The convening team conducted confidential interviews, reaching out to 198 individuals, representing 99 different schools.

In 2008, the BIA issued a Notice of Intent to Form a Negotiated Rulemaking Committee and to request nominations for tribal representatives on the committee. As required by the Act, the Secretary of the Interior was directed to select representatives of Indian tribes for the committee from among individuals nominated by tribes whose children attend Bureau-funded schools. To the maximum extent possible, the proportional representation of tribes on the committee would reflect the proportionate share of students from tribes served by the Bureau-funded school system. In addition, the Secretary was directed to consider the balance of representation with regard to geographical location, size, and type of school and facility, as well as the interests of parents, teachers, administrators, and school board members, in selecting tribal committee representatives. DOI received 57 letters nominating 40 tribal representatives and 14 letters nominating 12 tribal alternates. Nominees were vetted by DOI and selected, and then approved by the White House. DOI selected, according to the criteria noted above, 22 tribal representatives and nine tribal alternates, and appointed four federal representatives and alternates.

2. 107 Pub. Law 110, Part D; 115 Stat. 1425, 2007 (January 28, 2002).
3. 5 U.S.C. Appx. § § 1 – 16.
4. 5 U.S.C. § § 561 – 570a.

The Secretary of the Interior chartered the NCLB School Facilities and Construction Negotiated Rulemaking Committee (the Committee) (see Appendix A) in January 2010, roughly six years after the mandated time frame. Once convened, the Committee held seven multi-day meetings, during which they visited five Bureau-funded schools and received public comments from 12 tribal and school officials. The Committee deliberated at length upon the issues called for by Congress. The Committee also conducted five regional consultation sessions around the country, which were attended by more than 200 participants, and 16 tribes, schools, or tribal organizations submitted written comments (see Appendix B for an overview of the consultation process and findings). The Committee reviewed extensive data from federal agencies, and also submitted two data calls to Bureau-funded schools. The Committee respectfully submits the following report in compliance with the statutory mandate.

This report includes recommendations regarding how the Bureau should prioritize funding for construction work on Bureau-funded school facilities. The Committee is also submitting a catalog detailing the inventory and conditions of the facilities at each Bureau-funded school (due to the length of the catalog, drawn from a computerized database, the Committee submits the catalog as Sub-Report A). The Committee's recommendations include an analysis of this catalog and recommendations for improving its accuracy so that it can quantitatively and qualitatively guide the prioritization of repair and construction funding. A narrative summary of information contained in that Catalog and collected by the Committee is also included in this report.

The overarching conclusions to be derived from this report is that:

The funding appropriated by Congress has not been sufficient to keep pace with the deterioration of Bureau-funded school facilities—it would take $1.3 billion to bring all Bureau-funded schools up to acceptable condition. Furthermore, inadequate use and support of the computer database on which Indian Affairs relies, as well as lack of transparency and equity in the existing decision making process, has hampered a fair and effective allocation of funds.

The Committee's findings contain strong support for extensive improvements in Indian Affairs' system of administering school facilities and allocating construction monies for Bureau-funded schools. Recommendations for these improvements are contained in this report.

The DFO proposes, and the Committee endorses, a plan to implement the recommendations of this report as quickly as possible by incorporating these recommendations into the Indian Affairs Manual (IAM).

The Federal Government's Historical Duty to Educate Native Children

The historical connection of Native American Indians to the earth, air, water, and other resources has a distinct identity that has been in existence since before the United States became an independent nation. Indeed, to secure a nation independent from the English crown, early U.S. governments were obliged to enter into more than 100 treaties with American Indian tribes. Treaties have long been regarded as the most legitimate and steadfast form of agreement between two nations. According to the United States Constitution, **"...all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land."**[5] These treaties constituted contractual agreements between sovereign nations. Through these contracts, American Indian tribes ceded vast stretches of their ancestral lands since time immemorial to the United States in exchange for specific promises and considerations. Many of those treaties included solemn commitments by the United States to accept trust responsibility for the education of American Indian children.

As Congress recently acknowledged in the Act:

> *"Congress has declared that the Federal Government has the sole responsibility for the operation and financial support of the Bureau of Indian Affairs-funded school system that it has established on or near Indian reservations and Indian trust lands throughout the Nation for Indian children. It is the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children and for the operation and financial support of the Bureau of Indian Affairs-funded school system to work in full cooperation with tribes toward the goal of ensuring*

5. Art. VI of the Constitution.

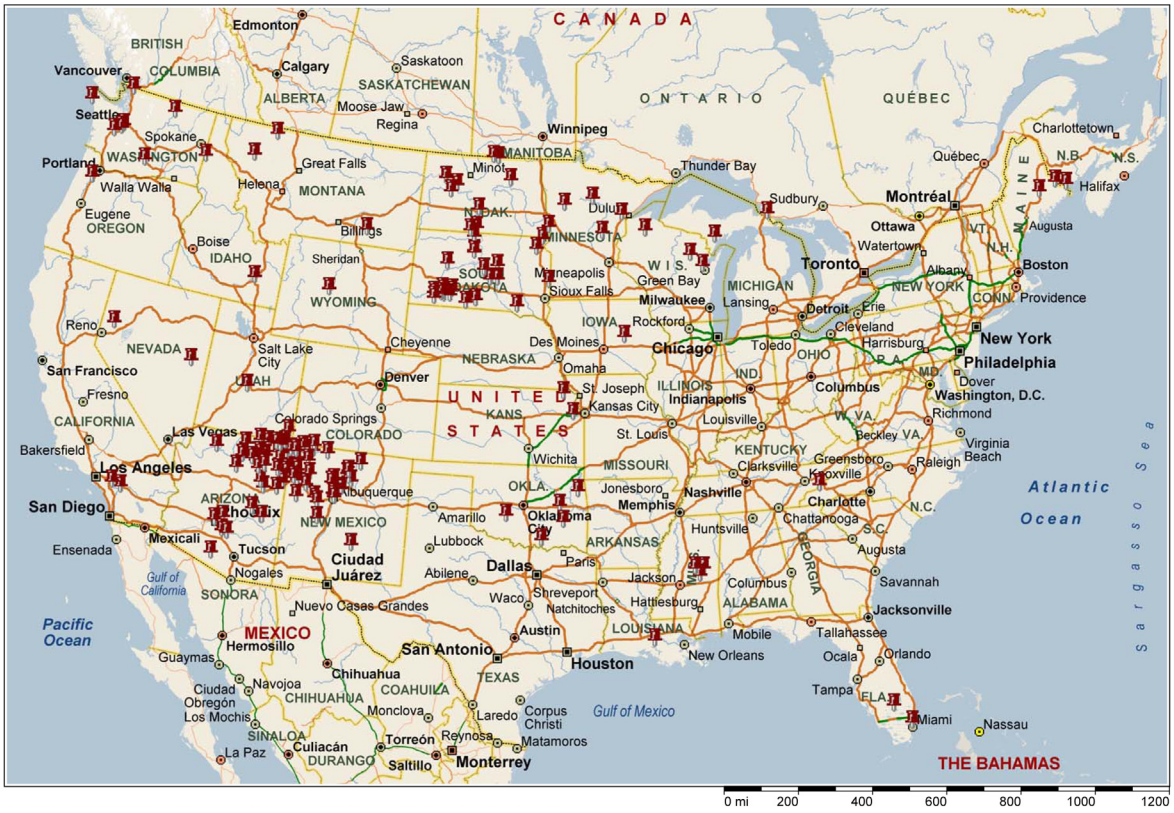
that the programs of the Bureau of Indian Affairs-funded school system are of the highest quality and provide for the basic elementary and secondary educational needs of Indian children, including meeting the unique educational and cultural needs of those children."[6]

The federal obligation to American Indian children continues today. In December 2010, at the White House Tribal Nations Conference, the President of the United States of America reminded the public: "I said that so long as I held this office, never again would Native Americans be forgotten or ignored." The President added, "[historical wrongs] serve as a reminder of the importance of not glossing over the past or ignoring the past, even as we work together to forge a brighter future. That's why, last year, I signed a resolution, passed by both parties in Congress, finally recognizing the sad and painful chapters in our shared history—a history too often marred by broken promises and grave injustices against the First Americans."[7]

The origins and long history of the Federal Government's trust responsibility respecting American Indian education is both complicated and unique; it is comprehensively summarized in the leading treatise, *Cohen's Handbook of Federal Indian Law*:

Provisions regarding Indian education appear with the earliest colonial laws. Beginning with the 1794 Treaty with the Oneida, [7 Stat. 47 (1794)] over 150 treaties between tribes and the United States have included educational provisions. For almost as long a time, Congress has legislated to provide for Indian education generally. In 1819, Congress established a permanent "civilization fund," which, until its repeal in 1873, authorized the executive to spend an annual sum to employ teachers in Indian country to provide "against the further decline and final extinction of the Indian tribes ... and for introducing among them the habits and arts of civilization." Civilization Fund Act, Act of Mar 3, 1819, 3 Stat. 516.[8]

6. Pub. Law 107-110, § 1042, 115 Stat. 2007, codified at 25 U.S.C. § 2000.
7. President Barack Obama, "Remarks by the President at the White House Tribal Nations Conference." White House Tribal Nations Conference. Washington, DC, December 16, 2010.
8. Cohen's Handbook of Federal Indian Law, Section §22.03: Education. Copyright 2009, Matthew Bender & Company, Inc.



Pin marks show locations of Bureau-funded schools.

Beginning with the Kiowa Comanche Treaty of October 21, 1867 (15 Stat. 581), the United States entered into at least eight treaties containing identical provisions obligating the U.S. to provide school facilities for Indian education:

> *"[t]he United States agrees that for every thirty children... a house shall be provided, and a teacher competent to teach the elementary branches of an English education, shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher."*[9]

Unfortunately, as Cohen further explains, the U.S. has not fulfilled its treaty obligations to Indian education:

[G]enerations of inadequate and inappropriate education have left a deep scar. In addition, failure to fully fund many, if not most, federal Indian education initiatives limits the efficacy of many education laws. Many Indian children attend school in facilities that are among the worst in the nation...

Opinions have long varied about the existence and extent of the United States legal obligation for Indian education. Today, however, Congress and the executive both agree that the federal government has a special responsibility for the education of Indian peoples. In 2001, Congress codified this responsibility more explicitly in the Native American Education Improvement Act.[10]

The Commerce Clause of the United States Constitution vests Congress with plenary authority over the relationship between the Federal Government and Indian tribes.[11] In exercising that authority, Congress plays a fundamental role in helping – or hindering – the success of America's First Americans. NCLB included mandates to implement Congress' recognition that:

> *It is the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children. The Federal Government will continue to work with local educational agencies, Indian tribes and organizations, postsecondary institutions, and other entities toward the goal of ensuring that programs that serve Indian children are of the highest quality and provide for not only the basic elementary and secondary educational needs, but also the unique educational and culturally related academic needs of these children.*[12]

Bureau-Funded Schools

The BIA and BIE within DOI are the federal agencies responsible for executing Congress' directives regarding American Indian education. BIA funds 183[13] schools serving Native Americans located on 64 reservations in 23 states. Fifty-seven of these schools are managed directly by the BIE and 126 are operated by tribes with Bureau funding. The OFMC, under the Director of the OFECR, is responsible for recommending to the Director of the BIE the distribution of operations and maintenance funds, and for the management and funding of projects for the repair, renovation, and replacement of Bureau-funded schools.

Indian Affairs (IA) is responsible for funding, maintaining, repairing, and replacing the 183 schools educating American Indian students. IA's relationship to those schools is like that of a state educational agency to the public schools it serves. A key distinction, however, is that state educational agencies receive tax revenues from the localities of their respective schools and Federal Impact Aid money (P.L. 81-815). In contrast, Bureau-funded schools cannot draw on the local tax base; they cannot issue bonds; they are primarily dependent upon support from the Federal Government. Bureau-funded schools must abide by 23 different state standards, federal standards, and in many cases, tribal standards.

Constructing and maintaining Bureau-funded school facilities is a major component of DOI's trust responsibility to American Indians; it is a requirement of many treaties and statutes.[14] Breach of that responsibility constitutes a separate and significant chapter within the larger history of misuse, neglect, and violation of trust by the Federal Government in its dealings with Native Americans. Federal appropriations for maintaining and replacing Bureau-funded schools have not

9. Also: Treaty with the Cheyenne and Arapaho, October 28, 1867 (15 Stat. 593); Treaty with the Ute, March 2, 1868 (15 Stat. 619); Treaty with various tribes of Sioux, and Arapaho, of 1868 (15 Stat. 635); Treaty with the Crow, May 7, 1868 (15 Stat. 649); Treaty with the Northern Cheyenne and Northern Arapaho, May 10, 1868 (15 Stat. 655); Treaty with the Shoshonees and Bannacks, July 3, 1868 (15 Stat. 673); Treaty with the Navajo, June 1, 1868 (15 Stat. 677).
10. "Cohen's Handbook of Federal Indian Law," Copyright 2009, Matthew Bender & Company, Inc. §22.03: Education.
11. Constitution Art. I, § 8, C13.
12. 115 Stat. 1907; amending 20 U.S.C. § 7401.
13. There are 183 schools in BIA's inventory. While two of these do not receive funds from BIA, they are still counted in their inventory, and so are included in all discussions within this report.
14. 115 Stat. 1907; amending 20 U.S.C. § 7401.

kept pace with the deterioration of these buildings nor with changing educational needs and requirements.

The United States, in its announcement of U.S. support for the United Nations Declaration on the Rights of Indigenous Peoples, proclaimed: "The Administration is also committed to supporting Native Americans' success in K-12 and higher education."[15] At the White House Tribal Nations Conference, the President added: "We're rebuilding schools on tribal lands while helping to ensure that tribes play a bigger role in determining what their children learn."[16] This Committee's research and conclusions should help the Federal Government to fulfill these public declarations.

Average Age of Bureau of Indian Education Academic and Dorm Buildings	
Schools (Buildings age 0-10)	35
Schools (Buildings age 11-20)	29
Schools (Buildings age 21-30)	36
Schools (Buildings age 31-40)	34
Schools (Buildings age 41-50)	32
Schools (Buildings age over 50)	17
	183

Source: OFMC, 2011

The Unmet Need for Quality School Facilities

In his September 8, 2011, speech on the American Jobs Act, the President declared: "How can we expect our kids to do their best in places that are literally falling apart? This is America. Every child deserves a great school."[17] This observation has a scientific basis – established research has explored the correlation between school facility conditions and academic performance (see Appendix C: Abstracts of Research Papers Associating School Conditions with Performance). Multiple studies have found significant links between inadequate facility conditions and poor performance for students and teachers. These studies have found that the quality of physical environments—including temperature, lighting, acoustics, and age of facilities —affects dropout rates, teacher retention, test scores, and student behavior. Direct testimony supports this correlation. For example, on September 11, 2010, in a statement to a Senate Committee on Indian Affairs hearing on Construction and Facility Needs at Bureau-funded schools, a student testified: "With an insufficient heating and cooling system, I have some classrooms that are very cold and others that are very warm. This is distracting when trying to do my work ... When students are expected to attend and work in a school like ours, it's very difficult to work and take school seriously when our building is in the shape that it is."[18] The principal of a different Bureau-funded school reported that structural defects in the classrooms forced teachers to

Breakdown of Number and Cost of Deficiencies by Type of School			
Type of School	**Number of Schools**	**Number of Backlogs Entered in FMIS**	**Estimated Cost of Backlogs**
BIE-operated	60	5,575	$ 461,235,377
P.L. 100-297 Grant	119	6,861	$ 497,888,744
P.L. 93-638 Contract	4	270	$ 8,493,183
Totals	**183**	**12,706**	**$ 967,617,304**

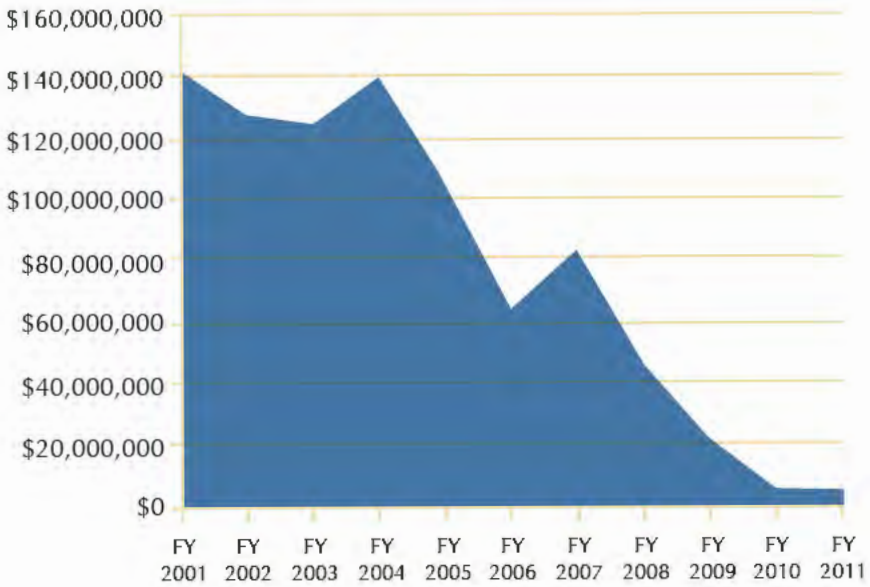
Data from FMIS as of May 2011, not including those backlogs already funded for repair or renovation. The 63 schools remaining in poor condition as of September 2011 require an estimated $1.3 billion to elevate them to an acceptable condition. Total backlogs and costs to elevate schools from poor condition are not equivalent since many schools would require full scale renovation or replacement.
Source: OFMC, 2011

15. "Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples," December 16, 2010.
16. President Barack Obama, "Remarks by the President at the White House Tribal Nations Conference." White House Tribal Nations Conference. Washington, DC, December 16, 2010.
17. President Barack Obama, Speech to a Joint Session of Congress, September 8, 2011.
18 Lindsey White, Bug-O-Nay-Ge-Shig School, MN. United States Senate Committee on Indian Affairs, "Oversight Field Hearing on Preparing Our Students for Tomorrow in Yesterdays Schools: Construction and Facility Needs at Bureau of Indian Education Schools," September 11, 2010, White Earth Reservation, MN.

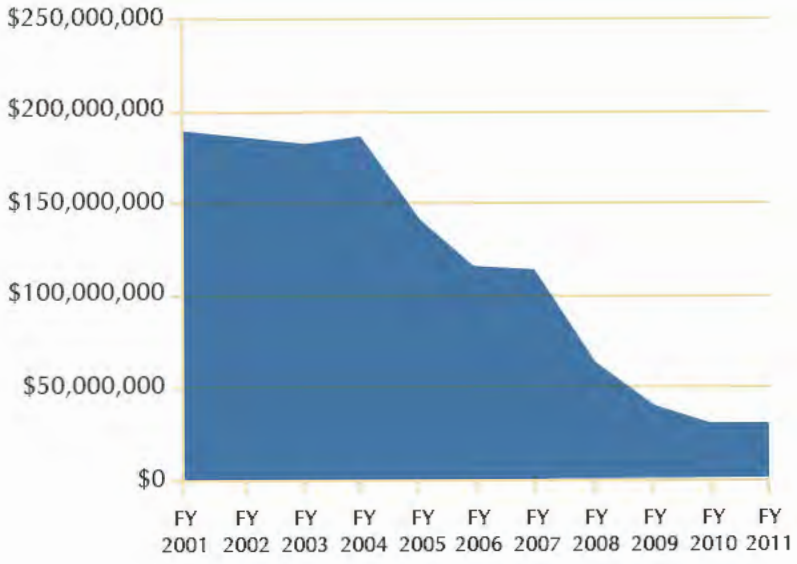
"All thirteen years I've been told that education is very important, but it's hard for me to believe this when I see how my school looks compared to other schools."

- As insightfully revealed by a student at the Bug-O-Nay-Ge-Shig School

Funding for Replacement Schools*



Total Education Construction Funding FY 2001 to FY 2011*



These charts illustrate the dramatic decrease in funding appropriated for school construction overall and the Replacement School Program in the past decade.
Source: OFMC, 2011.

**Does not include FY09 ARRA Funding of $244,239,342.*

relocate students to a heated bathroom during winter. Testimony received by the Committee bolstered the conclusion that poor school facilities have negative impacts on students and teachers.

These stories are not limited to a few schools. The Bureau's failure to provide environments conducive to academic achievement is well documented and long-standing. In 1997, the GAO reported a backlog of $754 million in needed repairs.[19] These repairs are not minor – in many cases the structural deficiencies at old and inadequately maintained facilities mean that schools are literally falling down. The 1997 GAO report revealed that 25 percent of Bureau-funded school buildings are more than 40 years old. This figure has increased to 27 percent in the 14 years since GAO issued that report.

Estimated Cost for Bringing Bureau-Funded Schools in Poor Condition into Good or Fair Condition

State	Cost
Arizona	$663,042,527
Idaho	$12,778,000
Louisiana	$13,975,000
Maine	$8,270,880
Minnesota	$21,328,440
Mississippi	$55,305,048
Montana	$17,880,135
North Dakota	$58,786,984
Nevada	$500,000
New Mexico	$265,633,212
Oklahoma	$67,845,580
South Dakota	$101,814,874
Utah	$9,927,960
Washington	$14,584,200
TOTAL	**$1,311,672,840**

Source: OFMC, 2011

19. GAO Report, School Facilities – Reported Condition and Costs to Repair Schools Funded by Bureau of Indian Affairs, December 1997, GAO/HEHS-98-47.

In 2010, DOI requested only $112 million for school facilities construction (2010 budget). With over $967 million in estimated backlogs, this amount is clearly inadequate to address the documented needs of Bureau-funded schools. At this rate of investment, Bureau-funded schools will only fall further behind.

In recent years, construction and repair budgets for Bureau-funded schools have remained woefully inadequate, and resources are shrinking annually. DOI's budgets for school facility operations, maintenance, and construction fell from $204 million in 2007 to $112 million in 2010. These declining appropriations pale in comparison to the identified need.

Funding Levels of Bureau Schools and the New School Replacement Program Since 2001

Some classes are being held in buildings constructed more than 100 years ago. According to OFMC, at current support levels, it will take more than 60 years to replace the 63 Bureau-funded schools currently rated in poor condition. Since the planned useful life of such schools is considerably less than 60 years (industry standard is 40 years), it is clear that continued funding at these levels ensures a prolonged breach of the federal trust obligation to Native American students.

As a point of contrast, a 2001 report from the U.S. GAO[20] illustrates that Bureau-funded schools had significantly more building deficiencies than schools under the U.S. DODEA—the only other comparable federally-funded educational system. Furthermore, the DODEA recently introduced a plan to replace or renovate 134 schools by 2018 for an estimated cost of $3.7 billion.[21] In 2010, OFMC calculated it would require $1.3 billion to elevate the 63 schools in poor condition up to satisfactory condition.

This Committee strongly recommends that the tribes, TIBC, the AS-IA and the Secretary of the Interior request of the President, and the President include in his budget request, funding for a comparable commitment to bring all Bureau-funded schools into acceptable condition.

20. GAO survey. Source: NCES, Condition of America's Public School Facilities: 1999, NCES 2000–32 (Washington, DC: U.S. Department of Education, June 2000).
21. Conference call between Committee members and DODEA's Mike Smiley, September 20, 2011.

Lack of Transparency in the Allocation Process

Another shortcoming of the Federal Government has been the inability of DOI to distribute the funds Congress has appropriated for building and maintaining Bureau-funded school facilities in a transparent manner. Affected tribal communities have expressed great frustration both with DOI's allocation decisions and with the lack of transparency characterizing the decision-making process. The White House promotes transparency, fairness, and objectivity in all federal agencies. In a 2009 memorandum to the heads of executive departments and agencies, the President wrote: "Transparency promotes accountability and provides information for citizens about what their Government is doing."[22] The White House has also explained: "Objectivity involves a focus on ensuring accurate, reliable, and unbiased information."[23]

DOI has not lived up to the White House's assertions, and this lack of transparency and objectivity has fostered ongoing tribal mistrust of the Federal Government. A Convening Report commissioned by DOI in preparation for this Negotiated Rulemaking, along with testimony received by the Committee, illustrated that many stakeholders perceive the prioritization of funding for repairs and renovations of schools as opaque, arbitrary, and unresponsive to the pressing needs of the schools. Lack of transparent decision-making has also contributed to suspicion that DOI made funding decisions in response to political pressure, rather than strictly basing its decisions on the actual needs of the schools.[24]

Conclusion

Providing proper educational facilities is not only essential to fulfilling the academic, social, and cultural needs of Native American children, but is also a matter of trust responsibility for the Federal Government, as well as treaty rights for many tribes. Satisfying these obligations involves attention to both the condition of the facilities and the quality of the educational experience. While some Bureau-funded schools have improved in the past decade, more progress is needed. To promote successful educational experiences, children must be able to learn in environments that are safe, enriching, culturally appropriate, and technologically advanced.

To ensure the success of our most precious resources – our children and future leaders – we must provide them with exemplary educational programs in high-quality settings. Currently, more than one-third of Bureau-funded facilities are in substandard or poor conditions, unconducive to educational achievement; thus, we are unfairly restricting the opportunities for these students to receive an education on par with non-Bureau-funded school systems. As explained previously, there is a great volume of research establishing a direct correlation between facility environment and student achievement. Therefore, continued failure to provide adequate educational facilities violates long-standing and current federal obligations. The Committee hopes and believes the following report will help Congress understand the shortcomings of Bureau-funded school facilities and provide the Secretary of the Interior with processes to ensure an equitable distribution of funds.

22. President Barack Obama, "Memorandum for the Heads of Executive Departments and Agencies on Transparency and Open Government." January 12, 2009.
23. Office of Management and Budget, "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies," 66 Fed. Reg. 49,718, at 49,724; September 28, 2001.
24. Final Convening Report, Negotiated Rulemaking Committee on BIA-Funded School Facilities Construction, prepared by the Consensus Building Institute, with the U.S. Institute for Environmental Conflict Resolution, March 5, 2008.

Summary of the Committee's Recommendations

- Tribes, TIBC, the AS-IA and the Secretary of the Interior should request of the President, and the President should include in his budget request to Congress, funding for a commitment to bring all Bureau-funded schools into acceptable condition.

FMIS Recommendations

- All schools should use the Maintenance Management Schedule module in FMIS. OFMC or BIE should monitor whether schools are using this module and encourage those who are not to do so.
- OFMC and BIE should standardize revisions to the space guidelines (i.e., *Educational Space Criteria Handbook*, Nov. 2005) to include cultural spaces, reading labs, technology, etc.
- OFMC should include educational facilities in FMIS, by surveying the current space inventory of all 183 schools and comparing existing space against existing or revised space guidelines to identify educational space deficiencies.
- OFMC should prioritize assistance for the 40 to 50 schools (e.g., not new schools and not schools known to be effective at using FMIS) that have problems with FMIS access, making them the first to receive assistance from OFMC and their contractor on updating backlogs, providing training, and ensuring that systems are in place in each school to maintain FMIS.
- OFMC and BIE should guarantee that all Bureau-funded schools have equitable means and capabilities to regularly use and update FMIS.
- OFMC and BIE should explain the facilities funding process and FMIS's important role in that process during educational trainings for school administrators and school boards.
- OFMC should require that minimum training for facility managers include a 40-hour FMIS certification.
- OFMC and BIE should create a matrix that defines roles and responsibilities, including communication responsibilities, for all parties involved with FMIS—from the school level up to the Central level, including local schools, BIE Albuquerque, education line offices, agencies, OFMC Albuquerque, and BIA regional offices.
- OFMC and BIE should ensure regular technical assistance and monitoring for all schools using FMIS. This support should be consistently offered for all schools, including grant and contract schools.
- OFMC and BIE should highlight the responsibility of school administrators and facility staff to guarantee that FMIS is updated. This should be reinforced from the director's office, at the assistant deputy director level, and through ELO offices. FMIS updates should be required at the same level of priority as each school's annual report and NASIS updates.
- OFMC should create expectations, deadlines, and reminders for entering and removing backlogs and offer more training in this area for school boards and administrators. OFMC should enact a policy requiring schools to use FMIS.
- OFMC should develop a National FMIS Users Group. The National Users Group would include a representative from schools within each of the 22 educational line offices along with staff from OFMC. The user group should include representatives of BIE-operated, grant and contract schools. This distributed representation would ensure close coordination with regional user groups. Both the national and regional user groups would identify key problems and challenges and offer advice and support for effectively implementing FMIS. Such user groups could be similar to earlier efforts to support FACCOM.
- OFMC should create nine Regional FMIS support groups. This could include a roster of people in each region who are available to provide FMIS technical assistance to others in their region.
- The 40-hour basic training, along with refresher trainings, should be offered Regionally on a regular basis, and provided, when possible via remote means such as via the Internet, CDs, or other means.

- If something in the FMIS program is going to change, FMIS users should be given advanced notice and any necessary training before the changes take effect.
- Like NASIS, FMIS should be easily accessible for all users via the Internet (versus dedicated terminals), without compromising security. Schools should also be able to retrieve their FMIS backlogs from remote locations.
- OFMC and the CIO should respond to FMIS technical challenges more quickly and efficiently, including system issues, access and connectivity problems, and password availability.
- OFMC should warn all users via email when the system is going to be down, and for how long.
- OFMC and BIE should provide regional/agency support, or a regional assistance team, to ensure backlogs are input for all Bureau-funded schools that lack access for whatever reason.
- OFMC should improve communication between contractor and schools during the assessment process.
- OFMC should require formal entry and exit interviews between school leaders and contractor team.
- OFMC should require OFMC to provide a final copy of the contractor's Facility Assessment Report to the school upon request.
- OFMC should require the school's facility staff to accompany the contractor during the visit.
- Thirty days prior to the arrival of the Contractor, OFMC should send the school administrator a copy of the contractor's Scope of Work and a printout of the school's list of backlogs from FMIS.
- Anyone with access from that location should receive notification if the FMIS gatekeepers change backlog entries.

Replacement School Recommendations

- DOI should codify, and OFMC and BIE should implement detailed recommendations regarding the following:
  - Principles underlying the new approach to replacement schools
  - Eligibility requirements for applicants
  - Application review and creation of pool of schools for whole school replacement
  - A post-application process
  - A whole school replacement and renovation formula

MI&R Recommendations

- OFMC and BIE should emphasize to the schools the importance of timely entry of data in FMIS.
- OFMC should annually publish a list of all S1, F2, and M1 backlogs. These are the backlogs eligible for MI&R funding.
- OFMC and BIE should publish the data call for schools to indicate their priority backlogs for MI&R funding.
- After all funding decisions are made, OFMC should issue an annual report of all regional and headquarters MI&R allocations, explaining each decision, to post and distribute.
- OFMC should convene regional committees made-up of one representative from each school in the region—grant/contract schools as well as BIE schools—to make decisions about the allocation of each region's MI&R funds.
- DOI should codify, and OFMC and BIE should implement the new MI&R formula and process.

FI&R Recommendations

- The Committee recommends that Congress revisit the moratorium on school expansion.
- OFMC should distribute the FI&R ranking of schools annually to all schools, tribes, and regions along with a brief explanation of how the rankings were obtained.
- OFMC should announce the overall budget for FI&R funding each year, and annually publish the schools and projects to be funded each year along with the rankings, explaining FI&R project/school selection in more detail than location ranking in the *United States Department of the Interior Budget Justifications and Performance Information* (Green Book).
- OFMC should identify the individuals who compile and complete the ranking process for FI&R, make clear their roles and responsibilities, and publish these "roles and responsibilities" annually.
- OFMC should identify educational space deficiencies by comparing the Educational Space Criteria (and state accreditation requirements) to existing conditions at all schools.
- OFMC should add all educational space deficiencies into FMIS, categorized as Critical Health and Safety Capital Improvement (educational space deficiencies) backlogs, given a weighting factor of 9.
- The FI&R formula should factor educational space deficiencies into the overall location score.
- DOI should incorporate educational space deficiencies into the ranking factor of critical health and safety capital improvement with a ranking factor of 9 into DOI/OFMC policy to ensure future compliance.
- OFMC should normalize API scores for all school buildings to be worth 100 points.

Chapter 2 Includes:

- An overview of the condition of schools
- A brief description of the FMIS system, indicating its compatibility with the five components as set out in NCLB 25 U.S.C. § 2005(a)(5)(A)(i)
- An identification of the primary limitations of the FMIS system as the ongoing catalog for tracking the conditions of schools
- Recommendations for improving this system and process[25]

25. The Committee includes a print-out of the current record of deficiencies contained in FMIS as of December 5, 2011, as Sub-Report A.

Chapter 2: A Catalog of Facilities

Summary of Recommendations from this Chapter

- Tribes, TIBC, the AS-IA, and the Secretary of the Interior should request of the President, and the President should include in his budget request to Congress, funding for a commitment to bring all Bureau-funded schools into acceptable condition.
- All schools should use the Maintenance Management Schedule module in FMIS. OFMC or BIE should monitor whether schools are using this module and encourage those who are not to do so.
- OFMC and BIE should standardize revisions to the space guidelines (i.e., *Educational Space Criteria Handbook*, Nov. 2005) to include cultural spaces, reading labs, technology, etc.
- OFMC should include educational facilities in FMIS, by surveying the current space inventory of all 183 schools and comparing existing space against existing or revised space guidelines to identify educational space deficiencies.
- OFMC should prioritize assistance for the 40 to 50 schools (e.g., not new schools and not schools known to be effective at using FMIS) that have problems with FMIS access, making them the first to receive assistance from OFMC and their contractor on updating backlogs, providing training, and ensuring systems are in place in each school to maintain FMIS.
- OFMC and BIE should guarantee that all Bureau-funded schools have equitable means and capabilities to regularly use and update FMIS.
- OFMC and BIE should explain the facilities funding process and FMIS's important role in that process during educational trainings for school administrators and school boards.
- OFMC should require that minimum training for facility managers include a 40-hour FMIS certification.
- OFMC and BIE should create a matrix that defines roles and responsibilities, including communication responsibilities, for all parties involved with FMIS—from the school level up to the central level, including local schools, BIE Albuquerque, education line offices, agencies, OFMC Albuquerque, and BIA regional offices.
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- OFMC should create expectations, deadlines, and reminders for entering and removing backlogs and offer more training in this area for school boards and administrators. OFMC should enact a policy requiring schools to use FMIS.

- OFMC should develop a National FMIS Users Group. The National Users Group would include a representative from schools within each of the 22 educational line offices along with staff from OFMC. The user group should include representatives of BIE-operated, grant and contract schools. This distributed representation would ensure close coordination with regional user groups. Both the national and regional user groups would identify key problems and challenges and offer advice and support for effectively implementing FMIS. Such user groups could be similar to earlier efforts to support FACCOM.
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- The 40-hour basic training, along with refresher trainings, should be offered Regionally on a regular basis, and provided, when possible via remote means such as via the Internet, CDs, or other means.
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- OFMC should require OFMC to provide a final copy of the contractor's Facility Assessment Report to the school upon request.
- OFMC should require the school's facility staff to accompany the contractor during the visit.
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- Anyone with access from that location should receive notification if the FMIS gatekeepers change backlog entries.

Background

The Act at 25 U.S.C. § 2005(a)(5)(A)(i) calls for the Committee to prepare and submit a catalog of the condition of school facilities at all Bureau-funded schools which:

> (I) *incorporates the findings from the Government Accountability Office study evaluating and comparing school systems of the Department of Defense and the Bureau of Indian Affairs;*
>
> (II) *rates such facilities with respect to the rate of deterioration and useful life of structures and major systems;*
>
> (III) *establishes a routine maintenance schedule for each facility;*
>
> (IV) *identifies the complementary educational facilities that do not exist but that are needed; and*
>
> (V) *makes projections on the amount of funds needed to keep each school viable, consistent with the accreditation standards required pursuant to this Act.*

An accurate catalog tracking the conditions of Bureau-funded schools is essential to keeping facilities properly maintained and providing the basis for organizing repair and replacement projects. Such a catalog would provide a record of the conditions of Bureau-funded schools over time. It would also serve as a vehicle for ensuring the fair allocation of resources for maintenance, repair, and replacement – especially in the face of scarce resources. The Committee agrees that supporting the maintenance of a comprehensive and accurate catalog is as high a priority as all other school record keeping, such as attendance and academic achievement.

FMIS provides an acceptable basis for meeting Congress' request for a catalog of the conditions of school facilities, if improved as recommended in this report. FMIS achieves some, though not all, of the five components required by the Act.

The Committee notes that educational facility needs are absent from the current FMIS catalog. As a consequence, there has been no method for identifying educational facilities that are needed but do not exist, or highlighting insufficiencies of current educational spaces. However, the greatest limitations of FMIS are due to a lack of consistent and appropriate training, connectivity, and resources to ensure that users in the field are able to keep information current and accurate.

Therefore, to fulfill the requirements of NCLB, the Committee focused on developing detailed recommendations for changes in FMIS and IA. These modifications would allow FMIS to function as an accurate and useful catalog of the conditions of Bureau-funded schools, and thus serve as the basis for a formula to determine an equitable distribution of funds for repair and replacement.

Number of Schools New Replacement Construction, Replacement Facility* Construction Major FI&R			
Fiscal Year	**Replacement School**	**Major FI&R**	**Replacement Facility Construction**
1998-2001	10	11	-
FY 2002	5	8	-
FY 2003	5	10	-
FY 2004	8	5	-
FY 2005	9	6	-
FY 2006	4	6	-
FY 2007	0	2	2
FY 2008	0	1	1
FY 2009	1	0	1
FY 2010	0	1	2
FY 2011	1	0	1
ARRA	3	14	0
Grand Total Projects	**46**	**64**	**7**

Total number of schools receiving a replacement school, major renovation and repair, or replacement facilities since 2001.
Source: OFMC, 2011.

Overview of the Conditions of School Facilities

Chronically inadequate funding for the operation and maintenance of Bureau-funded schools has resulted in a large backlog of repair work. As previously detailed, OFMC estimates it would require $1.3 billion to bring the 63 Bureau-funded schools in poor condition up to adequate condition, and $967 million to simply repair all of the reported deficiencies in the 183 schools. Compare this with the funding appropriation for 2011 of $46 million. This amount is woefully insufficient to reduce the overall deficiency backlog of Bureau-funded schools.

Thanks to higher funding levels in the early part of the last decade, and the one-time infusion of funds under the American Recovery & Reinvestment Act (ARRA)[26], the condition of many Bureau-funded schools has improved. In the past 10-year period, over $1.5 billion in construction and repair funds was devoted to reducing by 50 percent the number of schools in poor condition (as determined by the FCI).

In fiscal year 2002, 35 percent of schools were in good or fair condition and 65 percent were in poor condition. Upon the completion of existing construction projects scheduled in FY 2012, there will be an estimated 66 percent of schools in good or fair condition and 34 percent of schools in poor condition; 59 schools (or 31 percent) have improved from poor condition to good/fair. However, given the dramatic decrease in funding for education construction in the past 10 years, and particularly under the current budet, the Committee expects the number of schools in poor condition to rise. With inadequate maintenance and repair dollars, schools in fair condition can easily fall into poor condition once again.

ARRA provided IA the single largest education con-

26. Pub. Law 111-5; 123 Stat. 115, 168

**The Replacement Facility Program began in 2007, providing a mechanism for constructing or replacing one or more buildings on a school campus, often in combination with major renovation and repair.*

Indian Affairs Education Construction Funding FY 2001- FY 2011				
Fiscal Year	**Replacement Schools**	**Replacement Facility Construction**	**FI&R Project Funding**	**Total Education Project Funding FY 2001 to FY 2011**
FY 2001	$141,238,000		$48,962,000	$190,200,000
FY 2002	$127,799,000		$61,088,000	$188,887,000
FY 2003	$124,409,000		$59,100,000	$183,509,000
FY 2004	$139,612,000		$48,873,000	$188,485,000
FY 2005	$105,550,000		$37,021,000	$142,571,000
FY 2006	$64,530,000		$50,474,000	$115,004,000
FY 2007	$83,891,000	$26,873,000	$4,670,000	$115,434,000
FY 2008	$46,716,000	$9,748,000	$7,267,000	$63,731,000
FY 2009	$22,405,000	$17,013,000	$0	$39,418,000
FY 2010	$5,964,000	$17,013,000	$6,570,000	$29,547,000
FY 2011	$21,462,988	$29,465,950	$0	$50,928,938
ARRA	$153,311,000	$0	$91,074,000	$244,385,000
Total	**$1,036,887,988**	**$100,112,950**	**$415,099,000**	**$1,522,099,938**

Source: OFMC, 2011.

struction appropriation in history. As a result, $153.3 million was allocated to replace deteriorating Bureau-funded schools, and $91 million was assigned to repair educational facilities. Construction awards for these projects began in May of 2009; today all of the funds have been obligated, and some smaller projects have already been completed. More than 7,000 students will benefit through the use of adequate school facilities earlier than thought possible before passage of ARRA.

While significant progress has been made to correct facility deficiencies, 63 schools currently remain in poor condition, and $1.3 billion in funding is required to bring all education facilities into acceptable condition.[27]

27. As stated earlier, the 63 schools remaining in poor condition require an estimated $1.3 billion to elevate them to an acceptable condition. This figure includes more than simply fixing the deferred maintenance items in these schools. For example, if a facility has a number of leaks in the roof, ultimately it will be more economical to replace the entire roof rather than continue to fix leaks year after year. Therefore, the cost to replace the entire roof is included in the figure above, rather than the cost to mend all the separate leaks. Likewise, it may also be more cost-effective to replace an entire building or school rather than repair a number of deferred maintenance work items.

Background on FMIS

IA currently uses FMIS, a computer program, to catalog and document the conditions of school facilities. FMIS provides the basis for budget formulation and asset management to improve, repair, and replace school facilities. While this system is not perfect, the Committee accepts it as the best available starting point for meeting the cataloging requirements in NCLB and ensuring that the formulas for prioritizing facility construction and repair dollars is fair, efficient, and transparent. The Committee sought to identify the most pressing challenges regarding FMIS. It has developed a list of recommendations detailing how to improve both the accuracy of data and the process for updating the content of FMIS. Software systems change from time to time; therefore, these recommendations apply to both the current and any future systems.

FMIS is a tool for OFMC to collect and manage information about school facility conditions at the local level. For this system to contain accurate data,

schools must routinely input facility deficiencies. Data is verified by contractors (remotely and during school visits) once every three years. Ultimately, the information provided by FMIS is only as valid as the data contributed by contractors, local agencies, and individual schools, as verified by OFMC.

In addition to the module for entering deficiencies, FMIS includes components for project management, inventory tracking, health and safety needs, routine maintenance work tickets, and cost estimating and budgeting. Up until now, this system has not recorded the educational needs or deficiencies of facilities in meeting educational requirements – it has only tracked the condition of existing facilities, not those facilities that might be missing or insufficient. A more extensive description of FMIS can be found in Appendix D.

Finding as to the Five Requirements

The NCLB requires that the Committee's catalog include the five items listed on page 19 of this report. The following section describes the extent to which the existing FMIS catalog meets these requirements and suggests ways to fill in gaps where FMIS falls short.

(I) *Incorporates the findings from the Government Accountability Office study evaluating and comparing school systems of the Department of Defense and the Bureau of Indian Affairs.*

NCLB 25 U.S.C. § 2005(a)(1)-(4) called for the GAO, by January 2004, to submit the results of a national survey of the physical conditions of all Bureau-funded school facilities that would incorporate the findings from the GAO study evaluating and comparing school systems of the DOD and the BIA. GAO never issued such a report.[28] Therefore, the Committee is unable to incorporate any findings into its catalog regarding this requirement. The Committee recommends that GAO conduct the study mandated by NCLB.

However, it is interesting to note that in 2010, the DOD announced a plan to spend $3.7 billion to elevate all of their schools into acceptable condition. The appropriation for DOD school construction for FY2010 was $235 million, and their appropriation for FY2011 was $438 million. In contrast, the appropriation for Indian school construction was $29.5 million for FY2010 an $50.9 million FY2011. DODEA is also making a concerted effort to eliminate the use of portables. Furthermore, in the past three years, DOD schools have received full funding for their operations needs, while Bureau-funded schools had operations funds constrained at approximately 50 percent of need.[29]

DOI has not put forward an analogous plan to spend the $1.3 billion needed to bring Bureau schools into acceptable condition by 2015. The Committee contends the federal duty enshrined in statutes and treaties noted in the Introduction to this report mandates at least equal attention to Indian schools.

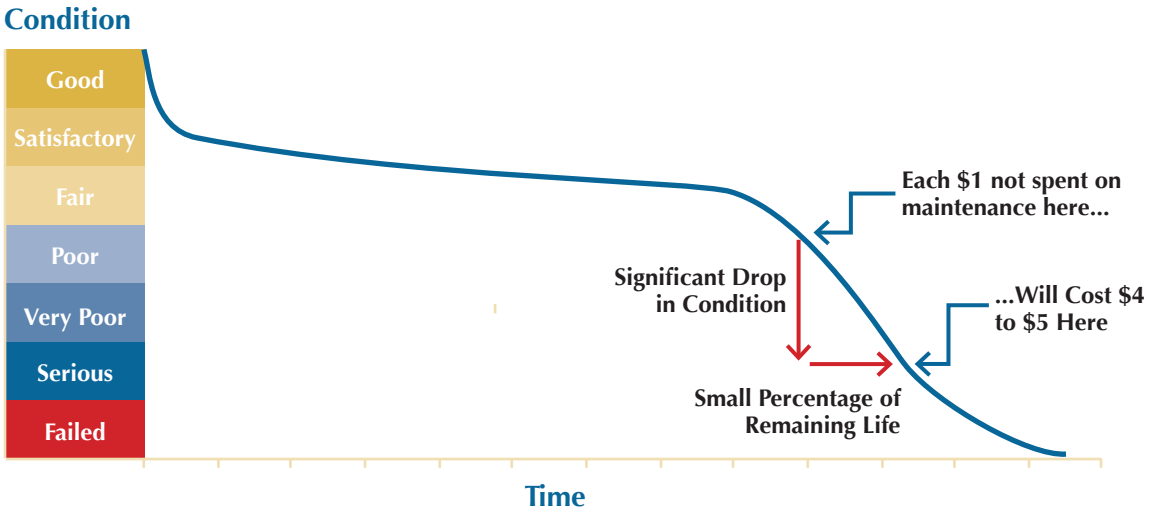
This Committee strongly recommends that the tribes, TIBC, the AS-IA and the Secretary of the Interior request of the President, and the President include in his budget request to Congress, funding for a comparable commitment to bring all Bureau-funded schools into acceptable condition.

(II) *Rates such facilities with respect to the rate of deterioration and useful life of structures and major systems.*

Because of the nature of school facilities in the often remote and harsh environments of Indian country, the rate of deterioration is not a static situation, but rather is highly dynamic. Beyond weather and environmental conditions, the largest factor impacting the rate of deterioration is the level of preventative maintenance.

28. In 2003, GAO issued 2 related reports: GAO-03-955, Bureau of Indian Affairs Schools: Expenditures in Selected Schools Are Comparable to Similar Public Schools, but Data Are Insufficient to Judge Adequacy of Funding and Formulas, and GAO-03-692, Bureau Of Indian Affairs Schools: New Facilities Management Information System Promising, but Improved Data Accuracy Needed. Neither of these reports fulfills the requirement of NCLB § 2005(a)(1)-(4).

29. Conference call between Committee members and DODEA's Mike Smiley, September 20, 2011.



Buildings without sufficient preventative maintenance face a steep drop in condition, and the cost of facility repairs increases dramatically as the building reaches the end of its useful life.
Source: Applied Management Engineering, Inc., 2011

Funds for preventative maintenance are appropriated with funds for operating the facilities, known as Operations and Maintenance (O&M) funding. In each of the last five years, schools have been funded with sufficient Maintenance funding based on construction industry standards, but received an average of only 50 percent of the money actually needed for operations. Operations includes non-deferrable, fixed-cost items like fuel and electricity. Consequently, schools have been left with no choice but to fund operations with money intended to pay for preventative maintenance. As a consequence, maintenance needs go unmet, deferred maintenance grows, and the quality of the physical plant deteriorates far more rapidly than it should.

By not investing sufficient resources in preventative maintenance, schools not only deteriorate more rapidly, but the cost of repairs increases. For instance, if a small leak in a roof is not addressed now, it will likely lead to further structural damage that will later cost much more to repair or replace. Over decades, this shortchanging of actual maintenance spending shortens the overall life of school buildings and will force increased costs upon the Federal Government in the future, not to mention more deplorable conditions for the next generation of children.

Many Bureau-funded school facilities are being used far beyond their useful life. Forty years is the Internal Revenue Service (IRS) figure for the useful life of buildings, yet there are 49 Bureau-funded schools over 40 years of age. The average overall age of the buildings comprising schools in poor condition, weighted by square footage, is 50 years. **Investing money to keep these very old schools functional is far less cost-effective than constructing new schools; however, funding provided for replacing schools that have exceeded their useful lives is sorely insufficient.**

Average Age of Academic and Dorm Buildings	
Schools (Buildings age 0-10)	35
Schools (Buildings age 11-20)	29
Schools (Buildings age 21-30)	36
Schools (Buildings age 31-40)	34
Schools (Buildings age 41-50)	32
Schools (Buildings age over 50)	17
	183

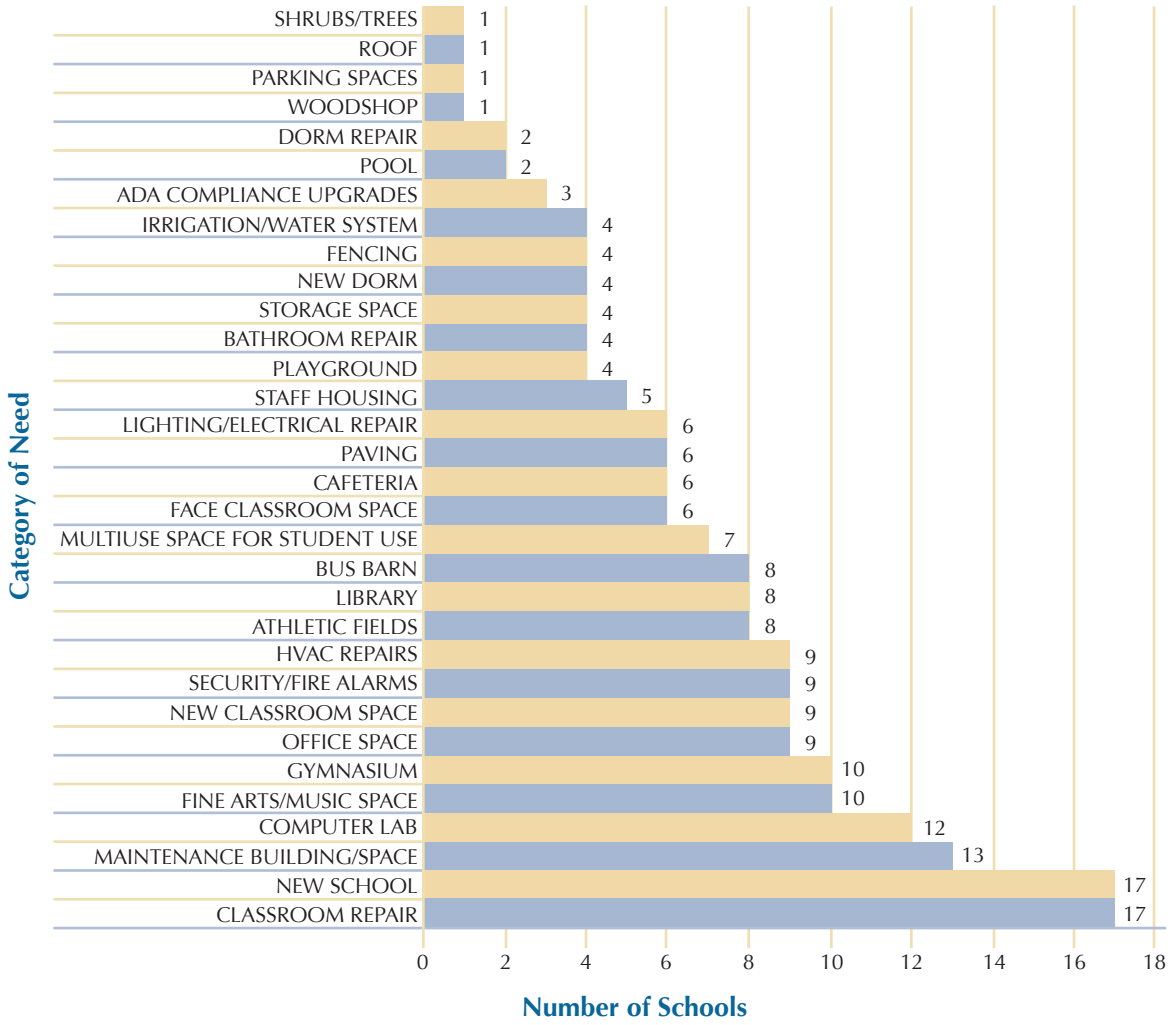
Source: OFMC, 2011

(III) *Establishes a routine maintenance schedule for each facility.*

FMIS adequately addresses this mandate. FMIS provides opportunities for schools to develop routine maintenance schedules through the Maintenance Management Schedule module. For instance, if all maintenance recommendations for a particular furnace model are entered into FMIS, the system will automatically generate a work ticket requesting routine maintenance at the appropriate time. This feature is used at the discretion of local schools, but a recent survey determined that only 34 percent of responding schools enter preventative maintenance into FMIS. Thus, the data in FMIS does not provide an accurate system-wide picture of routine maintenance needs. IA needs this information for budgeting purposes. **The Committee therefore advises that all schools use Maintenance Management Schedule module. The Committee also recommends that OFMC or BIE monitor whether schools are using this module and encourage those who are not to do so.**

The facility needs identified by the schools can be categorized in the following way:

Complementary Educational Facility Needs Reported by School



Source: Responses to the DFO's inquiry from 56 Bureau-funded schools regarding non-existant but needed educational facilities. August–November 2010, as summarized by CBI.

(IV) *Identifies the complementary educational facilities that do not exist but that are needed.*

Currently, FMIS does not identify complementary educational facilities that do not exist but are needed, nor is there any other inventory that makes this identification. The Committee agrees this is a fundamental shortcoming of this system that must be remedied in order to achieve a complete and accurate catalog of school conditions. In July 2010, to establish a rough sense of these needs, the DFO conducted a survey at the request of the Committee, asking each school to identify nonexistent but essential educational facilities. Fifty-six of the Bureau-funded schools responded, offering a wide range of types of facility needs.

The Committee stresses the importance of an ongoing catalog documenting essential but missing educational facilities and detailing improvements to existing facilities to make them compatible with educational needs. For example, schools could catalog a library that is too small for the school size, or a facility lacking telecommunications wiring needed for access to the Internet. Cultural spaces, reading labs, and other specialized educational facility components must be included in this system. This catalog could then serve as an effective tool for prioritizing funding for renovation, repair, and construction.

RECOMMENDATIONS: The Committee recommends the following methods for achieving this inventory:

(I) Standardize revisions to the space guidelines (i.e., *Educational Space Criteria Handbook*, Nov. 2005) to include cultural spaces, reading labs, technology, etc.;

(II) Survey the current space inventory of all 183 schools; and

(III) Compare existing space against the revised guidelines to identify spatial deficiencies.

The scope of work for the 2011-2013 facilities conditions assessment contract administered by IA will include collecting data on unmet educational space needs, using the existing *2005 Educational Space Criteria Handbook* and facility inventory data. This will create a database of educational facility deficiencies that can be incorporated into formulas for FI&R and new facility/school replacement.

(V) *Makes projections on the amount of funds needed to keep each school viable, consistent with the accreditation standards required pursuant to this Act.*

IA uses FMIS to develop projections on the amount of O&M funds needed to keep facilities viable. However, as previously noted, FMIS does not include the deficiencies of all schools and, more importantly, FMIS does not document missing or insufficient educational facilities, as might be needed to be consistent with the accreditation standards of NCLB. Further, O&M funds are substantially constrained.

Operations & Maintenance Need vs. Funding: FY 2006 through FY 2010					
Fiscal Year	**Funded Square Feet**	**Operations Need**	**Operations Funded**	**Operations Constrained**	**Percent Funding Constrained Below Need**
2006	16,022,204	$91,931,905	$52,268,045	$39,663,860	43.14%
2007	16,422,290	$99,157,997	$55,692,545	$43,465,452	43.83%
2008	16,339,267	$100,968,099	$54,720,628	$46,247,471	45.80%
2009	16,621,855	$106,313,052	$54,353,705	$51,959,347	48.87%
2010	16,411,775	$106,955,142	$51,092,600	$55,862,542	52.23%
Fiscal Year	**Funded Square Feet**	**Maintenance Need**	**Maintenance Funded**	**Maintenance Constrained**	**Percent Maintenance Funding Above Need**
2006	16,022,204	$42,544,509	$48,053,510	$0	13%
2007	16,422,290	$44,779,949	$50,019,363	$0	11%
2008	16,339,267	$44,317,070	$50,295,266	$0	13%
2009	16,621,855	$45,302,029	$48,717,022	$0	7%
2010	16,411,775	$46,259,490	$51,141,560	$0	11%

Calculated funding needed and funding provided for O&M of Bureau-funded schools 2006-2010. While maintenance costs were funded at slightly above calculated need, the constraint of operations funds leads schools to spend much of their preventative maintenance dollars on operations needs.
Source: OFMC, 2011

The chart above illustrates the yearly funding needed for O&M—based on OFMC calculations—compared to the amount of funding actually provided. As shown by the chart, although Maintenance funds have been provided to meet or exceed the needed funding, the extreme constraint of Operations funding requires schools to use preventative maintenance funds to pay for necessary operations costs (e.g., electricity, heat, and other essentials).

Therefore, without increasing the funding for O&M, schools will continue to deteriorate as they are forced to use maintenance monies to fund necessary operations. Moreover, as revealed earlier, insufficient funding for yearly maintenance inevitably leads to higher costs for repairs in the future.

Additional Identified Challenges and Recommended Improvements

Along with the required considerations, the Committee found several additional challenges hindering FMIS from meeting its purpose of providing information to make efficient and fair decisions about the allocation of facility repair and construction resources. This section highlights each of these challenges and provides a set of recommendations for improvement. **These improvements to the FMIS Catalog are critical in order for the proposed formulas in this report to meet the Act's requirements of equitability.**

Accuracy of the Existing FMIS Data

CHALLENGE: Although it constitutes the best record of the condition of Bureau-funded schools, the data in FMIS is incomplete for the following reasons:

(I) Not all schools have access to enter their own backlogs due to a lack of:

- connectivity to the FMIS server;
- computer equipment;
- staff trained in FMIS or with sufficient time to keep FMIS information up-to-date;
- staffing due to high turnover or insufficient funding to hire or task appropriate staff; or
- experience and/or support from administration.

(II) Cost estimates entered into FMIS may not reflect changing materials costs, actual cost of isolation, and increasing costs caused by economic circumstances (see Appendix E for current OFMC methodology for estimating costs).

(III) Validation of actual deficiencies by contractors occurs only every three years.

(IV) Educational needs are not currently factored in.

The Bureau recently conducted a survey regarding FMIS use, asking schools about their access to FMIS, how frequently data is updated, and other questions designed to help the Committee understand the extent of school use of FMIS.

The following charts illustrate some of the findings from this survey.

Does your school have access to FMIS?	Yes	No
BIE-operated	27	18
Cooperative Day School	1	1
Grant or Contract School	53	17
TOTAL	**81**	**36**

How many individuals have a FMIS account at your location?	One	Two	Three	Four	Five	None
BIE-operated	9	9	4	5	2	16
Cooperative Day School	0	1	0	0	0	1
Grant or Contract School	20	29	10	1	2	9
TOTAL	**29**	**39**	**14**	**6**	**4**	**26**

How does your school use FMIS?	1. Creating/ removing deficiencies and deferred maintenance (> $25,000)	2. Creating abatement plans for deficiencies listed under Safety	3. Creating work tickets for maintenance (< $25,000)	4. Respond-ing to work tickets for preventative maintenance	5. Entering actual location information (electric, gas, etc.)	Other: I don't know/we don't do it
BIE-operated	20	20	18	24	25	11
Cooperative Day School	1	0	0	1	1	0
Grant or Contract School	48	41	17	15	54	3

In FMIS, how well do the existing open backlogs present the true construction needs for your school?	Very Well	Somewhat Well	Not Well at All	Other/ Not Sure
BIE-operated	12	18	10	5
Cooperative Day School	0	0	1	1
Grant or Contract School	19	28	15	5
TOTAL	**31**	**46**	**26**	**11**

Source: All four of the preceding tables are based on a survey conducted by OFMC of Bureau-funded schools in 2010.

Breakdown of Number and Cost of Deficiencies by Type of School

Type of School	Number of Schools	Number of Backlogs Entered in FMIS	Estimated Cost of Backlogs
BIE-operated	60	5,575	$ 461,235,377
P.L. 100-297 grant	119	6,861	$ 497,888,744
P.L. 93-638 contract	4	270	$ 8,493,183
Totals	**183**	**12,706**	**$ 967,617,304**

According to FMIS as of May 2011, not including those backlogs already funded for repair or renovation.
Source: OFMC, 2011

There is a large discrepancy in FMIS reporting between the BIE-operated schools and the grant and contract schools. The preceding chart shows the total number of backlogs in FMIS by school type. This demonstrates more facility deficiencies are recorded for BIE-operated schools than for grant and contract schools: an average of 93 backlogs per BIE-school versus 58 for contract and grant schools. One reason for this may be that facility managers at Education Line Offices enter backlogs for some BIE-operated schools, but not for grant and contract schools. Whatever the cause, this discrepancy points to the likelihood that not all deficiencies at grant and contract schools are reflected in FMIS.

RECOMMENDATIONS: The Committee recommends all schools be brought up to equal footing in FMIS in order for formulas to function as intended. We suggest:

(I) All recommendations in this chapter will help ensure that FMIS accurately reflects the needs of schools.

(II) The Committee recommends prioritizing assistance for the 40 to 50 schools (i.e., not new schools and not schools known to be effective at using FMIS that have problems with FMIS access), making them the first to receive assistance from OFMC and their contractor on updating backlogs, providing training, and ensuring systems are in place in each school to maintain FMIS.

(III) Guaranteeing all Bureau-funded schools have equitable means and capabilities to regularly use and update FMIS.

(IV) Explaining the facilities funding process and FMIS's important role in that process during educational trainings for school administrators and school boards.

(V) Requiring that minimum training for facility managers include a forty hour FMIS certification.

Roles and Responsibilities

CHALLENGE: The division of roles between the OFMC and BIE leaves a gap at the local level; no OFMC staff are tasked with monitoring FMIS use and providing technical support to Bureau-funded schools. Schools do not know where to turn for assistance, and problems with FMIS use at many schools go unresolved. No one has the responsibility for monitoring FMIS use by Bureau-funded schools to ensure that backlogs are being entered.

According to NCLB (25 U.S.C. § 2006(b)(1)), all individuals who work at or with BIE-operated schools must be supervised by BIE. This includes custodial staff and facility managers. BIE-operated schools generally have facilities staff in charge of entering data into FMIS, but grant and contract schools may not. Bureau-funded schools are supported by local education line offices, which are staffed with individuals capable of supporting a wide range of educational needs. Yet few line office staff have expertise in FMIS, and thus cannot provide assistance to grant and contract schools needing technical support with their FMIS entry loads. Most BIA regional offices house regional facility managers employed by OFMC; however, with the exception of the Navajo region, these facility managers do not oversee grant and contract schools. Furthermore, coordination and communication between OFMC and BIE is limited. Since BIE has not been involved with FMIS, the system has not been identified as a high priority for school principals, superintendents, and ELOs. In response to this divide, BIE has recently hired a BIE facility specialist to serve as the BIE facility liaison to OFMC. Since March 2011, this liaison has been actively providing input and represents BIE at OFMC's planning sessions. Among other activities, the liaison is now participating and assisting in ensuring that school FMIS inventories are up-to-date.

RECOMMENDATIONS: The Committee strongly urges OFMC and BIE to develop a structure that improves communication, coordination, and teamwork to ensure that all schools receive FMIS training and technical assistance. To this end, the Committee proposes:

(I) Creating a matrix that defines roles and responsibilities, including communication responsibilities, for all parties involved with FMIS —from the school level up to the central office level, including local schools, BIE Albuquerque, agency offices*, OFMC Albuquerque, and BIA regional offices. The matrix needs to delineate a clear responsibility to support schools with FMIS as well as a protocol for monitoring schools to verify they are using and updating the system routinely. The matrix should apply equally to contract and grant schools and their particular needs. The matrix should then be widely distributed to all school leaders, education line offices, regional offices, and other interested parties.

(II) Ensuring regular technical assistance and monitoring from OFMC and BIE for all schools using FMIS. This support should be consistently offered for all schools, including grant and contract schools, and especially where no on-site personnel have experience with FMIS.

(III) Highlighting the responsibility of school administrators and facility staff to guarantee that FMIS is updated. This should be reinforced from the director's office, at the assistant deputy director level, and through education line offices. FMIS updates should be required at the same level of priority as each school's annual report and NASIS updates. School administrators or facility staff should emphasize to school boards and other key school stakeholders the importance of FMIS as the basis for physical plant funding. Administrators or facility staff should also provide periodic reports to the school board and others regarding backlogs and information of interest to ensure up-to-date knowledge of school facilities and their importance for educational achievement.

(IV) Enacting a policy requiring schools to use FMIS. Create expectations, deadlines, and reminders for entering and removing backlogs; offer more training in this area for school boards and administrators.

FMIS Entry Training and Support

CHALLENGE: OFMC has a 40-hour introductory training in FMIS for staff of Bureau-funded schools, which is held regularly in Albuquerque and occasionally in other regions. OFMC also offers a two-day refresher training in Albuquerque. However, some schools face abnormally high turnover rates in their facility staff, leaving gaps in their school's access to FMIS. Moreover, fluency with the program may take several months of experience after completing training, and if FMIS isn't used regularly, it is difficult to maintain system competency. The challenge of accurate local data entry is exacerbated by the complexity of the database and some of the technical expertise needed to identify and estimate deficiencies. Thus, OFMC must increase training opportunities and provide further ongoing support to local schools to ensure they are using the system properly.

RECOMMENDATIONS:

(I) Develop a National FMIS Users Group. The National Users Group would include a representative from schools within each of the 22 educational line offices along with staff from OFMC. The user group should include representatives of BIE-operated, grant and contract schools. This distributed representation would ensure close coordination with regional user groups. Both the national and regional user groups would identify key problems and challenges and offer advice and support for effectively implementing FMIS. Such user groups could be similar to earlier efforts to support FACCOM.

(II) Create nine Regional FMIS support groups. This could include a roster of people in each region who are available to provide FMIS technical assistance to others in their region.

(III) The 40-hour basic training, along with refresher trainings, should be offered Regionally on a regular basis, and provided, when possible via remote means such as via the Internet, CDs, or other means.

(IV) If something in the FMIS program is going to change, FMIS users should be given advanced notice and any necessary training before the changes take effect.

**Most agency offices are not involved with education construction, though there are exceptions.*

System Administration and Remote Access

CHALLENGE: FMIS users experience frequent challenges accessing the network. The program is only available on dedicated terminals, not via the Internet. This drastically limits school access as it requires all FMIS work to be done in one place and cuts off access if there are technical problems with that terminal. Bureau-funded schools also lack access to the information technology resources of DOI, as the Office of the Chief Information Officer of IA does not support the FMIS program. Technical problems (such as the system being down) occur without warning and may persist for long periods without response. Few FMIS users know where to turn for technical support. Compare this to the administration of the NASIS, the database used by all Bureau-funded schools to track attendance and other academic matters, which is available on the Internet through a password-protected project portal and offers extensive technical support. Reporting the condition of school facilities is critical to the success of Native American students, and FMIS should be as technically supported and conveniently available as NASIS.

RECOMMENDATIONS:

(I) Like NASIS, FMIS should be easily accessible for all users via the Internet (versus dedicated terminals), without compromising security. Schools should also be able to retrieve their FMIS backlogs from remote locations.

(II) OFMC and the CIO should respond to FMIS technical challenges more quickly and efficiently, including system issues, access and connectivity problems, and password availability.

(III) Via email, warn all users when the system is going to be down, and for how long.

(IV) Provide regional/agency support, or a regional assistance team, to ensure backlogs are input for all Bureau-funded schools that lack access for whatever reason.

Transparency of Facility Condition Assessment Contractors

CHALLENGE: OFMC hires a contractor to assess the condition of schools and confirms the accuracy of FMIS information by sending a team to visit each school once every three years. Many schools do not manage or update their own information in FMIS, so these contractor visits are very important as the only chance to update the deficiencies listed in FMIS.

Nevertheless, school administrators may not be well-informed about the role of the contractor. These administrators and local facility managers are currently encouraged (but not required) to meet with the contractors before and after the site visit. Thus, many school officials do not accompany the contractor during their assessment. Moreover, school leaders do not feel the contractors are accountable to their schools, and administrators are not aware of what information will be added to or changed in FMIS as a result of the visit.

RECOMMENDATIONS:

(I) Improve communication between contractor and schools during the assessment process.

(II) Require formal entry and exit interviews between school leaders and contractor team.

(III) Require OFMC to provide a final copy of the contractor's Facility Assessment Report to the school upon request.

(IV) Require the school's facility staff to accompany the contractor during the visit.

(V) Thirty days prior to the arrival of the Contractor, OFMC should send the school administrator a copy of the contractor's Scope of Work and a printout of the school's list of backlogs from FMIS.

(VI) Anyone with access from that location should receive notification if the FMIS gatekeepers change backlog entries.

Chapter 3 Includes:

- An overview and critique of past New School Replacement allocation systems
- An articulation of principles underlying a new, recommended process
- A detailed description of the new process and formula recommended by the Committee for the equitable distribution of New School Replacement funds

Chapter 3: New School Replacement Program

Summary of the Replacement School Recommendations

- DOI should codify, and OFMC should implement, detailed recommendations regarding the following:
  - Principles underlying the new approach to replacement schools
  - Eligibility requirements for applicants
  - Application review and creation of pool of schools for whole school replacement
  - Post-application process
  - Whole school replacement and renovation formula

Introduction

The Act at 25 U.S.C. § 2005(a)(5)(ii) requires that the Committee develop a report on school replacement and new construction needs, creating a formula for the equitable distribution of funds for school replacement. This formula is to address six factors:

(I) Size of school

(II) School enrollment

(III) Age of school

(IV) Condition of school

(V) Environmental factors

(VI) School Isolation

The Act at 25 U.S.C. § 2005(a)(5)(i)(IV) also requires the Committee to identify complementary educational facilities that do not exist but are needed.

This chapter seeks to provide recommendations to this end.

Since Bureau-funded schools are found in many different demographic and environmental contexts, mathematical formulas can be complex in an effort to account for all the factors of such a diverse school system. Nonetheless, the objectivity and transparency that comes with using standard formulas to allocate scarce resources helps ensure the equitable distribution of resources.

Overview of the Past System for Allocating New School Replacement Funding

Currently no formula or mechanism for prioritizing funding for whole-school replacement exists. In the past, OFMC used several different processes to prioritize the replacement of Bureau-funded schools. These methods were all based in part, but not entirely, on the data provided by FMIS or its predecessor database system, FACCOM. The New School Replacement Construction Program focused on projects that would replace a majority of a school campus or, in the event that the existing site could not be used, the entire campus. Prior to FY 1994, the Bureau developed a prioritized list for school replacement each year. Beginning in FY 1993, upon instruction of Congress, the Bureau (through OFMC) created a multi-year priority list for fiscal years 1993, 2000, 2003, and 2004. Costs for schools replaced under this program ranged from $10 million to $60 million. Please see Appendix F for a detailed listing of all schools on these lists.

To develop the FY 1993-2003 lists, as an example of previous processes to prioritize schools for replacement, the Bureau invited schools to submit applications. The Bureau weighed applications against a set of criteria with associated points or scores that included:

- Building code deficiencies (15 points)
- Environmental risks (10 points)
- Accessibility (5 points)

- Unmet educational program requirements reflected by educational space utilization, inappropriately housed students, accreditation deficiencies, and students per square foot of classroom space (20 points)
- Building and equipment condition (30 points)
- Site conditions (10 points)
- Availability of alternative facilities (5 points)
- Historical enrollment trends (5 points)

An evaluation committee reviewed applications. One subcommittee ranked applications based on facilities criteria, while another subcommittee ranked applications based on educational factors. These two subcommittees independently forwarded their rankings to a steering committee that merged the education and facilities rankings into one list. The list of priority schools was then approved by AS-IA and published in the Federal Register.

New School Replacement Program Problems

A review of past Federal Register notices, information presented in the Convening Report for this Negotiated Rulemaking, and the reflections of Committee members indicate the listing of prioritized schools for new construction created confusion, uncertainty, frustration, and disappointment among affected tribes and schools. Concerns raised have included but are not limited to the following:

- The application process, in some stakeholders' view, favored schools with the greatest skill in completing applications and making a compelling case for their school; it did not effectively prioritize the schools in actual greatest need.
- The process was not clear and transparent to all who participated.
- The list of priority replacement schools changed over a period of years and school replacement priority rankings shifted. Numerous lists were developed through these processes, and schools often did not know which was the official list and whether they were on it.[30]
- The ranking on each list established expectations about the order of funding and construction among the schools listed; strong disappointment ensued if that ranking changed for whatever reason.
- The educational program requirements did not fully account for actual educational needs beyond a narrow set of parameters. Cultural educational needs, insufficient space for educational activities as measured against educational space guidelines, and other factors were not considered in the school replacement process.
- Although the method was adjusted over time, the initial application process did not allow for major repair and renovation of existing buildings or replacement of a few key buildings, to bring the whole school up to sufficient standards.

A New Approach to New School Replacement and Renovation

The Committee has developed new approaches for prioritizing schools for replacement that include both a process and a formula for generating a prioritized list of schools. The following subsections detail this new approach.

Principles

Formulas can be successfully used to prioritize funding if: 1) the data used for such formulas is comprehensive and accurate; and 2) the formulas are clear and fair. As demonstrated in Chapter 2, the data for formulas contained in FMIS must be improved in order for a formula based on that data to provide adequate results. The Committee has identified additional principles to guide the creation of a new formula for prioritizing school replacement. These principles include:

30. Year by year, changes in the priority list may have been due to schools not being able to find suitable building sites during design, repairs made using funds from the FI&R and facilities replacement program that obviated the need for New School Replacement, or other individual reasons. However, the broad view in Indian Country was that the list changed as individual tribes with political connections were able to reorganize and prioritize the list according to their needs, rather than the needs of all Bureau-funded schools.

- Funding should be needs based.
- Formulas must foster compliance with health and safety standards.
- Formulas must account for educational needs.
- The Bureau-assembled database providing the variables used in the formulas must be improved to ensure valid results.
- Formulas must be uniformly applied.
- Formulas must not be susceptible to manipulation.
- Formulas must be practicable.
- Formulas should be defensible legally and technically.
- Any decision-making process used in addition to the formulas must also be clear, consistent, transparent, and compliant with these principles.

RECOMMENDATIONS:

Every five years (or sooner if sufficient levels of funding are allocated), the Bureau will generate a new list of schools for replacement. The list should be based on an application process, but this process should be grounded primarily on readily available data and easily measurable criteria that would increase the ability of all schools, regardless of size, resources, or grant writing ability, to participate. The Committee recommends that schools on the FY 2004 list that have not yet received funding should be replaced prior to initiating this new approach.

The general approach is as follows:

Overview: The New School Replacement and Renovation Program should allow for a mixture of replacement and renovation activities. Some schools can be modernized with a combination of new and renovated buildings and might not require a complete campus replacement.

Eligibility for Application:

(I) OFMC should generate a list of all schools whose overall FCI is "poor" based on FMIS, as well as a list of schools that are both 50 years or older and educating 75 percent or more of students in portables. Only schools on one or both of these lists should be eligible to apply for the New School Replacement Program.

(II) All schools meeting the condition(s) in (I) above should be ranked based on FCI; however, if schools do not apply, they should not be considered for new school replacement.

(III) The announcement of the initiation of the process should be well publicized and must include communication and outreach that extends far beyond the Federal Register notice process. Letters should be sent to all schools and ELOs by the Director of the BIE and to tribal leaders by the AS-IA.

(IV) During the five-year process, schools should still be eligible for MI&R and FI&R monies, as needed, to ensure the school can continue to operate and improve its physical condition to meet educational needs.

(V) The ability of a school to cost-share should not be a factor in the ranking of applicants. Cost-sharing should continue to be allowed in determining the final designs for a school included in the pool for funding.

(VI) The application process should be clear, relatively simple, and based on as much quantitative data as possible. The application process should also allow schools to describe their particular circumstances and needs.

Application Review and Creation of the Pool of Schools for New School Replacement:

(I) OFMC should review the applications for completeness and accuracy within the FMIS database, and input location scores, which are worth up to 65 points (out of 100), and remove names and identifying characteristics to prepare for review.

(II) As soon as applications are submitted, a National Review Committee should be formed made up of individuals from each of the regions, selected by the Regional MI&R Committees (described in the next chapter), plus one representative each from OFMC and BIE. Each region will select one person and the Navajo region will select three people. The Review Committee members should all be knowledgeable about school facilities and shall not include anyone from schools that are submitting applications.

PRE-NOTIFICATION

OFMC and BIE provide a three or more month notification of pending application process along with application materials and an up-to-date FCI list. Schools asked to update backlogs.

APPLICATION

Application process opens and schools ranked in poor condition are provided 45 days to respond. FMIS data for calculating location score fixed at this time. Applications should be submitted online.

OFMC INITIAL REVIEW

OFMC reviews applications against FMIS data for accuracy and completeness and awards up to 65 points based on FMIS data (location score).

COMMITTEE REVIEW

A committee of educators, facility experts, and OFMC staff score applications based on the other criteria (up to 35 points). The applications are then ranked and the top 10 projects are listed in alphabetical order (not by ranking).

PUBLIC MEETING AND FINAL COMMITTEE DECISION

The 10 schools with the highest rankings are invited to present to the Review Committee at a Public Meeting, to make their case and answer questions. The Review Committee then completes a final ranking and the top 5 projects are forwarded to the AS-IA for acceptance.

AWARD NOTIFICATION

The list of the top 5 schools is published, along with the scores of all schools that submitted proposals.

POOL PRE-PLANNING

OFMC works with the awardees to complete a pre-planning package that addresses site readiness (NEPA, land, etc.) and begins to develop a program for each major project.

CONSTRUCTION SCHEDULING

Based on pre-planning, readiness, and budgets, OFMC schedules projects in an appropriate order. Should a school not be site-ready, it has 18 months to move forward or it must reapply in the next round.

A summary of the steps in the recommended Replacement School and Renovation Program.

The Review Committee should use the points in the formula (see Chart 1 on page 38) to rank applicants based on the other application criteria (worth up to 35 points). The Review Committee should identify the 10 applicants with the highest number of points.

(III) The Bureau should publish the names of the 10 schools with the highest rankings in alphabetical order and these schools should be invited to present at a public meeting in Albuquerque.

(IV) At the public meeting, schools could present their arguments regarding their rankings and the Review Committee could ask and answer questions.

(V) After deliberation, the Review Committee should select five schools for the funding pool for that five-year period. The Review Committee should be required to clearly explain its selection process in detail.

(VI) The selected pool of schools should then be reviewed by AS-IA for final approval.

(VII) In the Federal Register, the Bureau should publish a list of all schools that applied ranked by FCI and the list of schools expected to be funded in the five-year time frame. The Federal Register notice should state clearly that those in the rankings not in the top pool of schools anticipated to be funded should understand that: 1) they will not be funded in the five-year window, 2) they will have to reapply, and 3) the rankings will be recalculated based on new information in the next five-year cycle of application. The intent of this approach is to be transparent about rankings to all schools.

Post-Application:

(I) All schools in the replacement pool should then undergo initial pre-planning for readiness (e.g., site availability, soil testing, available utilities, etc).

(II) The Bureau should develop readiness criteria for the pool.

(III) Schools would then be funded for construction based on: 1) ranking, 2) readiness, and 3) budget.

(IV) The pool should be fixed for the length of the term. If the Bureau is able to fund all five schools in under five years, it should reinitiate this application process for another round sooner than five years to ensure there are no gaps in activity.

(V) If any of the selected schools are not built in the five-year period due to a lack of funding, they should be "grandfathered" into the next ranking of schools for the next time frame.

(VI) Naturally, emergencies and condemnations must be addressed in real time and could affect funding for other projects.

(VII) Pre-planning money for the schools in the pool would be provided to ascertain that:

- Tribe has certified that land is available;
- Utilities are available;
- Soils have been tested (geotechnical surveys);
- NEPA review is completed.

A reasonable timeline to get pre-planning completed would be provided.

Please note that the timing of the process should be aligned with annual federal budgets to ensure monies are available for pre-planning and programming once the pool of schools is selected.

New School Replacement and Renovation Formula

The formula for ranking schools should include the following criteria. Only applications from schools rated in poor condition, or 50 years and older and educating 75 percent or more students in portables, shall be reviewed.

Chart 1

Points	Description	Method for Calculating
65	Condition of Facilities and Educational Space Deficiencies	Overall school location score from FMIS (out of 1000) x .065. Data fixed on date application is due.
5	Crowding	Actual students per square foot divided by standard for that school in *Educational Space Criteria Handbook* (times 100). Award points based on Chart 2.
5	Declining or Constrained Enrollment Associated with Poor Facilities	Award points based on narrative provided on this criterion, based on Chart 3.
5	Inappropriate Educational Space	Award points based on percent of students in inappropriate educational space in portables, dormitory space, leased space, according to Chart 4.
5	Accreditation Risk	Award points based on the number and severity of citations in the accreditation, according to Chart 5.
10	School Age	Award points based on the average age of school's educational and dormitory buildings, according to Chart 6.
5	Cultural Space Needs	Points based on response to the following: 1) is there a specific tribal requirement; 2) is there a program; 3) is there a lack of space for that program or requirement, according to Chart 7.

The key evaluation criteria for prioritizing schools for whole school renovation and replacement.

The following section explains each of the criteria in more detail, as well as a chart showing how each will be measured.

Crowding

Each school would first calculate students per square foot per grade based on the averages of the last three years enrollment (per NASIS), divided by the total square feet of core educational space. This ratio would then be compared with the standard for that school (per grade) in the *Educational Space Criteria Handbook* (times 100). This would yield a crowding factor and points would be awarded based on the chart on the next page.

The application will lay this formula out for applicants in a simple way that they can fill in, using statements like: "Enter the number of students per grade." OFMC will confirm that the numbers in the application are consistent with FMIS and NASIS data.

Chart 2

Crowding Factor	Points Awarded
140 and above	5
130 to 139	4
120 to 129	3
110 to 119	2
101 to 109	1
100 and below	0

Declining or Constrained Enrollment Associated with Poor Facilities

Poor facilities may cause declining or constrained enrollment. Schools should explain how the condition of their facilities is causing decreasing enrollments, inability to utilize existing space, etc. Schools must support their explanation with data such as transfer data from NASIS (students requesting moves out of their geographic boundary), student/parent surveys, demographic information, waiting lists, or other data. All lists and data would be verified by the Review Committee prior to finalizing rankings.

Chart 3

Declining or Constrained Enrollment Associated with Poor Facilities	Points Awarded
School has closed a building due to poor conditions	5
School can demonstrate students are transferring because of poor facilities and/or because school has waiting list on day 11 according to NASIS	3

Inappropriate Educational Space

Up to 5 points will be awarded to schools with students being educated in spaces that are not designed or appropriate for instruction. This includes portables, dormitories, or leased facilities.

Chart 4

Percentage of Students Taught (based on last three year average) in Portables, Dormitories, or Leased Facilities	Points Awarded
95% to 100%	5
80% to 95%	4
60% to 79%	3
40% to 59%	2
20% to 39%	1
Below 20%	0

Accreditation Risk

Applicants should identify the facilities that do not meet the school's accreditation requirements. For example, a school could note a state requirement for a chemistry lab that is nonexistent. Or, a school might document an accreditation citation for lacking a library. The applicant should provide a copy of the relevant standards in their application. The intent of this criteria would be to identify schools not meeting minimal requirements from such standard-setting bodies as: the FACE program guidelines, tribal requirements (i.e., Navajo NCA), state requirements, etc. Cultural educational space deficiencies should not be indicated in this section, but noted in the section titled Cultural Space Needs

Chart 5

Citations in Accreditation Named by the Accreditation Body (documentation should be provided)	Points Awarded
Accreditation at highest risk (numerous, severe citations)	5
Accreditation at high risk (numerous citations, some severe)	4
Accreditation at risk (some citations, some severe)	2-3
Accreditation citations, not extensive nor severe	1
No citations	0

School Age

The average age of a school would be calculated by including the age of each building that is a dormitory or school building that the applicant intends to be replaced or renovated in the program. Buildings that are not meant to be part of the program would not be included in the average.

Chart 6

Average Age of School Buildings or Dormitories to be Replaced or Renovated Under the Application	Points Awarded
Over 60	5
50 to 59	4
40 to 49	3
30 to 39	2
20 to 29	1
Below 20	0

Cultural Space Needs

Bureau-funded schools should provide space for critical cultural programs such as instruction in tribal language, tribal culture, and traditional arts. Up to 5 points will be awarded for cultural space needs.

Chart 7

Determining Cultural Space Needs	If Yes, Points Awarded
Did the school respond yes to: • Is there a requirement for native language/cultural education? (please provide the Tribal Council requirement/resolution) • Is there a lack of adequate or sufficient space to support this program and/or requirement?	4
Is there an existing cultural program that requires space?	1

Other Considerations

Applicants may provide additional information about their particular circumstances and contextual details that the Review Committee should be aware of during the review process. This information may be used to break any ties in the overall ranking by points

Factors Not Considered

NCLB directs that the formula developed by the Committee include "school isolation" as a "necessary factor in determining an equitable distribution of funds." The Committee concluded that the overarching goal of basing funding prioritization on the needs of the schools would not be furthered by including isolation as a criterion. The Committee maintains that the schools in the worst condition should be fixed first, whether isolated or in metropolitan areas. Once schools are prioritized, geographic isolation will have to be taken into account regarding higher construction costs, more difficult logistics, and so forth. However, once a school is part of the funded pool, no matter how isolated, it should in no way be discriminated against in terms of setting the order of funding.

Chapter 4 Includes:

- An overview and critique of the existing MI&R and FI&R Renovation and Repair program
- Detailed recommendations for a new process and formula for the equitable distribution of MI&R funding
- Detailed recommendations for a new process and formula for the equitable distribution of FI&R funding

Chapter 4: Formulas for Minor and Major Renovation and Repair

Summary of MI&R Recommendations

- OFMC and BIE should emphasize to the schools the importance of timely entry of data in FMIS.
- OFMC should annually publish a list of all S1, F2, and M1 backlogs. These are the backlogs eligible for MI&R funding.
- OFMC and BIE should publish the data call for schools to indicate their priority backlogs for MI&R funding.
- After all funding decisions are made, OFMC should issue an annual report of all regional and headquarters MI&R allocations, explaining each decision, to post and distribute.
- OFMC should convene regional committees made up of one representative of each school in the region—grant and contract schools as well as BIE schools —to make decisions about the allocation of each Region's MI&R funds.
- OFMC and BIE should codify and implement the new MI&R formula and process.

Summary of FI&R Recommendations

- The Committee recommends that Congress revisit the moratorium on school expansion.
- OFMC should distribute the FI&R ranking of schools annually to all schools, tribes, and regions along with a brief explanation of how the rankings were obtained.
- OFMC should announce the overall budget for FI&R funding each year, and annually publish the schools and projects to be funded each year along with the rankings, explaining FI&R project/school selection in more detail than location ranking in the *United States Department of the Interior Budget Justifications and Performance Information* (Green Book).
- OFMC should identify the individuals who compile and complete the ranking process for FI&R, make clear their roles and responsibilities, and publish these roles and responsibilities annually.
- OFMC should identify educational space deficiencies by comparing the Educational Space Criteria (and state accreditation requirements) to existing conditions at all schools.
- OFMC should add all educational space deficiencies into FMIS, categorized as Critical Health and Safety Capital Improvement (educational space deficiencies) backlogs, given a weighting factor of 9.
- The FI&R formula should factor educational space deficiencies into the overall Location Score.
- DOI should incorporate educational space deficiencies into the ranking factor of Critical Health and Safety Capital Improvement with a ranking factor of 9 into departmental/OFMC policy to ensure future compliance.
- OFMC should normalize API scores for all school buildings to be worth 100 points.

Introduction

The Act at 25 U.S.C. § 2005(a)(5)(ii) requires that the Committee develop a report on school replacement and new construction needs, creating a formula for the equitable distribution of funds for school replacement. This formula is to address six factors:

(I) Size of school

(II) School enrollment

(III) Age of school

(IV) Condition of school

(V) Environmental factors

(VI) School Isolation

The Act at 25 U.S.C. § 2005(a)(5)(i)(IV) also requires the Committee to identify complementary educational facilities that do not exist but are needed.

This chapter seeks to provide recommendations for the programs of MI&R and FI&R. For each category of funding, the Committee recommends:

(I) Communication enhancements

(II) Engagement improvements

(III) Formula revision

The Committee was not asked to review and make recommendations regarding the allocation of funds for routine O&M of school facilities. The Committee does note, however, that the O&M budget has a direct impact on the improvement and repair needs at Bureau-funded schools; insufficient funding for routine maintenance allows small problems to turn into big ones that draw funding from the MI&R and FI&R programs. As stated in the Catalog of Facilities Chapter (page 23), operations funds have been constrained by approximately 50 percent per year for Bureau-funded schools.

Overview of the Current Systems for Allocating Improvement and Repair Funding

Funding for Bureau-funded school improvement, repair, and renovation is divided into several accounts or "buckets" of funding. OFMC has some flexibility to move allocations among these categories in order to best meet the needs of school facilities. The following briefly describes the current system for allocating improvement, repair, and renovation monies.

MI&R

MI&R funds address serious health/safety and other high-priority deficiencies at Bureau-funded facilities (except teachers' quarters). Most MI&R projects correct problems that put the facility out of compliance with applicable life safety statutes, codes, and requirements including those found in: the Americans with Disabilities Act; Uniform Federal Accessibility Standards; U.S. Environmental Protection Agency requirements; and the National Fire Protection Association Codes and Standards. Such projects may address issues such as fire doors, alarms, structural repairs, etc. To qualify under MI&R, projects must exceed $2,500 in cost and typically do not exceed $500,000 in cost. There are special MI&R programs concerning specific components, such as roofs, energy, portables, demolition, and condition assessment.

FI&R

Most FI&R projects consist of major renovation of or repairs to an existing asset. As with MI&R, projects under FI&R can correct deficiencies that cause non-compliance with applicable codes and other regulatory or Executive Order requirements. FI&R projects typically address all repairs needed for a single building or all maintenance required by an entire campus. As such, rather than being one backlog or one specific project, they consist of most or all of the backlogs for a building or location. Such projects range from $500,000 up to many millions. A detailed explanation of the current FI&R formula can be found in Appendix G.

Facility Replacement

The Replacement Facility Construction program was established in FY 2007 to replace individual buildings when the total cost of all deferred maintenance exceeds 66 percent of the cost of replacing the building; it also provided funding for schools lacking key academic facilities required for accreditation. This program was distinct and separate from the Replacement School Program, though it can be combined with FI&R to respond comprehensively to the needs of a school campus, replacing or constructing some buildings and renovating others. Like FI&R projects, these ventures typically ranged in cost from about $500,000 to multiple millions.

The following chart graphically explains these programs:

Facilities Condition Index

Another calculation related to the FI&R program is the FCI. FCI provides a numerical rating of the condition of a school as a whole, based on the ratio of cost of deficiencies to current plant value. It is used to determine whether a school is ranked in good, fair, or poor condition.

MI&R

2010 MI&R Process

Up until 2010, the allocation of MI&R funds was based on a process rather than a formula. Each year, OFMC requested that schools submit MI&R priorities to OFMC's regional offices, which then organized the lists of individual school priorities into a list of regional priorities. In turn, these regional priorities were reorganized at the headquarter level to establish overall MI&R spending priorities for the year across the 183 schools.

The following chart graphically displays this process:

MI&R process from 2010 and earlier.

2011 MI&R Process

In 2011, OFMC made a change in its process of allocating MI&R funds to focus funding on schools in the worst condition. For 2011, 69 schools in and nearing poor condition status based on the FCI were identified for MI&R funding. Based on FCI scores, these schools were considered the schools with the "worst deficiencies." The 2011 MI&R allocation process was a collaborative effort between BIE and OFMC which used established criteria in utilizing risk assessment to justify deferred maintenance repairs. The process identified and justified viable improvement and repair priorities with an emphasis on stakeholder participation.

The FCI ranking establishes a base priority of targeted schools and identifies the worst deficiencies at these schools as viable projects by a fully documented validation process. The process identifies and prioritizes deferred maintenance backlogs that will correct major building systems and components including any urgent critical system failures (e.g., roofs, HVAC, fire alarms, electrical systems), which have the potential to close down the education program. All deficiencies selected for repair must be backlogs in the FMIS system; fund-

ing is limited so it is extremely important that backlogs targeted for repair are top priority.

A team at OFMC, with BIE and the Division of Safety and Risk Management representation, reviews the regional lists and makes recommendations to finalize the MI&R funding allocations.

MI&R Problems

The Committee has identified problems with the current MI&R allocation process including, but not limited to, the following:

- Schools are not informed of how OFMC prioritizes individual projects within the critical health and safety category.
- There is too little communication between OFMC and schools once the initial requests are submitted.
  - Decisions are not transparent—schools do not understand why they receive money for some projects but not others.
  - Inadequate communication gives poor results —projects that were submitted because they should be done together (e.g., replacing fire doors and fire alarms) are not funded together, with wasteful consequences.
- Ranking is done without clear and consistent criteria across regions. Without guidance from OFMC to all schools regarding what factors to take into consideration when prioritizing projects, schools identify needs that do not reflect OFMC's priorities (e.g., life and safety).
- Inadequate attention to educational facility needs. OFMC and BIE are separate offices within IA. Therefore, BIE's ELOs have no direct authority to affect OFMC's prioritization decisions for MI&R projects. This raises the concern that the need for correcting educational space deficiencies is given less weight than the need to repair and improve existing facilities, regardless of educational space deficiencies.

MI&R Recommendations

The Committee makes the following recommendations to improve the MI&R process:

OFMC should improve communication by doing the following:

- Emphasize to the schools importance of timely entry of data in FMIS.
- Annually publish a list of all S1, F2, and M1 backlogs. These are the backlogs eligible for MI&R funding.
- Publish the data call for schools to indicate their priority backlogs for MI&R funding.
- After all funding decisions are made, issue an annual report of all regional and headquarters MI&R allocations, explaining each decision.
- Post the collected information on the Bureau's website, distribute to all school principals, facility managers, and ELOs, and distribute at Bureau key conferences and trainings.

OFMC should improve engagement by doing the following:

- Convene regional committees made up of one representative of each school in the region to make decisions about the allocation of each region's MI&R funds (a proportional amount of 2/3 of total MI&R funds). Representatives should include grant/contract schools as well as BIE schools.

OFMC should improve the formula for prioritizing the allocation of MI&R funds by establishing a formula prioritizing MI&R funding. The formula and process would work as follows:

- MI&R funds will be divided into two pools—a regional pool and a headquarters pool. Two-thirds of the funds will go into the regional pool to be allocated to OFMC regional offices for allocation by regional committees, and 1/3 of the funds will become the headquarters pool and be allocated by OFMC.
- The regional pool will be allocated to each region proportionately based on the square footage of all schools' educational and dormitory space in that region, based on FMIS. Regional funds not needed or unspent by a region (due to new schools, updated facilities, etc.) will be reallocated across the other regions according to the same square footage approach.

A summary of the steps in the recommended MI&R program.

- These regional funds will be allocated across schools in that region by regional committees consisting of one representative of each school in the region, deliberating in an open and transparent manner, and allocated to fund the eligible (S1, F2, and M1) backlogs highlighted as priorities by the individual schools that are between $2,500 and $500,000. Only projects within this cost range will be funded by these regionally allocated funds. If there are large critical projects over $500,000 that the region deems as highest priority, they will bring this to the attention of OFMC. **Funds will not be allocated within a region by the school square footage, but by need. The square footage distribution of funds is only at the regional level to ensure distribution of funds across all regions.**
- Prioritized projects in each region that are not allocated by regions will be forwarded to OFMC for potential funding from the headquarters fund, (consisting of 1/3 of the MI&R funds in total).
- OFMC will allocate its portion of the MI&R funds consistent with its 2011 MI&R process, drawing from the eligible (S1, F2, and M1) backlogs highlighted as priorities by the individual schools with the highest FCI rankings but not funded by the regional funds. OFMC may fund individual backlogs over $500,000 from their headquarters pool when necessary to cover major or special projects.

FI&R and Facility Replacement

The FI&R program funds numerous larger projects for schools that exceed the typical repair done with MI&R monies. These projects customarily exceed $500,000 and may cost millions of dollars. Typical projects include replacement of plumbing, HVAC, roofs, and other systems. Sometimes, a building needs so many MI&R projects that a major rehabilitation of that building is in order, and can be done with FI&R monies. Occasionally, the combined cost of FI&R and MI&R projects for a specific building exceeds 66 percent of the replacement cost of the building. In such cases, the facility may be eligible for complete replacement.

The FI&R formula is used as a basis for determining whether a building should be replaced. Once a school ranks high for FI&R monies, as OFMC reviews that school to plan a set of construction activities, they evaluate each building with deficiencies and determine if that building should be wholly replaced versus repaired/renovated. If replacement is deemed necessary, that part of the project is then funded through the Facility Replacement program.

Current FI&R Process

The current FI&R process for allocating funds is based on data collected in the FMIS system:

(I) Individual schools enter all backlogs and costs into FMIS. The data is reviewed and revised as described in more detail in Chapter 2 of this report.

(II) Through a complex formula, OFMC generates an overall project score for a school, giving it a priority ranking versus all other schools in the system for facilities and repair funding (see Appendix G for detailed description of the existing approach).

(III) The current formula to develop an overall project score is as follows:

- Relative weighed score of specific backlog for the facility (based on FMIS backlogs)* 75%) + API average* 25%) = Final Project Score.
- API is a consideration of the criticality of the buildings with backlogs within the school to the overall educational mission. For instance, outbuildings, shops, and other non-education buildings would have lower criticality.
- OFMC reviews these project scores generated automatically by the formula in FMIS, checks for mistakes, removes irrelevant backlogs, and "re-ranks" the school according to the same formula.
- OFMC then incorporates rankings into a five-year project plan. To provide consistency and certainty, projects are "locked in" during the first and second years. However, the last three years' rankings are subject to change based on new information from FMIS.

- FI&R money only funds renovation of existing facilities. It cannot be used to expand square footage or fund new buildings. However, if OFMC determines that a facility must be expanded in order to correct square footage deficiencies to bring a building up to current educational standards, the existing building perimeter may be expanded up to 25 percent.

Key Summary Points to the FI&R Formula

While the calculations in the FI&R formula are detailed and complex, there are, in general, a few key points the Committee identified as most important in understanding this formula:

(I) The number and total cost of backlogs do not affect a school's overall FI&R score. Schools with the most backlogs or the highest costs are not necessarily ranked the highest in overall score. Small schools with large relative needs may rank higher than larger schools with more expensive but less serious needs.

(II) The FI&R score is affected by:

- The critical/essential categories of backlogs (i.e., health and safety issues);
- The relative value of those critical backlogs as compared to all backlog costs (i.e., if critical backlogs make up a large percentage of the total backlog costs in that school); and
- The criticality of the buildings with backlogs (i.e., if the buildings with critical backlogs are essential to education).

(III) The formula does not discriminate in any way based on tribe, geography, ability to pay, or size of school. The FI&R formula has no inputs relative to these items.

(IV) The formula does not prioritize backlogs against any educational criteria. Currently, the FI&R formula does not account for the critical impact of a project on a school's quality of education. Nor does it include essential educational needs that cannot be represented by deferred maintenance backlogs.

Expansion Moratorium

In the Department of the Interior and Related Agencies Appropriations Act of 2006, Congress provided that no funds shall be used to support expanded grades for any school beyond the grade structure in place at each school in the BIA school system as of October 1, 1995.[31] The law also prohibits funding any new Bureau-funded schools, preventing the creation of charter schools. This language has been included in each appropriation since then. The Committee respects Congress' underlying goal of ensuring adequate funding for existing school programs, but it is the view of the Committee that an unintended consequence of this blanket moratorium has been to block important opportunities to improve the efficiency and serviceability of some Bureau-funded schools. **The Committee recommends that Congress revisit the moratorium on school expansion.**

FI&R Formula Strengths and Weaknesses

The Committee has identified several strengths with the current process. The FI&R formula:

- Is specific, data-based, and reasoned;
- Does not discriminate by school size, project cost, location, or ability to pay; and
- Helps ensure a fairer allocation of money that cannot be easily changed due to politics, personalities, and individual influence.

However, the Committee has also identified several shortcomings in the current FI&R process.

- It is quite complex and not well understood by schools: most schools do not know of the formula, how it works, and what inputs or criteria are key.
- It is completely dependent on the accuracy and comprehensiveness of FMIS data to generate a needs-based ranking. The formula is only as good as the data it is based on and FMIS needs improvements as noted in other chapters.

31. Public Law 104-134, 110 STAT. 1321–171

- The formula does not account for any educational needs. The current approach has no way of accounting for two important educational space deficiencies:

  - The system does not identify backlogs that have significant negative educational impacts (e.g., inability to use a reading lab);

  - It does not account for space that is either entirely missing (e.g., we have no reading lab at all) or space that is far too small (e.g., the reading lab can only handle half of our children).

- It does not account for inappropriately housed students in portables. An FI&R ranking may be low in a school dependent on numerous portables because FI&R only focuses on the condition of buildings, not their adequacy.

- It does not calculate whole building replacement, putting even greater pressure on FI&R dollars for repair and renovation when a building is identified in the FI&R ranking as needing complete replacement under the facilities' replacement program.

- By investing in F&IR projects, a school may be improved sufficiently to make it a lower priority for a whole school replacement program.

FI&R Recommendations

The Committee makes the following recommendations for improvements to the current FI&R process regarding communication, consultation, and formula.

OFMC should increase and enhance communication by implementing the following recommendations:

- Distribute the FI&R ranking of schools annually to all schools, tribes, and regions along with a brief explanation of how the rankings were obtained;

- Annually publish the schools and project to be funded that year along with the rankings;

- Announce the overall budget for FI&R funding that year along with above information;

- Explain FI&R project/school selection process in greater detail than merely the location ranking published in the Green Book; and

- Identify the individuals who compile and complete the ranking process for FI&R, and make clear their roles and responsibilities. OFMC should publish these "roles and responsibilities" annually.

OFMC would improve the formula for prioritizing and allocating FI&R monies by implementing the following recommendations. In order to identify educational needs and develop a means to rank these needs, OFMC must:

- Conduct a study of all schools, comparing the *Educational Space Criteria Handbook* (and state accreditation requirements) to existing conditions to determine educational space deficiencies (see the Catalog of Facilities Chapter of this report for further detailed recommendation);

- Add all educational space deficiencies into FMIS, and incorporate them into the FI&R formula as Critical Health and Safety Capital Improvement (educational space deficiencies) backlogs, given a weighting factor of 9.

- Factor educational space deficiencies into the overall Location Score for FI&R formula.

Including educational needs into the FI&R formula with a ranking factor of 9 should be incorporated into OFMC policy to ensure future compliance.

The Committee recommends the following revised formula:

- (Relative weighed score (based on FMIS backlogs) * 75%) *(weighed education deficiency score is included in above)*

PLUS

- (API Average *25%) *(normalized so that all school buildings have an API score of 100)*

= Overall Final Project Score

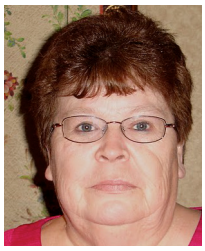
This new FMIS formula will generate a prioritized list arranged worst first (combined building and educational space deficiencies), and FI&R monies will be used as available each year to fund these projects.

Chapter 5: Appendices

Appendix A: Committee Members and Alternates

Tribal Representatives

Gregory Anderson is the Superintendent of the Eufaula Dormitory in Eufaula, Oklahoma. He has been involved in Indian education for 27 years at many levels and has served on numerous Federal committees for improvement and reform in Indian education. Mr. Anderson was appointed in April 2002 by President George W. Bush to serve on the National Advisory Council on Indian Education and was re-appointed by President Barack Obama to continue serving on NACIE in August 2010. He was selected in 2002 to serve on the Department of the Interior - Bureau of Indian Affairs first NCLB Negotiated Rulemaking Committee of 2005. He served as co-chairman for the Committee, which developed recommendations for proposed regulations for the No Child Left Behind Act of 2001. In July 2010, Oklahoma Governor Brad Henry appointed Mr. Anderson to the Oklahoma Advisory Council on Indian Education. He is involved in public service at the local level, and has served as Vice-Mayor and Council President for the city of Eufaula, Oklahoma. Mr. Anderson is a graduate of Eufaula High School and went on to earn his bachelor's degree in Journalism from the University of Oklahoma, a master's degree in Education Administration from East Central Oklahoma University and his superintendent's certification through the Oklahoma State Department of Education. He resides in Eufaula, Oklahoma and is married to Becky Anderson. They have two children—son Brett, 17, and daughter Alex, 13—who attend Eufaula Public Schools. He is serving a co-chair for this NCLB School Facilities and Construction Negotiated Rulemaking Committee.



Janice Azure, a member of the Turtle Mountain Band of Chippewa Indians, has worked in education with the Dunseith Public School for 18 years. She also has worked for the tribe in the Tribal NEW program, the Tribal Work Experience Program and the Tribal Child Care Block Grant Program, rising to Tribal Secretary and Program Director. She also served two terms on the Tribal Council. She and her husband own and run a family business in Dunseith, North Dakota. Ms. Azure also volunteers her time in community fundraisers for members of the community who are ill. She is the mother of six children, and has 22 grandchildren and 2 great-grandchildren.

Jimmie C. Begay is a member of the Navajo Tribe and has been in Indian Education for more than 30 years as a teacher, school principal, and Executive Director of Grant/Contract Schools. He also was a Health Director for one grant school entity. He also served more than 15 years as Board of Director for the Association of Contract Tribal Schools, a national association consisting of grant and contract schools which advocated for self determination. Mr. Begay has 20 years experience as project management for design/construction projects, namely Rock Point Community School, Jeeh deez ah' Academy Inc., Rough Rock School, and Lukachukai Community School where Validation project was done. He was involved with working with local school boards, architects, contractors and federal government to complete these projects. For the last four years Mr. Begay performed duties on the Navajo Nation Board of Education. In 2011 he was elected to four more years to serve on the board. Mr. Begay earn his bachelor's degree in Secondary Education and master's degree in Educational Administration from New Mexico Highlands University, Las Vegas, New Mexico. He also testified before Congress for legislative changes or for new legislation affecting Indian Education and advocated for educational funding.

Margie R.S. Begay is Navajo, and was born and raised on the Navajo reservation at Wheatfields, Arizona. Her parents are the late Tom Slim Begay and Marie N. Begay. She has eight brothers, a deceased brother, and four sisters. Margie has two children, Ashley, her daughter, and Ryan, her son, who with his wife, Aldercy, have two children, Ariyah and Seth. Her grandchildren are her pride and joy. Her interest and involvement

in education came from being a parent and her love of doing local work. Ms. Begay holds a B.A. in Administration. From 1998 to the present she has acted as School Board president to Lukachukai Community Board of Education, Inc., and as the Secretary/Treasurer of the Tsaile/Wheatfields Chapter of the Navajo Nation. She has been president of the Associated Navajo Community Control School board Association, and vice-president of the Native American Grant School Association. She has also served as the vice president, and formerly as secretary, of the Chinle Agency Council. Ms. Begay has worked as the Chinle Agency Commissioner for the Navajo Nation to the Government Development Office. In addition to her elected and volunteer positions, Ms. Begay works as a Senior Planner to the Division of Transportation, and on her farm. Ms. Begay serves as an Alternate Tribal member of the Committee.

Faye Blueeyes is Program Director and Director of Finance/ Special projects at Dzilth-No-O-Dith-Hle Community Grant School, where she is, amongst other tasks, responsible for special projects pertaining to facilities. Prior to this, she worked for Shiprock Alternative Schools, Inc. for 24 years, holding numerous positions, including Director of Facilities and New School Construction Project Director. In this role, she directed the completion of a $26.9 million new school construction, and managed all school facility and FMIS data. She has provided testimony to the House of Representatives on issues involving budget and education, and also served on an earlier No Child Left Behind Negotiated Rulemaking Committee. Ms. Blueeyes holds a master's degree in Curriculum and Instruction and a bachelor's degree in Elementary Education. Ms. Blueeyes serves as an alternate member of the Committee.

Gerald "Jerry" Leroy Brown was born at the Flathead Reservation on January 7, 1940, at St. Ignatius, Montana. His mother, Dorothy Morigeau Brown was Salish and Kootenai and his father, Thomas W. Brown, Sr. was Oglala Lakota. They had eight children, seven boys and one girl. The family moved to San Francisco, CA under the BIA Relocation Program in 1957. Mr. Brown graduated from Mission High School in 1958. After serving in the U.S. Army, Mr. Brown attended college at San Francisco State College, Carroll College, Helena, Montana, University of Colorado workshop on Indian Affairs, graduating from Montana State University in 1965 with a B.A. in Sociology. After college, Jerry directed the Community Action Program for his tribe, Confederated Salish and Kootenai Tribes until he entered UCLA School of Law in 1968. He received his J.D. from UCLA in 1971. His primary professional career was in school desegregation, working in various regions of the country. He is currently retired and living on the Flathead Reservation, where he serves as chair of the Two Eagle River School Board and teaches part-time for the Salish Kootenai College at Kicking Horse Job Corps Center. He is serving as a co-chair for this NCLB School Facilities and Construction Negotiated Rulemaking Committee.

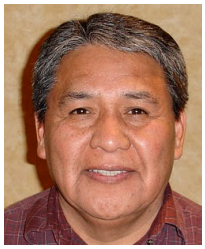
Fred Colhoff is an enrolled member of the Oglala Sioux tribe, and has been involved in school facilities and maintenance for 20 years. Mr. Colhoff worked with the Head Start transportation department and the Lakota Community Homes in housing maintenance, before attending the Western Dakota Vo-Tech Institute for building and grounds maintenance. Mr. Colhoff worked as the Lady of Lords School Maintenance Supervisor for three years, and currently works as the Wounded Knee district school facility manager, where he is responsible for FMIS data entry.

Joy D. Culbreath graduated from Lubbock High School and attended Southeastern Oklahoma State University where she received a bachelor's degree in Business Education and Elementary Education, master's of Behavioral Studies (Certified Professional Counselor) and master's of Administration. Joy worked for Southeastern Oklahoma State University for 27 years in TRIO programs and teaching in the Business Department. After her retirement, Joy was asked by the Choctaw Nation of Oklahoma to help build an adult education program. She began the program as its only employee, doing every-

thing from teaching GED classes to clerical work. After directing the Adult Education Program for four years, she was named as Executive Director in charge of all Education programs within the Choctaw Nation. Another program under Joy's direction is Jones Academy, a legacy school founded by the Choctaw Nation in 1891. This residential school is rapidly becoming a nationwide example of excellence in Tribally-operated schools (see www.jonesacademy.org). In 1997 Chief Pyle asked Joy to build a language program for the Choctaw Nation. Other tribes have looked to this language program as they try to build their own. Joy serves as an officer on the Jones Academy Foundation Board of Directors and on the alumni board for Southeastern Oklahoma State University. Joy has a great love for children and young people. Among other awards, she was recognized by the Oklahoma State Board of Regents as the first recipient of the "Champion for Student Success" award.

Judy DeHose is a member of the White Mountain Apache Tribe, where she has been active in tribal development and education for her entire career. She was a Tribal Council member for the White Mountain Apache Tribe for eight years, and also has worked as the supervisor for the Cibecue Complex and as the tribe's Title VII Program Director. Ms. DeHose has served as a member of the White Mountain Apache Committee, as chair of the White Mountain Apache Health Authority Board, as an elected Tribal Council representative for Cibecue Community on the White Mountain Apache Tribal Government, and as Cibecue Community President.

Shirley Gross has been Program Coordinator for the Pierre Indian Learning Center for 32 years, where she is responsible for the day-to-day management of the fiscal affairs of the organization, and managed construction of a new dormitory. She works with facilities staff on a daily basis for operations and maintenance issues and is responsible for communications with the Director of the Office of Facilities Management and Construction. Prior to her tenure at the Learning Center, Ms. Gross spent 13 years as Business Manager for the Fort Pierre Public Schools, where she was also involved in coordination for new school construction.



Lester Hudson currently serves as the Chief Executive Officer of Ch'ooshgai Community School in Tohatchi, New Mexico, a position he has held since 2007. Previously, Mr. Hudson worked as an Education Program Administrator for the Office of Indian Education Programs at three agencies. Mr. Hudson received his master's of Education Administration from the University of New Mexico, and a bachelor's in Science Education from New Mexico State University. He is a licensed New Mexico K-8 Instructional Leader and a New Mexico K-12 Education Administrator.

Bryce In the Woods is a District I Council Representative for the Cheyenne River Sioux Tribe. He was re-elected in 2008 after serving a four year term. As Council Representative, he has served in many roles, including as Wolakota Chairman, Veterans Affairs Chairman and Education Vice-Chairman. He has also worked as a Certified Chemical Dependency Counselor for the Four Bands Healing Center and as a Youth Outreach Worker for the Cheyenne River Sioux Tribe Healthy Nations initiative. He is a veteran of the US Army. Mr. In the Woods serves as an alternate member of the Committee.

Fred R. Leader Charge is a member of the Rosebud Sioux Tribe, and graduated from St. Francis Indian School in 1976. Mr. Leader Charge worked at the Rosebud housing authority, now SWA Corps, rising from maintenance man to executive director over the course of his tenure. He is trained in maintenance, inspection and administration. Mr. Leader Charge returned to St. Francis in 2001 as maintenance supervisor, and in 2004 was appointed to his current position of Operations and Maintenance director. When Mr. Leader Charge started at St. Francis, FMIS was not

in use at the school, and Mr. Leader Charge has coordinated an effort to get training and technological resources in place. Mr. Leader Charge is married with three children and two step-children, and is grandfather to 10 grandchildren and four step-grandchildren. Mr. Leader Charge serves as an alternate member of the Committee.

Frank Lujan is the Governor of the Pueblo of Isleta, a position he has held since 2007, and is responsible for monitoring over 32 tribal government service provider programs and supervises department directors and operations. Mr. Lujan possesses more than 31 years of professional experience in project management for facilities management and construction. He oversaw construction of the Isleta Elementary School as project manager, and worked as an engineering technician and as supervisory facilities operations specialist with the Southwest Regional Office of the Bureau of Indian Affairs. Mr. Lujan has served as an elected Tribal Council member of the Isleta Tribal Council, studied Civil Engineering at New Mexico State University, and received a certificate in Architectural Drafting from Draughton's Business College.

Nancy Martine-Alonzo is a member of the Ramah Band of Navajo Tribe, part Yaqui and Spanish heritage, born and raised in Pine Hill, New Mexico. She recently retired with 37 years of services as an educator with public school, BIE schools, and state and tribal governments. She is currently the Executive Director for the Albuquerque Area Indian Health Board Inc., a consortium of seven tribes in New Mexico and Southern Colorado for Audiology and HIV/AIDS Prevention programs. In 2007, services expanded to include an Albuquerque Area Southwest Tribal Epidemiology Center (AASTEC) which serves 27 tribes in the southwest region to provide health-related research, surveillance and training to improve the quality of life of American Indians; and to provide accurate and timely health data to member tribes. She has a bachelor's degree, two master's degrees, education specialist certificate, and is an education doctorate candidate, all in the field of education and organizational administration. She holds a lifetime K-8 teaching certification and K-12 administration certification. She serves on numerous local and national education and health task forces and advisory councils, and is President of the Ramah Navajo School Board, Inc. She is the parent of seven children, and has 10 grandchildren. Ms. Martine-Alonzo serves as an Alternate Tribal member of the Committee.

Merrie Miller White Bull is a second term Tribal Council representative for the Cheyenne River Sioux Tribe. She represents District 4, which is the second largest district on the Cheyenne River Reservation. Merrie was elected to the Tribal Council in December of 2006. Merrie is the chairman of the Education Committee, Chairman of the Election Board Committee, and Vice-Chairman of the Judiciary for the Cheyenne River Sioux Tribe. Merrie is married to Kevin White Bull and they have three children ages 21, 19, and 13. Merrie has a bachelor's degree in Elementary Education and is currently certified in the State of South Dakota. Before Merrie was a Tribal Council representative she worked for the Bureau of Indian Affairs at the Cheyenne Eagle Butte School. Merrie has dedicated her life to serving children, she has coached more than 150 girls as a dance coach throughout the years working at the C-EB school, and choreographs routines for the C-EB school drama club. Merrie also coached a dance team for children ages 4 to 12 years old. Merrie continues to look for ways to help out in her community. She is serving as a co-chair for this NCLB School Facilities and Construction Negotiated Rulemaking Committee.

Betty Ojaye, Navajo, is the Executive Director of Navajo Preparatory School, Inc., Farmington, NM. In her 20-year leadership role at Navajo Prep School, she helped fundraise to oversee a $40 million school campus revitalization project that included restoration of historic buildings, as well as the Navajo Nation's first LEED GOLD Certification for Construction established by the U.S. Green Building Council.

Charles Monty Roessel currently serves as Superintendent for Rough Rock Community School, a position he has held since 2007. Mr. Roessel has also served as Executive Director and Director of Community Services for the school. He has coordinated and implemented the master plan for Rough Rock Community School construction needs and worked to achieve new school construction for the K-12 school campus, including construction of two dormitories, a high school, middle school and elementary school. In 2008, he provided testimony on school construction to the Senate Indian Affairs Committee. Mr. Roessel holds an Ed.D. in Educational Administration and Supervision from Arizona State University, a master's in Journalism, and a bachelor's in Photo-Communication and Industrial Arts. Mr. Roessel is a published writer and photographer, and has worked as vice-president and editor for the *Navajo Nation Today* and managing editor for the *Navajo Times Today*. He is serving as a co-chair for this NCLB School Facilities and Construction Negotiated Rulemaking Committee.

Jerald Scott House has been employed with the Navajo Nation, Division of Community Development, Design and Engineering Services for the past 25 years, and is responsible for project management services to plan, initiate, implement, monitor/control, and close-out capital outlay projects. This involves the planning, design, and construction of public facilities on the Navajo Nation funded by various agencies through federal, state, and tribal appropriations. Mr. House majored in Civil Engineering at the University of New Mexico and took Project Management courses from the University of Wisconsin. He is currently involved in revising the Navajo Nation's policy and procedures for project management, procurement, and contracting for project implementation and development. Mr. Scott House serves as an Alternate Tribal member of the Committee.

Andrew Tah has been in education for 39 years as a teacher and administrator (vice principal, principal and superintendent). He is the superintendent of schools for the Department of Dine Education, Navajo Nation, and is retired from the federal government, where he was an Education Line Officer.

Arthur Taylor currently serves as the Native American Tribal Liaison for the University of Idaho, and is responsible for coordinating, planning and implementing open dialogue between members of the Native American tribes in the Northwest and members of the University of Idaho in order to best serve the people of the reservations and surrounding areas. Arthur spent five years as Assistant Director of Multicultural Student Programs and Services at the University of Notre Dame and six years on the Nez Perce Tribal Executive Committee. He holds a master's in Organizational Leadership from Gonzaga University, a master's in Cultural and Educational Policy Studies from Loyola University and is currently an Ed.D. candidate in Education at the University of Idaho. Arthur is from Lapwai, Idaho and is a member of the Nez Perce tribe.

Willie Tracey, Jr. served as a Member of the 21st Navajo Nation Council, 2007-2011 Education Committee, where he worked cooperatively with education providers to assure educational goals were successfully attained by Navajo Nation while establishing friendly policies, methods, procedures and laws that govern BIE, grant and charter institutions on Navajoland. He also served on the 20th Navajo Nation Council, 2001-2006 Transportation and Community Development Commit-

tee where he effectively coordinated legislative matters that administered new road / bridge construction, road maintenance and transportation system improvement planning and development. Mr. Tracey was officially appointed by the 20th Navajo Nation Council to represent the Nation on the Intertribal Transportation Association, which elected him Vice-President for three consecutive two-year terms. He also served as a Ganado Community Secretary / Treasurer for two consecutive terms from 1996 - 2001. Other employment positions include Senior Transportation Planner for the Navajo Department of Transportation; Planner with Apache County District II Road Department; Employee Development Officer and a Contract Analyst for the Navajo Nation Workforce Development. Mr. Tracey presently is employed with the Department of Dine Education, Office of Dine Culture, Language and Community Services, as a Project Manager to establish an alternative form of academic measuring standards.

Jerome Wayne Witt has worked in construction for most of his life. He worked in facilities management for the BIA Pine Ridge Agency for 18 years, becoming a facility foreman. Mr. Witt then joined the Rosebud agency as a facilities manager for the BIA and the school system. The Rosebud agency was a pilot agency for the development of FACCOM, and Mr. Witt has been involved with FACCOM and FMIS since the programs began. Mr. Witt retired from the BIA, and joined the Shannon County School District as the maintenance director before working at the Loneman School as a special projects manager. He is now the project manager for the design and construction of the new K-8 54,000 square foot Loneman school. Mr. Witt is married with five grown children. He also raised a grandson who graduated from Loneman, and Mr. Witt works there to give back to the school. Mr. Witt is an enrolled member of the Oglala Sioux tribe.

Catherine M. Wright currently serves as Director of the Hopi Board of Education for the Hopi Tribe, where she works with members of the Board of Education, the Hopi Department of Education, the Bureau of Indian Education and local school boards on issues including revisions to the Hopi Education Ordinance, developing strategies for enhancing and promoting education opportunities, and surveying facility needs for local schools. She has served as a member of the Polacca Day School Board/First Mesa Elementary School Board, acted as President of the Polacca Day School Board and as Vice President of the Hopi Board of Education. An attorney, Ms. Wright worked extensively on trust asset issues involving the Hopi Tribe, acted as Senior Attorney for the Hopi Legal Services, and ran a private practice. She holds a J.D. from the University of Texas and a master's in Anthropology from Washington University. Her son Nicolaas recently graduated from University of California at Berkeley after attending K-12 on the Hopi Reservation.

Dr. Kennith H. York has worked in education and development over the course of his career. He served as school principal for the Choctaw Tribal Schools for eight years, in two K-8 schools. He also worked as an Educational Planner for the Choctaw Tribal Schools and Tribal Courts, developing educational strategies and plans for youth and planning a youth/adult drug court within the judicial system. For the past five years, Dr. York has worked for the Mississippi Band of Choctaw Indians Tribal Administration, where he is currently the Director of Development Division. Dr. York holds an Ed. D in Educational Administration with collateral in American Indian Studies from the University of Minnesota, a master's in Educational Administration from the University of Minnesota and a master's in Management from Belhaven College. Dr. York is a member of the Mississippi Band of Choctaw Indians.

Albert Yazzie is a retired Indian educator who worked in Navajo public school education for 24 years as a teacher, principal, associate superintendent and superintendent. He was involved in school construction planning for Ganado public schools at the elementary, intermediate and high school level. Mr. Yazzie was instrumental in bringing impact aid monies to Indian public schools, working to change legislation at the national and state level. Mr. Yazzie also served as executive

director for the Wide Ruins Community School and as principal at the Rock Point High School, both grant schools. Mr. Yazzie was appointed by former president George H. W. Bush to serve on the National Indian Education Advisory Council, served on the board of the National Indian Education Association, and was president of the Arizona Indian Impact Aid Association. He is served on the U.S. Census Advisory Committee on the American Indian and Alaska Native (AIAN) Populations for the 2010 Census. In addition to his current involvement on the No Child Left Behind Negotiated Rulemaking Committee, Mr. Yazzie is giving back to the community where he grew up as a member of the Red Lake farm board, and takes care of the family ranch. Mr. Yazzie has three children—Melanie, Darryle and Tarajean—who all work in education.

Lorena Zah-Bahe has been involved in education for 35 years. She holds a degree in Elementary Education, attended Northern Arizona University and Arizona State University, and was both a teacher and school administrator. Ms. Zah-Bahe's career has been in work with tribally controlled schools. She currently works at the Department of Dine Education, where she monitors and provides technical assistance to Bureau funded schools. Previously she was the Director of the Association of Navajo Community Controlled Schools; she spent more than 20 years with the organization. Her experience includes lobbying Congress, reviewing Indian education legislation to improve the status of Indian education on a national level and working as an advocate for Indian self determination and tribally operated programs and schools. Ms. Zah-Bahe is a former president of the National Indian Education Association. She is serving as an alternate co-chair for this NCLB School Facilities and Construction Negotiated Rulemaking Committee.

Federal Representatives

Jacquelyn Cheek
Special Assistant to the Director, Bureau of Indian Education
Ms. Cheek is the Special Assistant to the Director, Bureau of Indian Education (BIE) at the Department of the Interior. Ms. Cheek has worked in various positions in Indian Affairs in the Department since the mid-1980s. Prior to working in the BIA, Ms. Cheek was a consultant with Native American Consultants, Inc., in Arlington, Virginia. Her first job in Washington, D.C. was as the Public Information Officer for the Presidential Commission on Indian Reservation Economies in 1984. Ms. Cheek came to Washington, D.C. by way of Boston, Massachusetts, serving as the Director of Education Programs at the urban Indian Center known as the Boston Indian Council. She has held various positions in Indian education since 1973, as a teacher's aide for summer youth programs, as an afterschool teacher for troubled youth, as the lead coordinator of a curriculum development project, a culture-based curriculum development consultant, and as a Head Start teacher and administrator for the Seneca Nation of Indians, just to name a few. She holds two master's degrees: one in Human Development and another in Education, from the Harvard Graduate School of Education. She also has a Bachelor of Arts degree in English from the State University of New York at Fredonia. Ms. Cheek is an enrolled member of the Seneca Nation of Indians, Allegany Reservation in New York. She continues her education in various subject areas, encourages the use of interns within her office, volunteers web publishing skills upon request, enjoys cooking, making fry bread and beadwork, and loves to dance to her Seneca songs. Ms. Cheek serves as an alternate member of the Committee.

Regina Gilbert
Regulatory Policy Specialist, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary - Indian Affairs
Regina has earned a Bachelor of Science in Business Administration from Northern Arizona University, as well as a master's in Business Administration from the University of New Mexico. Regina worked in the private sector before joining the Federal Government in February 2003. During her time with the Office of Regulatory Affairs and Collaborative Action, Regina has performed various duties that include participating in various Indian Affairs committees, providing technical assistance to improve efficiency and effectiveness on various land trust issues, and en-

suring compliance with related laws and regulations. Regina is a member of the Hopi Tribe and returns often to the Hopi reservation to visit family and continue involvement with the Hopi culture. Ms. Gilbert serves as an alternate member of the Committee.

Emerson Eskeets
Deputy Director, Bureau of Indian Affairs Office of Facilities Management and Construction

Emerson Eskeets started his career in the early 80s with the U.S. Army Corps of Engineers, and served in both the Seattle and Sacramento districts. He joined the Bureau of Indian Affairs in the early 90s. As the Deputy Director for the Office of Facilities Management and Construction, his responsibilities include management of the day-to-day operations of education, detention and housing construction projects as well as operations and maintenance across Indian country. This includes preparation of cost estimates and bids, preparing contracts and/or project administration of $500-600 million in construction projects across Indian country. Emerson earned his Bachelor of Science in Mechanical Engineering from the University of New Mexico. He is a member of the Navajo Nation and a veteran. He enjoys outdoor activities including camping, fishing and hunting, and family time. Mr. Eskeets serves as an alternate member of the Committee.

James Porter
Attorney Advisor, Office of the Solicitor Division of Indian Affairs

Jim Porter worked for 20 years in the construction trades before earning a bachelor's in English followed by a law degree, both from George Mason University. Since joining the Solicitor's Office in 2007, Jim has worked on a variety of matters affecting American Indians and their relationship with the Federal Government.

John "Jack" Rever
Director, Office of Facilities Environment and Cultural Resources

As a licensed professional engineer, Jack has spent more than 40 years in the engineering, design, construction, and program management industries. He holds a B.S.E.E. from the University of Maryland and an M.B.A. with an emphasis on Financial Management from The George Washington University. During his 28 years of service in the U.S. Navy, Jack served as a member of the Civil Engineer Corps, overseeing design and construction projects in Asia, Europe, and the U.S. He is a Vietnam veteran and served in the battle for Hue during the Tet Offensive of 1968. Following his retirement from active duty, Jack was named a Vice President for one of the leading U.S. engineering firms where he managed a design office and was later named as a Principal in a consortium of firms overseeing the design and construction of the last rail tunnel section of the original Washington Metropolitan Area Transit Authority system. Additional assignments at the engineering firm included appointment as the Director of Construction and Deputy Director of the New Construction Division for the Los Angeles Unified School District. The Los Angeles Unified School District is the largest single non-federal education construction program in the U.S. As the Director of Construction, Jack provided oversight for the design and construction of more than 330 schools in Los Angeles and as Deputy Director his oversight responsibilities included planning, design, construction and real estate acquisition. In 2005, while continuing his service to others, Jack accepted his current position with the Department of the Interior where he oversees engineering, design, and construction of schools, detention facilities and tribal support facilities across Indian country. He would enjoy more time to hunt, fish, and play golf.

Michele Singer
Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary - Indian Affairs

Ms. Singer is responsible for the review and revision of all federal regulations governing Indian Affairs at the Department of the Interior. She is also currently charged with implementing a dispute resolution program for Indian Affairs. Ms. Singer's regulatory work began in 2005 with the largest and most comprehensive revision of trust management regulations undertaken at the Department in many years. This has involved coordination with employees from throughout the Department, tribes, individual Indians, Congress, and state and local governments. Ms. Singer first became involved in Interior's trust management reform efforts as an attorney in the Office of the Solicitor working on individual Indian and tribal litigation matters. Then, as Chief of Staff for the Office of the Special Trustee for American Indians (OST), Ms. Singer worked on the Indian trust business process reengineering effort as well as the reorganization of both OST and the Bureau of Indian Affairs. Michele received a law degree from Georgetown University and worked as a litigator in Washington, D.C., and for the Attorney General of the Cheyenne River Sioux Tribe prior to coming to the Department of the Interior. She is a member of the California, Washington, D.C., and Cheyenne River Sioux Tribal Court Bars. Ms. Singer serves as the Designated Federal Officer for the NCLB School Facilities and Construction Negotiated Rulemaking Committee.

David Talayumptewa
Deputy Director, Bureau of Indian Education

David Talayumptewa is an enrolled member of the Hopi tribe with more than 25 years of service with the Office of Indian Education Programs, which is now the Bureau of Indian Education. He has served as the Chief Administrative Officer for the Hopi tribe, a Business Manager and Education Line Officer for OIEP/BIE at the Hopi Education Line Office, Special Assistant to the Deputy Director, School Operations, BIE, and currently serves as the Assistant Deputy Director, Administration for the BIE. He was honorably discharged from the U.S. Army Reserves as a 1st Lieutenant.

Appendix B: Summary of Consultation Process and Findings

The NCLB Facilities and Construction Negotiated Rulemaking Committee held five regional tribal consultations during the period of June 15 to July 19, 2011. The consultations took place in Window Rock, Arizona; Seattle, Washington; Phoenix, Arizona; Rapid City, South Dakota; and Miami, Florida. The sessions were facilitated by members of the Committee, and more than 200 participants attended. The Committee also received written comments from 16 tribes, schools, or tribal organizations.

The following is a summary of the key themes and ideas that the Committee heard during the consultations and from the written comments that were submitted. Many of the comments reinforced the findings and recommendations that the Committee had come to during their deliberations. Some comments pushed the Committee to rethink or further explore some of their draft language or recommendations. The Committee reviewed transcripts from all of the consultation sessions as well as copies of all of the written comments prior to their final Committee meeting in September 2011. They drew on this summary as a guide for their conversations in that meeting, to deliberate on the concerns raised by tribal participants and explore possible changes to their draft report. Among other changes, the final report fleshes out the mechanisms for ongoing school and regional input, to ensure that the new formulas will lead to greater transparency and engagement for tribes.

Broad Issues

(1) Poor inter-agency communication, coordination, and planning and lack of responsiveness to state, tribal, and other guidelines:

- Communication and partnership between BIE and BIA is a serious problem. We need support for FMIS and facilities located at the ELO offices. Move the facilities and operations budget from BIA to BIE.
- Structural problem of too many different offices, programs, funding buckets, makes it difficult to get any problems solved in a comprehensive manner. Also, different agencies have different building, safety, and academic requirements and reporting lines, which confuses schools and delays funding.
- There is a discrepancy between ages funded by ISEP (age 5 by Dec. 31) and Kindergarten entry age in our state (S.D. – 5 by Sept. 1). We have service for pre-K for those between those ages. But we were denied that classroom! This should be addressed as an educational facility deficiency and added to space guidelines.
- There is an impossible loop in getting a FACE program—can't have the space without the program, denied the program if you don't have the space. This needs to be fixed.

(2) Strengthen recommendations; turn them into regulations or legislation:

- Needs stronger language on consequences for the Bureau to ensure this gets done. Report says schools "must" and "will," but Bureau "should" and "may."
- Strong desire to see recommendations turned into regulations and statutes.
- Concerns about clarity, transparency, and fairness in implementing the recommendations, and request that all processes be codified as regulations and/or statutes.
- Stay away from one-size-fits-all formulas. Formulas will work differently in remote areas versus urban areas; tailor formulas to meet specific regional and tribal needs. The government should honor its treaty to protect and educate the children of the Navajo Nation regardless of any formulas the Committee has come up with. In the introduction, strongly emphasize the uniqueness of the Navajo Nation and Native American culture and their contribution to the country. Emphasize the government's treaty with the Navajo nation, and distinguish Native Americans from immigrant or minority populations and programs, with which they are often included.

(3) Increase transparency and fairness in funding and negotiation process:

- Some regions felt underrepresented or ignored and felt that others were overrepresented on the Committee, which led to unequal representation and bloc voting. Request for a viewing of all selection criteria for Committee members.

- Concern that the consultations were not true consultations, but merely an information session since government decision-makers such as Jack Rever and Emerson Eskeets were not present.
- Many advocated for funding parity with DOD schools and among Bureau-funded schools.
- More transparency in budget and spending for schools. Provide schools with a breakdown of the budget and spending.

(4) Incentives for properly maintained schools:

- Concern that success in doing the best you can with your limited O&M to keep up your school—or using your own money to fix critical problems—is punished, not rewarded. There should be a way to reward success and provide incentives to keep schools in good repair. Tribes who put their own money in to keep their schools going are less likely to get a new school.

(5) Disappointment with budget for BIA school facilities:

- Need more money. Need to fight for more money. More tribal leadership to fight for more facility money.
- Include options for cost-sharing in report, which might have positive impact on congressional funding decisions.

Potential issues for Committee discussion:

1. Stronger recommendations about coordination between BIA and BIE.
2. Whether curriculum and coordination issues, such as the FACE and ISEP issues, are within the Committee's charge and, if so, how to address them.
3. Additional and/or stronger language regarding increased funding from Congress.
4. Incentives that encourage or reward schools for maintenance.
5. Greater explanation about Committee selection, tribal consultation process.

FMIS

(1) FMIS support for schools is not sufficient:

- Participants at all sessions echoed the Committee's concerns about the lack of local FMIS expertise and lack of coordination between BIA and BIE, which they saw as a big problem.
- Provide additional guidance to schools to supplement face-to-face training for inputting information into FMIS (CD-ROM of step-by-step instructions, guidance on suggested monthly input activities, guidelines on time commitment required, etc).
- Participants report ongoing challenges getting access to FMIS at schools. Stories of submitting applications, getting no response, and of FMIS system being down.
- Agreement that available FMIS training on a regular basis is very important.
- FMIS trainings not offered at a time that is convenient for administrators. Offer trainings at a more convenient time. Suggest increasing the amount of trainings offered in the summer.
- Develop Bureau manpower to assist schools with inputting their backlog data. Staff time is very limited; provide additional funding for schools to hire a data-entry person for FMIS.
- Strong agreement with putting FMIS on a web-based system so everyone has access to it.
- Concerned that voluntary FMIS support committees will not be sufficient. Multiple recommendations that a FMIS expert be located at ELO offices.
- Tribal members should be able to nominate whomever they choose to be on the FMIS committee without input or objection from OFMC, and tribal members should decide the amount of members on the committee.

(2) Suggested changes to FMIS data entry and access:

- Report should include specific recommendations as to how to bring FMIS up to capacity, including a timetable for implementing solutions.
- School-board members should be allowed to take the FMIS training and help with FMIS entry or oversight.

- Consider adding "geographic location" as one of the factors in the facilities index, to account for risks of weather and seismographic conditions. Consider expanding FMIS to cover funding for liability and facilities insurance, security costs, housing, and certificate of occupancy issues.
- The formula for determining space needs should take into account birthrates of the reservation and the special needs population.
- Revisit the space requirements in light of the growing size of students (obesity, also improved nutrition) and individual school needs for accreditation, mission, and goals.
- FMIS should have a built-in depreciation factor as the schools age and require more maintenance, renovations, or replacement.
- More weight given to educational environment factors such as class size, illumination, acoustical treatment, heating, cooling, ventilation, general educational space provisions, and age of facilities.
- Explain more fully how "educational space deficiencies" would be identified, evaluated, and entered into the database. Educational space deficiencies should be established under a separate system from the FMIS system.

(3) Increase transparency, responsiveness, and flexibility with contractors and inspectors:

- Too much time goes by without safety inspections. Ensure safety inspections every year – they aren't happening, even when requested. Allow tribal safety officers to enter safety backlogs. Use Indian Health Service fire/safety inspectors.
- Contractor should be giving a report to schools after assessments, but this isn't happening. There is no accountability for the construction or work performed resulting in spending more funds to fix already funded projects.
- Safety inspector should be giving a report to the school after assessment, which isn't happening. One school was told they could not have the report after requesting it.

(4) Streamline system administration; increase agency transparency and communication:

- Need better communication and transparency, and less bureaucracy (streamlining the funding!). Can't figure out who to contact to solve problems of getting quarters, getting a FMIS terminal, getting a safety inspection, etc. Also, lack of communication between BIA, contractors, and schools leads to poorly constructed facilities that are not suited for the school's environment or needs; decisions are made at a distance with no true knowledge of the school or community that the facility will serve.
- Concern about manipulation; there is a "good ole boy" network and potential for upgrading of backlogs to appear more dire in order to receive more points. How can we assure that this doesn't happen? FMIS can be manipulated by entering many backlogs into the system, which can affect school placement on the replacement list. Politics affects FMIS funding—those closer to Albuquerque and are able to make frequent visits get more funding.
- Data entered into FMIS just sits there until you make calls to the right people who push it through to the Gatekeepers – this is a flaw in the system. BIE personnel do not input data in a timely manner, if at all. Recommend that schools receive a quarterly report on what is the status of the backlog items, possibly from the Gatekeepers.
- Tribal chairs should be in charge of funds rather than regional offices—this would eliminate red tape and delays in funding and give schools more control over how money is spent. Give some control over the FI&R funding to regional level for school input. Close down the regional office and re-direct funds to programs that serve students.

(5) Inaccuracy of existing data in FMIS:

- All the concerns raised by the Committee about FMIS accuracy were echoed during the consultations. High turn-over, insufficient staffing, lack of connectivity, lack of capacity, etc.
- Additional infrastructure problems are often uncovered during renovation and new construction, but by then it is too late to enter into backlog—consider reworking FMIS to capture these issues.
- FMIS does not accurately reflect the deteriorating

condition of the schools—many schools rated in good condition, but actually falling apart. Once safety and health concerns are addressed, the systems (fire alarms, smoke detectors) are obsolete within a decade.

- Concerns about whether the existing FMIS is tailored enough to the needs of schools to be the right mechanism. Allow alternative methods of evaluating facility condition where FMIS may not be a reliable indicator.
- Update FMIS backlog costs annually and verify accuracy of the costs of the backlogs (backlogs entered at the local level are often changed by those at the regional level).
- School leaders still don't recognize the importance of FMIS. Emphasize to grant schools the necessity and rationale for entering information into FMIS. Grant and contract schools are experiencing considerably more difficulty entering the data and would be more negatively affected if funding decisions are based on FMIS.

Potential issues for Committee discussion:

1. Options for improving access to FMIS, including hiring additional FMIS technical support, online FMIS entry, and supplemental training such as CD-ROMs and guidance documents.
2. Development of criteria and selection process for the FMIS committee.
3. Increased reporting and distribution of FMIS data, contractor assessment reports, and safety inspection findings to schools.
4. Increased participation (including system access and funds distribution) of tribal chairs and school board members in the FMIS process.
5. Allow additional factors such as geographic location, liability insurance, housing, certificate of occupancy issues, and security costs to be entered into FMIS and calculated in the location score.
6. Revise space guidelines.

MI&R

(1) Increase transparency and clarify misperceptions about formula:

- Support the idea of an annual report clarifying why our priorities aren't funded.
- The most important word: transparency! Squeaky wheel gets help, not all principals know. Make sure the communication is clear!
- Many participants mistakenly thought MI&R regional funds would be divided evenly among schools within each region, and feared this would cause undue competition among schools and unfair distribution to larger schools.

(2) Reopen discussion on the recommended MI&R formula:

- Agree with the idea that schools funded for replacement are eligible for MI&R while they wait.
- Support the formula because it removes politics and manipulation.
- As a small school in a small region, we disagree with the funding of regions by square footage.
- Concern that new MI&R formula does not take existing building age and condition into consideration. The repair needs and costs for older buildings are significantly greater than newer buildings.
- Concern that new MI&R formula does not distinguish between building types or uses. Additionally, it does not allow different funding levels based on building type or use.
- Concern that new formula does not make any allowance for location conditions, climate, and weather, which can influence the rate of wear on a building.
- Concern that new MI&R formula bases funding on area, which will motivate schools to keep old, unused buildings that would otherwise be demolished in order to maintain maximum area.
- A fairer method would be to assess relative need, (e.g., by assessing the deferred maintenance backlog in each region) and allocating funding according to the largest backlogs.
- Formula does not take into account prior school

replacement and repair funding from BIA or ARRA.

- Concern that the presence of ELOs and BIA facilities managers on the regional committee will tip the allocation decisions toward BIE-operated schools.
- Allow schools receiving funding to have some say on which backlog item to remedy first.

Potential issues for Committee discussion:

1. Revisit the 2/3 regional, 1/3 national distribution of funds.
2. Clarify the recommendation to make clear that funding within regions will be based on critical health and safety backlogs from FMIS, and not distributed to each school based on square footage.
3. Consider addition of suggested criteria to the MI&R formula, including building characteristics (e.g., age, condition, type, and usage), climate and weather conditions.

FI&R

(1) Additional criteria that the formula should take into account:

- Accreditation risk should be a factor for FI&R, it is one of the most important things – without accreditation, we aren't a school. Also important given student mobility.
- Formula should take modular spaces, unusable spaces, age of schools, and new school funding into account.
- Concern that undersized academic spaces will not be given enough points.
- Allow schools to supplement facilities data with other evidence including the FCI, environmental reports, inspections, and regions by Bureau safety officers, etc.

Potential issues for Committee discussion:

1. Consider adding accreditation risk, inadequate or inappropriate spaces, school age, and new school funding as factors in the FI&R formula.

Replacement School

(1) Include schools not ranked as poor:

- If you have a significant number of students in portables, even if the school overall is rated as "good" or "fair," you should still be eligible to be considered for a new school.
- Highly over-crowded schools should be able to apply for new school even if not ranked as poor by FCI.

(2) Additional criteria to consider in the formula:

- Some participants supported using AYP as a factor, to reward success. Others commented that they supported not using AYP as a factor.
- Willingness to combine two schools into one should provide some extra points.
- Consider awarding more points (two or three) to account for conditions that are either unique to the individual school or have not been anticipated by the Committee (e.g., lack of comparable educational facilities, availability of alternative dormitory space).
- Consider excluding from application process schools accused of mismanagement, at risk of losing grant status, in restructuring under NCLB, or which don't have land.
- Accreditation risk deserves more points. Even if not many schools are in that situation, if they were, it would deserve more points. Others oppose using accreditation risk since each state's method is different.
- The cultural space criteria is too narrow—our whole school is a cultural space. There are many space needs schools have due to their unique relationships with tribal communities—for example, schools serving older kids need a day-care. These should be included, but need to correlate with what OFMC will actually build.
- Space in portable buildings should not be calculated as part of the space in any of the formulas (i.e., crowding, average age of building criteria) since portable buildings are temporary. However it should be a major factor in the "inappropriate space" criteria.

- "Severely overcrowded schools": Severely overcrowded schools should be treated the same as "schools in worst condition" for the purposes of eligibility and scoring. Severely overcrowded schools should be defined as "schools in which 50 percent or more of the school's ISEP enrollment is housed in temporary structures" or "schools whose square footage needs for new school replacement equals or exceeds their current permanent construction in the FMIS inventory."
- Consider weighting the average age of instructional and residential buildings higher than storage and other secondary use buildings in the "school age" criteria.
- Concern that data on "declining enrollment" criteria could be subjective and easily manipulated since it is not captured as hard data.
- More consideration should be given to schools that have been out of compliance for major safety violations.

(3) Schools undergoing the construction process face many concerns:

- There needs to be a way to account for significant increases in enrollment in newly constructed schools.
- Recommend that parents' and community's choice of site for new school be honored.
- Dorms should be included as part of the construction of new schools.
- Include a cost-of-living increase in the replacement funds since backlogs are often in the system for years and the original cost does not reflect the impact of inflation.
- The formula should take into account environmental and infrastructure factors that affect the schools, and these repairs should be factored into new construction funding.
- Allow newly constructed schools to build facilities for new programs that they did not have in old school.
- Make sure every region has an education construction line officer, and provide clear lines of authority in the roles of engineers. Ensure timely response from BIE during entire construction process, particularly responses to prefunding, preconstruction, and construction process letters.

(4) Suggestions for making new school selection process clearer, more transparent, and more fair:

- Establish clear, published criteria for how the top five will be ordered for allocation. Provide technical assistance to schools in completing the new school application and guide them through the process.
- Confusion over rankings – "I was on the list, then wasn't." This could be made worse by the proposal to publish the scores of all schools that apply for, but are not granted, new schools.
- Create a historical process document to educate people about new school replacement lists—what happened and where are we now?
- Recommend going back to 10-year school replacement period (rather than five-year period) since school staff turnover is very high and information is not carried over from one administrator to the next, which causes a great deal of information loss.
- Objection to listing first five schools in alphabetical order rather than by priority—there was concern that schools in most dire need may end up at bottom of alphabetical list, which will harm their chances of school replacement.
- Application process for replacement schools should be an online process—not paper and pencil.
- Create an automatic system that schedules anticipated replacement based on the projected life of facilities. Include a factor for unforeseen catastrophes.
- Ensure that certain criteria are not double-weighted in the scoring process (for example, cultural space is included in the FMIS score and also receives additional points in the new school formula).
- The Review Committee should be required to conduct site visits at each of the 10 finalist schools before the public meeting.
- Allow the five unsuccessful schools to be grandfathered into the next round so that they do not have to apply again; they will compete against five newly qualified schools. Provide the five unsuccessful schools with any excess or unused construction funds.

- Concern about presenting at the public meeting in Albuquerque: schools with more eloquent speakers could influence the ranking, and schools in remote locations need funding to pay for travel.
- Clear definition and criteria of how the 65 points from FMIS will be awarded, similar to the classification in the previous formula.

(5) Suggestions for selection criteria and process of Review Committee members:

- Make sure that the people who make up the ranking committee will be neutral. Put school board members on the committee because, unlike ELOs and administrators who just follow orders from headquarters, school board members are the most likely to be neutral.
- Rotate new members onto Review Committee every five years. Have committee members come from the tribes of the selected schools.
- Committee member nominations should be automatically accepted, as long as they meet Review Committee criteria.

Potential issues for Committee discussion:

1. Allow schools that are not ranked in poor condition to apply if they meet other criteria—such as overcrowded, inappropriately housed, over a certain age.
2. Consider additional criteria such as willingness to combine schools, mismanagement, accreditation risk, and broaden culture criteria in the New School formula.
3. Add section with recommendations to address concerns after selection—contracting and construction process.
4. Increase education and transparency mechanisms regarding replacement list and ranking process.
5. Consider keeping or changing alphabetical approach to replacement school listing.
6. Develop selection criteria for New School Review Committee.
7. Develop clear criteria for ordering the top five schools.

Appendix C: Abstracts of Research Papers Associating School Conditions with Performance

The following collection of abstracts was edited from a website maintained by the engineering firm Fanning Howey, and was downloaded from their website (http://www.fanninghowey.com/oakhill/research/building-conditions.pdf) on May 6, 2011. Used with permission.

TITLE: School Facility Conditions and Student Academic Achievement
AUTHOR: Glen I. Earthman, Virginia Polytechnic Institute and State University
PUBLICATION DATE: October 1, 2002
ABSTRACT: This paper shows that the condition of school facilities has an important impact on student performance and teacher effectiveness. In particular, research demonstrates that comfortable classroom temperature and noise level are very important to efficient student performance. The age of school buildings is a useful proxy in this regard, since older facilities often have problems with thermal environment and noise level. A number of studies have measured overall building condition and its connection to student performance; these have consistently shown that students attending schools in better condition outperform students in substandard buildings by several percentage points. School building conditions also influence teacher effectiveness. Teachers report that physical improvements greatly enhance the teaching environment. Finally, school overcrowding also makes it harder for students to learn; this effect is greater for students from families of low socioeconomic status. Analyses show that class size reduction leads to higher student achievement.

1. School facility conditions affect student academic achievement.
2. School building design features and components have been proven to have a measureable influence upon student learning.
3. Among the influential features and components are those impacting temperature, lighting, acoustics, and age.
4. Researchers have found a negative impact upon student performance in buildings where deficiencies in any of these features exist.
5. Overcrowded school buildings and classrooms have been found to be a negative influence upon student performance (especially for minority/poverty students).
6. In cases where students attend school in substandard buildings they are definitely handicapped in their academic achievement.
7. Correlation studies show a strong positive relationship between overall building conditions and student achievement.
8. Researchers have repeatedly found a difference of between 5–17 percentile points difference between achievement of students in poor buildings and those students in standard buildings (when the socioeconomic status of students is controlled).
9. Ethnographic and perception studies indicate that poor school facilities negatively impact teacher effectiveness and performance and therefore have a negative impact on student performance.
10. All of the studies cited in this report demonstrate a positive relationship between student performance and various factors or components of the built environment. The strength of that relationship varies according to the particular study completed; nevertheless, the weight of evidence supports the premise that a school building has a measurable influence on student achievement.

TITLE: Testimony of Kathleen J. Moore, Director of the School Facilities Planning Division, California Department of Education (to the Committee on Education and Labor, United States House of Representatives)
DATE: February 13, 2008

1. There is a growing body of research on the importance of school facility condition, design, and maintenance on student performance and teacher workplace satisfaction.
2. U.S. Dept. of Education cites over 40 academic research papers... Researchers have repeatedly found a difference of between 5-17 percentile points between achievement of students in poor buildings and those students in above-standard buildings.
3. Design Council of London review of 167 sources... Showed clear evidence that extremely poor environments have a negative effect on students and teachers and improving these have significant benefits.
4. Poor building conditions greatly increase likelihood that teachers will leave their school.
5. Numerous studies have confirmed the relationship between a school's physical conditions and

improved attendance and test scores, particularly in the areas of indoor air quality, lighting, thermal comfort and acoustics.
6. There is a consensus in the research that newer and better school buildings contribute to higher student scores on standardized tests.
7. Student attitudes and behavior improve when the facility conditions improve.
8. Teachers report that adequate space and access to technology are important variables to deliver curriculum.
9. Facility directors report that new and renovated schools can provide better opportunities for small schools
10. Building design such as large group instruction areas, color schemes, outside learning areas, instructional neighborhoods, and building on the student scale had a statistically significant impact on performance.
11. School quality can affect the ability of an area to attract businesses and workers.
12. The physical condition of school facilities impact student achievement and experience as well as teacher retention and community vitality.

TITLE: Do K-12 School Facilities Affect Education Outcomes? (Staff information report for Tennessee Advisory Commission on Intergovernmental Relations)
DATE: January 2003

1. Almost all of the studies conducted over the past three decades have found statistically significant relationships between the condition of a school, or classroom, and student achievement.
2. In general, students attending school in newer, better facilities score five to 17 points higher on standardized tests than those attending in substandard buildings.
3. School facility factors such as building age and condition, quality of maintenance, temperature, lighting, noise, color, and air quality can affect student health, safety, sense of self, and psychological state.
4. Research has also shown that the quality of facilities influences citizen perceptions of schools and can serve as a point of community pride and increased support for public education.
5. Of special importance is the effect that facilities have on time in learning, which is universally acknowledged as the single most critical classroom variable. Every school year, many hours of precious and irreplaceable classroom time are lost due to lack of air conditioning, broken boilers, ventilation breakdowns, and other facilities related problems.
6. It is unreasonable to expect positive results from programs that have to operate in negative physical environments.
7. The quality of the learning environment is known to affect teacher behavior and attitudes toward continuing to teach.
8. Review of 141 published studies, 21 papers presented at professional conferences, 97 published studies. Summary:
   a. Age of Facility:
      i. Students had higher achievement scores in newer facilities (math, reading, composition)
      ii. Fewer disciplinary incidents in newer facilities
      iii. Attendance records were better in new facilities
      iv. Social climate factors perceived by students were considerably more favorable in a new school
   b. Condition of Facility:
      i. As the condition of the facility improved, achievement scores improved
      ii. Stimulating environments promoted positive attitudes in students
      iii. Higher student achievement was associated with schools with better science labs
   c. Thermal Factors:
      i. Eight or nine studies found significant relationship between the thermal environ ment of a classroom and student achieve ment and behavior
      ii. Consistent pattern of higher achievement in air conditioned schools
      iii. Excessive temperatures caused stress in students
   d. Visual/Lighting
      i. Light in the classroom seemed to have a positive effect on attendance rates
      ii. Light had a positive effect on achievement
      iii. Daylight in the classroom seemed to foster higher achievement
   e. External Noise:
      i. Higher student achievement was associated with schools with less external noise
      ii. Outside noise caused students to be dissatisfied with their classrooms

iii. Excessive noise caused stress in students

f. Air Quality:

i. Poor air quality causes respiratory infections, aggravates allergies, and causes drowsiness and shorter attention spans

ii. When students do not feel well when they are in school, or miss school due to air quality problems, learning is adversely affected

TITLE: Do School Facilities Affect Academic Outcomes?
(National Clearinghouse for Educational Facilities)
AUTHOR: Mark Schneider, Professor of Political Science at the State University of New York, Stony Brook.
DATE: November 2002

1. How can we expect students to perform at high levels in school buildings that are substandard?
2. Clean, quiet, safe, comfortable, and healthy environments are an important component of successful teaching and learning.
3. Synthesis of earlier studies correlated student achievement with better building quality, newer school buildings, better lighting, better thermal comfort and air quality, and more advanced laboratories and libraries. More recent reviews report similar links between building quality and higher test scores.
4. Students in newer buildings outperformed students in older ones and posted better records for health, attendance, and discipline.
5. Good facilities had a major impact on learning.
6. Research does show that student achievement lags in shabby school buildings – such as those with no science labs, inadequate ventilation, and faulty heating systems.
7. Other studies tie building quality to student behavior...Vandalism, leaving early, absenteeism, suspensions, expulsions, disciplinary incidents, violence, disruption in class, tardiness, racial incidents, and smoking all have been used as variables in these studies.
8. Good teaching takes place in schools with a good physical environment.
9. The general attitudes, behaviors, and relationships among pupils and staff are more conducive to learning in those schools which have had significant capital investments.

TITLE: Good Buildings, Better Schools, An Economic Stimulus Opportunity With Long Term Benefits
(Economic Policy Institute Briefing Paper)
AUTHOR: Mary Filardo, founder of 21st Century School Fund
DATE: April 29, 2008

1. Many of the key educational initiatives designed to give the nation's children the tools and knowledge they need for the future have facility related implications.
2. Building deficiencies impair the quality of teaching and learning and contribute to health and safety problems of staff and students.
3. Building design and facility conditions have also been associated with teacher motivation and student achievement.
4. Classroom lighting and thermal comfort are commonly cited by teachers as determinants of their own morale and the engagement of their students.
5. 53 studies linked design features to student achievement.

SOURCE: National Clearinghouse of Educational Facilities
AUTHORS: Jack Buckley and Mark Schneider
DATE: February 2004

1. A myriad of factors clearly affect teacher retention, but most teaching takes place in a specific physical location (a school building) and the quality of that location can affect the ability of teachers to teach, teacher morale, and the very health and safety of teachers.
2. Many schools suffer from "Sick Building Syndrome" which in turn increases student absenteeism and reduces student performance.
3. Ability to control classroom temperature as central to the performance of both teachers and students.
4. Teachers believe thermal comfort affects both teaching quality and student achievement.
5. Classroom lighting plays a particularly critical role in student performance.
6. The consensus of 17 studies is that appropriate lighting improves test scores, reduces "off task" behavior, and plays a significant role in the achievement of students.
7. Good acoustics are fundamental to good academic performance.
8. Higher student achievement is associated with schools that have less external noise.
9. Outside noise causes increased student dissatis-

faction with their classrooms and excessive noise causes stress in students.
10. Teachers believe that noise impairs academic performance.

TITLE: The Effects of the School Environment on Young People's Attitudes Towards Education and Learning (Summary report for England's National Foundation for Educational Research)
AUTHORS: Peter Rudd, Frances Reed, and Paula Smith
DATE: May 2008
1. There is a good deal of evidence to indicate that student attitudes had become more positive after the move into a new school building.
2. Those students who "felt safe" most or all of the time increased from 57 to 87 percent.
3. Those students who "felt proud" of their school increased from 43 to 77 percent.
4. Those students who "enjoyed going to school" increased from 50 to 61 percent.
5. Those students who perceived that bullying was a big problem decreased from 39 to 16 percent.

TITLE: Acoustics in Schools (Ceilings and Interior Systems Construction Association white paper report)
DATE: November 2009
1. Children, especially those younger than 13 years of age, have an undeveloped sense of hearing, making the impact of background noise on hearing, comprehending, and learning more pronounced for children than adults.
2. Students with learning, attention, or reading deficits are more adversely affected by poor acoustic conditions than the average student.
3. Loud or reverberant classrooms may cause teachers to raise their voices, leading to increased teacher stress and fatigue.

TITLE: Relationship Between School Facility Conditions and the Delivery of Instruction; Evidence From a National Survey of Principals (*Journal of Facility Management*)
AUTHOR: Ibrahim Duyar
DATE: 2010
1. Six of ten facility conditions are statistically and positively associated with the delivery of instruction.
2. Facility conditions accounted for 43 percent of the explained variation on the delivery of instruction with medium sized effect.
3. The paper supported the notion that educational facilities do matter and they affect the delivery of instruction.

TITLE: Teacher Attitudes About Classroom Conditions (Journal of Educational Administration)
AUTHORS: Glen I. Earthman and Linda K. Lemasters
DATE: 2009
1. Differences between the responses of teachers in satisfactory buildings are significant compared to those of teachers in unsatisfactory buildings (responses concerning attitudes and impressions).
2. Physical environment influences attitudes of teachers, which in turn affects their productivity and these effects could cause morale problems in the teaching staff.
3. The conditions of the classroom can cause morale problems with teachers.

TITLE: Having an Impact on Learning (School Planning and Management)
AUTHOR: Deb Moore
DATE: August 2009
1. Facilities DO impact learning.
2. Research shows that facilities can be an asset or a detriment to the educational process and to student achievement.
3. Researchers have repeatedly found a difference of 5–17 percentile points between achievement of students in poor buildings and those students in above-standard buildings. (When controlled for socioeconomic status). The average is around 10 points.
4. Building age, windows in the instructional area and overall building condition were positively related to student achievement.
5. Results showed a direct correlation between better facility conditions and student outcome.
6. (1,100 schools in Canada)... shows substantial differences between schools with different facility conditions.
7. In all cases, schools in top-ranked facility condition have better learning environments than schools in bottom ranked condition. Students work with more enthusiasm. The morale of teachers is higher. There is less disruption of classes by students. Teacher expectations of students are higher.
8. Facilities are one of the things we can change that will positively affect students and staff.

Appendix D: Extensive Description of FMIS Source: OFMC, 2011

FMIS – Facility Management Information System

FMIS was developed by IA/OFMC as a modernized facility/asset management application to carry out IA's responsibility for planning, designing, constructing, operating and maintaining Bureau-funded facilities.

FMIS is used to assist IA, BIE and tribal staff in managing the entire Indian Affairs Facilities Management Program. The data is used to identify, plan, perform and evaluate all facilities program-related work. All major facilities management work processes are supported in FMIS including planning, scheduling, designing, constructing, operating, and maintaining facilities.

FMIS is used for recording improvement and repair needs, health and safety issues, abatement plans for the health and safety issues, and the execution of new and renovation construction projects from conception through project completion.

FMIS serves as an ongoing communication link with all of its users. It provides management planning, engineering, operations and maintenance and fiscal control to central office, regional offices, agency offices and school locations.

FMIS Features and Benefits

- Provides concise, organized information to make value-based decisions
- Improves project planning and management of construction activities
- Provides cost-justified project management and construction management
- Automates project prioritization and ranking capabilities
- Fosters continuous maintenance improvement practices
- Delivers instant retrieval of data online
- Promotes strategic planning – meeting IA's five year planning requirements
- Allows ability to track level of commitments, obligations and expenditures
- Improves project capitalization of assets
- Allows ability to apply inflation indexing for inventory asset replacement
- Contains values and backlog items to improve project cost estimating
- Improves cost estimating process that conforms with industry standards
- Improves automation and procedural support for employee quarters program
- Improves reporting for environmental, health and safety programs and provides for accurate accounting of resources utilized on these and all facility management programs

FMIS Modules

- **Inventory**
  FMIS inventory module manages all IA inventory including all buildings, towers, sites, and utilities. Site inventory also includes inventory of equipment, landscaping, roads, sidewalks, etc.
- **Backlog/Inspections**
  FMIS backlog module collects the specific work items needed to improve and repair buildings, towers, sites and utilities. The work items are tracked from identification of the need through all stages to completion
- **Project Management**
  Project management tracks all stages of projects from planning, design and construction including warranty
- **Budget**
  Budget module provides an accounting of funds appropriated to operate, maintain repair, or construct new IA facilities
- **Work Ticket/Work Planning**
  This module is used for the day-to-day operations and maintenance activities for planning, scheduling and executing corrective work on the building assets, equipment and infrastructure

Appendix E: Method for Estimating for New Construction Source: OFMC, 2011

Step 1. Determine Student Enrollment - In January 2004, BIA implemented a new enrollment projection policy. This methodology uses the sum of least squares linear regression analysis which results in a more realistic assessment of the future enrollment and square footage requirements. Once the student enrollment is determined in joint efforts with BIE and OFMC, project the education program requirements space needs utilizing the *Education Space Criteria Handbook*.

Establish base cost/square foot (sf) for specific building types: academic (schools), dormitories, employee quarters and maintenance shop/bus garage. The base cost is for the building cost/sf only. RS means construction cost ¾ cost/sf data is used for this purpose. The RS means ¾ cost column indicates that 75 percent of the indicated project type had lower costs and 25 percent had higher costs. Why does BIA use the means ¾ cost? The ¾ cost data is used, in lieu of the median cost, due to the following factors not accounted for in the geographic indexing factor described below:

a. Indian Preference. All construction projects on reservations must comply with federal and tribal laws requiring Indian or tribal preference in hiring and training of Indian construction workers and subcontractors.

b. Federal Minimum Wage (Davis-Bacon Act) Requirement. All construction over $2000 must comply with the Act. Wages not less than those specified in a wage determination must be paid and the appropriate recordkeeping by the construction contractor must be maintained. Contractors claim the reporting requirements are an administrative burden that adds to the cost of construction.

c. Tribal Courts. Generally speaking, all lawsuits under a construction contract must be tried in tribal courts if the contract is between a tribal organization (tribe, grantee, school board) and a construction contractor. Contractors claim they do not get fair treatment in tribal courts and add costs to their bids to cover this risk.

d. Social Programs. Federally funded construction requires compliance with certain programs such as: veterans preference, woman-owned business preference, small business preference. Contractors claim there is a cost involved in complying with these requirements.

e. LEED Compliance. Contractors must provide extensive documentation relative to materials installed so that the architect can apply for LEED certification. This requirement adds, although minimally, to the cost of construction.

Step 2. Using geographic indexing factors developed by Hanscomb Associates for BIA-OFMC, the base cost/sf is adjusted to the specific project location, not just the closest city.

Step 3. The geographically adjusted cost/sf is further adjusted by adding in the following additional factors:

a. Building Size. Buildings smaller than the typical size in the RS means cost book cost more per square foot. Buildings larger than the typical size cost less due to economies of scale. The adjustment factor varies based on building type and size.

b. Special Foundations. Because of poor soils conditions at most BIA school locations, special foundations must be constructed (concrete pier and grade beam, "waffle slabs") or special engineered fill (dirt or gravel) material must be hauled long distances to the site. A five percent factor is used for this additional cost. (Under review—this factor is probably more than indicated.)

c. Energy Policy Act of 2005. Energy efficient mechanical and electrical systems are required to meet the energy reduction requirements of the Act and could add approximately five percent to the cost of construction. The BIA does not feel that current RS means cost/sf adequately reflects this policy requirement. (Under review—this factor is probably more than indicated.)

d. LEED Compliance. OMB Circular A-11 and BIA-OFMC require compliance with the U.S. Green Building Council's LEED Green Building rating system. BIA estimates that this requirement adds ap-

proximately three percent to the cost of construction. The Resource Conservation and Recovery Act requires federal agencies to give preference in the use of recycled materials for construction. Compliance with additional Executive Orders; (e.g. E.O. 13101, Greening the Government through Waste Prevention, Recycling and Federal Acquisition; E.O. 13123, Greening the Government through Efficient Energy Management; and E.O. 13148, Greening the Government through Leadership in Environmental Management), adds to the cost of construction.

e. Tribal Taxes and Fees. The cost/sf is further adjusted to add applicable tribal sales taxes and Tribal Employment Rights Ordinance fees.

f. Inflation. The cost/sf is further adjusted to mid-point of anticipated construction. BIA uses the *Engineering News-Record* annual rate for building construction, unless there are compelling reasons to use a different rate.

Step 4. After the cost for each building type is established, the site and utilities costs are factored in.

Step 5. Establish total cost by adding "soft costs." Soft cost descriptions and their respective percentages are identified below. The soft costs factor is multiplied by the sum of the building cost to arrive at the total soft cost. The soft cost is added to the building cost to get the total building cost.

Soft Costs (Indirect Costs)

Calculated as a percentage of direct construction cost for the building. They include:

Planning Phase Costs:	2%
Preparation of education specifications, program of requirements (architectural programming), topographic and legal survey of construction site, National Environmental Protection Act compliance, archeological survey and report, historic preservation compliance (Section 106 of HPA), flood hazard determination, environmental assessment; sub-surface soils investigation and geotechnical report; utilities survey, assessment and report; determination of required easement and road Right of Way. Preparation of site master plan, preliminary architectural and engineering requirements. Preparation of preliminary construction estimate. Tribal administrative costs during planning phase (includes tribal or school board staff salaries and benefits, project manager, travel, audit, board meeting costs). These costs are necessary under PL 93-638 contracts with tribes or PL 100-297 grants with Bureau-funded school boards.	

Design Phase Costs:	
Architect-engineer (AE) fees for production of drawings and specifications	6%
Value engineering, LEED and commissioning services during design, AE reimbursable expenses (travel, printing, etc.)	2%
Tribal administrative costs during design (includes tribal or school board staff salaries (percent of time basis) and benefits, project manager, travel, audit, board meetings)	2%

Construction Phase Costs:	
AE construction administration, inspection, materials testing, commissioning services during construction, LEED costs during construction phase	10%
Furniture, fixtures and equipment including technology equipment	8%
Contingency during construction (covers unforeseen costs during construction and overbids). Includes change orders or shortfalls in other line items	10%
Tribal administrative costs during the construction phase (includes tribal or school board staff salaries, percent of time basis) and benefits, project manager, travel, audit, board meetings	2%

Project Management by BIA staff or by Contract for all phases of project (includes salaries, benefits, travel, supplies, and training):		
Planning Phase		2%
Design Phase		10%
Construction Phase	+	30%
Current BIA Soft Cost Rate		42%
Project Management/Administrative OH by BIA or by Contract	+	12%
Total Soft Costs (as a percentage)		**54%**

Appendix F: Previous Whole School Replacement Priority Lists

Table of Priority List Schools for Whole School Replacement FY 1993 to FY 2004

The following table lists the schools that were identified by the BIA in a Federal Register notice as prioritized for funding for whole school replacement. Please note that all schools listed, with the exception of those in red, have been funded and construction is either under way or complete.

As of January 2011, construction has not begun at schools listed in red below.

Rank	FY 1993 Priority List [58 FR 579; 1/6/93]	FY 2000 Priority List [66 FR 1689; 1/9/01]	FY 2003 Priority List [68 FR 4098; 7/9/03]	FY 2004 Priority List [69 FR 13870; 3/24/04]
1	Pinon Community School Dorm	Tuba City Boarding School	Turtle Mountain High School	Dilcon Community School
2	Eastern Cheyenne River Consolidated School	Second Mesa Day School	Mescalero Apache School	Porcupine Day School
3	Rock Point Community School	Zia Day School	Enemy Swim Day School	Crown Point Community School
4	Many Farms High School	Baca/Thoreau (Dlo' Ayazhi) Consolidated Community School	Isleta Pueblo Day School	Muckleshoot Tribal School
5	Tucker Day School	Lummi Tribal School	Navajo Preparatory School	Dennehotso Boarding School
6	Shoshone-Bannock/Fort Hall School	Wingate Elementary School	Wingate High School	Circle of Life Survival School
7	Standing Pine Day School	Polacca Day School	Pueblo Pintado Community School	Keams Canyon Elementary School
8	Chief Leschi School Complex	Holbrook Dormitory	Bread Springs Day School	Rough Rock Community School
9	Seba Dalkai Boarding School	Santa Fe Indian School	Ojo Encino Day School	Crow Creek Elementary/ Middle/High School
10	Sac and Fox Settlement School	Ojibwa Indian School	Chemawa Indian School	Kaibeto Boarding School
11	Pyramid Lake	Conehatta Elementary School	Beclabito Day School	Blackfeet Dormitory
12	Shiprock Alternative School	Paschal Sherman Indian School	Leupp School	Beatrice Rafferty School
13	Tuba City Boarding School	Kayenta Boarding School	-	Little Singer Community School
14	Fond du Lac Ojibwe School	Tiospa Zina Tribal School	-	Cove Day School
15	Second Mesa Day School	Wide Ruins Community School	-	-
16	Zia Day School	Low Mountain Boarding School	-	-
17	-	St. Francis Indian School	-	-
18	-	Turtle Mountain High School	-	-
19	-	Mescalero Apache School	-	-
20	-	Enemy Swim Day School	-	-

A few points to note:

- Prior to FY 1993, the Bureau developed an annual prioritized list of schools needing complete replacement; however, this generated multiple yearly lists, and many schools on these lists went unfunded due to a changing list the next year. Consequently, Congress directed the Bureau to create a continuous multi-year priority ranking list for new school construction as of FY 1993.
- For both FY 2000 and FY 2003, the Bureau (through the OFMC) administered an application process allowing all interested schools to apply. OFMC provided detailed application instructions, created a comprehensive scoring system, and selected, via an evaluation committee, prioritized schools in rank order.
- In FY 2004, Congress requested that the Bureau develop another list of priorities for new school construction to identify a sufficient number of schools to allow continual replacement through FY 2007. The Bureau, via OFMC, created this FY 2004 list by reviewing FMIS data and identifying likely schools in need. In turn, OFMC retained a contractor who conducted a site review and rating of visited schools.

Appendix G: Current FI&R Formula Description Source: OFMC, 2011

The following appendix provides detailed background on the existing FI&R scoring and rankings processes.

FMIS Categories and Ranking

FMIS itself, based on policies applied to the entire DOI, categorizes each proposed construction or maintenance project into one of nine "ranking categories" (e.g., "Critical Health and Safety Deferred Maintenance"). Each of these categories has a weighting factor of from 1 to 10.

DOI Weighting Factors that IA-OFMC Uses		Weighted Factor
CHSdm	**Critical Heath and Safety Deferred Maintenance -** A facility deferred maintenance need that poses a serious threat to public or employee safety or health. Examples: • Repair fire alarm • Fire sprinkler protection system repair	10
CHSci	**Critical Health and Safety Capital Improvements -** A condition that poses a serious threat to public or employee safety or health and can only be reasonably abated by the construction of some capital improvements. Examples: • Install a fire alarm or sprinkler system where one does not exist • Repair or replacement of a facility with structural failure	9
EPHPBSci	**Energy Policy, High Performance, Sustainable Buildings CI -** Policy Act of 2005 or the guiding principles of the Memorandum of Understanding for High Performance and Sustainable Buildings Deferred Maintenance and/or Capital Improvement Needs.	5
CMdm	**Critical Mission Deferred Maintenance -** A facility-deferred maintenance need that poses a serious threat to a Bureau's ability to carry out its assigned mission. Examples: • Replacement of facility's deteriorated generator that supplies power to a mission-critical asset • Repair of deferred maintenance items that if not accomplished quickly compromises the public's investment in the structure	4
CCci	**Code Compliance Capital Improvement -** A facility capital improvement need that will meet compliance with codes, standards, and laws. Example: • Providing accessibility to comply with ADA	4
Odm	**Other Deferred Maintenance -** A facility deferred maintenance need that will improve public or employee safety, health, or accessibility; complete unmet programmatic needs and mandated programs; protect natural or cultural resources, or improve a facility's ability to carry out its assigned mission. Examples: • Facility repair or rehabilitation to increase program efficiency • Repair or maintenance of existing systems or system component	3
Oci	**Other Capital Improvements Heath and Safety Deferred Maintenance -** Other capital improvement is the construction of a new facility or the expansion or rehabilitation of an existing facility to accommodate a change of function or new mission requirements. Examples: • Construction of a new school or dormitory • Major alterations to a school dormitory to convert its function to academic classroom use	1

Relative Weighted Score per Backlog

The FI&R formula then weights each backlog in the system for a particular school. For instance, imagine a school with a Critical Health and Safety deferred maintenance backlog at an estimated cost of $26,196. To get the relative weighted score for this backlog, the estimated cost of the backlog is divided by the estimated total cost of all backlogs for this school multiplied by the category weighting (in this case 10, the highest ranking or weight). So, if the estimated total cost of all backlogs for a school is $492,495, then this particular backlog has a weight of 0.5319. To keep the scores clear, this initial weighting is multiplied by 100 to get the final relative weighted project score. The formula and our example:

- (Backlogs cost/total cost of all backlogs) x weighted factor for that backlog x 100 = weighted relative score for that backlog
- ($26,196/$492,495) X 10 X 100 = 53.19

Location Name	FCI	Category	Rank	DOI Category	Weight Factor	Number of Backlogs	Backlog Cost	Backlog Weight	Weighted Relative Score
School A	0.11046	E	3	EPHPBSci	5	1	$ 6,657	0.81%	6.76
School A	0.11046	H	1	CHSdm	10	4	$ 26,196	6.36%	53.19
School A	0.11046	M	1	CHSdm	10	13	$ 342,778	83.25%	696.00
School A	0.11046	M	2	CHSdm	4	7	$ 44,049	4.28%	35.78
School A	0.11046	M	3	Odm	3	9	$ 72,815	5.31%	44.35
						TOTALS	**$ 492,495**	**100%**	**836.08**

Two things to note: 1) if the backlog is not entered into the FMIS system, it is never given a score, and this may affect the school's overall eligibility for FI&R funding, and; 2) accurate cost estimates are important because if they are inaccurate, the project score is inaccurate as well.

Relative Weighted Score per School

Once the relative weighted scores per backlog are calculated, the calculation for the school as a whole is simple. All of the relative weighted project scores are added to get the total relative weighted score per school. There are a few important things to note about this calculation. The relative weighted score per school is not affected by the number or cost of backlogs. A school rated in high need under the FI&R formula would have several critical backlogs in health and safety (i.e., high category weights) relative to the school's overall backlogs and their cost. Schools with the most backlogs or the highest scores do not necessarily come out with the highest relative weighted score per school across the system. For instance, in a past fiscal year, the Yakama Tribal School had the highest overall FI&R ranking with a total estimate backlogs cost of just under $500,000. There were several schools with much more costly total backlogs (in the millions) who ranked lower in the total scoring, but whose expensive backlogs had lower weight factors.

Also, it is important to note that this score does not account for any critical educational need. Scores are based on facility or physical issues such as health and safety, energy, and so forth. There is not a category for important or essential educational needs. So, for instance, a critical mission-deferred maintenance backlog has a lower category ranking than a health and safety backlog. A room essential for teaching first graders reading may not be usable without a critical mission backlog project, but since that project has a lower category score (4 versus 10), it is possible it won't get funded for some time. And, if the reading room is in suitable condition (i.e., no backlogs) but is simply too small to be useful for the number of students, then that educational need is in no way captured by the current FI&R formula.

Asset Priority Index

In addition to the relative weighted score per school, the FI&R formula takes into account how critical the particular buildings with backlogs in that school buildings are to the overall educational mission. To do this, an API is also calculated. Every building within a school is given an asset priority ranking. That ranking is based on the criticality of building to overall education (e.g., maintenance shed as less critical than a classroom building). Each building can have a maximum API score of 100. The ranking has three components: mission criticality (is it critical to education?); operations (is it critical to the functioning of the school?); and substitution (can the function be done in a different building?). Each building with a backlog is scored and these individual building scores are combined. Then, to scale or average the scores, the sum of the individual building scores is divided by the total number of buildings. This yields an API average. For instance, in our example school, there are six buildings, all with an API score of 100, and so the school as a whole has an API of 100.

Overall School or Location Score (Final Project Score)

To get the final score used to compare a school against all other schools with backlogs in the FMIS system, the two scores need to be added together—the relative weighted score per school and the API. The FI&R formula gives a greater weight to the weighted relative score than to the API. To get the complete school or location score, the API is multiplied by 25 percent (X 10 again just to keep the same relative scale in numbers) and the relative weighted score is multiplied by 75 percent. In our example, the school relative weighted score of 836.08 is multiplied X 75 percent and added to 100 X 25 percent X 10 to yield an overall location or school score of 877. The formula and our example:

- (Weighted relative scores of all backlogs x 75%) + (API Average (the priority of all the buildings with backlogs in that school X10 for scaling) X 25%) = final overall project score
- 836.08 X 75% = 627 and 100 X 25% X 10 = 250. 627 + 250 = 877

The following matrix illustrates the calculations to obtain this overall location score in more detail.

Location Name	FCI	Category	Rank	DOI Category	Weight Factor	Number of Backlogs	Backlog Cost	Backlog Weight`	Weighted Relative Score	
School A	0.11046	E	3	EPHPBSci	5	1	$ 6,657	0.81%	6.76	
School A	0.11046	H	1	CHSdm	10	4	$ 26,196	6.36%	53.19	
School A	0.11046	M	1	CHSdm	10	13	$ 342,778	83.25%	696.00	
School A	0.11046	M	2	CHSdm	4	7	$ 44,049	4.28%	35.78	
School A	0.11046	M	3	Odm	3	9	$ 72,815	5.31%	44.35	
						TOTALS	**$ 492,495**	**100%**	**836.08**	**627**

API	Building	Building Type	Mission Criticality	Operations	Substitutability	Total API	API Average	
School A	1T	School, Day	60	20	20	100		
School A	2T	School, Day	60	20	20	100		
School A	3T	Office	60	20	20	100		
School A	4T	Office	60	20	20	100		
School A	5T	School, Vocational Shop	60	20	20	100		
School A	6A	Office	60	20	20	100		
					TOTAL	**600**	**100**	**250**
							FINAL PROJECT SCORE	**877**

Comparison of Schools

Once the location or school score is determined, it can be compared to all the other school location scores to prioritize projects across the system. An example of a location score ranking from a previous fiscal year is included below:

Location Name	Fiscal Year	Location Score	Location FCI	Number of Backlogs	Total Backlog Cost
Yakama Tribal School	2009	833.3794	0.1105	34	$492,495
Cibecue Community School	2009	632.5658	0.2577	78	$2,709,091
Lukachukai Boarding School	2009	629.8443	0.3817	74	$2,942,192
Coeur D'Alene Tribal School	2009	628.6586	0.0861	22	$957,673
Bug-O-Nay-Ge-Shig School	2009	606.2827	0.0243	27	$411,524
Kin Dah Lichi'i Olta (Kinlichee)	2009	579.9163	0.1935	17	$798,118
Hotevilla Bacavi Community School	2009	567.9706	0.5464	70	$2,383,182
Sho-Ban School District No. 512	2009	559.0765	0.0382	9	$296,514
Cottonwood Day School	2009	554.0987	0.3174	4	$619,294
Marty Indian School	2009	551.4163	0.0614	48	$1,339,255
T'Iis Nazbas Community School	2010	547.4448	0.3834	204	$7,778,987
Nenahnezad Boarding School	2009	528.4948	0.2418	117	$3,464,395

Facilities Condition Index

The FCI is a separate index that uses a different formula for calculation. Note that "facility" in this usage means an entire school and not a particular building. It is related to the FI&R rankings in that, if a school does not have a "poor" condition as determined by the FCI, then it is not likely to receive FI&R monies even if its FI&R score and ranking is high. Thus, the FCI serves as a kind of "check" to make sure schools in most need are receiving the limited funding available.

The FCI formula is:

FCI = Cost of Deficiencies / Current Replacement Value

The FCI provides a simple, valid, and quantifiable indication of the relative condition of a facility or group of facilities for comparisons with other facilities, and groups of facilities: the higher the FCI, the worse the condition. In general, the condition of the schools is based on FCI values as follows:

- 0.0-0.05 = Good condition
- 0.06-0.10 = Fair condition
- > 0.10 = Poor condition

Because this facility index is calculated for an entire school, not a particular building within that school, the FCI ranges from less than .05 to as high as in the .50s. A general construction practice is that individual buildings whose backlog costs are equal to or greater than 66 percent of the replacement cost of the whole building should simply be replaced, not renovated or repaired. The FCI, since it's a reflection of an entire school campus, not a building, rarely exceeds that 66 percent threshold because at least some buildings on campus are likely to be in fair or good condition. That does not mean, however, that individual buildings in a school do not need to be replaced and it does not mean that a whole new school is not needed.

Appendix H: Glossary of Terms

Asset Priority Index (API) API is a measure of the importance of a constructed asset to the mission of the installation where it is located. API is a numeric range from one (1), for little or no importance, to one hundred (100), for very important.

Assistant Secretary - Indian Affairs (AS-IA) The Office of the AS-IA is the primary policy setting and management oversight organization for IA functions, responsible for fulfilling U.S. trust obligations to the federally recognized American Indian tribes and Alaska Natives, and individual Indian trust beneficiaries.

Adequate Yearly Progress (AYP) The NCLB requires states to develop objective criteria for measuring school performance, and to establish targets for annual improvements in school performance as a condition for receiving federal grant aid. 20 U.S.C. § 6311. NCLB requires that school performance improves each year, as measured by standardized tests. AYP is the amount of improvement required by NCLB. The Act sets out criteria for defining AYP, but directs each state to craft its own definition of AYP. Per DOI regulations, each state's definition of AYP applies to the Bureau-funded schools in that state. 25 C.F.R. § 30.104.

Bureau of Indian Affairs (BIA) The principal bureau within Indian Affairs responsible for the administration of federal programs for federally recognized Indian tribes, and for promoting Indian self-determination.

Bureau of Indian Education (BIE) The BIE is responsible for all IA education program activities necessary to provide quality education opportunities and safe, secure, and healthy learning environments to all students attending Bureau-funded schools.

Bureau As defined in 25 U.S.C. § 2021 (Bureau of Indian Affairs Programs), 25 U.S.C. § 2511 (Tribally Controlled School Grants), 25 U.S.C. § 2801 (Indian Law Enforcement), and 25 U.S.C. § 3202 (Indian Child Protection and Family Violence Prevention), "Bureau" means the Bureau of Indian Affairs.

Bureau-funded School One of the 183 schools funded by the BIA. 125 Bureau-funded schools are operated by Tribes; the rest are operated by BIE.

The No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee (The Committee) The Committee was chartered to serve as an advisory committee subject to the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix 2, under the authority of 25 U.S.C. § 2005(a)(5) for the purpose of preparing a catalog and report regarding the physical conditions of Bureau-funded schools.

Consensus Building Institute (CBI) A not-for-profit organization specializing in public collaboration and dispute resolution, hired by the U.S. Institute to facilitate the NCLB Facilities and Construction Negotiated Rulemaking Committee.

Complementary Educational Facilities NCLB at 25 U.S.C. § 2005(a)(5)(A) directed the Committee to identify educational facilities that are needed, but do not exist.

Cultural Space Space required to provide an academic program specific for native language/cultural education. This could be a requirement placed on the school through a tribal resolution.

Designated Federal Officer (DFO) A federal employee charged with responsibility for managing a rulemaking committee. 5 U.S.C. appx. § 10(e). The DFO for the Committee is Michele Singer, Office of Regulatory Affairs and Collaborative Action. See Appendix A.

United States Department of Defense Educational Activities (DODEA) DoDEA operates 194 schools in 14 districts located in 12 foreign countries, seven states, Guam, and Puerto Rico. All schools within DoDEA are fully accredited by U.S. accrediting agencies. Approximately 8,700 educators serve more than 86,000 DoDEA students.

United States Department of the Interior (DOI) The Department that manages the United States public lands and minerals, and is the agency charged with primary responsibility for carrying out the Federal government's trust responsibilities to Indian tribes and Alaska Natives. This mission is accomplished through the coordinated efforts of the Department's bureaus and offices, other Federal agencies, and the tribes. The Department's other responsibilities include managing and protecting the 20 percent of the Nation's land set aside as national parks, national wildlife refuges, and other public lands; providing access to public lands and the Outer Continental Shelf for renewable and conventional energy development; supplying and managing water resources in 17 western states; and managing hydropower resources on federal lands.

Education Line Officer (ELO) An employee of the BIE at one of 22 offices located around the country, who is the point of contact between Bureau-funded schools and the federal government. The ELO is responsible for the administration and implementation of the BIE education programs and activities, including school operations.

Facilities Condition Index (FCI) The ratio of the cost of performing accumulated Deferred Maintenance (DM) to the Current Replacement Value (CRV) for a constructed asset. FCI=DM/CRV. FCI is a calculated indicator of the depleted value of a constructed asset to determine a condition value (e.g., good, fair and poor). The range is from zero (0) "(best)," for a newly constructed asset, to one (1.0) "(worst)," for a constructed asset with a DM value equal to its CRV. An acceptable rating for BIA schools is under 0.10. All schools with ratings above 0.10 are deemed as being in poor condition. All those with ratings between 0.05 and 0.099 are deemed as being in fair condition. Those with ratings below 0.05 are deemed as being in good condition.

Facilities Construction, Operation and Management (FACCOM) The information system for tracking conditions of Bureau-funded school facilities prior to development of FMIS.

Family and Child Education (FACE) A BIE program implementing a comprehensive family literacy model of lifelong learning. FACE educates mothers about proper prenatal nutrition, developmental milestones, and early literacy through book sharing; prepares 3- to 5-year-olds for school entry; fosters parental involvement in their children's education; and promotes continuing education for the parents themselves.

Facilities Improvement and Repair (FI&R) A funding category in the OFMC budget. FI&R includes major renovation or repair of an existing asset in order to restore

and/or extend the life of the asset. FI&R projects include bringing facilities into compliance with codes (e.g., life safety, ADA, OSHA, environmental, etc.) and other regulatory or Executive Order compliance requirements.

Facilities Management Information System (FMIS) ("feemiss") A software program used by BIA to collect, categorize, and manage detailed information on every component of every Bureau-funded school. Beyond that, OFMC uses FMIS to ensure efficient planning, design, construction, improvement, repair, operations and maintenance of IA-owned and IA-funded Indian education, law enforcement and general administration facilities.

Gatekeeper A contractor hired by OFMC under the condition assessment contract to review backlog deficiencies to verify and validate for cost estimates and to prevent duplications.

Government Accountability Office (GAO) Supports Congress in meeting its constitutional responsibilities and helps improve the performance and accountability of the Federal Government for the benefit of the American people.

Inspector General, U.S. Department of the Interior (IG) The Office of the Inspector General is responsible for ensuring the ethical conduct of the Department's employees, by performing audits, investigations, evaluations, inspections, and other reviews of the Department's programs and operations.

Indian Affairs (IA) A primary division within DOI, IA provides services directly or through contracts, grants, or compacts to a service population of about 1.7 million American Indians and Alaska Natives who are enrolled members of 565 federally recognized tribes in the 48 contiguous United States and Alaska. IA is headed by the AS-IA. BIA and BIE are two offices within Indian Affairs.

Inappropriate Educational Space Many Bureau-funded schools lack sufficient classroom space for all their students. Schools are compelled to conduct classes in whatever space is available. This report categorizes such non-classroom areas as Inappropriate Educational Space.

Leadership in Energy and Environmental Design (LEED) An internationally recognized green building certification system, providing third-party verification that a building or community was designed and built using measurable green building design, construction, operations and maintenance solutions.

Location Score Also known as the final project score, is the final score used to compare a school against all other schools with backlogs in the FMIS system. The location score is calculated by combining the API score and the ranking category factor score. See Appendix G for detailed calculations.

Minor Improvement and Repairs (MI&R) A funding category in the OFMC budget. MI&R addresses serious health/safety and other high-priority deficiencies at Bureau-funded facilities (except teachers' quarters). MI&R funds are used to resolve FMIS backlog items ranging from $2,500 to $500,000.

Native American Student Information System (NASIS) A centralized database and data processing system used to create statistical reports and to track student performance. Analysis of the information in NASIS helps schools improve by identifying the variables affecting student learning. Data collected through NASIS can be shared between state, federal, and tribal governments.

The No Child Left Behind Act of 2001 (Pub. Law 107-110; 115 Stat. 1425) (NCLB) (The Act) An Act of Congress supporting standards-based education reform, premised on the belief that setting high standards and establishing measurable goals can improve individual outcomes in education. The Act requires states to develop assessments in basic skills to be given to all students in certain grades, if those states are to receive federal funding for schools. The Act addresses the education of Indian children by the Federal Government.

Office of Facilities, Environmental and Cultural Resources (OFECR) OFECR is responsible for IA facilities management and construction, environmental management, safety and risk management, and cultural resources management programs.

Office of Facilities Management and Construction (OFMC) An office within Indian Affairs, under the Director of the OFECR. The mission of OFMC is to ensure the efficient and effective stewardship of resources for new construction, renovation, and maintenance of Bureau-funded facilities.

Operations and Maintenance (O&M) A funding category in the OFMC budget. O&M includes the following: recurring maintenance and repair costs; utilities (includes plant operation and purchase of energy); cleaning and/or janitorial costs (includes pest control, refuse collection and disposal as well as recycling operations); and roads/grounds expenses (includes grounds maintenance, landscaping and snow and ice removal from roads, piers and airfields).

Region Delivery of program services to the federally recognized tribes and individual Indians and Alaska Natives, whether directly or through contracts, grants or compacts, is administered by the 12 regional offices and 83 agencies that report to the BIA Deputy Director-Field Operations, located in Washington, D.C. However, the OFMC works with a set of 10 modified regions. These regions do not include BIA's Alaska region, since Alaska does not have Bureau-funded schools. Nor does it include the BIA's Pacific region, which is serviced by the Western region for the purposes of school construction. Therefore, for the purposes of this report, the Committee refers to the 10 modified regions of Eastern, Eastern Oklahoma, Great Plains, Midwest, Navajo, Northwest, Rocky Mountain, Southern Plains, Southwest, and Western.

Tribal Interior Budget Council (TIBC) The TIBC, formerly known as the Indian Affairs Tribal Budget Advisory Council (TBAC), provides a forum and process for tribes and federal officials to work together in developing annual budget requests for Indian programs in DOI. It provides cooperative participation in IA budget formulation, justification, and information. TIBC meetings also serve as an education forum to better inform tribes of the IA budget process and advise on the status of Indian Country initiatives throughout the Federal Government. The TIBC includes two tribal representatives from each of the 12 BIA regions.

United States Institute for Environmental Conflict Resolution (U.S. Institute) A program within the Udall Foundation, an independent federal agency. Congress established the Institute in 1998 to help resolve environmental disputes that involve the federal government by providing mediation, training and related services.

Subcommittee on the Interior, Environment and Related Agencies
Senate Committee on Appropriations

Hearing on the President's Fiscal Year 2014 budget request for the Department of the Interior
May 7, 2013

Questions from Senator Reed:

National Heritage Areas

QUESTION: Your fiscal year 2014 budget request proposes a change in the distribution formula for national heritage areas including the John H. Chafee Blackstone River Valley National Heritage Area in Rhode Island that includes a new tiered and "performance-based" system of funding. Please describe, in detail, how and when the Department plans to implement this formula change and provide the proposed allocation of funds for each authorized heritage area as provided by your fiscal year 2014 budget.

QUESTION: Specifically, how does your fiscal year 2014 budget request continue to provide funding for mature national heritage areas like Blackstone? At what level do you propose to fund these areas, and how does that level compare with the funding that these areas will receive in fiscal year 2013?

ANSWER: NPS will initiate phase-in of a revised funding formula as funding levels allow. The revised formula is a merit-based system for allocating heritage areas funding that considers a variety of factors based upon criteria related to program goals, accountability, and organizational sustainability.

The revised HPP funding formula uses three sequential tiers. The amount of funding available to each heritage area coordinating entity depends upon the total annual Heritage Partnership Program (HPP) appropriation and the number of coordinating entities authorized to receive funds. Tier increases for each coordinating entity are dependent upon meeting eligibility requirements and attaining performance measures.

First the tier 1 allocation of $150,000 would be provided to all NHA's that are authorized to receive HPP funding, able to meet any Federal/non-Federal match requirements contained in their authorizing legislation, and are able to expend funds obligated under their cooperative agreement within a reasonable period of time.

Next, each NHA coordinating entity that meets the tier 2 requirements would receive an additional amount of funding up to $250,000 or if sufficient funding is not available an equal share of the available funds. To be eligible for tier 2 funding the coordinating entity must meet additional eligibility requirements regarding management plan approval, and have at least one

full-time, paid staff person in place to assume financial and administrative responsibility of heritage area funds.

Lastly, if funds remain available after awarding tier 1 and tier 2 funds, then tier 3 funds will be allocated among those coordinating entities that have already met the tier 1 and 2 requirements, have long-term sustainability plans, and can match HPP funds at a 1:2 ratio, or provide an all-cash match at a 1:1 ratio or the ratio specified in the Area's authorizing legislation.

There are currently 48 National Heritage Areas authorized to receive funds through the NPS HPP budget activity. If the appropriated amount is equal to the request of $8,014,000 for Heritage Partnership Commissions and Grants, the FY 2014 allocations will range between $150,000 and $170,872, which will constitute a dramatic decrease for mature areas.

The following table shows the actual FY 2013 allocations and the planned allocation for FY 2014. In FY 2013, $15,533,000 was available, post-sequestration, for Heritage Partnership Commissions and Grants, or nearly twice as much as planned for FY 2014. Due to the significantly higher level of overall funding, direct comparisons of the allocations between the two years are not very descriptive, but overall the individual allocations ranged between $150,000 and $628,000. The draft FY 2014 allocation is predicated on each of the 48 coordinating entities receiving authorization through FY 2014 and obtaining eligibility for tier 1 funding. A subset of the NHA's is expected to have approved management plans in place and thus be eligible for tier 2 funding. These NHA's would be funded at $170,872.

National Heritage Areas	FY 2013 Enacted (Post-Sequestration)	FY 2014 President's Budget Request
Abraham Lincoln National Heritage Area	150,000	170,872
America's Agricultural Heritage Partnership (Silos)	628,000	170,872
Arabia Mountain National Heritage Area	288,000	170,872
Atchafalaya National Heritage Area	288,000	170,872
Augusta Canal National Heritage Area	288,000	170,872
Baltimore National Heritage Area	150,000	170,872
Blue Ridge National Heritage Area	610,000	170,872
Cache La Poudre River Corridor	150,000	150,000
Cane River National Heritage Area	523,000	170,872
Champlain Valley National Heritage Partnership	288,000	170,872
Crossroads of the American Revolution National Heritage Area	288,000	170,872

National Heritage Areas	FY 2013 Enacted (Post-Sequestration)	FY 2014 President's Budget Request
Delaware & Lehigh National Heritage Corridor	540,000	170,872
Erie Canalway National Heritage Corridor	627,000	170,872
Essex National Heritage Area	556,000	170,872
Freedom’s Frontier National Heritage Area	288,000	170,872
Freedom's Way National Heritage Area	150,000	150,000
Great Basin National Heritage Route	150,000	170,872
Gullah/Geechee Heritage Corridor	150,000	170,872
Hudson River Valley National Heritage Area	435,000	170,872
Illinois and Michigan Canal National Heritage Corridor	288,000	170,872
John H. Chafee Blackstone River Valley National Heritage Corridor	575,000	170,872
Journey Through Hallowed Ground National Heritage Area	150,000	150,000
Kenai Turnagain Arm National Heritage Area	150,000	170,872
Lackawanna Valley National Heritage Area	378,000	170,872
Mississippi Delta National Heritage Area	150,000	150,000
Mississippi Gulf Coast National Heritage Area	0	170,872
Mississippi Hills National Heritage Area	150,000	150,000
Mormon Pioneer National Heritage Area	288,000	170,872
MotorCities-Automobile National Heritage Area	435,000	170,872
Muscle Shoals National Heritage Area	150,000	150,000
National Aviation Heritage Area	288,000	170,872
National Coal Heritage Area	288,000	170,872
Niagara Falls National Heritage Area	288,000	170,872
Northern Plains National Heritage Area	150,000	150,000
Northern Rio Grande National Heritage Area	150,000	150,000
Ohio and Erie Canal National Heritage Area	567,000	170,872
Oil Region National Heritage Area	288,000	170,872

National Heritage Areas	FY 2013 Enacted (Post-Sequestration)	FY 2014 President's Budget Request
Quinebaug-Shetucket Rivers Valley National Heritage Corridor	590,000	170,872
Rivers of Steel National Heritage Area	588,000	170,872
Sangre de Cristo National Heritage Area	150,000	170,872
Schuylkill River Heritage Area	435,000	170,872
Shenandoah River Valley Battlefields National Historic District	385,000	170,872
South Carolina National Heritage Corridor	587,000	170,872
South Park National Heritage Area	150,000	170,872
Tennessee Civil War Heritage Area	386,000	170,872
Upper Housatonic Valley National Heritage Area	150,000	150,000
Wheeling National Heritage Area	528,000	170,872
Yuma Crossing National Heritage Area	304,000	170,872
Totals	15,533,000	8,014,000*

*Numbers may not add due to rounding.

Urban Parks and Recreation Recovery Program

QUESTION: As member from an urban state, I was encouraged to see that your budget request includes a $10 million investment to revive the Urban Parks and Recreation Recovery Program, which has not been funded in several years. Can you please explain what specific activities are funded by these grants, and who is eligible? How will you allocate these funds?

ANSWER: Established in 1978 by The Urban Park and Recreation Recovery Act of 1978, the Urban Park and Recreation Recovery (UPARR) grant program was designed to provide matching grants to a prioritized list of urban cities and counties that represent the most physically and economically distressed communities nationwide.

The program provides direct Federal grants to local governments for:

1. Rehabilitation grants, to rehabilitate, expand or developing existing neighborhood oriented outdoor or indoor recreation areas and facilities existing indoor and outdoor recreation facilities;

2. Innovation grants, to cover the cost of personnel, facilities, equipment, supplies or services associated with the development of innovative cost-effective ideas, concepts, and approaches

towards improved facility design, operations or programming for the delivery of recreation services at the local level; and

3. Recovery Action Program Planning grants, to develop local Recovery Action Programs to identify needs, priorities and strategies for revitalization of the total recreation system.

Grants are available directly to a predetermined list of eligible urban cities and counties. This list currently includes over 400 jurisdictions and was determined through a comprehensive study and analysis conducted by the U.S. Census Bureau in conjunction with the Department of the Interior. If funding is provided by Congress, this analysis would be updated. Additionally, up to 15 percent of the annual appropriation is available to cities not on the list but which are in Census Bureau defined Metropolitan Statistical Areas and meet other eligibility criteria. In order for jurisdictions to be able to apply for Rehabilitation or Innovation grants, they must have an National Park Service approved Recovery Action Program Plan that demonstrates the jurisdiction's commitment to revitalizing its park and recreation system.

Rehabilitation and innovation grants are awarded through a national competition among the detailed project proposals submitted to the NPS. These are evaluated and ranked by a national panel and recommendations made to the Director of the National Park Service for selection.

QUESTION: The request proposes funding these urban recreation grants in lieu of the existing $5 million Stateside Competitive Grant program, while it continues to fund $40 million for Stateside formula grants. Can you please explain what is different about this urban parks program compared to the Stateside competitive grant program? What is the Administration hoping to achieve with this proposal?

ANSWER: There are a number of key differences between the UPARR program and the previously proposed, but never enacted, LWCF State Competitive program. Chief among them is that the LWCF State Competitive program proposal focused on the three core AGO priorities which included increasing and improving recreation access and opportunities in urban parks and community green spaces, increasing public access to rivers, and catalyzing large landscape partnership projects. The UPARR program is consistent with the AGO priorities, but has a more targeted approach in that it focuses exclusively on rehabilitating existing facilities in core urban areas. Lastly, LWCF competitive grants were intended to be available to States and through States to any local unit of government whereas UPARR grants are specifically targeted to the most economically distressed urban cities and counties across the country.

With regard to the goals that the Administration hopes to achieve, the UPARR program is intended to help stimulate the revitalization of urban park and recreation opportunities by promoting a unified approach to addressing urban recreation through coordination and partnership among different levels of government and the private sector. By doing so the Administration hopes to create a robust system of urban parks that can contribute to the accomplishment of high priority national goals to improve and encourage health living, redevelop economically depressed urban cores, revitalize and create livable urban communities.

The President's budget request includes $10.0 million for the UPARR program; additionally a proposal to fund a portion of recreation grants from the LWCF as a permanent appropriation will provide an additional $5.0 million for UPARR grants. The budget also requests $40.0 million for the Stateside program with an additional $20.0 million included in the permanent LWCF appropriation proposal. Competitive Stateside grants are not proposed for funding in the President's budget request.

Sequestration

QUESTION: Secretary Jewell, can you give us more detail about what visitors to the parks and other Federal lands should expect this summer as a result of sequestration? What are some specific examples of the tough choices that you have already been forced to make?

ANSWER: As a result of the sequester, many parks are not filling vacancies and are retaining fewer seasonal employees. Consequently, these parks will experience reduced visitor services and hours of operation, shortened seasons, and closing of park areas when there is insufficient staff to ensure the protection of visitors, employees, resources and government assets. Some specific examples include:

- Great Smoky Mountains NP will close three remote campgrounds and two picnic areas, affecting 54,000 visitors;
- Mount Rainier NP will close the Ohanapecosh Visitor Center, affecting 60,000-85,000 visitors;
- Catoctin Mountain Park will close its only visitor center 50 percent of the time;
- Blue Ridge Parkway will cut 21 seasonal interpretive ranger positions, affecting 584,000 visitors and resulting in the closure of ten developed areas, which is nearly a third of its developed areas and creates a 50-mile distance between open facilities which limits contacts with park staff;
- Jewel Cave NM and Wind Cave NP, both located in southwestern South Dakota, will each discontinue approximately 35 percent of cave tours daily in the high season;
- Natchez Trace Parkway will close 14 comfort stations two days per week, and four comfort stations for the entire 2013 season, affecting more than 200,000 visitors. Colbert Ferry Visitor Center and Rocky Springs Visitor Center will remain closed for the 2013 season;
- Yosemite NP will do less frequent trash pickup, have fewer campground staff, and place a reduced focus on food storage violations, all of which contribute to visitor safety concerns and increased bear mortality rates. This will reverse the progress the park has made since 2000 to reduce bear incidents by 90 percent as well as the cost of damage from bear incidents by 42 percent.

Ellis Island

QUESTION: The National Park Service has announced that the Statue of Liberty will reopen on July 4th this year, but it does not appear that the Service has established any timeframes for the reopening of Ellis Island. Does the National Park Service have a specific plan, including a timetable, for the public reopening of Ellis Island National Monument? If so, will you please share that plan with the Committee and please tell the Committee whether or not the public has access to the plan. If the Service has not yet settled on a plan, when will such a plan be developed? When will the public be able to participate in its development?

ANSWER: Plans to reopen Ellis Island to the pre-Sandy visitor experience depends upon the re-establishment of utilities, primarily electricity, and replacement of building systems, including HVAC, plumbing, telecommunications, as well as the re-installation of artifacts in exhibits at Immigration hall. Engineers have been developing plans to provide a sustainable long term solution for utilities that are vulnerable to flooding and water damage from future storm events. We anticipate concepts of the engineering plans to be complete within the next month; when the engineering plans are final, a firm timetable to re-open Ellis Island to visitors can be considered.

QUESTION: Complicating the matter for both the Statute of Liberty and Ellis Island is the issue of security. The main security screening facility, which was located in Battery Park in Manhattan, was lost in the hurricane. I understand that there is some discussion of erecting a "temporary" facility on Ellis Island, similar to the "temporary" facility that was used on Battery Park for a decade. Does the Service currently have a plan for building a security screening facility on Ellis Island? If so, please tell the Committee the location and nature of the structure. If such facility is considered temporary, what is the Service's current thinking is with respect to a long-term option for security screening at the Statute of Liberty and Ellis Island?

ANSWER: Earlier plans to conduct security screening on Ellis Island have been superseded by new plans to return security screening to temporary facilities at both Battery Park and Liberty State Park. The National Park Service continues to work with our partners to find and commit to a long term, permanent option for security screening.

QUESTION: Will any of the Ellis Island funding provided in the recent Sandy supplemental bill (P.L. 113-6) be used to re-stabilize the buildings on the "south side?" If so, please provide the details of those expenditures.

ANSWER: Supplemental funding will be used to repair and rehabilitate all visitor facilities that were operating prior to Superstorm Sandy. The NPS has planned $75.5 million for projects at the Statue of Liberty National Monument; which includes Ellis Island. The specific projects, and the individual cost estimates, are included in the table below. Funding levels for projects will be refined as planning and design gets underway, and sequestration reductions are applied.

Hurricane Sandy NPS Construction Projects		
Park Unit	**Project Title**	**Amount** ($ in millions)
Statue of Liberty National Monument	Demolish Three Houses and Rehabilitate Two Structures for Mission Critical Support Requirements	0.6
Statue of Liberty National Monument	Remove Estimated 3.3 Tons of Hazardous Debris from the Main Buildings	3.1
Statue of Liberty National Monument	Repair Storm Damage at Liberty Island Dock, Pier and Ferry Slip	22.3
Statue of Liberty National Monument	Restore Concrete Foundation for Office Trailer Marina Unit for Park Police	0.1
Statue of Liberty National Monument	Repair Flood Damage in Basement at Concession Building #38	1.7
Statue of Liberty National Monument	Repair Damage to Heat, Utilities, Mechanical, and Electrical Systems at Main Immigration Building	19.2
Statue of Liberty National Monument	Repair Storm Damage to Liberty Island Temporary Retail Pavilion	0.2
Statue of Liberty National Monument	Repair Storm Damage to Heat and Utilities at Liberty Island	4.6
Statue of Liberty National Monument	Ellis Island Emergency and Long Term Museum Collections Protection Conservation and Storage	1.7
Statue of Liberty National Monument	Replace Destroyed Administrative Equipment, Furnishings and Data Systems	0.5
Statue of Liberty National Monument	Repair Storm Damages on Ellis Island and to the Statue Mall and Plaza	0.1
Statue of Liberty National Monument	Repair Sections of Brick Paved Walkway, Handrail System and Granite Seawall at Liberty Island	2.7
Statue of Liberty National Monument	Repair Damages to the Administrative, Maintenance and Support Buildings	3.7
Statue of Liberty National Monument	Replace Flood Destroyed Equipment and Security Screening Tents With Temporary Facilities at Ellis Island	9.3
Statue of Liberty National Monument	Replace Diesel Generators and Restore Interim Emergency Utility and Heating System	1.8
Statue of Liberty National Monument	Replace Equipment and Ancillary Attachments	0.8
Statue of Liberty National Monument	Replace Damaged Fuel Oil System With Natural Gas Main at Liberty Island	3.1
	Total	**75.5**

QUESTION: Does the Service currently have any plans to open the assets on the south side of Ellis Island to the public?

ANSWER: The buildings and grounds on the south side of Ellis Island are not suitable for public visitation due to their condition. The National Park Service continues to work with its partners to produce a long term plan for the rehabilitation of the south side and access by the visiting public.

Questions from Senator Tom Udall:

Fire Funding

It is my understanding that the President's FY14 budget request for Hazardous Fuels Reduction for the DOI Office of Wildland Fire is reduced by $88.9 million. This is a 48% cut in funding for the program. The DOI Office of Wildland Fire supports fire programs within the BLM, NPS, FWS and BIA, which represents a huge amount of federal lands across the country.

1. Could I get some examples or description as to how the four bureaus successfully used this funding in previous years?

ANSWER: Hazardous Fuels Reduction (HFR) funding is used to plan, implement, and monitor fuels reduction treatments and conduct community assistance activities. Hazardous fuels treatments remove or modify wildland fuels (both living and dead vegetation) to reduce the risk of wildfire to communities and their values. Community assistance is provided in the form of community education, collaborative planning, and activities to reduce human-caused ignitions.

From Fiscal Year (FY) 2002 through FY 2012, DOI treated on average approximately 1.3 million acres of hazardous fuels annually across the four Bureaus. The Bureaus design and implement fuels treatment activities that are aimed at reducing fire severity, modifying fire behavior, and/or restoring ecosystem health. Examples of treatments that have achieved one or more of these objectives are numerous and evident across the nation.

Below are some specific examples and recent activities:

- Between 2002 and 2009, the Bureau of Indian Affairs implemented a series of prescribed fire treatments located on the boundary of the Fort Apache Indian Reservation that proved effective in controlling the spread of the 2011 Wallow Fire.

- Fuel breaks established since 2005 have either stopped or helped suppress several past large fires in southeastern Oregon, particularly around the towns of Rome and Arock.

- In fall 2012, fire crews completed the 22-acre Lodge prescribed fire adjacent to the John Muir Lodge in Sequoia-Kings Canyon National Park. The project provided critical fuels reduction next to the lodge and for the Grant Grove area.

- Nevada BLM's recently completed 1,080-acre Upper Colony II Fuels Treatment Project, on the eastern slope of the Pine Nut Mountains, moderated fire intensity and slowed the rate-of-spread of the 2012 Burbank fire.

- In 2012, the Tract G Fuel Break prevented community and wildfire risks by stopping a wildfire from burning on to refuge land and neighboring private property in the vicinity of the Sacramento National Wildlife Refuge.

- Also in 2012, two prescribed fires at the Grand Canyon National Park reduced the heavy build-up of dead and down vegetation in both burn units, decreasing the risk of extreme fire behavior in the future, especially along Highway 67, the North Rim's primary exit route.

2. Will this reduction in funding for Hazardous Fuels Reduction make communities more at risk?

ANSWER: The Department's commitment to fully fund the 10-year suppression average, which required a $205.1 million increase over the 2012 enacted level, and other priority investments, impacted the funding available for other important programs. The Department's 2014 budget decisions were made in the context of a challenging fiscal environment.

The Wildland Fire Management program's primary objective is to protect life and property, and this is achieved by fully funding the suppression 10-year average and maintaining our initial and extended attack firefighting capability at current levels. The 2014 request does this by funding Preparedness at the 2012 enacted level, as adjusted for fixed costs.

The planned Hazardous Fuels Reduction program for FY 2014 represents the most effective use of available funds. High priority projects will be completed in high priority areas with the goal of mitigating wildfire risks to communities.

LWCF

I want to commend your Administration's continued commitment to the Land and Water Conservation Fund and to ensuring that it is used for its intended purposes. I applaud you and the President for your foresight and strong support for LWCF funding in the FY14 budget.

In New Mexico, our experience is that our public lands are enormous economic engines with substantial local community support. LWCF plays a key role in ensuring the viability of our public lands -- by securing access to hunting, fishing and other recreation lands, protecting important historic and cultural sites, and ensuring water supply and watershed restoration.

1. As you seek to address the many pressing needs of the Department of the Interior, how do you see the role of LWCF funds in supporting local economic needs, in addressing agency management challenges, and in providing a conservation solution to community needs?

ANSWER: The 2014 budget represents an unprecedented commitment to America's natural heritage by proposing $200 million in mandatory funds out of $600 million overall for LWCF programs in 2014. Starting in 2015, the budget proposes $900 million annually in mandatory funding, which is equal to the amount of oil and gas receipts deposited in the LWCF each year. This funding will provide stability needed for agencies and States to make strategic, long-term investments in our natural infrastructure and outdoor economy to support jobs, preserve natural and cultural resources, bolster outdoor recreation opportunities, and protect wildlife. The Land and Water Conservation Fund is an important tool for supporting conservation and recreation priorities in communities throughout the country. Through direct federal investments and grants to states and local governments, LWCF supports a wide range of community needs related to conservation, recreation, and strong rural economies and working lands. The fund also enables bureaus to address land management challenges through strategic acquisition of inholdings or parcels that solve resource management challenges. The Department's LWCF programs work in cooperation with local governments and communities, rely on willing sellers for acquisitions, and maximize opportunities to partner with private landowners on conservation easements. The Department and bureaus use rigorous merit-based selection processes to identify projects that will make the greatest contribution to meeting outcome-based goals. All of these factors help ensure that LWCF funds are targeted to high priority projects and are aligned with and supportive of community priorities, including local economic needs.

A total of $243.8 million, 41 percent of the Administration's 2014 LWCF request, would fund grants to States for conservation and recreation through grant programs run by the Forest Service, the National Park Service, and the Fish & Wildlife Service. The **LWCF State Grants Program** provides matching grants to States and local governments for the acquisition and development of public outdoor recreation areas and facilities. The program helps to create and maintain a nationwide legacy of high quality recreation areas and facilities and to stimulate non-federal investments in the protection and maintenance of recreation resources across the country. The **Cooperative Endangered Species Conservation Fund** (CESCF) grants provide funds to States to work with private landowners, conservation organizations, and other partners to protect and conserve the habitat of threatened and endangered species. The **Urban Park Recreation and Recovery Program** (UPARR) provides matching grants to select physically and economically distressed urban communities to revitalize and improve recreation opportunities.

A total of $356.2 million, accounting for the other 59 percent of the Administration's LWCF request, would support land acquisition. Land acquisition funds are used to secure access for the American public to their federal lands. These funds invest in acquisitions to better meet recreation access needs by working with willing landowners to secure rights-of-way, easements or fee simple lands that provide access or consolidate Federal ownership so that the public has unbroken spaces to hike, hunt, and fish. The Administration's highly strategic approach to using LWCF land acquisition funds includes the Collaborative LWCF initiative. This new program brings Federal agency staff together with local stakeholders to identify opportunities where LWCF funds can be used to achieve the most important shared conservation outcome goals in the highest priority landscapes. Conserving large scale landscapes provides multiple resource and economic benefits to the public including cleaner drinking water, recreational opportunities, reduced wildlife risks, protected habitat for at-risk and game species and jobs generated on and off these lands. The Collaborative LWCF program seeks to fund the best opportunities to

leverage other Federal resources, along with those of non-Federal partners, to support conservation goals driven by the best science and a shared community vision for the landscape.

The Department has worked to identify LWCF investments which would: support simpler, more efficient land management; create access for hunters and anglers; create long-term cost savings; address urgent threats to some of America's most special places; and support conservation priorities that are set at the State and local level.

Reduced Costs for Land Management
LWCF funds would be used to acquire parcels that make it easier and less costly to manage existing public lands. Far from raising operating costs, the acquisition of inholdings can reduce maintenance and manpower costs by reducing boundary conflicts, simplifying resource management activities, and easing access to and through public lands for agency employees and the public.

Access for Hunting and Fishing and Recreation
Participants in the America's Great Outdoors listening sessions made it clear that access to our nation's lands for all kinds of recreation – in particular hunting and angling – is a national priority. This LWCF request would fund strategic acquisitions that improve access to public lands for sportsmen and women.

Economic Benefits for Communities
Investing in healthy ecosystems pays off for the Federal government, local communities and taxpayers. Timely acquisition of important natural areas today can help avoid much higher costs to taxpayers in future years by protecting water supplies, important species habitat, recreational and cultural sites, and other natural resources with economic value to the public.

Protection from Urgent Threats
LWCF funds are used to acquire lands that are in imminent danger from industrial or residential development. Civil War and Revolutionary War battlefields, for example, are the hallowed ground of our nation's history; preserving these lands as parks for the American public prevents an irreparable loss.

Supporting Local Priorities
Federal acquisition projects are planned collaboratively with local stakeholders, and often depend on significant support of State or local government, or of locally-based nonprofit partners. These partners sometimes act as intermediary landowners, holding land temporarily to protect it from development until the Federal government can secure the funds to assume ownership.

Price's Dairy (Valle Del Oro National Wildlife Refuge)

I know that you are a strong advocate of ensuring that residents of our cities and urbanized counties have access to outdoor recreation close-to-home and opportunities for healthy lifestyle.

With that in mind, I wanted to make sure you are aware of an ongoing Departmental priority project underway in the Albuquerque area that hits all those marks. I am referring to the Price's Dairy project at Valle de Oro National Wildlife Refuge, the first urban refuge in the Fish and Wildlife Service's southwest region and one of the 50-state America's Great Outdoors projects. This is a highly leveraged, truly locally driven project -- one that the community has been working on for over 10 years. I am very pleased that the final funding needed to complete this project is included as part of the Department's FY 14 budget proposal. However, I would note that the landowner agreement expires in July 2014, so it is absolutely critical that the Department work with us to ensure that this project is completed along that timeline. I note that last year the project was ranked #5 on the agency's priority list, but this year it is ranked last at #18. Hopefully that is not an indication of flagging enthusiasm or lack of desire to get this project done.

1. Will you work with me to ensure this AGO project is completed this year?

ANSWER: Completion of the last phase of the Valle de Oro National Wildlife Refuge acquisition remains a Departmental priority project, and it is our intention to complete the project providing Congress appropriates enough funding for this acquisition. Funds would be used to acquire fee title to the final portion of this 570 acres refuge located along the El Camino Real de Tierra Adentro National Historic Trail, just a few miles from downtown Albuquerque.

The Valle de Oro refuge has received a huge outpouring of community support and the Service has maintained its support for the acquisition. To honor commitments made to the landowner, the community, and partners, the budget request includes $6 million of federal funds as part of the Collaborative Landscape Planning initiative to complete the project in FY 2014.

BLM Pilot Offices:

In March I visited the BLM office in Carlsbad, New Mexico to learn about the importance of their status as a "Pilot Office." As you know, the 2005 Energy bill designated several pilot offices to receive extra resources to expedite permit processing and conduct much-needed environmental oversight. These offices are already understaffed and overworked, so I committed to ensure that this program would be reauthorized in 2015 when it expires. I am pleased to see in your budget proposal that you are proposing to reauthorize this successful authority. I am also pleased that you are proposing to build in more flexibility – for example, the ability to shift resources to offices like Carlsbad that are in the middle of a boom would be helpful. We'd want to be sure that the flexibility is fair, but I appreciate this option.

1. Can you provide any more details on what you expect to do and how we can work to ensure this happens?

ANSWER: The BLM would like to work with the Congress on language that would allow greater flexibilities Nationwide to adjust permitting resources based on demand. There are many BLM field offices that are not part of the pilot project, but are receiving hundreds of APDs per year. Of the 10 field offices that received the most APDs during FY 2012, only five are currently designated as pilot project offices. For example, in FY 2012, the Pinedale Field Office in Pinedale, Wyoming, received 325 APDs; the Bakersfield Field Office in Bakersfield, California, received 286 APDs; and the Oklahoma Field Office in Tulsa, Oklahoma, received 157 APDs. Although these offices have received high volumes of APDs, none are currently designated as pilot project offices. At the same time, some of the currently designated pilot project offices have received relatively few APDs in recent years; for example, the Miles City, Montana, Field Office received only 55 APDs in FY 2012.

Parks and River Management

The Bureau of Reclamation's, "Colorado River Basin Water Demand and Supply Study" does an excellent job of describing the challenges in meeting water supply needs, but it does very little to describe or assess the needs of the National Park Service to meet its obligations to protect its river ecosystems.

Most park units in the Colorado River basin and other river basins lack protection for the waters flowing through park boundaries and that in most cases, park units in the Colorado River basin and other river basins do not have management plans to provide for sound management of water resources within parks.

1. Is it possible to create a planning effort to ensure that the National Park Service can substantively participate in policy discussions about water management that may have profound impact on national park resources?

ANSWER: The Office of the Secretary works collaboratively with the bureaus to ensure that water management planning is effective. The NPS has made recent strides in this arena in the past few years, but many challenges remain to address the major concerns facing the Colorado River.

The NPS provides technical expertise through its Water Resources Division (WRD) to park units on water issues. WRD has been instrumental in conducting scientific studies and monitoring, participating in processes related to dam operations, negotiating tribal water issues, and working with States to protect flows in places such as Black Canyon of the Gunnison National Park. The NPS also has been active in multiagency processes such as the Upper Colorado River Endangered Fish Recovery Program. In 2001, the NPS created the Colorado River Basin Parks Program to better ensure effective coordination and active participation in multiagency and multistate efforts to protect park resources. These collaborative, multi-stakeholder efforts are overseen by a Steering Committee, Technical Committee, and a Colorado River Coordinator.

Currently, the NPS is working to address the scientific information gaps, strategic planning needs, and targeted issues within the basin such as aquatic invasive species.

The NPS regularly engages in planning efforts, such as invasive aquatic species management in Lake Mead and Glen Canyon National Recreation Areas, partnerships for flow management for Grand Canyon National Park, and monitoring of headwaters in Rocky Mountain National Park, which are designed to protect natural and cultural resources throughout the Colorado River basin, and to ensure continued outdoor recreational opportunities that are important to local and regional economies in the Western states. Though these plans were sufficient to respond to more localized past challenges, they lack the system-wide integration and detailed scientific data needed to effectively respond to more widespread current challenges. The Colorado River Basin Parks Program Steering Committee has identified research needs related to stream gaging, sediment transport, riparian vegetation, and aquatic communities necessary to inform management decisions that address many of these issues. Some of this data collection has begun and other projects will be instated as funds become available.

2. How can the Department of Interior ensure that the National Park Service is an active partner in water management decisions that impact Park Service resources?

ANSWER: The NPS has established itself well in the last several years as a collaborative partner and an active participant in several ongoing multiagency processes, including the WaterSMART program, which was established in 2010. WaterSMART allows all bureaus within the Department to work with States, Tribes, local governments, and non-governmental organizations to pursue a sustainable water supply for the Nation by establishing a framework to provide Federal leadership and assistance on the efficient use of water, integrating water and energy policies to support the sustainable use of all natural resources.

The NPS participates in on-going collaborative efforts regarding dam operations, including the development process of the Glen Canyon Dam Long Term Experimental and Management Plan, for which it is a co-lead with the Bureau of Reclamation. In developing the plan, the NPS and Bureau of Reclamation are re-operating the dam to achieve better compliance with the Grand Canyon Protection Act. The NPS also works with the coordination and healthy flows teams to support follow-up actions for the Colorado River Basin Water Demand and Supply Study.

This active participation has worked best when NPS staff has been engaged in discussions at the local level as well as at the Departmental level. For example, in the High Flow Experiment Planning for Glen Canyon Dam in 2010-2011, discussions were successful because of input and involvement of both the Assistant Secretary for Water and Science, and the Assistant Secretary for Fish and Wildlife and Parks. In addition, NPS is an active partner at both the local and Department level with respect to aquatic invasive species that impact both park resources and water management. As discussed in the response to the previous question, the NPS has a Division of Water Resources within the Natural Resource Stewardship and Science directorate, which includes technical experts on hydrology, wetlands, water rights, and water quality. These water resource professionals collaborate with the Department and its bureaus to ensure water management decisions include protection of National Park resources.

Questions from Senator Murkowski:

King Cove Road -- I worked with Secretary Salazar on the agreement involving the King Cove road reflected in the Secretary's memorandum of March 21. The Department, led by the Assistant Secretary for Indian Affairs, will take a second look at a land exchange in Izembek National Wildlife Refuge with the community of King Cove and the state of Alaska. Approval of the land exchange would allow a one-lane, gravel road to connect King Cove with the all-weather airport in Cold Bay. Under this agreement, the Interior Department will look at whether the EIS by the Fish and Wildlife Service adequately considered the importance of protecting the human health and safety of the residents of King Cove. The review will also include an evaluation of the Department's trust responsibilities, and government-to-government consultations with local Aleut groups.

1. What is the status of this review?

ANSWER: Tribal consultation was held in King Cove on Friday, June 28, 2013, from 5:00–7:00 p.m. at the King Cove Community Center. Kevin Washburn, the Assistant Secretary for Indian Affairs, toured the King Cove area to assess the medical evacuation benefits of the proposed road and will provide the Secretary, following consultation with other federal partners, with a written report that addresses the medical evacuation benefits of the proposed road as well as whether and to what extent the road is needed to meet the medical emergency requirements of King Cove.

2. I am glad that you will visit King Cove prior to a final decision on this issue. I understand Assistant Secretary Washburn will be visiting comparatively soon. Can you tell me when you expect to reach a decision?

ANSWER: No specific time has been set for the Secretary to issue a final decision on the Izembek National Wildlife Refuge, Land Exchange/Road Corridor. The full Departmental record will be considered in rendering a final decision. The Secretary's final decision will be informed by:

- The U.S. Fish and Wildlife Environmental Impact Statement
- The Assistant Secretary of Indian Affairs' written report to the Secretary that addresses the medical evacuation benefits and whether and to what extent the proposed road is needed to meet the medical emergency requirements of King Cove
- A site visit to King Cove by Secretary Jewell which is expected later this year.

BOEM/BSEE New Arctic Regulations -- I understand that BOEM is in the process of developing Arctic-specific regulations for the exploration and development of Alaska's OCS oil and gas resources. As you know, exploration has been delayed in large part because of the regulatory uncertainty surrounding oil and gas projects in the Arctic OCS.

1. What is the timeline for the development of these regulations?

ANSWER: The Department of the Interior (DOI), Assistant Secretary, Land and Minerals Management, directed the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety & Environmental Enforcement (BSEE) to form a team of subject matter experts to improve safety standards for exploration, development, and production operations occurring in the Alaska Outer Continental Shelf (OCS). The Department's goal is to have proposed Alaska OCS regulations published in the Federal Register by the end of 2013.

2. Is it your intent to have these regulations in place in time for a 2014 drilling season?

ANSWER: We intend to have the regulations finalized before the 2014 drilling season. As part of the process, DOI held Listening Sessions to obtain public comments in Anchorage and Barrow, Alaska, on June 6 and 7, respectively. We anticipate developing a performance-based approach that will fully inform BOEM and BSEE how lessees plan to achieve safe operations under the operating conditions likely to be experienced while drilling and while transporting equipment into and out of the Alaska operating theater.

3. Though ConocoPhillips and Statoil have announced that they will not pursue exploration programs in 2014, Shell has not made a similar announcement. How do you intend the new regulations to impact and/or be incorporated into Exploration Plans and Oil Spill Response Plans for 2014?

ANSWER: The focus of the new regulations is to improve safety planning early in the process of developing Exploration Plans (EPs) and Development and Production Plans (DPPs). In accordance with 30 CFR 550.202(b), EPs and DPPs must demonstrate the lessees have planned and are prepared to conduct proposed activities in a manner that is safe. The regulations will emphasize the need for an integrated, overarching safety plan as a condition for approval of Alaska OCS operations. Each lessee will need to show BOEM and BSEE they are fully prepared to conduct the proposed activities, including mobilization and demobilization operations, in a manner that is safe and protective of the environment.

I also understand that the Department is updating its regulations for the oil and gas air quality program to incorporate their new authority over the Arctic contained in the FY 2012 Interior Appropriations bill, so I will ask the same questions as I did for the pending Arctic-specific regulations.

1. What is the timeline for the development of these regulations? Is it your intent to have these regulations in place in time for a 2014 drilling season? How will these regulations impact 2014 Exploration Plans?

ANSWER: BOEM and BSEE are already engaged in the development of the proposed Alaska OCS regulations. Public outreach efforts in the form of Listening Sessions were held in Anchorage and Barrow, on June 6 and 7, respectively. Public comments are also being accepted through Regulations.gov (docket number BOEM-2013-0035). BOEM and BSEE held more detailed meetings with industry, non-governmental organizations, the State of Alaska, local government, and Native Alaskans and Tribes in Anchorage on June 17 through 19. The purpose

of these follow-up meetings was to obtain a more comprehensive understanding of concerns and criteria for consideration in the proposed rules. Comments will be used to develop the scope of the Alaska OCS regulations and identify appropriate issues applicable for BOEM and BSEE oversight to ensure safe and responsible oil and gas exploration, development, and production on the Alaskan OCS.

BOEM and BSEE will develop draft regulation language that addresses issues and goals identified during the comment period. The proposed Alaska OCS regulations will be published in the *Federal Register*, and stakeholder input will again be solicited. It is anticipated the draft rules will be published by the end of the year.

2. How will the new regulations differ from the existing regulations? Will there be any difference in how the Department regulates air quality in the Gulf of Mexico versus in Alaska? If yes, why and how will the programs differ?

ANSWER: At this time, BOEM is still obtaining stakeholder input and reviewing existing regulations. Until this analysis is complete, it is not clear what, if any, differences in regulations between the regions will be needed. The bureau can provide more details as the draft rule is developed.

National Marine Fisheries – Arctic OCS EIS-- BOEM has worked with NMFS on the EIS for the impacts of oil and gas activities in the Beaufort and Chukchi Seas. I continue to believe there are major problems with this document, including development alternatives that are not realistic and the lack of participation from relevant agencies.

1. The Fish and Wildlife Service expressly declined to participate in the EIS, yet the EIS still analyzes impacts to polar bears and Pacific walruses – species the Service has trust responsibility over. Why was this approach taken? Will these species be removed from the next draft? If not, please explain why not.

ANSWER: The Service declined to be a cooperating agency on the Arctic EIS in 2010 because it had recently completed an Environmental Assessment (EA) on the effects of oil and gas activities in the Chukchi and Beaufort Seas on polar bears and Pacific walruses in conjunction with issuing Marine Mammal Protection Act Incidental Take Regulations (ITRs). The potential effects of oil and gas activities on polar bears and Pacific walruses had been adequately addressed in the ITRs and effectively considered in the EAs. Additionally, other existing program commitments precluded the degree to which the Service could be involved. Instead, the Service offered to provide copies of these EAs and informal review and comment on the Draft EIS. Since then, the Beaufort Sea EA was updated in 2012 and the Chukchi Sea EA was recently updated in conjunction with finalization of the 5-year Chukchi Sea ITRs that are to be published in the *Federal Register* in the near future. These EAs are made publically available. In addition, the Service is currently reviewing the Draft EIS and, as appropriate, will provide feedback to National Marine Fisheries Service.

Although the Service cannot speak on behalf of NMFS, the National Environmental Policy Act's procedures are intended to ensure that information about potential environmental impacts of an agency's proposed and alternative actions are made available and considered in the decision-making process and both the polar bear and Pacific walrus occur in the area of the Arctic EIS.

2. The new draft also appears to cap each company to one drilling rig at a time per Sea. This is inconsistent with Exploration Plans previously submitted and approved by BOEM. Is it BOEM's intent to limit exploration in this way? If it is, what is BOEM's rationale for the change of course? [This would be extremely problematic given the short exploration season and would, at best, severely delay/restrict exploration and, at worst, lead to project abandonment.] If it isn't, will BOEM clarify this point in the next draft?

ANSWER: NMFS served as the lead agency for preparation of the Draft Supplemental EIS (SEIS), with BOEM as a formal cooperating agency, along with the North Slope Borough of Alaska. The purpose of the Draft SEIS is to analyze the potential environmental impacts of seismic and exploration activities for the purpose of informing NMFS's decisions regarding authorizations for the incidental take of marine mammals under the Marine Mammal Protection Act.

As for BOEM's intended use of the Draft SEIS, the information will be used, as appropriate, for environmental analyses to inform BOEM's own decisions for specific projects, just as other relevant information contained in National Environmental Policy Act (NEPA) documents is considered. Moreover, it is important to note that a NEPA document is not a decision document; it is merely an analysis of potential environmental impacts associated with particular activities.

The alternatives included in the Draft SEIS were prepared based on the best information available at the time for recent federal and state lease planning, and recent industry plans, for both seismic surveys and exploratory drilling programs in the Beaufort and Chukchi seas. The seismic and exploration activities analyzed in the Draft SEIS are not limited to one drilling unit at a time per company. The alternatives analyzed in the Draft SEIS consider up to four drilling "programs" operating in each sea at one time. For analysis in the EIS, one "program" entails however many surveys or exploration wells a particular company is planning for that season. Each "program" would use only one source vessel (or two source vessels working in tandem) or drilling unit (i.e. drillship, jackup rig, SDC, etc.) to conduct the program and would not survey multiple sites or drill multiple wells concurrently.

3. I was also surprised to see that the new draft appears to have no timeline – for example, the last draft covered a 5-year period, this draft does not. Is there precedent for an "infinite" environmental document? What was the rationale for an open-ended document? What would be the result if more operators pursue their leases than the alternative selected analyzes? How do you plan to ensure that this document is not a back door way to limit exploration in the Arctic?

ANSWER: A timeline is not relevant to the purpose of the document, which is to provide an analysis of the potential environmental impacts of a reasonable range of OCS activities.

Based upon past lease sales, G&G permits, ancillary activity notices, exploration drilling exploration activities, and requests for incidental take authorizations, NMFS and BOEM have determined a reasonable range and level of activities for which permits and authorizations may be requested in the foreseeable future. While the level of activity proposed may vary from one year to the next, the action alternatives represent a reasonable range of exploration activities for which permits and authorizations may be expected. Also, the Draft Supplemental EIS does not serve as a decision document but rather is used to analyze possible environmental impacts associated with particular activities.

Oil/Gas Development Public Lands-- The budget request includes what it calls "Federal Oil and Gas Reforms." These consist of a host of changes in three areas – royalties, development of oil/gas leases, and improving the revenue collection process. They all share one thing in common – they will make our federal lands less competitive to industry, which increasingly has other alternatives on state and private lands here in the U.S., or globally. For example, you are proposing a $6 per acre fee on nonproducing leases even though it takes years to bring leases to production – usually because of permit or other regulatory delays caused by the federal government. You also propose "adjusting royalty rates" which I can only imagine means increasing them since you claim that these "reforms" will generate $2.5 billion over the next 10 years for the Treasury.

On April 17th the House Resources Committee held a hearing comparing oil/gas production on state lands vs. federal lands. One of the major differences they found was that it takes the BLM 307 days on average to approve a drilling permit – nearly double the time it took in 2005. On state lands, processing times are 12-15 days.

1. Won't increasing royalties, charging new inspection fees on top of the fee that you already charge for processing a permit, and a new fee on so-called "non-producing leases" only make our federal lands less competitive compared to the states?

ANSWER: Federal oil and gas production is an important component in fulfilling our Nation's energy needs and the Department has an obligation to the public to ensure a fair return on that production. The Department deems the proposed changes necessary to ensure this fair return and do not believe they will make Federal lands less competitive compared to the States. Onshore Federal oil and gas royalty rates, which are currently 12.5 percent, are lower than most States' royalty rates. For example, Montana, Wyoming, Utah, and Colorado all have a royalty rate of 16.67 percent for State leases. North Dakota has an 18.75 percent royalty rate, and New Mexico has various rates that are as high as 20 percent.

The Administration believes that American taxpayers should get a fair return on the development of energy resources on their public lands. We feel industry should pay the cost of inspecting and monitoring oil and gas activities, as is the case for other industries, including offshore oil and gas. This is consistent with the principle that the users of the public lands should pay for the cost of both authorizing and oversight activities.

The Department's intent behind the proposed fee on non-producing leases is to encourage more timely development of Federal lands. The fee will provide an incentive for oil and gas companies to either put their leases into production or relinquish them so the Department can re-lease those tracts to companies who want to develop them. Many States also have similar fees (e.g., escalating rental rates) to encourage development. Therefore, the Department does not believe the proposed changes will make Federal lands less competitive compared to the States.

2. The Hill newspaper published an article on March 5th of this year where they cited a CRS study that determined that while overall U.S. oil production has increased since 2007, oil development on federal lands has dropped by 7%. For natural gas, overall U.S. production has increased by 20% between 2008 and 2012, but on federal lands it has fallen by one-third. Instead of a host of new fees, shouldn't the Department be looking at ways to attract companies to federal lands for oil/gas production? This would generate significant revenues to both the States and federal government.

ANSWER: The Congressional Research Service study shows that Federal onshore oil production increased by 16.3 percent from 284,900 barrels per day in 2008 to 331,500 barrels per day in 2012. Federal onshore gas production decreased slightly during that same period. The decrease in gas production was a result of lower gas prices and rising supplies of natural gas due to the development of unconventional shale gas. The largest unconventional shale gas discoveries are primarily on non-Federal land and are attracting a significant portion of new investment for natural gas development. This does not mean that Federal lands are no longer competitive for natural gas development. Indeed, companies continue to acquire thousands of Federal leases and permits annually for new natural gas production projects on Federal lands.

The Department has an obligation to the public to ensure a fair return on Federal oil and gas production. Even with the proposed changes, Federal leases will remain competitive with State leases and should not result in any significant reduction in interest and development of oil and gas on Federal lands. The proposed onshore and offshore reforms will generate roughly $2.5 billion in net revenue to the Treasury over 10 years. Many States will also benefit from higher Federal revenue sharing payments as a result of these reforms.

National Wildlife Refuge Fund/PILT-- The National Wildlife Refuge Fund provides funds to local counties to offset the loss of tax receipts from federal land ownership. Again this year, your FY 2014 budget proposed to eliminate this $14 million discretionary amount available to local governments across the country.

It seems to me that we should be creating fiscal certainty for local governments instead of cutting payments to them at a time when your Department has placed such a large emphasis on increasing federal land ownership through LWCF.

1. I understand that the mandatory portion of this program will continue to go to local counties, but why are you proposing to eliminate the discretionary portion of the program again this year?

ANSWER: The Refuge Revenue Sharing Act, as amended, authorizes revenues and direct appropriations to be deposited into a special fund, the National Wildlife Refuge Fund (NWRF), and used for payments to counties in which lands are acquired in fee (fee title) or reserved from the public domain (reserved land) and managed by the Service. These revenues are derived from the sale or disposition of (1) products (e.g., timber and gravel); (2) other privileges (e.g., right-of-way and grazing permits); and/or (3) leases for public accommodations or facilities (e.g., oil and gas exploration and development) incidental to, and not in conflict with, refuge purposes.

Refuges have been found to generate tax revenue for communities far in excess of that which was lost with federal acquisition of the land. In addition, Refuge lands provide many public services and place few demands on local infrastructure such as schools, fire, and police services when compared to development that is more intensive. National Wildlife Refuges bring a multitude of visitors to nearby communities and so provide substantial economic benefits to these communities.

The Refuge System welcomed more than 47 million visitors in FY 2012, according to the Service's Refuge Annual Performance Plan. Hunters, birdwatchers, beach goers and others who spend time on refuges also bring money into local economies when they stay in local hotels, dine at local restaurants, and make purchases from local stores. Recreational spending on refuges generates millions of dollars in tax revenue at the local, county, state and Federal level. According to a report titled *Department of the Interior Economic Contributions FY 2011*, in 2011 national wildlife refuges generated more than $4.2 billion in economic activity and created more than 34,500 private sector jobs nationwide. In addition, property values surrounding refuges are higher than equivalent properties elsewhere. Importantly, in an increasingly urban world, these sanctuaries of natural beauty offer Americans priceless opportunities to connect with nature.

2. PILT payments, which compensate states and counties with large amounts of non-taxable federal land, expire at the end of this fiscal year. While your budget proposes to extend the mandatory payments by a year, it does not identify any offset. Shouldn't we identify a concrete way to pay for this important program?

ANSWER: The President's Budget proposes an extensive number of legislative proposals that result in savings in the next ten years. Any of these propsoals could be considered for potential offsets to extend the Payments in Lieu of Taxes (PILT) program for FY 2014. These proposals are identified on page 200 of the Mandatory and Receipts Proposals section (S-9) of the President's Budget and a narrative explanation is provided by the Department of the Interior. Please refer to the following website links:
http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/tables.pdf and on page DO-20 http://www.doi.gov/budget/appropriations/2014/highlights/upload/overview.pdf.

Questions from Senator Cochran

QUESTION: Increased production, particularly on the Outer Continental Shelf in the Gulf of Mexico, would likely reduce our reliance on foreign oil and create much needed jobs.

1. What is the Department doing to make Federal offshore land available for exploration and development?

ANSWER: President Obama's call for a sustained, all-of-the-above energy strategy includes the expansion of responsible production of our domestic oil and gas supplies, including Federal lands. Since the President took office, America's dependence on foreign oil has decreased every year, and domestic oil and natural gas production has risen every year. In 2012, American oil production reached the highest level in two decades and natural gas production reached an all-time high. Combined with recent declines in oil consumption, foreign oil imports now account for less than half of the oil consumed in America.

BOEM held the first two sales of the Five Year Program in the Gulf of Mexico in November 2012 and March 2013, which resulted in over $1.3 billion dollars in high bids on 436 new leases. A third lease sale, scheduled for this August, will offer 21 million acres offshore Texas, making all unleased acreage in the Western Gulf of Mexico available for leasing. BOEM's lease terms encourage prompt development and production and ensure that the American public receives fair market value for these shared resources. Lease sales conducted under the program include a modified minimum bid structure that BOEM has developed, after rigorous economic analysis, to encourage operators to invest in the OCS acreage that is most likely to lead to discoveries and production and reduce the amount of leased acreage that sits idle. BOEM will continue to use lease terms that incentivize industry to diligently and promptly operate their leases.

QUESTION: National Fish Hatcheries across the Southeast generate millions of dollars in economic benefits through warm water fish production. In my state, we have the Private John Allen National Fish Hatchery, located in Tupelo, Mississippi, which is one of eight warm water fish hatcheries managed by the U.S. Fish and Wildlife Service. Despite the large contribution warm water fisheries have on national restoration efforts, the budget for fisheries located in the Southeast continues to decline. I have concerns about funding for warm water hatcheries.

1. What is your plan for these hatcheries in the future?

2. Will a disproportionate amount of funding go to cool water fisheries at their expense?

ANSWER: To meet the needs of the American people in a changing social and economic climate, the National Fish Hatchery System (NFHS) has been proactive in implementing creative strategies for assessing, deploying, and managing its workforce to answer these types and other important and pressing questions. In December 2012, the Service initiated a review of 70 production hatcheries within the NFHS to ensure the Service is positioned to address the current and future aquatic resource needs of the United States.

- Geoffrey Haskett, the Service's Alaska Regional Director and former Chief of the National Wildlife Refuge System (NWRS), led the review. He previously oversaw a similar exercise that helped the NWRS improve workforce and financial management.
- The NFHS review was precipitated, in part, by staffing and budget challenges at various hatcheries. With tight budgets, the Service must establish production goals for the highest priority species; determine the optimal number of hatcheries and employees to achieve those goals; and strive for a more balanced ratio of payroll to operational costs to achieve NFHS goals and support collaborative recovery and restoration programs.
- The review team is comprised of Fisheries Program leadership from all Service Regions and Headquarters. The team has collected and examined information about species produced, staffing levels and needs, organizational structure, operational budgets, and assets. The team used data gathered through previous programmatic reviews as the baseline for collecting up-to-date and comparable information.
- The review team is developing a report with funding scenarios and operations options that is expected to be complete by August 2013. The Service will use this information to make informed decisions about where to focus efforts given current, declining, or increasing budgets, and where operations would be reduced or expanded accordingly. The review will also help inform an evaluation of the Service's vision for the future of its fisheries activities that the Sport Fishing and Boating Partnership Council is conducting. The Service will use the review team's report and the Council's recommendations to produce a strategic plan for the future.
- The Service strongly believes the steps taken now – together as an agency and with our partners – will help focus its efforts, make strategic investments, and better address current and future challenges. Above all, these steps will position the Service to proudly continue America's fisheries legacy.

QUESTION: Last year, in response to a question I submitted for the record, the Department stated that most States and Tribes currently use the majority of their Historic Preservation Fund grant funds to carry out non-discretionary activities mandated by the National Historic Preservation Act.

1. Do you believe that the preservation and conservation activities previously carried out by the Save America's Treasures program were an important part of ensuring the protection of our nation's cultural heritage?

ANSWER: The National Historic Preservation Act (NHPA) states that it is the policy of the Federal government to "contribute to the preservation of […] prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means." (16 U.S.C. 470-1). There are numerous ways in which the Federal government can contribute to historic preservation, and the Save America's Treasures program was one of these tools.

From 1999 to 2010, $319.1 million was appropriated resulting in 1,287 grant awards. Matched dollar-for-dollar, these funds have leveraged approximately $380 million in non-Federal investment and added over 16,000 jobs to local and states economies.

The SAT grants assisted 295 National Historic Landmarks (NHL), 28 properties located in and contributing to NHL Districts, over 250 buildings individually listed in the National Register of Historic Places (NRHP), over 70 properties located in and contributing to NRHP-listed historic districts, and 24 properties eligible for NRHP listing, as well as hundreds of nationally significant museum collections.

2. Given that most States and Tribes have little funding from Historic Preservation Fund grants remaining after completing mandated activities, what is the Department doing to support bricks and mortar projects to preserve and protect nationally significant historic sites?

ANSWER: The grants-in-aid to States and Territories and grants-in-aid to Tribes funded through the NPS Historic Preservation Fund (HPF) account can be used for brick and mortar projects, and a small number of States do use a portion of the HPF allocation for this. A small amount of funding goes to bricks and mortar projects through the Tribal Heritage grant program and Japanese-American World War II Confinement Site Preservation program. Additionally, through the NPS's Technical Preservation Services office, the NPS develops historic preservation policy and guidance on preserving and rehabilitating historic buildings, administers the Federal Historic Preservation Tax Incentives Program for rehabilitating historic buildings, and sets the Secretary of the Interior's Standards for the Treatment of Historic Properties.

Question from Senator Hoeven:

Which states, if any, do you believe do not have laws or rules regulating hydraulic fracturing?

ANSWER: States are free to regulate hydraulic fracturing as appropriate, with the exception that State regulations must meet the minimum requirements of any applicable federal regulations. Some States have specific rules related to hydraulic fracturing, while others regulate the process solely under their general oil and gas permitting requirements.

States are not legally required to meet the stewardship standards applying to public lands and do not have trust responsibilities for Indian lands under Federal laws. The States that have regulated hydraulic fracturing do not uniformly require measures that would uphold the BLM's responsibilities for federally managed public resources, to protect the environment and human health and safety on Federal and Indian lands, and to prevent unnecessary or undue degradation of the public lands.

We would note that BLM is not an expert on the regulatory requirements of each State, and we understand that many States are in the process of reevaluating their regulatory requirements regarding hydraulic fracturing; thus, we recommend that the Committee follow up with appropriate State officials for the latest information on their particular regulatory requirements and standards. However, after conducting a search through regulations of various States, the BLM believes that the following States do not currently have specific hydraulic fracturing regulations in place:

- Connecticut
- Delaware
- Florida
- Georgia
- Hawaii
- Iowa
- Maine
- Maryland
- Massachusetts
- Minnesota
- Missouri
- New Hampshire
- North Carolina
- Rhode Island
- South Carolina
- Tennessee
- Washington
- Wisconsin

In addition, our understanding is that the following States have banned the practice of hydraulic fracturing:

- New Jersey
- New York
- Vermont

U.S. House of Representatives
Committee on Appropriations
Subcommittee on Interior, Environment, and Related Agencies
Budget Hearing: U.S. Department of the Interior
April 11, 2013
B-308 Rayburn HOB

Questions for the Record -- Secretary of the Interior

Questions from Mr. Cole

Hydraulic Fracturing/Energy
The BLM is currently in the process of re-proposing the regulation of hydraulic fracturing on public lands. The BLM's stated intent of the proposed rule is to require the public disclosure of the chemicals used in hydraulic fracturing operations, to ensure well-bore integrity and ensure safe water management practices.

Currently, the states regulate hydraulic fracturing operations within their state borders.

Cole Q1: Are you aware of any gaps currently in the state regulation of hydraulic fracturing that the BLM needs to address to assure adequate regulation on federal lands? If so, have you or will you work with the states where the BLM has identified gaps in state regulation?

Answer: In accordance with its stewardship mandate from the Federal Land Policy and Management Act of 1976, the BLM is promulgating regulations in order to protect and manage hydraulic fracturing activity on Federal and Indian lands. The BLM recognizes the work of State regulatory agencies with respect to hydraulic fracturing and seeks to avoid duplicative regulatory requirements. However, it is important to recognize that a major impetus for a separate BLM rule is that States are not legally required to meet the stewardship standards applying to public lands and do not have trust responsibilities for Indian lands under Federal laws. Thus, the rule may expand on or set different standards from those of States that regulate hydraulic fracturing operations, but do not need to adhere to the same resource management and public involvement standards appropriate on Federal lands under Federal law.

The BLM has held public and private listening sessions which included State officials, where the BLM has worked cooperatively to improve the regulatory environment for hydraulic fracturing. For example, the revised proposed rule announced on May 16th encourages efficiency in the collection of data and the reporting of information by proposing to allow operators in States that require disclosure of chemical constituents of fracturing fluids on FracFocus to meet both the State and the BLM requirements through a single submission to FracFocus.

Cole Q2: Are you aware of a specific concern that has happened that has compelled the Department to move forward with a new layer of regulation on top of what the states already require?

Answer: The BLM is promulgating hydraulic fracturing rules primarily to address concerns regarding protecting the usable water zones, confirming good cement bonding, adequate wellbore integrity, and disclosing the chemical content of the hydraulic fracturing fluids. The BLM is not promulgating its rules in response to a specific occurrence; rather the significant increase in the number of wells using hydraulic fracturing activity on Federal and Indian lands caused the need to develop the hydraulic fracture regulation by the BLM as a part of our stewardship mandate to ensure proper balance between human health, energy development, and the environment.

BLM's own numbers show that leasing on federal lands for oil and natural gas are down at a time when energy production overall is booming.

Cole Q3: Because duplicative regulations could further drive investment away from public lands**,** should the BLM rule look to streamline the permitting process rather than create additional delays and increase costs?

Answer: The BLM's regulatory framework regarding well stimulation/Hydraulic Fracturing (HF) has not been updated for over 30 years. In addition, the existing regulations do not reflect industry's technological advancements that have occurred during that time frame. The BLM estimates that about 90 percent of wells currently drilled on public and tribal lands are stimulated by hydraulic fracturing techniques and there is a need for a consistent regulation all across these lands for proper protection of the usable water and other valuable resources during the drilling and completion of these unconventional wells using HF operations. Over the past few years Wyoming and a few other States have substantially revised their State regulations related to hydraulic fracturing. BLM's key goal in updating its regulations on HF is to complement State efforts by providing a consistent standard across all public and Indian lands Nationwide.

The BLM has taken the suggestions and inputs from a number of States in developing and revising the HF regulation. The BLM has considered public comments on the proposed rule released on September 10, 2012, noted the valuable issues raised in those comments, and made necessary changes to come up with the revised rule that was announced on May 16th. As part of the public comment process prior to finalization of the rule, BLM will seek new and improved ways to reduce administrative burdens and to increase efficiency, while fulfilling the Secretary's statutorily mandated responsibilities as steward for the public lands and trustee for Indian lands.

Cole Q4: Should the BLM examine the potential effects of the BLM rule on the costs of drilling operations and if those costs discourage new investment on public lands and if the re-proposed rule will increase or decrease production on federal lands prior to the re-proposed rule being officially proposed?

Answer: The BLM has examined the potential impacts of the revised rule. We received extensive public comments suggesting that the initial proposal would significantly increase the costs of drilling operations. We considered those comments and made changes to the requirements, which are now reflected in the revised rule. We believe that the new approach provides greater flexibility to operators and reduces the potential additional cost burden. We have determined that the rule is not economically significant as defined by Executive Order 12866, in that it will not have an estimated annual impact of over $100 million. Further, we do not believe that the revised rule will reduce future investment on public lands. We will make the economic analysis available on www.regulations.gov when we publish the revised rule in the Federal Register.

Cole Q5: In the budget the Administration says they're looking into increasing the onshore oil & gas royalty rate. Is the Department, in fact, already working on raising the royalty rate?

Answer: The BLM is currently drafting an Advance Notice of Proposed Rulemaking that will request comments from the public related to royalty rate reforms. Among other questions, the ANPR will seek public comment about increasing the standard onshore oil and gas royalty rate and introducing an adjustable royalty rate system. Any royalty changes made administratively are expected to apply only to new Federal leases obtained through our competitive leasing process.

BIA/BIE Construction

The FY 2013 Budget request does not include BIE construction funding for new school replacement.

Cole Q6: When will we start replacing schools that quite frankly are not currently safe for students.

Answer: While the 2014 budget request does not include funding to fully replace existing schools, the construction budget includes $48.5 million for major facilities improvement and repair projects at education facilities. Projects are prioritized to address the most critical health and safety issues. In addition, the budget requests $110 million for facility operations and maintenance of the current schools. The Assistant Secretary – Indian Affairs has discussed this matter with me and he will be taking a fresh look at how we can address this issue. I would welcome working with you on the issue.

Contracting for Tribal Services

Under Self-governance contracts, tribes have been extremely successful providing services that BIA, BIE and IHS traditionally provided. As you know tribes have been great stewards and managers of the land well before the creation of this country.

Cole Q7: Is there any thought at DOI about engaging tribes to contract for services beyond the scope of BIA and BIE such as managing land, water and wildlife programs.

Answer: I agree with your assessment that tribes have been extremely successful at managing programs traditionally provided by the Federal Government. In 1975, the Congress enacted the Indian Self-Determination and Education Assistance Act (the Act), P.L. 93-638, as amended. The Act allows tribes to have greater autonomy and the opportunity to assume the responsibility for programs and services through contractual agreements. The Act assures that tribes have involvement in the direction of services provided by the Federal Government in an attempt to target the delivery of such services to the needs and desires of their communities. The Department of the Interior is fully supportive of self-determination and self-governance and believes it is critical to optimizing services to Tribes. Tribes already manage numerous programs within Indian Affairs, which include BIA water and wildlife programs. Specifically, the Water Resources Program and the Wildlife and Parks programs are considered Tribal Priority Allocation Programs (TPA) and tribes may assume operation of these programs.

In addition, self-determination contracts and self-governance funding agreements have been arranged between tribes and other DOI bureaus based on the authorities in the Indian Self-Determination and Education Assistance Act. These bureaus include the Bureau of Reclamation (BOR) and the Bureau of Land Management (BLM), and the Department is open to exploring other self-determination contracting possibilities permitted under current law. These expansions would potentially increase the amount of contract support costs that BIA would pay to the Tribes.

Questions from Mr. Valadao

Valadao Q1: The Bay Delta Conservation Plan (BDCP) addresses problems that are vitally important to the State and nation. With the change in leadership at Interior, do you see the Administration maintaining it as a high value, high priority initiative? If not, why?

Answer: The Sacramento-San Joaquin Bay-Delta (Bay-Delta) is an ecosystem of national significance and the Department of Interior will continue to support its partnership with the State of California in the effort to find acceptable long-term solutions to appropriately balance the need to restore the ecosystem and the many water supply needs of the Sacramento-San Joaquin Basin.

Valadao Q2: The Administration has been ardent about science leading decision making but, on many issues, science has failed to deliver a clear answer and decision making has been stymied. How would you propose to make decisions in the face of scientific uncertainty when maintaining the status quo is simply untenable, such as in the California Bay Delta? And what do you see is the potential for problem solving through scientific collaboration between federal agencies, state agencies, and other regional or local interests with appropriate expertise?

Answer: Due to the complexity of the Bay-Delta ecosystem and the number of species of concern there is some level of scientific uncertainty as to how the ecosystem will respond to the conservation measures included in the BDCP (Plan) despite substantial scientific work and analysis to date. This uncertainty must be addressed between partners through a rigorous and collaborative science-based adaptive management program that will consistently evaluate, on an ongoing basis, the system's response to implementation of the conservation measures included in the Plan. While more work remains, efforts will continue to be guided by sound and credible science as the Plan moves forward.

Valadao Q3: Interior has been examining the potential public interest and CVP cost allocation of BDCP for at least a year now. When do you think a recommendation will be forthcoming? The allocation's findings are essential information in finalizing the Public Draft document, which needs to be issued in July if federal commitments are to be upheld

Answer: Though the issue of financing has been an area of considerable discussion throughout the BDCP process, more work remains to be completed on a workable financing plan that is supported by the affected parties. This additional work includes determining methods for financing and repayment of investments and associated assignment and recovery of project costs. The State of California has secured consulting services to complete a comprehensive cost-benefit analysis that will identify potential costs and benefits of the BDCP for various water users and the public at large. The proposal is expected to consider a statewide perspective and analyze impacts to various groups whose welfare may be affected by the Plan. Cost and benefit components that will be quantified are divided into three broad categories: (1) construction and operating costs of proposed projects, (2) impacts to Delta-dependent economic activities, and (3) non-

market environmental impacts. This State of California analysis will inform financing discussions between the Federal and State agencies. Documents for public release will be developed in parallel with these discussions.

Valadao Q4: While, I understand that resource protection is a priority, Interior must strike a balance when determining land use and obviously areas of public lands that are suitable for OHV use. What have you done to ensure that this important form of recreation retains appropriate access, and, what are you going to advise your successor do to promote access for the millions of Americans who wish to participate in motorized recreation?

Answer: The BLM considers the recreational use of motorized vehicles a legitimate use of public lands. Each BLM field office develops a Resource Management Plan that strikes a balance between conserving and protecting sensitive resources while providing for the long-term, sustainable use of the public lands. This includes the sustainable and responsible recreational use of motorized vehicles on public lands. One part of the land use planning process that directly impacts recreational users of motorized vehicles is the development of travel management plans. Travel Management Plans build on the Resource Management Plan and lead to specific decisions about where and how motorized vehicles can be used on public lands for recreational purposes. It is also important to note that travel management plans are developed collaboratively with the local communities and public land users concerned with the planning outcomes - including recreational motor vehicle users.

The goal of travel management plans is to ensure that the public lands involved provide the highest quality recreational opportunities possible while minimizing user conflicts and any impacts to sensitive resources. Though the BLM is still in the relatively early phases of completing travel management plans for all field offices, the public lands are still available for recreational motorized vehicle use on an interim basis. Currently, there are estimated to be over half a million miles of motorized vehicle travel routes available for recreational motorized vehicle use on BLM managed public lands.

Off-highway vehicle recreation is very popular with many of my constituents and the powersports industry is principally located in California, including the many small businesses that make their livelihoods from selling off-highway motorcycles, all-terrain vehicles and recreational off-highway vehicles. The Motorcycle Industry Council recently found that the estimated economic impact of just the off-highway motorcycle/all-terrain vehicle (ATV) retail marketplace in California is $1.26 billion annually. Obviously, this is an important part of California's economy and decisions by agencies under the Department of the Interior to reduce the availability of federal lands to OHV use have a significant impact on this industry.

Valadao Q5: Does the Department of the Interior take in account these sorts of economic impacts when making land use decisions?

Answer: The land use planning process for the BLM relies heavily on the input of local communities and organized groups representing recreational users, including recreational motor vehicle users of the public lands. Public input often stresses the economic benefits to local and regional economies from recreational uses of the public lands involved in a land use planning process.

The BLM encourages active participation in the management of public lands from interested communities of public land users such as recreational motor vehicle users. Taking advantage of volunteers can require a significant commitment of time on the part of agency staff to ensure that work projects can be completed safely using appropriate techniques that improve the sustainability of the public lands. The BLM is working with national motorized recreation organizations such as the National Off-Highway Vehicle Conservation Council to find ways to help strengthen local user organizations to be better equipped to support field offices with on-going operation and maintenance work.

With declining budgets for land management agencies, it is clear that managers need to find outside sources of funding and manpower to achieve agency goals. Many recreation enthusiasts want to help. OHV clubs for example often wish to partner with industry and others to provide trail maintenance, yet I have heard from some that they are stymied by what they view as unnecessary red tape when attempting to work with federal land managers.

Valadao Q6: What can your successor do to ensure that eager volunteers and other voluntary private resources are better utilized as part of the federal land management strategy moving forward?

Answer: The BLM is working collaboratively with national recreational motorized vehicle organizations such as the Motorcycle Industry Council and the National Off-Highway Vehicle Conservation Council to find ways to help local recreational motor vehicle user groups interested in assisting with the management of public lands learn the state-of-the-art best management practices that lead to high-quality motorized recreation opportunities while improving and sustaining the health of the land. Pilot projects have shown that we can successfully work with national and local groups to cooperatively manage motorized recreational opportunities on public lands. The challenge, as always, is to find efficient ways to expand these types of efforts to communities all across the West and Alaska.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

January 4, 2012

The Honorable Mark Udall
Chairman
Subcommittee on National Parks
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses to follow-up questions from the oversight hearing on *A Call to Action: Preparing for the Second Century of Stewardship and Engagement* held on September 21, 2011. 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 Rand Paul, Ranking Minority Member
Subcommittee on National Parks

Enclosure

QUESTIONS FOR THE RECORD
FOR JONATHAN B. JARVIS, DIRECTOR, NATIONAL PARK SERVICE
U.S. SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
SUBCOMMITTEE ON NATIONAL PARKS
HEARING HELD ON SEPTEMBER 21, 2011

FROM SENATOR PAUL:

Question 1. – Maintenance Backlog - Can you please explain to me how the Park Service plans to address the $10 billion maintenance backlog?

Response: We will continue to address maintenance needs on several fronts. Funding proposed for line-item construction will be targeted primarily to addressing critical health and safety projects, especially if the project involves the repair of a facility for which corrective maintenance has been deferred. The National Park Service (NPS) will also continue to use other sources of funding for similar projects, including repair and rehabilitation funds, housing funds, and recreational fee revenue. The NPS will use operational maintenance funding, including cyclic maintenance, to help slow the deterioration of assets awaiting rehabilitation and to maintain the improved condition of repaired assets so that these projects do not become deferred. We will continue to target funding toward strengthening assets' critical systems (e.g. roofs, utility systems, foundations), which are the highest priorities because an overall asset will become further damaged and potentially non-functional if the critical system is impaired. We will also continue to work toward disposing of more low-priority assets that are contributing to the maintenance backlog.

a. **I do understand that there are sensitive lands and certain special circumstances for which land must be acquired despite the maintenance backlog. Could you tell me why the NPS couldn't use land exchanges to acquire sensitive lands rather than paying to acquire these additional lands?**

Response: The NPS considers all possible avenues to address the most urgent needs for recreation; species and habitat conservation; and the preservation of landscapes, and historic and cultural resources. The NPS has used land exchanges to acquire needed land in certain situations. However, in many situations, land exchanges are not a viable option, and therefore the NPS uses other means to acquire lands from willing sellers.

b. **Does the National Park Service estimate the maintenance costs of new land acquisitions before making the decision to purchase additional land? If so, how does this factor into the decision-making process? Shouldn't the Federal Government wait until the maintenance backlogs for all federal land management agencies are paid down before new public land units are established?**

Response: Yes, the NPS estimates the costs of maintenance for new lands before proposing to acquire the lands. Estimated maintenance costs are one of the factors that are considered in the priority-setting process for the Administration's annual budget requests. Most of the land the NPS acquires for existing parks is undeveloped, so there is relatively little contribution to the maintenance backlog from these new acquisitions. We do not believe that designations of new units of national parks or other public lands should be postponed because there is a maintenance backlog within existing units of public lands.

c. **Generally, when a business or individual cannot afford to maintain their assets they are forced to sell the unmanageable assets. Can you please explain to me why the National Park Service decides to purchase more assets when the NPS cannot take care of what they already own?**

Response: The Administration's proposal to increase funding for NPS land acquisition reflects the strong support for land conservation and additional outdoor recreational opportunities that was voiced at the 51 America's Great Outdoors listening sessions held during the summer of 2010. The lands identified in the FY 2012 budget request are strategic acquisitions that would strengthen our existing national parks while adding little to operational costs. In fact most of these acquisitions or easements would simplify management and reduce expenses related to signage, fencing, law enforcement patrols, legal permits, rights-of-way conflicts, fire fighting, road maintenance, habitat management and restoration, and fighting invasive species, and they would protect national parks in perpetuity.

d. **How does the National Park Service's maintenance backlog compare to other Federal Land management agencies?**

Response: The NPS's maintenance backlog is an estimated $10.8 billion. The two other Department of the Interior land management agencies, the Fish and Wildlife Service and the Bureau of Land Management, have estimated maintenance backlogs of $2.9 billion and $438 million, respectively. We note that the NPS has far more buildings at its sites, which are used by far greater numbers of people, than do the other two agencies.

Question 2. – Raising Revenues

a. **Would the National Park Service consider selling land or property that is no longer financially viable for the NPS to continue to manage? For example, many of the National Parks in Alaska receive fewer than 5,000 visitors per year. Would the NPS be better served to raise revenues by selling those lands and transferring assets to other Park Units?**

Response: There are a number of sites under the stewardship of the NPS that protect and interpret critically important aspects of our nation's natural and cultural heritage, but that receive relatively few visitors. In many cases, low visitation is attributable largely to the fact that they are in remote locations. The value of these places to the American public, now and for the future, cannot and should not only be measured by the number of people who visit them.

Lands managed by the NPS are nationally significant areas that have been determined by past Congresses and a number of Presidents (through the Antiquities Act) to be worthy of permanent protection for the benefit of future generations. If the NPS determined it should no longer manage certain park lands, it would require enactment of legislation to sell those park lands.

b. Can you please provide a list of properties that the NPS leases to outside entities? Shouldn't the NPS expand leasing opportunities?

Response: The National Park Service is gathering information for a national database on all current leases with terms in excess of one year. This database will enable us to track the number of types of leases, types of structures subject to the leases, revenue generated, and other information. We are in the final stages of gathering the lease information and would be happy to provide the listing once it is compiled.

Concurrently, we are developing tools to help park managers decide how to care for our inventory of structures, including whether to use leases. By law, leasing of properties in parks is permitted only where the proposed use is consistent with park purposes and compatible with park programs. However, we anticipate leasing will increase to some degree over time as more park mangers become aware of the benefits of leasing.

Question 3. – Buffer Zones/Park Service Jurisdiction – Recently, there have been a number of situations where the National Park Service endorsed proposals to increase NPS land or effectively create buffer zones around existing National Park Service Units. It is important to note that the Park Service only manages land within the boundaries of the National Park Units, and is not provided with the jurisdiction to manage lands outside of those Units.

a. What role should the National Park Service play in creating and mandating policy for lands surrounding National Park Units?

b. If the Park Service plays a role in overseeing surrounding lands or resources, the NPS would have extremely far reaching jurisdiction, wouldn't you agree?

Response: The NPS does not create or mandate policy for lands surrounding national park units. The agency does not have jurisdiction over lands outside of park boundaries, and it does not play a role in overseeing surrounding lands or resources, except in cases where we have entered into a cooperative management agreement with a neighboring

entity. However, in order to address negative impacts on park resources from activities outside of park boundaries, NPS managers try to work with surrounding communities to find solutions. Working cooperatively with partners beyond park boundaries is necessary as the NPS strives to fulfill its statutory mandate to preserve the natural and cultural resources of parks unimpaired for future generations.

FROM SENATOR BARRASSO:

Question 1. – The State of Wyoming and the Department of the Interior have reached an agreement on the sale and purchase of a state land in-holding section within the Grand Teton National Park. The agreement for purchasing the state lands requires timely action. The Grand Teton state land acquisition has been identified as a top priority by the National Park Service.

a. **Does the NPS remain committed to the agreement between the State of Wyoming and the DOI?**

b. **What steps are being taken to fulfill the agreed upon timeline and accompanying terms?**

Response: The NPS and Department of the Interior (DOI) remain fully committed to acquisition of the Wyoming inholdings within Grand Teton National Park. A 40-acre subsurface mineral rights-only tract was acquired earlier this year for $2,000. Three tracts totaling 1,366 acres remain to be acquired at a combined appraised value of $107 million. The NPS has set aside $5 million from FY 2011 funds, and the President's budget request for FY 2012 includes $10 million for acquiring the Snake River parcel by the January 5, 2013 deadline established in the agreement. The NPS intends to seek additional funds to complete this acquisition.

The NPS and the Bureau of Land Management (BLM) are also determining if alternative methods to fund acquisition of the additional inholdings may be available, such as royalties or bonus bids from the sale of coal in Wyoming. A 2006 report to Congress prepared by the BLM pursuant to the Grand Teton National Park Land Exchange Act (P.L. 108-32) identified several options related to coal as potential methods of completing the acquisition. Recent and anticipated future sales of coal (through 2013) could potentially provide a source of funds for acquisition of the remaining lands, but would likely require additional authority from Congress.

Question 2. – In the National Park Service's Call to Action report, there are a number of stated goals I would like to have clarified. The seventh goal is to create a new generation of citizen scientists.

a. **In the NPS's view, who is a citizen scientist?**

b. **Would citizen scientists need to have the same academic credentials as real scientists?**

c. **How will the NPS guarantee the educational materials used to create a new generation of citizen scientists is peer reviewed and science-based?**

Response: Citizen scientists are volunteers who receive training from the bureau to enable them to collect accurate field data and may range from school children to professional scientists. These highly productive volunteer efforts foster a sense of stewardship between people and parks. Citizen scientists working on NPS Biodiscovery events are generally supervised by an agency or professional scientist to ensure safety and credible and useful data collection, and to be educated about the resources of the park. Citizen scientist activities are designed and overseen by agency personnel with expertise in various fields of science. Related education materials may be peer reviewed by the professional community, depending on the intended use of the citizen-generated information.

Question 3. – The eleventh goal includes creating a new competitive state grant program within the Land and Water Conservation Fund State Assistance Program for strategically selecting projects that support large landscape conservation.

a. **Will the selected project for large landscape conservation be restricted to lands currently within the National Park system boundaries?**

b. **If yes, what types of projects are envisioned with the State Assistance Program?**

c. **If no, what type of projects are envisioned with the State Assistance Program, and what types of lands will be considered for large landscape conservation.**

Response: The state grant program helps state and local governments preserve open space and provide outdoor recreational opportunities. It is not used for purchasing land within national park boundaries.

The competitive component first proposed in the FY 2012 budget request would address the public's concern about the lack of open space and outdoor recreational areas in certain urban and other areas, which was frequently conveyed during listening sessions for the America's Great Outdoors initiative. It would fund "signature projects" that create more outdoor recreational opportunities and conserve open space where access to natural areas has been inhibited or is unavailable; protect, restore, and connect open space and natural landscapes; and provide access to waterways. The projects would be expected to be larger in scale and would likely require and receive greater amounts of funding than has typically been awarded.

Question 4. – The twelfth goal includes the protection and restoration of waterways across the country by establishing national system water trails.

a. **Is this goal different from the Wild and Scenic River designation?**

b. **Water is obviously very fluid and crosses many ownership boundaries. How will the NPS advance this goal as water ways leave or come into NPS lands?**

c. **What criteria will be used for protection purposes?**

d. **What water trails need to be restored?**

e. **How does the NPS envision managing a national water system?**

f. **What would the costs be for the NPS to manage a national water system?**

g. **Will a national water system or water trails affect, in any way, previously agreed upon water compacts between States, localities, and tribes?**

Response: The goal for a national system of water trails is different from Wild and Scenic River designation. Congress designates rivers as part of the Wild and Scenic Rivers System in order to preserve them in a free-flowing condition for the enjoyment of present and future generations. The system of water trails, as currently envisioned, is intended to support community-based efforts to expand access to water-based recreation.

The national water trails system will use the authority of the National Trails System Act, which provides for National Recreation Trails to be designated administratively, for the designation of national water trails. National Recreation Trails are designated in response to applications from trail managers. Local trail managers continue to manage their trails. The management of water trails would not be related to the management of lands and waters within parks.

The NPS helps to manage the designation process for National Recreation Trails. The process of application review and subsequent designation has been estimated at $2,000 per application. This cost is covered within existing NPS programs and budget. There are no expected long term-costs to the NPS to manage a national water trail system.

Partnerships are a key component to water trails. Landowner support will be necessary to receive designation. Community water trail users and local trail managers will identify restoration and water improvement goals appropriate to sustain water-based recreation.

National Recreation Trail applications require trails on State, local government, or private lands to have a statement of support from the State Trails Administrator. All concerns related to compacts between States, localities, and tribes would be addressed before designation and continue to be the responsibility of local and state officials.

Question 5. – The report states the NPS will manage the natural and cultural resources of the NPS to increase resilience in the face of climate change and other stressors.

a. **What are the other stressors?**

b. **Can the National Park Service predict with accuracy what the weather will be, and what the subsequent impact on the landscape will be, in Yellowstone or any other park unit 5, 10, 50 years from now?**

c. **Can computer models predict with accuracy what the weather will be, and the subsequent impact on the landscape, in Yellowstone or any other park unit 5, 10, 50 years from now?**

Response: Climate change is not the only stress affecting resources. Other stresses like habitat loss, invasive species, and pollution complicate species' and ecosystems' abilities to be resilient in the face of change. The NPS and its partners are analyzing historical impacts of climate change and future vulnerability of species and landscapes. Vulnerability comes from analysis of historical climate and impacts data, climate projections, and peer-reviewed published information on the sensitivity and adaptive capacity of plants, animals, and other resources.

Because weather is the temperature, rainfall, and wind on a particular day, computer models cannot accurately predict the weather 5 to 50 years from now. On the other hand, models can project future climate, which is the average range of temperature, rainfall, and wind over an extended period of time. The NPS and its partners are using peer-reviewed published climate projections of climate 20 to 100 years from now. These projections indicate what the climate may be under different plausible scenarios of global trends in energy use, population, economic activity, and technology development. So, computer models can provide projections of future climate from which the NPS can analyze potential future impacts of climate change on landscapes, and take appropriate measures to make ecosystems more resilient to these impacts.

Question 6. – The twenty first goal calls for the creation of a new basis for NPS resource management to inform policy, planning, and management decisions and establish the NPS as a leader in addressing the impacts of climate change on protected areas around the world.

a. **Is the current basis for NPS resource management failing?**

b. **If yes, what are the shortcomings of the existing basis?**

c. **If no, why is a new basis needed?**

d. **Why does the NPS need to assume the role of a leader in climate change?**

Response:

a. No. However NPS approaches to resource management must respond to changing environmental conditions and new scientific knowledge. In order to increase resilience and management effectiveness in the face of emerging issues we believe now is the time to prepare a contemporary version of the 1963 *Leopold Report* to advise the NPS on focusing future resource management activities and resources. The Leopold Report was written as an advisory document to the NPS Director and Secretary of Interior by a committee of independent scientists, led by A. Starker Leopold. It proposed a science-based foundation to natural resource management in the NPS. Over the following decades, many of the principles in this report were adopted by the NPS professionals, used to train resource managers, and used to develop and improve NPS policies. An updated report, expanded to include both natural and cultural resource management will be useful in providing contemporary advice to NPS decision-makers.

c. Many elements of contemporary resource management are robust. However, emerging challenges include climate change, habitat fragmentation, biodiversity loss, and degradation of cultural resources. New scientific knowledge including datasets collected via remote sensing, increased modeling and computing power, new techniques for wildlife monitoring, and substantial new research findings, inform NPS resource management. This new knowledge must be integrated into NPS resource management policies, if those policies are to remain effective.

d. The National Park Service is responsible for preserving the Nation's natural and cultural heritage, a stewardship that now includes protection of more than 84 million acres and reaches over 300 million visitors each year. Meeting that trust responsibility requires a robust scientific understanding of current conditions as well as future trends, and climate change affects both. Leadership is necessary to increase scientific understanding of climate change, analyze potential impacts, and effectively apply that information to resource management decisions. The NPS demonstrates leadership by working collaboratively through the Department of the Interior Climate Science Centers and Landscape Conservation Cooperatives, as well as with other partnerships, including with state and Federal agencies, that promote science-based decision making.

Question 7. – The twenty second goal is to promote large landscape conservation by protecting continuous corridors through partnerships across public and private lands.

a. How does the NPS define what is and what is not a continuous corridor?

Response: Our working definition identifies a "continuous corridor" as that which functionally links two or more areas that support viable ecosystems, natural habitats, wildlife populations, or cultural resources. By functional, the NPS means that with

minimal management these corridors can allow the movement of species, continuation of ecosystem services, and maintenance of cultural resource integrity that are necessary to link and maintain the viability of the areas that the corridors connect. This working definition is similar to The Western Governors' Association Wildlife Council draft definition (August 2011), which defines important wildlife corridors as crucial habitats that provide connectivity over different time scales (including seasonal or longer) among areas used by animal and plant species. Wildlife corridors can exist within unfragmented landscapes or join naturally or artificially fragmented habitats, and serve to maintain or increase essential genetic and demographic connection of aquatic and/or terrestrial populations.

b. What other federal land agencies will be public partners in creating continuous corridors?

Response: Protection of wildlife and cultural corridors requires the collaboration of federal agencies that manage or support protected lands including, but not limited to, the U.S. Fish & Wildlife Service, Bureau of Land Management, U.S. Forest Service, Natural Resources Conservation Service, Department of Defense, Bureau of Indian Affairs, U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, Tennessee Valley Authority, and National Oceanic & Atmospheric Administration.

c. Will state lands be considered for the continuous corridors?

Response: Yes, states will be key partners in the conservation of continuous corridors as landowners and as law- and policymakers that affect land use.

d. Does the NPS believe the creation of continuous corridors is in the public good and eminent domain powers could be used to obtain strategic private lands to make a corridor continuous?

Response: The NPS believes that continuous corridors will result in a public good through the conservation and restoration of intact natural ecosystems and the preservation of cultural resources. As stated in Action #22, NPS will achieve this goal through voluntary partnerships across public and private lands. The NPS will work with willing sellers to acquire land within park boundaries and will seek to create partnerships with federal, tribal, state, and local governmental entities, non-governmental organizations, and private landowners to create continuous corridors. This approach is consistent with recommendations in *Rethinking the National Parks for the 21st Century* (National Park System Advisory Board, 2001) which states: "Parks cannot survive as islands of biodiversity. They need to be linked with other natural areas through wildlife migratory corridors and greenways. These connections can only be created through partnerships." Other land protection tools, such as conservation easements, will be important parts of a strategy in conserving corridors as land ownership when implementing landscape-scale conservation efforts.

e. What are the boundaries of the five geographic regions mentioned in goal twenty two?

Response: The five geographic regions referenced in Action #22 have not been determined. The NPS is currently evaluating a number of areas where continuous corridors could be identified, restored if necessary, and conserved. The NPS is committed to involving landowners, other stakeholders, and the general public in the selection of the regions.

f. **Will the federal Land and Water Conservation Fund be targeted to make strategic land acquisitions for corridors outside of national parks?**

Response: The NPS has no authority to acquire lands outside the boundaries of units of the National Park System except for congressionally authorized trails in the National Trails System and rivers designated in the Wild and Scenic Rivers System.

Question 8. – The twenty sixth goal is to return the American Bison to the landscape.

a. **Where will the three wild bison populations be located across the central and western United States?**

b. **Will the NPS, tribes, private landowners, or other land management agencies manage the bison?**

c. **What is the target number for each of the three bison herds?**

d. **How many total acres will be required to sustain the desired population levels?**

e. **Will the NPS provide the funding for managing the bison herds?**

f. **Outside of Yellowstone National Park, what current NPS lands are candidates for bison population?**

Response: Specific locations and a target number are undetermined at this time. The NPS is working closely with state, federal, and private partners to discuss opportunities for bison conservation. Depending upon location, bison could be managed by tribes, the Intertribal Bison Committee, federal, or private partners. Bison are currently managed at Badlands National Park, Wind Cave National Park, Theodore Roosevelt National Park, Chickasaw National Recreation Area, Tallgrass Prairie National Preserve, Grand Teton National Park, and Yellowstone National Park. The NPS would only fund wildlife management on NPS lands.

The DOI Bison Conservation Initiative, signed by former Secretary of the Interior Dirk Kempthorne on October 28, 2008, called for federal agencies to coordinate management of existing bison herds on federal lands, research bison genetics and disease, and study partnerships to increase existing herds or establish new ones to assist in the ecological

recovery of the species. The NPS will continue to implement bison conservation strategies based upon rigorous scientific goals and objectives outlined in the 2008 Initiative in order to ensure the perpetuation of this iconic species.

Question 9. – The twenty seventh goal is to protect natural darkness as a precious resource.

a. What basis is there for natural darkness to be managed as a precious resource?

Response: National Park Service 2006 Management Policies identifies Natural Darkness as both a natural resource and a park value. References to the value of starry night skies in a park setting are also found in NPS policy statements dating back to at least 1997.

We note that protection of natural darkness is a growing park visitor interest. This is evidenced by ranger program statistics that shows sharply increasing participation in park stargazing programs, visitor surveys conducted by academic institutions, and a high number of popular media articles on the subject. Furthermore, the NPS has conducted measurements of night sky quality at numerous parks, showing that few NPS units still retain natural or near-natural night skies and a large fraction of them experience degradation of night sky quality due to poor quality outdoor lighting. The NPS is building on the successes of local initiatives (private sector, academia, and local government), which are grounded in opportunities for increased tourism and other forms of economic growth.

b. What light sources are incompatible within a Dark Sky Cooperative for natural darkness? For example, would a campfire be incompatible? Would a flashlight be incompatible? Would a highway with vehicles traveling at night be incompatible? Would the lights from power plant be incompatible? What about house lights from in-holder properties? What types of future light sources would be precluded from use within a Dark Sky Cooperative?

Response: Best management practices for outdoor lighting recommend using light only when it is needed (e.g. turning off when not needed, using timers or motion sensors), shielding the light so that all light shines downward, and using the right amount of light for the application. This guidance does not preclude the use of light for human safety, utility, and convenience. Many lighting manufacturers offer "dark sky friendly" outdoor lighting fixtures. Using such lighting results in a substantial improvement in night sky quality while also being energy efficient, reducing glare, and improving visibility. Portable lights, headlights, and campfires cause far less impact to the environment than permanent fixed lighting and generally are not addressed within the context of lighting guidance for natural resource conservation. Lighting from private residences, municipalities, and industrial sites can impact night sky quality. Night sky friendly solutions for those applications have been successfully implemented in many locations

and on many different levels, ranging from city and county ordinances to purely voluntary measures.

We do not anticipate that any future sources would be precluded from use within the Dark Sky Cooperative. On the contrary, most new forms of lighting, including emerging Light Emitting Diode (LED) lighting technology, can actually further the effectiveness of night sky conservation. LEDs are more easily directed, can be more easily controlled with smart circuitry, can shift colors and dim readily, and can be more finely tuned to the human necessity.

c. What is the minimal number of square miles needed to create a Dark Sky Cooperative?

Response: The minimum size to protect natural darkness will depend on the objectives set forth by those wishing to participate including public land managers, local communities, chambers of commerce, state tourism offices and the citizens of the area. The NPS expects the Dark Sky Cooperative on the Colorado Plateau to unfold through voluntary participation. There is not likely to be a contiguous boundary, but instead a patchwork of supporters and participants across the landscape. The larger the area, the more effective the measures will be toward conserving the dark night sky. Success from an NPS perspective would mean that the entire Colorado Plateau would see economic value and growth through tourism, improvement to its natural resource condition, and the preservation of its cultural heritage through participation in a Dark Sky Cooperative.

Question 10. – One of the major goals in the Call to Action is connecting people to parks. National Parks in Wyoming attract nearly 6.3 million visitors every year. Many of these visitors come by motorcycle and they help support local economies. Motorcyclists seek out the sights, scenery, camping, recreation opportunities, and roads suited to motorcycle touring that National Parks, like Yellowstone and the Grand Teton offer in Wyoming and that other Parks offer across the country.

a. What are your impressions of the economic impact that motorcyclists have on areas surrounding many of our National Parks?

b. What are you doing to encourage even more motorcyclists to discover our National Parks?

Response: Although many visitors travel by motorcycle to national park units, the NPS does not calculate economic impacts specifically for motorcyclists. The NPS National Tourism Strategic Plan encourages parks to work with tourism partners in our gateway communities to invite all Americans--and our foreign guests--to experience their national treasures. In some cases, these tourism partners identify package tour providers who accommodate a particular market interest based on travel themes and transportation modes—motorcycles and bicycles for example. A result of this is a growing trend among foreign travelers to purchase tour packages that feature motorcycles as their mode of

travel to national parks. Wherever appropriate, park managers work with their partners to educate these visitors on means of enjoyment and safe routes and practices.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

January 4, 2012

The Honorable Mark Udall
Chairman
Subcommittee on National Parks
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses to follow-up questions from the legislative hearing on several bills on October 19, 2011. 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 Rand Paul, Ranking Minority Member
Subcommittee on National Parks

Enclosure

Questions for the Record for William D. Shaddox
Acting Associate Director for Park Planning, Facilities, and Lands, National Park Service, Department of the Interior

United States Senate Energy and Natural Resources Committee
Subcommittee on National Parks
October 19, 2011

Questions from Senator John Barrasso

Currently the Park Service has a maintenance backlog of approximately 10 billion dollars. The overall annual budget of the Park Service is 3 billion.

That means if the Park only performed maintenance, it would take over 3 years to get the current park units properly cared for.

Eight of the nine bills before us today involve the expansion or possible expansion of National Parks.

1. How does the National Park Service reconcile its support of creating new parks before the maintenance backlog is paid down?

NPS Response: We will continue to address maintenance needs on several fronts. Funding proposed for line-item construction will be targeted primarily to addressing critical health and safety projects, especially if the project involves the repair of a facility for which corrective maintenance has been deferred. The National Park Service (NPS) will also continue to use other sources of funding for similar projects, including repair and rehabilitation funds, housing funds, and recreational fee revenue. The NPS will use operational maintenance funding, including cyclic maintenance, to help slow the deterioration of assets awaiting rehabilitation and to maintain the improved condition of repaired assets so that these projects do not become deferred. We will continue to target funding toward strengthening assets' critical systems (e.g. roofs, utility systems, foundations), which are the highest priorities because an overall asset will become further damaged and potentially non-functional if the critical system is impaired. We will also continue to work toward disposing of more low-priority assets that are contributing to the maintenance backlog. We do not believe that designations of new units of national parks or other public lands, which will help protect valuable natural and cultural resources for future generations, should be postponed because there is a maintenance backlog within existing units of public lands.

2. Does the National Park Service estimate the maintenance costs of new land acquisitions before making the decision to purchase additional land? If so, how does this factor into the decision-making process?

NPS Response: Yes, the NPS estimates the costs of maintenance for new lands before proposing to acquire the lands. Estimated maintenance costs are one of the factors that are

considered in the priority-setting process for the Administration's annual budget requests. Most of the land the NPS acquires for existing parks is undeveloped, so there is relatively little contribution to the maintenance backlog from these new acquisitions.

The majority of the NPS FY 2012 land acquisition request was for inholdings – isolated parcels of non-federal land that lie within the boundaries of parks. Acquisition of inholdings does not generally require any significant additional operating costs as usually no new staff or equipment are required to manage new lands within existing boundaries. In addition, these acquisitions greatly simplify land management issues for federal managers and neighboring landowners, thereby further reducing operational costs.

3. Shouldn't the National Park Service use land exchanges to acquire sensitive lands rather than paying to acquire any additional lands?

NPS Response: The NPS considers all possible avenues to address the most urgent needs for recreation; species and habitat conservation; and the preservation of landscapes, and historic and cultural resources. The NPS has used land exchanges to acquire needed land in certain situations. However, in many situations, land exchanges are not a viable option, and therefore the NPS uses other means to acquire lands from willing sellers.

S. 1537 – National September 11 Memorial and Museum

In regard to S. 1537, I think it is imperative to take the time to determine if National Park Service involvement is in the best interest of the National Park Service, American citizens, and most importantly 9/11 families.

4. Will you describe what is and what is not being transferred to the National Park Service in terms of decision authority, control, responsibility, management, and ownership regarding the museum and memorial?

NPS Response: The bill would allow for the donation of the title to the memorial and museum to the United States for management by the Department of the Interior, contingent upon the agreement of the Board of Directors of the Foundation, the Governor of the State of New York, the Governor of the State of New Jersey, the Mayor of the City of New York, and the Secretary of the Interior. The bill does not address any change in decision authority, control, responsibilities, or management of the museum and memorial from its current state.

5. Has this type of arrangement been done before with the NPS?

NPS Response: There are very few circumstances, if any, within the NPS where the agency holds title to a property, but has no administrative function.

In your testimony, you stated the $20 million in annual appropriations authorized by S. 1536 would likely come out of the NPS budget, reducing the amount of operational funding available for the numerous needs of the 395 other designated units of the National Park System.

6. Will you elaborate on what type of "needs" would be affected for the balance of the National Park System units?

NPS Response: Given the current budgetary situation, the NPS would likely be required to redirect funds from existing parks if Congress passes legislation requiring us to provide funds toward the annual operation of the Memorial. A $20 million annual contribution to the Memorial would require a redirection of about 1.5 percent of operating funds from each of the other existing park units. A reduction of this magnitude would most likely be taken through a reduction in seasonal operations at all other parks and deferral of maintenance projects. The reduction to fund the operation of the Memorial would be in addition to a number of similar reductions enacted in recent years.

Most memorial bills that come before this subcommittee seek to accomplish the completion of the respective memorials through private funding, such as the Oklahoma City National Memorial and Museum.

7. Can you please address why this particular memorial requires federal tax dollars?

NPS Response: It is our understanding that the federal funds are for operation of the site and not completion of its construction.

8. Wasn't the original plan to only use private funds?

NPS Response: It is our understanding that private funds along with federal grants have contributed to the construction of the site.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 10 2012

The Honorable Jeanne Shaheen
Chairwoman
Subcommittee on Water and Power
Committee on Energy and Natural Resources
United States Senate
Washington, DC 20510

Dear Madam Chairwoman:

Enclosed are responses prepared by the United States Geological Survey to questions submitted following the Subcommittee's October 20, 2011, oversight hearing on "Gas production and water resources in the Eastern United States."

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 Mike Lee, Ranking Minority Member

Responses to questions posed by Senator Shaheen of the Senate Subcommittee on Water and Power

Question 1 - Water availability does not seem to be a barrier to development of shale gas in the East at the moment but given USGS's latest projected assessments of economically recoverable gas in this country, what does this mean for future demands on water availability and the likely impacts in the East?

As stated above, water availability does not appear to be a barrier to shale-gas development in the Northeast, but water availability is a region by region issue. In the East, water use is largely a seasonal, and a very localized issue. Although there are likely hotspots for natural gas drilling, it is not clear exactly where future drilling and hydrofracturing will take place.

The Susquehanna River Basin Commission (SRBC) has projected the consumptive use of water by the gas industry within the Susquehanna Basin will be about 28 million gallons per day at the peak future demand, which is a little more than half the current consumptive use for recreation in the basin. *Accommodating a New Straw in the Water: Extracting Natural Gas from the Marcellus Shale in the Susquehanna River Basin*.
http://www.srbc.net/programs/docs/Marcellus%20Legal%20Overview%20Paper%20(Beauduy).pdf.pdf

Though the total water use by the gas industry will not make a large impact on total water use in the Susquehanna River (or other major basins in the Northeast), withdrawals will need to be managed to prevent overdraft from local aquifers or small streams during low-flow summer months and during periods of drought. For example, though 2011 will surely be one of the wettest years on record in Pennsylvania, during a drought period in July 2011, water withdrawals were prohibited at 36 of the permitted surface-water intakes used by the gas industry because stream flows were less than the pass-by criterion prescribed by the SRBC for these locations. Potential effects on the quality of water can also impact the quantity of freshwater that is available for human and ecological uses. The careful stewardship and judicious use of water are critical to minimizing the impacts of shale-gas development on the region's water resources.

Question 2 - One of the key differences between shale gas production in the East vs. the West is water scarcity. We have a lot more water in the East. However, such surpluses may not always be available. What does long term production of shale gas mean for water consumption, particularly in light of climate change and its impact on water availability?

Water withdrawn for shale-gas development is generally considered a 'consumptive use', that is, it is not returned to the water cycle. In reality, some of this water either is returned just following the hydraulic fracturing process (flowback water), or is recovered over time during gas production (produced water). Flowback water is currently being recycled by the gas industry, thereby somewhat reducing the need for new water for hydraulically fracturing the next well. Flowback water usually represents about 5 to 12 percent of what was injected into a Marcellus well, according to data recently summarized by the SRBC in northeastern Pennsylvania.

Produced water from Marcellus wells in Pennsylvania is generally minimal – several hundreds of gallons per one million cubic feet of gas produced from the well, according to the gas industry.

In relation to potential effects of climate change, it is expected that changes in precipitation patterns due to climate variability would govern the judicious withdrawal of water for shale gas production. It would be expected during periods of drought that water needed for shale-gas development would be curtailed as is currently the case when, during seasonal dry periods, flows that fail to meet pass-by criteria result in restrictions on water withdrawals for shale gas applications.

Question 3 - What steps should be taken to prevent harm to our water resources, particularly due to cumulative withdrawals from headlands or when there are drought-like conditions?

The amount of water to be withdrawn depends on the number of wells drilled, when the wells are drilled (seasonally), where they are drilled, and over what period of time they will be drilled. Assessing the cumulative impact is extremely difficult due to these and other unknowns.

Protecting the Nation's water resources will require decision makers to use scientific research and monitoring data when considering actions for determining where, when, and to what degree (or amount) water is withdrawn from any particular water resource. Water managers will need to ensure appropriate consideration of the various potential users, including the gas industry, water consumers (drinking water), agricultural production, waste assimilation, and ecological needs. Additional protection of the water resource may be needed during 'extreme' water resource conditions, while allowing users the ability to judiciously utilize water during periods of high water availability. Understanding the limitations on withdrawals and the flow requirements of other water use needs depends on a network of long-term streamgages and groundwater monitoring wells to provide baseline data.

Question 4 - Different sources report that fracking fluids are either a "benign" mixture of water, sand, bleach, and other household agents, or that they contain known neurotoxins and carcinogenic compounds. What is your understanding?

Each 'service company' (that is, a company that performs the hydraulic fracturing process) has its own 'recipe' for hydraulic fracturing fluids. These mixtures will change dependent on the properties of the rock being fractured and the fluids encountered in the bedrock. Changes to the formulation might occur during the fracturing process at the site. While most of the chemical compounds are easily found on company websites or at FracFocus (http://fracfocus.org/), the proprietary chemicals are not divulged; therefore, it is difficult to determine the toxicity of all the chemical compounds used by these different companies.

The U.S. Environmental Protection Agency's national "Plan to Study the Potential Impacts of Hydrofracturing on Drinking Water Resources" will characterize the toxicity and human health effects of fracturing fluids[i].

Question 5 - Recently a USGS scientist, Zachary Bowen, heading one of the agency's water quality studies stated that "there's very, very little information in the scientific literature, there are very few studies looking at potential effects [on water quality] of these activities." Would you agree that there are many unresolved questions in this area and that more needs to be done to understand potential adverse effects of shale gas development on water?

Yes. In order to understand potential adverse effects of shale gas development on water resources, scientists would need access across the region to surface water and groundwater quality data. It would be necessary to use monitoring wells to test for the potential presence of natural gas and to determine how the chemistry of waters is altered deep within the bedrock as they are injected and create the micro-fractures. It would be important to attain and analyze samples of the flowback and formation waters and to monitor where and how these wastes are treated and ultimately disposed of. It would also be necessary to sample surface waters to evaluate the possible contamination of these waters from accidental spills and/or by elevated amounts of sediment generated by pipeline and road construction.

Question 6 - Typically when a company that settles with a property owner who claims that their water has been contaminated by shale gas production, the property owner is forced to sign a non-disclosure agreement. Given the need for further study in this area, do you believe the use of non-disclosure agreements inhibits your and other state regulatory bodies' ability to collect adequate data? Wouldn't this lack of information affect our ability to ensure that regulations designed to protect public health and the environment are sufficient?

As a Federal science agency, the USGS does not have regulatory responsibilities. The general lack of scientific data can and does limit our ability to effectively evaluate the potential effects of the consequences of shale gas development across the United States. The impact of different stressors on water quality and quantity requires targeted monitoring and data collection and analysis. Access to gas company data would improve our ability to evaluate, understand, and communicate to the public the potential impact of shale gas production.

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[i] Environmental Protection Agency: Nov. 2011, Plan to Study the Potential Impacts of Hydrofracturing on Drinking Water Resources, p. 71-72.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 12 2012

The Honorable Ron Wyden
Chairman
Subcommittee on Public Lands and Forests
Committee on Energy and Natural Resources
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 Wednesday, August 3, 2011, hearing on: **S. 1024**, the Organ Mountains, New Mexico Wilderness Preservation; **S. 1149, Geothermal Production Expansion Act of 2011;** and **S. 1144,** to amend the Soda Ash Royalty Reduction Act of 2006.

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 John Barrasso, Ranking Member
Subcommittee on Public Lands and Forests

2. At this point, lacking an extension, what will the Bureau of Land Management recommend to the Secretary of dropping the Soda Ash Royalty back down to the 2 percent range?

As previously noted, the current regulations enable royalty reduction on a case-by-case basis, subject to the leaseholder's presentation of information demonstrating that he meets the criteria of the currently applicable regulations as contained at 43 C.F.R. Subpart 3513. DOI delivered a report to Congress on September 30, 2011, on the Soda Ash Royalty Reduction Act of 2006. The report found that "the Act resulted in substantial unrealized royalty revenues to the Federal Government and the states which exceeded Congressional estimates. The royalty rate reduction does not appear to have contributed in a significant way to the creation of new jobs within the industry, to increased exports, or to a notable increase in capital expenditures to enhance production. In addition, the royalty rate reduction appears to have influenced a shift of production away from state leases and private lands and onto Federal leases." As noted in the letter accompanying the report to Congress, the BLM is willing to entertain "bundled" requests for royalty relief when similarly situated leaseholders jointly submit information that meets the regulatory tests for which royalty reduction is sought.

FROM SENATOR BARRASSO

S. 1144, to amend the Soda Ash Royalty Reduction Act of 2006:

In your testimony, you called the Soda Ash Competition Act (S.1144) "premature" because the Department had not completed its Soda Ash report. In May 2010, I sent a letter with Senators Wyden, Enzi, Merkley and Feinstein requesting the Department expedite the report so that Congress would have time to review it and consider legislative options. The report has yet to be submitted, leaving Congress with little time to respond.

1) During the hearing, you mentioned the potential for administrative royalty relief on a case-by-case basis. Please provide information on the nature of this process. Is relief granted on a lease-by-lease basis?

Yes, royalty relief is considered on a lease-by-lease basis for leaseholders who apply for such relief in accordance with the provisions of 43 C.F.R. Subpart 3513. Each leaseholder may apply for a royalty rate relief if they meet the criteria contained in 43 C.F.R. § 3513.12. Under 43 C.F.R. § 3513.12, the BLM "will consider if approval:

(a) is in the interest of conservation;
(b) will encourage the greatest ultimate recovery of the resource; and
(c) is necessary either to promote development of the mineral resources or because you cannot successfully operate the lease under existing terms."

The provisions of 43 C.F.R. § 3513.15 set out the requirements for the information and documentation that a leaseholder seeking a reduction must present to the BLM for the agency's consideration of a rate reduction. The BLM has processed royalty rate

reduction applications from many solid mineral lessees. The BLM analyzes operational and financial information submitted by the operator and determines if a royalty rate reduction is justified, based on the above-described criteria.

The BLM has established Royalty Rate Reduction Guidelines that allow applications to be processed under five categories; (1) Expanded Recovery, (2) Extension of Mine Life, (3) Financial Test – Unsuccessful Operations, (4) Financial Test – Expanded Recovery / Extension of Mine Life, and (5) Regional. These guidelines are subject to, and must be implemented consistent with, the provisions of the applicable regulations. Administratively complete applications containing the information and documentation required by 43 C.F.R. § 3513.15 to justify the rate reduction request must be submitted by the lessee and evaluated by BLM on a lease-by lease basis. Following such submission, if BLM determines that the criteria of the applicable regulation, 43 C.F.R. § 3513.12, have been met, royalty rate reductions may be granted on a lease-by-lease basis. Each such decision would be dependent upon the particular facts presented in each case and thus, there is no guarantee that every applicant will receive the requested reduction.

The BLM is willing to entertain "bundled" requests for royalty relief when similarly situated leaseholders jointly submit information that meets the regulatory tests for which royalty reduction is sought.

2) How long would it take the Department to process a waiver request?

Review of royalty rate reduction applications involves extensive coordination with the applicant, the Office of Natural Resources Revenue, and the Governor of the affected state. Time frames are heavily dependent on whether the application is complete and all the associated information from the operator is provided. Our experience has shown that in most cases, the review by the affected state governor will necessitate additional information collection, analysis and follow-up coordination with both the applicant and the respective state's governor.

3) Would BLM consider these requests on an expedited basis given the significant economic and job impacts on the line?

Yes.

4) What other options, if any, are available to administratively extend the royalty rate on an interim basis?

Under current laws and regulations, the Secretary has no authority to unilaterally extend a general rate reduction of the type currently imposed by the Soda Ash Royalty Reduction Act. Any generally applicable rate reduction extension for all leases without individual adjudications would require a formal rulemaking under Administrative Procedure Act requirements of 5 U.S.C. § 553. Those requirements include publishing a proposed rule in the Federal Register and providing the public with opportunity to comment. The

agency then would need to address any public comments and publish a final rule. The administrative record supporting such rulemaking would need to demonstrate the basis and reasons supporting the rule.

5) Would the Department consider granting a temporary one-year extension to leaseholders to provide Congress adequate time to review the Department's study?

There is no current authority for the Department to immediately grant a general one-year extension of rate reduction to leaseholders.

The BLM has the authority to maintain the current royalty level. Can you describe to us the procedure the Department would undertake if the decision is made to maintain the current royalty rate until Congress has the time to consider your recommendation?

The BLM does not currently have the authority to continue the general royalty rate reduction that was granted by the Soda Ash Royalty Reduction Act of 2006, once the authorities in that Act expire. The BLM's regulations at 43 C.F.R. Subpart 3513 provide a formal process for only case-by-case applications by lessees for the reduction of rental and royalties.

43 C.F.R. § 3513.12 states that BLM will consider an applicant's request for a reduction in the royalty rate if approval:
(a) is in the interest of conservation;
(b) will encourage the greatest ultimate recovery of the resource; and
(c) is necessary either to promote development of the mineral resources or because the applicant cannot successfully operate the lease under the existing terms.

43 C.F.R. § 3513.15 provides the required information that a royalty reduction applicant must present to BLM. 43 C.F.R. § 3513.16 provides that BLM will charge a processing fee "on a case-by-case basis" for applications for royalty reduction. Thus, the applicable regulatory provisions require case-by-case applications and decisions supported by an administrative record demonstrating that the criteria of 43 C.F.R. § 3513.12 have been met to justify approval of a rate reduction.

As stated above, the BLM is willing to entertain "bundled" requests for royalty relief when similarly situated leaseholders jointly submit information that meets the regulatory tests for which royalty reduction is sought.

QUESTIONS FOR ROBERT ABBEY, BLM DIRECTOR

FROM SENATOR MURKOWSKI

S. 1024, the Organ Mountains, New Mexico Wilderness Preservation:

1. Given the border situation in Arizona, Texas, New Mexico and California and the refuge that additional Wilderness designations might afford those that seek out remote places to traffic in illegal drugs and illegal immigration activities; do you think it would be better to pull the boundaries of the proposed wilderness back even further from the Mexico border than has been proposed by S. 1024?

No, the Administration supports the boundaries proposed in S. 1024. As we noted in our testimony, a number of improvements have been made to the bill in order to accommodate law enforcement needs including releasing additional lands near the border with Mexico, and special provisions to allow law enforcement to install communications and surveillance facilities on a wide area of land as may be needed.

FROM SENATOR HELLER

S. 1024, the Organ Mountains, New Mexico Wilderness Preservation:

1. Under BLM's regulations for managing Wilderness areas, are Border Patrol and law enforcement officials allowed to patrol, in routine circumstances, Wilderness areas with mechanized vehicles? On bicycle?

BLM regulations for managing Wilderness areas (43CFR 6303) specify that BLM may authorize officers, employees, agencies, or agents of Federal, State, and local governments to occupy and use wilderness areas to carry out the purposes of the Wilderness Act or other Federal statutes. Unless another Federal statute required use of motorized and mechanized vehicles, including bicycles, routine patrols using such methods would not be permitted by these agencies. Routine patrols could be conducted by foot or horseback, or by air. However, under emergency conditions, such as law enforcement emergencies, motorized and mechanized vehicles may be used.

2. In September of 2010 there were reports by news outlets in New Mexico that BLM was blocking sites favored by Border Patrol for placing Forward Operating Bases (FOB) in areas highly trafficked by drug traffickers and human smugglers. Border Patrol reportedly had to settle for a location 20 miles from the border and from the area they originally wanted the FOB placed. Has BLM in New Mexico denied requests for FOB to be placed in areas because of environmental or preservation laws? Has BLM allowed FOBs to be placed in Wilderness areas in New Mexico or elsewhere?

While I am unfamiliar with the news story, BLM in New Mexico works closely with law enforcement on requests for placement of FOBs on public lands. No requests have been denied.

3. In a CRS report released in October of 2010, Border Patrol officials in New Mexico stated it may take up to 6 months or more to obtain permission from federal land managers to simply maintain roads within federal lands. Another account in the report said it took 8 months for federal land managers to do the environmental and historical preservation work that they claimed had to be done before a permit could be issued to improve a road so Border Patrol could move an underground sensor. During this eight month delay Border Patrol could not patrol this area known to be highly trafficked by "illegal aliens". Given the documented evidence that exists of the obstructions that Border Patrol faces from federal land management agencies and environmental and historical preservation laws in areas in southern New Mexico, wouldn't the highly restrictive land use designations in S. 1024 only exacerbate the problem?

The BLM Las Cruces District and the El Paso Sector Border Patrol signed a Memorandum of Understanding (MOU) in January 2007 that identified all of the dirt roads within the El Paso Sector that the Border Patrol needed to maintain. This MOU gives them the authority to maintain and improve these roads as needed and has expedited our ability to respond to Border Patrol requests. The Border Patrol has acquired maintenance responsibilities for a number of access roads that were previously two-track dirt roads and have now been improved by the Border Patrol to be fully passable. The BLM continues to work closely with the Border Patrol to identify roads in need of improvement and maintenance and to authorize this action as feasible.

4. Dona Ana County Sheriff Todd Garrison wrote a letter to the Subcommittee on Public Lands and Forests opposing S. 1024. Has BLM talked to Sheriff Garrison about his concerns with S. 1024? Doesn't BLM rely heavily on local law enforcement officials like Sheriff Garrison to help police their lands?

We are aware of Sheriff Garrison's concerns regarding S. 1024. The BLM meets regularly with many of the law enforcement agencies along the border, including the Doña Ana County Sheriff's Department, to discuss border security. This includes the Border Management Task Force meetings facilitated by the BLM and the Border Security Task Force meetings facilitated by Senator Bingaman's staff. Coordination and cooperation between law enforcement agencies is excellent and provides for our improved ability to combat crime along the border.

FROM SENATOR MURKOWSKI

S. 1149, Geothermal Production Expansion Act of 2011

Lease payments: I have two questions on the geothermal bill. Currently in Nevada, the state that has had the most leasing of federal lands for geothermal activities, the average payment per acre is roughly $12 and that average apparently is lower for surrounding states in the Lower 48.

1. To my knowledge there has been no leases sought on federal lands in my home State of Alaska, so there is no data for what a relevant lease amount may be in Alaska. My question is, is the requirement that a potential leasee pay four times the amount of the existing lease, or a minimum of $50 per acre for a neighboring site the correct amount?

The BLM is also concerned about the provision of S. 1149 that set a minimum price on how the Secretary may determine the fair market value for a non-competitive geothermal lease on adjoining lands, in part because lease values vary from site to site and across states and regions. The establishment of a minimum price as defined by S. 1149 would not account for these local valuation factors. The BLM instead supports the requirement that regulations be promulgated to establish procedures for determining the fair market value of leases on adjoining lands.

2. While we don't want to give anyone too good of a lease deal for a non-competitive lease extension, still if this bill is going to increase geothermal energy production, the lease can't be too high as to be non-competitive on an economic basis. Any view on the lease terms built into the bill and whether they walk that fine line appropriately?

The BLM supports the requirement that regulations be prepared to determine the appropriate fair market value for non-competitive leases on adjoining lands. Through the regulatory process, DOI can appropriately consider the economic value and site specific factors that may influence the fair market value of a lease.

FROM SENATOR MURKOWSKI

S. 1144, to amend the Soda Ash Royalty Reduction Act of 2006:

1. If this bill is not passed before October, what are the Administrative options that the Secretary of Interior will have to provide this important industry an extension of the royalty relief?

The current regulations enable royalty reduction on a case-by-case basis, subject to the leaseholder's presentation of information demonstrating that he meets the criteria of the currently applicable regulations as contained at 43 C.F.R. Subpart 3513. Under that Subpart, leaseholders may apply for a royalty rate relief if they meet certain criteria. Under 43 C.F.R. § 3513.12, the BLM "will consider if approval:

(a) is in the interest of conservation;
(b) will encourage the greatest ultimate recovery of the resource; and
(c) is necessary either to promote development of the mineral resources or because you cannot successfully operate the lease under existing terms."

The BLM has processed royalty rate reduction applications from many solid mineral lessees. We analyze operational and financial information submitted by the operator and determine if a royalty rate reduction is justified, based on the above-described criteria.

The BLM has established Royalty Rate Reduction Guidelines under which applications may be processed under five categories; (1) Expanded Recovery, (2) Extension of Mine Life, (3) Financial Test – Unsuccessful Operations, (4) Financial Test – Expanded Recovery / Extension of Mine Life, and (5) Regional. These guidelines are subject to, and must be implemented consistent with, the provisions of the applicable regulations. Administratively complete applications containing the information and documentation required by 43 C.F.R. § 3513.15 to justify the rate reduction request must be received from the lessee and evaluated by BLM on a lease-by lease basis. Following such submission, if BLM determines that the criteria of the applicable regulation, 43 C.F.R. § 3513.12, have been met, royalty rate reductions may be granted on a lease-by-lease basis. Each such decision would be dependent upon the particular facts presented in each case and thus, there is no guarantee that every applicant will receive the requested reduction.

As noted in the letter accompanying the report to Congress, the BLM is willing to entertain "bundled" requests for royalty relief when similarly situated leaseholders jointly submit information that meets the regulatory tests for which royalty reduction is sought.

The minimum royalty rate for federal sodium leases is 2%, as set by the 1920 Mineral Leasing Act. Most federal sodium leases in Wyoming were initially issued with a royalty rate of 5%. In the early 1990s, BLM began a process of raising the federal rate to match the 8% local private lease royalty rate. In 1996, the decision was reached to issue any new federal leases at 8%, and renew existing leases at 6%. There are currently eight sodium leases in Wyoming at 8%, 49 leases at 6%, and four leases at 5%.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

FEB - 9 2012

The Honorable Daniel Akaka
Chairman
Subcommittee on Oversight of Government Management,
the Federal Workforce, and the District of Columbia
Committee on Homeland Security
And Government Affairs
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 Subcommittee's October 27th, 2011 hearing titled, "Safeguarding of Hawai'i's Ecosystem and Agriculture Against Invasive Species."

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

Sincerely,

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

Enclosure

cc: The Honorable Ron Johnson, Ranking Minority Member

Post-Hearing Questions for the Record
Submitted to Mr. George Phocas
From Senator Daniel K. Akaka

Safeguarding Hawai'i's Ecosystem and Agriculture Against Invasive Species
October 27, 2011

1. In your testimony, you noted that the current process the U.S. Fish and Wildlife Service uses to ban the import of species under the Lacey Act is not nearly efficient enough to meet the daunting challenge posed by harmful invasive species. What specific reforms would you recommend to enable the Service to be more proactive?

   A. The U.S. Fish and Wildlife Service (Service) is currently developing recommendations to improve the effectiveness of provisions in Title 18 (injurious wildlife provisions) of the Lacey Act to prevent the introduction and establishment of invasive species in the U.S. These recommendations are being developed by experts from the Department of the Interior and the Service. The recommendations include ways to improve public outreach, voluntary efforts, State enforcement, and ways to ensure that the latest scientific methods are transparently incorporated into evaluation and screening processes used to determine which species are allowed into the U.S. We look forward to working with Congress and interested stakeholders, constituents, and partners as this effort moves forward.

2. At the hearing, Area Port Director Murley of U.S. Customs and Border Protection (CBP) agreed that both State and Federal agricultural inspections must be considered to be core airport functions. Mr. Murley noted the complimentary missions of State and Federal agriculture inspectors, with CBP responsible for inspecting international arrivals and departures, while the Hawai'i Department of Agriculture (HDOA) inspects domestic shipments and passengers.

Does U.S. Fish and Wildlife Service share CBP's view that both State and Federal agricultural inspections are complimentary, core airport inspection functions and responsibilities, and that HDOA agricultural inspection activities are not duplicative of Federal agricultural inspection activities?

A. Yes, the Service agrees that both State and Federal agricultural inspections are core airport inspection functions and responsibilities. They are based on different authorities, jurisdictions, and priorities (Federal and State), they have different resources and capacities, and they can be complementary. Having both kinds of agricultural inspections helps to achieve the interdiction of shipments that violate Federal and State law, and while they may cover similar issues, they are not duplicative.

Hawai'i is a Pacific hub of commerce between Asia and the continental United States, and it experiences a large volume of imports and exports, many of which are accompanied by complex paperwork and histories. The Service has frequently conducted interceptions and investigations which were aided by either or both agencies. The USDA has assisted most often in the

interception phases, in the protection of Hawai'i from: 1) imported pests associated with international plant shipments; 2) the administration of CITES regulations with respect to plants, both import and export; and 3) outbound threats from the transport or export of protected and regulated native species. The HDOA makes interceptions of State-identified invasive species in interstate commerce and aids in subsequent investigations. HDOA also assists the Service in both the interceptions and investigations of in-bound protected wildlife and plants that were illegally acquired and trafficked from the U.S. or overseas.

In all cases, the illegal shipments intercepted often arrive with questionable or fraudulent documentation. Illegal shipments require time and resources to research the species, risks, sources, and other related information. HDOA's inspection facilities, as well as their off-site quarantine station and underlying authorities, are important aids in securing the space, expertise, and time to make the proper inquiries to conduct our mission effectively.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 13 2012

The Honorable Jeff Bingaman
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Management to questions for the record submitted following the Thursday, February 9, 2012, hearing on: "**H.R. 1904,** To facilitate the efficient extraction of mineral resources in southeast Arizona by authorizing and directing an exchange of Federal and non-Federal land, 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 Lisa Murkowski, Ranking Member
Committee on Energy and Natural Resources

FROM SENATOR MURKOWSKI

Questions for Mr. Farquhar, Department of the Interior

Mr. Farquhar, in your testimony under *general concerns* you state that: "It is the Administration's policy that NEPA be fully complied with to address all federal actions and decisions, including those necessary to implement Congressional direction."

1. **Are you suggesting that if Congress makes a decision on public lands that this Administration should have the right to modify or qualify that decision under NEPA?**
   The BLM is required by law to analyze the impacts of the federal action as part of the process of implementing the congressional direction unless Congress provides otherwise.

2. **Are you saying that NEPA, which is the law that we in Congress wrote, is somehow superior to Congresses constitutional authority to legislate on the public lands?**
   No.

3. **Is it your belief that NEPA applies to Acts of Congress? Could you provide this Committee with the specific language from the CEQ regulation that you believe imposes NEPA on laws passed by Congress?**
   The BLM is required by law to analyze the impacts of the federal action as part of the process of implementing the congressional direction unless Congress provides otherwise.

4. **You state in your testimony, that many of the lands to be exchanged hold significant cultural value to Indian Tribes. You then list the Apache Leap, the Oak Flat Campground and Devil's Canyon as those culturally significant lands.**
   a. ***You do understand, that Devil's Canyon is not part of the exchange and 110-acres of private land are being added to Apache Leap which is being retained in federal ownership, correct?***
   It is our understanding that the tribes are concerned about the implications of mining on adjacent land and the effect that could have on Devil's Canyon.

5. **You state in your testimony the numerous concerns the Tribes have raised that the "legislation" is contrary to laws and policies that direct the federal land management agencies to engage in formal consultation with Indian Tribes.**
   a. In the opinion of this Administration are these concerns valid? Does the Administration share these concerns?
   The Administration believes that formal consultation with the tribes before the land exchange is completed, rather than following completion (as envisioned under H.R. 1904), provides for more meaningful consultation and coordination.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 13 2012

The Honorable Jeff Bingaman
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Safety and Environmental Enforcement to questions for the record submitted following the Tuesday, October 18, 2011, oversight hearing on: "to examine the status of response capability and readiness for oil spills in foreign Outer Continental Shelf waters."

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

FULL COMMITTEE HEARING:

Tuesday, October 18, 2011

The purpose of the hearing is to examine the status of response capability and readiness for oil spills in foreign Outer Continental Shelf waters adjacent to US waters

Mr. James A. Watson - Director, Bureau of Safety and Environmental Enforcement, U.S. Department of the Interior - Submitted on behalf of former Director, Mr. Michael R. Bromwich

Chairman Bingaman

1. I would like to open this round of questions by asking the both of you - How confident are you that the U.S. is ready to respond to a spill following the tragic events of the Deepwater Horizon?

Response: BSEE is very confident that our overall preparedness and capability to respond to an undersea drilling well blowout has significantly improved when compared to the capability before the *Deepwater Horizon* incident. The *Deepwater Horizon* was a human and environmental tragedy that highlighted a number of weaknesses in our offshore drilling and oil spill response regulatory regimes in place at that time. We have learned from those weaknesses, however, and taken strong steps to reform our regulations and processes. Shortly after the spill, the Bureau of Ocean Energy Management, Regulation, and Enforcement (now split into the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE)) began requiring implementation of new safety measures for offshore drilling activities, including the availability of undersea containment equipment for any well being drilled with a subsea blowout preventer or floating drilling rig. This requirement alone, which clarifies existing regulation-based requirements on operators, will help ensure that we will be far more ready to respond in the event that another subsea blowout occurs. We have also instituted a requirement that all offshore lessees and operators have safety and environmental management systems, and have recently proposed expanding that requirement to provide for an even greater level of safety. In addition, we have improved planning and communication regarding oil spill response with other agencies, including U.S. Coast Guard the Environmental Protection Agency (EPA), and the National Oceanic and Atmospheric Administration (NOAA). We continue to work to improve safety oversight in other areas, such as strengthening our inspections and enforcement program

to ensure that we are assessing and focusing adequate resources on the highest-risk operations.

2. In particular, how confident are you that we're ready in the advent that an oil spill occurs in the near future in Cuban waters – that would impact US waters, such as the Florida straights?

Response: In conjunction with other federal agencies such as the U.S. Coast Guard (USCG) EPA, and NOAA, and to the extent authorized by law, BSEE is seeking to ensure that U.S. national interests, particularly environmental interests in Florida and along the U.S. coastline, are protected from the potential impacts of oil and gas drilling operations in Cuban waters. Repsol YPF Cuba, S.A., (Repsol), a Spanish energy company, is preparing to undertake petroleum exploration activities in Cuban waters. Repsol offered the United States government (USG) access to review certain operations and equipment on the Scarabeo 9, the drilling rig that will be used to conduct these activities. The USG accepted Repsol's offer to allow U.S. government officials, including BSEE and USCG inspectors, to review certain equipment and documentation onboard the rig while it was offshore Trinidad and Tobago. These observations and reviews have provided information for USG officials concerning Repsol's adherence to its voluntary commitment to conform to all U.S. offshore drilling safety standards, including those implemented after the *Deepwater Horizon* incident. However, we do not have enforcement authority over the rig or Repsol's activities in Cuban waters, nor were we able to do a number of inspection activities that BSEE or the USCG would typically perform in U.S waters once a rig is at the drilling site. BSEE is aware that the USCG is updating its contingency plans to ensure its readiness to respond to oil spills in Cuban waters that may affect U.S waters and coastline. Questions about USCG activities in that regard should be directed to the USCG.

3. *Cuba Licensing* – You mention that Treasury has been issuing licenses in the last decade for spill response and is considering new licenses for spill response. Should equipment, such as capping stacks and other well containment that is manufactured in the US, be needed – in the advent of an oil spill – do you think Treasury will grant licenses for this equipment and its supporting personnel knowing that U.S. natural resources, environmental and human health and safety could be adversely affected?

Response: All U.S. efforts are designed to protect U.S. interests. BSEE works closely with other government agencies including the Department of Commerce and the Department of the Treasury in the context of fulfilling the Bureau's missions.

The Department of Commerce advises BSEE that, consistent with U.S. foreign policy and national security concerns, the Department of Commerce's Bureau of Industry and Security (BIS) has licensed temporary exports of post-incident oil spill containment and cleanup items for use by U.S. companies while in Cuban waters since 2001.

The Department of the Treasury advises BSEE that Treasury's Office of Foreign Assets Control (OFAC) has licensed U.S. entities to prepare for and to operate in the event of an oil spill.

We defer to the Department of Commerce and the Department of the Treasury to provide any additional details.

4. *Bahamas* - You seem to have had some great success in working with Mexico and Repsol, in terms of getting them to comply with accepted U.S. regulatory standards. Have you begun to work with the Bahamian government at all to assist them in developing regulations for any offshore exploration that may occur going forward?

Response: We participated in a multilateral regional technical meeting titled "Regional OPRC [Oil Pollution Preparedness, Response, and Cooperation] Seminar to Focus on Developing National Plans for Marine Pollution Preparedness and Response Related to Offshore Units and Regional Cooperation," on December 7-9, 2011, in the Bahamas. Participating countries were the Bahamas, Cuba, Jamaica, Mexico, and the United States. The meeting was a planning seminar focused on improving spill prevention and well control, preparedness and response to a major oil spill from an offshore drilling operation that may impact the waters and coastlines of multiple nations in the northern Caribbean. It was a useful starting point for coordination among Caribbean nations, and we plan to have follow-up meetings to further examine issues and carry out strategies.

5. *Arctic* – it seems that BSEE is quite active in the area of spill prevention and intervention for arctic areas and that a great deal of efforts are being expended to gain a better understanding of how best to approach this issue. Do you feel that we are currently ready to response to an oil spill of any magnitude that could happen in arctic waters, on ice or under ice – in or around Alaska? How do you think we compare, in terms of our experience and readiness, with our arctic neighbors – Canada and Russia?

Response: BSEE's regulatory responsibility for spill prevention includes oil spill response plan review and approval, drilling permit review and approval, and a safety and environmental inspection program. Facilities engaged in the development, exploration and production of offshore energy resources are required to submit detailed spill-response and prevention plans for BSEE approval prior to commencing operations. Spill response plans must specifically designate a spill management team available on a 24-hour basis as well as an oil spill response organization (OSROs) capable of responding to prospective spills from that specific facility in accordance with the Oil Pollution and Clean Water Acts. BSEE engages in a rigorous review and approval process to ensure that adequate spill response and prevention measures are in place and that the operator has the capability to respond to a worst-case scenario oil spill. Facilities operating in the Arctic must demonstrate the capability to respond to spills in these scenarios without the assistance of the USCG or the State of Alaska. .

The Administration is proposing a priority action through the National Ocean Policy Implementation Plan to address development and implementation of response coordination, procedures, and decision support systems. BSEE, in collaboration with federal partners in NOAA and USCG are also studying the effects of oil in, on and under the ice with international partners. BSEE is committed to developing and assessing new technology and techniques for oil spill prevention and response in ice-covered waters through our Technology Assessment & Research (TAR) Program, which has provided funds and resources for research concerning Arctic spill prevention, preparedness and response for decades.

Many nations, including Norway and Canada, have collaborated with the TAR Program and use our OHMSETT spill tank facilities in New Jersey for testing response measures in ice conditions with real oil. Canada and Norway are members of the International Regulators Forum in which safety, operational practices, and investigations of offshore incidents are shared among national regulators to foster a coordinated approach to prevention and preparedness.

BSEE is also a leader in the work of the Arctic Council on spill prevention, preparedness and response, including development of the Arctic Offshore Oil and Gas Guidelines and Guidelines for In-Situ Burning, an Arctic-wide instrument for emergency preparedness and response, and other projects. The U.S. and Canada have been sharing research in spill response in the U.S.-Canada Northern Oil and Gas Research Forum. Results of these studies, assessments, programs, as well as our experience in offshore Arctic operations, are valuable to Arctic nations. Based on our participation in the Arctic Council and communications with other northern nations, we believe that our readiness for oil spills is equal to or greater than Canada's and Russia's.

Senator Murkowski

1. Prior versions of the Chukchi exploration plan had won your agency's approval and the only changes to it have been, indisputably, improvements such as including additional spill prevention, containment, and response measures. Specifically, what legal and administrative obstacles may remain before the approval of this EP?

Response: The approval of exploration plans (EPs), in the Chukchi or anywhere else on the U.S. Outer Continental Shelf (OCS), is not under BSEE's purview. All EP reviews and decisions are performed by the Bureau of Ocean Energy Management (BOEM). We coordinate closely with BOEM during its EP review to ensure that required information is submitted and understood by both bureaus. Subsequent to BOEM approval of an

EP,BSEE would consider any applications for permits to drill in accordance with any BOEM-approved EP.

BOEM granted conditional approval of Shell Gulf of Mexico, Inc.'s Exploration Plan under leases in the Chukchi Sea Planning Area on December 16, 2011. BOEM is best able to provide additional information concerning review and approval of exploration plans in the Chukchi Sea.

2. You have stated before that the failure to provide final answers on administrative decisions is the worst possible result from an agency. Is your current process consistent with delivering an answer in time for the decisions which the Chukchi applicant must make with regard to contracting for the 2012 exploratory season?

Response: The mission of the Bureau of Safety and Environmental Enforcement (BSEE) is to ensure that exploration, development and production of offshore energy resources take place in a manner that is protective of human health and the environment. Although BSEE is committed to conducting the most efficient reviews possible, reviews of oil spill response plans or applications for permit to drill must take place in a manner such that agency decision-making is fully informed by all relevant materials regardless of any particular applicant's internal timelines. We are on schedule to complete a thorough review of Shell's Oil Discharge Prevention and Contingency Plan (ODPCP) for the Chukchi Sea, with comments informed by the participation of other federal agencies through the Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska, well before the start of the 2012 exploratory season in Alaska. The timelines for agency review are dependent on Shell providing information and correcting any potential shortcomings in its plans or applications. BOEM conditionally approved Shell's Chukchi Sea Exploration Plan on December 16, 2011, and we are confident that BSEE's internal processes will not be the source of any undue delays in the review of the ODPCP or future Applications for Permits to Drill.

3. It is my understanding that the Administration will be reviewing the Alaska spill response plan separately from the exploration plan; specifically that Deputy Secretary Hayes is evaluating this element of the plan with the Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska. Although your testimony indicated your absence from the Interagency Working Group, both BOEM and BSEE have or will have responsibilities associated with the plan. What is the timeline on evaluating the spill response plan?

Response: The review of the ODPCP is proceeding separately from the review of the exploration plan (EP) because the two reviews are conducted, under our regulations, by two separate bureaus. The separation of these functions is part of our reorganization intended to put safety regulation in different hands from planning and leasing for oil and gas development offshore. BOEM is responsible for review of the EP, and BSEE is responsible for the review of the ODPCP. As part of our review of Shell's Arctic

ODPCPs, BSEE has been closely engaged with the Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska, established by the President in E.O. 13580, and BSEE staff has participated in comprehensive dialogue with technical experts from Shell, the USCG, the Environmental Protection Agency, and the National Oceanic and Atmospheric Administration. The interagency process has been extremely helpful for highlighting concerns from other agencies long before they would normally be addressed. Working through those concerns is helping to inform our review and should allow Shell to more fully address our comments on their ODPCPs in a more timely manner. Shell was provided a detailed notification of certain modifications that we believe are necessary to incorporate into their Chukchi ODPCP. Shell's response to that notification was received and will be incorporated into our review of their Chukchi ODPCP.

4. In light of the Interagency Working Group's apparent control over part of the decision on the Arctic, as well as action and inaction of other agencies with the power to slow or halt OCS exploration, are you comfortable that DOI's ultimate statutory authority over the OCS is preserved?

Response: The Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska has no control over any decisions to be made in the Arctic by BSEE. The purpose of the Interagency Working Group is to ensure effective coordination among all relevant agencies with respect to decisions about Arctic resource development. With respect to the ODPCP, this involves soliciting information and feedback from other agencies to help inform BSEE's review. It has performed this role admirably. With respect to other agencies that also have legal authority over activities on the OCS, we continue to work with those agencies exercising their respective statutory authorities, which do not negatively affect the Department of the Interior's ability to successfully fulfill its missions in any way.

5. Your agency has asserted that contractors in the OCS will be subject to the same direct regulation by DOI as the operators – notwithstanding the previous practice of regulating the operator as the lead entity in charge of an operation. Because this authority is newly found or, at a minimum, newly exercised, the Committee has an immediate interest in understanding specifically how the OCSLA, a statute under our jurisdiction, is being interpreted and implemented at the agency level. In the interests of oversight, better understanding, and transparency, will you include those specific memoranda on legal rationale for this authority with your responses to these questions?

Response: BSEE's legal authority over contractors who violate the provisions of the Outer Continental Shelf Lands Act (OCSLA), is based in part on subsection 24(b)(1), which states in part: "[I]f <u>any person</u> fails to comply with any provision of the Act, or any term of a lease, or permit issued pursuant this Act, or any regulation or order under this Act, after notice of such failure and expiration of any reasonable? period allowed for corrective action, such <u>person</u> shall be liable for a civil penalty . . .." Consistent with the

Act, BSEE's implementing regulations also extend responsibility for OCSLA compliance to co-lessees, operators, and those persons actually performing OCS covered activities. (See, 30 C.F.R. §250.146.) BSEE's civil penalty regulation also defines a "violator" as a person responsible for a violation of the Act. (See, 30 C.F.R. §250.1402.) In addition, in subsection 24(c) Congress authorized assessment of criminal penalties against "any person" who "knowingly and willfully" violates OCSLA, regulations issued under the authority of the OCSLA, and leases, licenses, or permits issued pursuant to the OCSLA. Congress's utilization of the term "any person" in OCSLA provides BSEE with clear statutory authority over non-leaseholders and non-operators.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 0 8 2012

The Honorable Jeanne Shaheen
Chairman
Subcommittee on Water and Power
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Madam Chairman:

Enclosed are responses prepared by the Bureau of Reclamation and the U.S. Geological Survey to the questions for the record submitted following the Thursday, December 8, 2011, oversight hearing on "opportunities and challenges to address domestic and global water supply issues."

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 Mike Lee, Ranking Member
Subcommittee on Water and Power

QUESTIONS FOR Ms. Castle
12.08.11 Senate Subcommittee on Water and Power

FROM SENATOR SHAHEEN

Energy Water Nexus:

1. There is a clear connection between saving energy and saving water and vice versa. In your opinion, what more can we be doing to understand this connection and implement policies that address it?

   ANSWER: The Department recognizes the important connection between energy and water use. Thermoelectric power water withdrawals have been the largest category of withdrawals since 1965 and represented 49 percent of all water withdrawn in 2005 (USGS 2009, Circ 1344). Hydropower is the largest renewable power resource and is critical in providing reliable firming power for new investments in wind power. Traditional energy generation and new investments in renewable energy depend upon sustainable water supplies. Energy is also critical in supplying water. Water transmission and treatment are significant sources of energy demand.

   Recognizing the clear connection between water and energy, the Department has made this nexus a focus of existing activities, including several Administration initiatives, most notably the WaterSMART Program. Last September, the Department adopted the WaterSMART Strategic Implementation Plan within which all of the Interior bureaus have identified efforts to improve water use efficiency, which in turn will reduce energy demand. The plan also recognizes the need to give strong consideration to water supply and existing uses as new energy development is considered.

   The Bureau of Reclamation is a leader in this area. Under WaterSMART's Water and Energy Efficiency Grants, which fund projects that help to meet the Priority Goal for Water Conservation, the Bureau of Reclamation (Reclamation) incentivizes the conservation of energy in the delivery of water. Proposals that not only address water conservation but also incorporate the use of renewable energy and other energy efficiency improvements receive additional weight during the competitive grant selection process.

   Reclamation also prioritizes WaterSMART Grant applications that describe the relationship between proposed water conservation improvements and any expected reduction in energy demands. Applicants are encouraged to describe and quantify expected energy savings, such as reduced pumping needs. Such estimates are assessed by Reclamation as part of the review and ranking of applications. In recent years, Reclamation has awarded dozens of water and energy efficiency grants for amounts as high as $1 million in Federal funding each, including a number of proposals that incorporated the relationship between water efficiency improvements and energy savings. We expect to continue to fund such projects through the WaterSMART Program.

In 2011, Secretary Salazar and the U.S. Department of Energy Secretary Steven Chu announced nearly $44 million in funding for research and development projects to advance hydropower technology, including $3.5 million for the Department to research, develop, and test low-head hydropower technologies that can be quickly and efficiently deployed at existing non-powered dams or constructed waterways. In March of 2011, the Department released the results of an internal study, the "Hydropower Resource Assessment at Existing Reclamation Facilities." The study estimated the Department could generate up to one million megawatt hours of electricity annually and create jobs by addressing hydropower capacity at 70 of its existing facilities. In addition, Reclamation will complete the second phase of its investigation of hydropower development, as referenced in the 2010 Hydropower Memorandum of Understanding (MOU)[1] between the Department of the Interior, the Department of Energy, and the Army Corps of Engineers. While the first phase, completed in 2011, focused primarily on Reclamation dams, the second phase will focus on constructed Reclamation waterways such as canals and conduits.

The USGS' Water Use and Availability analysis represents a critical investment in understanding the connection between energy and water. The USGS has been involved in a joint effort for the last two years with the Department of Energy's Energy Information Administration (EIA) to improve the understanding of water use associated with thermoelectric power generation. These efforts include quantifying the consumptive use of water at thermoelectric plants across the country and disseminating data on alternate water sources used for cooling, such as treated effluent and saline groundwater sources. USGS publications on thermoelectric consumptive use will be available in 2013 and alternate water sources in 2014. Additionally, EIA plays an important role in data collection and reporting for water used in the energy sector. Multi-year data is critical to provide a sound basis for analysis of changing conditions over time.

New technologies have expanded domestic oil and gas production to include low-permeability formations once considered to be inaccessible, including the Bakken Formation in northern Montana and North Dakota, the Barnett Shale in Texas, and the Marcellus Shale in the Appalachian states. Hydrocarbon production from these formations requires considerable quantities of fresh water (surface and/or groundwater) to increase fluid conductivity of the reservoir unit through hydraulic fracturing. The large volumes of water involved in these practices (generally 1-5 million gallons per "frac job") have already led to supply and disposal problems in some areas. To address such issues and to help stakeholders prepare appropriately, the USGS is developing water-budget methods for uses associated with oil and gas production. Established USGS energy assessments provide estimates of technically recoverable resources. These results will be extended to project the volume of water needed for hydrocarbon production. Initial efforts are focused on the Williston Basin in Montana and North Dakota. Other efforts are examining chemical composition and water quality of produced waters.

[1] http://www.usbr.gov/power/SignedHydropowerMOU.pdf, 2010

Water Recycling and Reuse:

1. I understand that the water recycling and reuse program administered by the Bureau of Reclamation (the "Title XVI Program") has been well-received. What should be done to further this program?

   ANSWER: The Title XVI Program is part of the Department's efforts through the WaterSMART Initiative to secure and stretch water supplies for use by existing and future generations. In order to optimize the Program's results, Reclamation has established a process to prioritize and select authorized Title XVI projects for funding. The Title XVI selection criteria include consideration of those projects that most effectively stretch water supplies and contribute to water supply sustainability; address water quality concerns or benefit endangered species; incorporate the use of renewable energy or address energy efficiency; deliver water at a reasonable cost relative to other water supply options; incorporate a regional or watershed approach; and meet other important program goals.

   In FY 2012, as in FY 2011, Reclamation has incorporated those criteria into two funding opportunity announcements, one open to authorized project sponsors for activities on authorized Title XVI projects and the other to make funding available for development of new Title XVI feasibility studies for potential new water recycling projects. Proposals will be evaluated against the selection criteria to identify projects for funding. The Department's competitive funding approach through prioritization has strengthened the Title XVI Program.

FROM SENATOR LEE

1. Does the USGS provide the primary source of water data for use for other Federal Government agencies? How often do you update this data?

   ANSWER: As the primary Federal science agency for water information, the USGS monitors and assesses the amount (quantity) and characteristics (quality) of the Nation's freshwater resources, and assesses the sources and behavior of contaminants in the water environment. The USGS has provided this service since 1879. This legacy continues through the efforts of hydrologic professionals and support staff located in all 50 States and Puerto Rico. The USGS goes beyond simply providing data by developing tools to improve the management and understanding of water resources. The information and tools allow the public, water managers and planners, and policymakers to:

   - Minimize loss of life and property as a result of water-related natural hazards, such as floods, droughts, and land surface movement;

- Effectively manage freshwaters, both above and below the land surface, for domestic, public, agricultural, commercial, industrial, recreational, and ecological uses;
- Protect and enhance water resources for human health, aquatic health, and environmental quality; and
- Contribute to wise physical and economic development of the Nation's resources for the benefit of present and future generations.

Fundamental to USGS water science is the collection and public dissemination of data describing the quantity and quality of the Nation's freshwater resources. During the past 120 years, the USGS has collected streamflow data at over 21,000 sites, water-level data at over 1,000,000 wells, and chemical data at over 338,000 surface-water (streams, rivers, natural lakes, and man-made reservoirs) and groundwater (water beneath the land surface) sites. These data are available online through the National Water Information System (NWIS) at http://waterdata.usgs.gov/nwis. Depending on the data set, data can be provided in real time (surface water gauges), weekly or monthly for non-instrumented gauges, periodically such as through the 5 year water use report, or through one-time investments such as a groundwater studies focused on a particular location.

2. Please describe your Water Census Program. How long, and at what cost, will it take to complete a comprehensive examination of water availability in the United States?

ANSWER: The USGS Science Strategy identifies a Water Census of the United States as one of six USGS science priorities. The Water Resources programs provide the scientific underpinnings for a coordinated assessment of water availability and use through the Hydrologic Networks and Analysis Program. The basic structure of this effort includes:

- Estimating freshwater resources, how those supplies are distributed, and whether they are increasing or decreasing over time;
- Evaluating factors affecting water availability including energy development, changes in agricultural practices, increasing population, and competing priorities for limited water resources;
- Assessing water use and distribution for human, environmental, and wildlife needs;
- Providing data and information to forecast likely impacts on water availability, quality, and aquatic ecosystem health due to changes in land use and cover, natural and engineered infrastructure, water use, and climate change or variability; and
- Assisting State water resource agencies through a grant program to integrate State water use and availability datasets with Federal databases for a more comprehensive assessment of water availability.

The cost of the water census program would be $9 million per year for the duration of the program (10 years) to comprehensively examine the United States. The Water Census, similar to the population census, is intended to be an ongoing activity that will operate in perpetuity.

3. Within your statement you state, "State governments administer water use within their borders and state law determines allocations and allowable uses." Under what circumstances if any, does the Federal Government have the right to reallocate water unilaterally within a state?

   ANSWER: The Federal Government does not have the right to reallocate water unilaterally within a state; Federal water rights do not confer such an authority. Section 8 of the Reclamation Act of June 17, 1902 specifies that the Secretary of the Interior will conform to state laws addressing the control, appropriation, use and distribution of water used in irrigation for authorized Federal reclamation projects. While the Federal Government may hold a water right for a given use, this does not imply authority to reallocate other entities' water rights. In certain circumstances, the United States has authority to hold and manage water rights, such as on Federal lands and those held in trust on behalf of and in partnership with federally recognized Indian tribes.

4. Would you mind providing a list of key Federal statutory and regulatory authorities that impact a holder of a State issued water right or permit?

   ANSWER: Identification of key Federal statutory and regulatory authorities that impact a holder of a State issued water right or permit completely depends on the particular water right or permit in question and the location and manner of use. With respect to Reclamation, Reclamation has specific statutory obligations to store, divert, manage, and deliver Federal project water on behalf of particular project beneficiaries and general statutory obligations and authorities that may impact a holder of a state issued water right or permit. The applicability of Federal statutes and regulations depends on a large number of variables.

5. How do you address water as a public resource, specifically within Western water law?

   ANSWER: The creation of Reclamation in 1902 occurred in response to a growing public enthusiasm for direct Federal investment in irrigation projects to benefit western water users and encourage development of the West. Under its broad powers to regulate navigable waters under the Commerce Clause and to regulate government lands under Article IV, Section 3 of the Constitution, the United States, acting through federal agencies has the power to reserve water rights for its reservations and its property. In the case of Federal Reclamation projects, Reclamation complies with Section 8 of the Act of June 17, 1902 and related case law regarding the authority of states to allocate water for beneficial uses within their borders. Accordingly, Reclamation fashions its operations plans

in concert with applicable state law and regulation, as well as the imperatives of Federal law, treaties and regulation. This includes many Reclamation projects located on river systems that traverse state or international borders, such as the Colorado River, the Columbia River, the Klamath River, the Platte River, the Republican River, the Rio Grande, the Snake River, and dozens of other river systems. In addition, pursuant to the Boulder Canyon Project Act of 1928, the Secretary of the Interior serves as Watermaster for the lower Colorado River, where he is responsible for administering "entitlements" for water use from the river in coordination with the states of Arizona, California, and Nevada, and delivers water to entities in those states under contracts authorized by the Boulder Canyon Project Act.

Reclamation's expanded mission since its founding more than a century ago reflects today's greater understanding of the complexities of water resource development. Reclamation has evolved into a contemporary water management agency with a mission not only "to manage, develop, and protect water and related resources" in the West, but to do it "in an environmentally and economically sound manner in the interest of the American public." Reclamation's mission is to assist in meeting the increasing water demands of the West while protecting the environment and the public's investment in these structures. Reclamation places great emphasis on fulfilling water delivery obligations, water conservation, water recycling and reuse, and developing partnerships with our customers, states, and Native American Tribes, and in finding ways to bring together the variety of interests to address the competing needs for our limited water resources.

6. Are the current uses of water and water-related resources sustainable and, if not, what institutional changes will enhance sustainable management?

ANSWER: Conflicts over water supplies that occur throughout the West, coupled with the expectation that demands will only increase, indicate that water management, conservation, and efficiency must improve in order for water supplies to remain sustainable. Section 210(b) of the Reclamation Reform Act and most Reclamation water service and repayment contracts executed after July 17, 1979 contain provisions requiring that partner districts prepare and submit water conservation plans. In addition to enforcing these requirements, Reclamation pursues a broad portfolio of actions to advance water conservation and efficiency and develop new water supplies in an efficient, cost effective and sustainable manner.

The Department of the Interior is actively engaged in activities to enhance the sustainable management of water and water-related resources. Secretary Salazar issued a Secretarial Order 3297 in February 2010, which established the WaterSMART Program calling for coordination across agencies, to integrate energy and water policies, and to ensure the availability of sound science and information to support decisions on sustainable water supplies. The program

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. The WaterSMART Program includes funding for cost-shared grants for water and energy management improvement projects, basin-wide efforts to evaluate current and future water supplies and demands, Title XVI Water Reclamation and Reuse projects, the establishment and expansion of collaborative watershed groups, and smaller-scale water conservation activities through the Water Conservation Field Services Program. Together, these programs form an important part of Reclamation's implementation of the SECURE Water Act (Subtitle F of Title IX of P.L. 111-11, the Omnibus Public Lands Management Act of 2009).

7. Within your testimony you state, "The mission of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public." How do you define, "in the interest of the American public," as it relates to the water developed, under contract, at a Reclamation facility?

ANSWER: Reclamation supports activities that deliver water and generate power, consistent with applicable State and Federal law, in an environmentally responsible and cost-effective manner. Overall, Reclamation's goal is to promote certainty, sustainability, and resiliency for those who use and rely on water resources in the West. Success in this approach will help ensure that Reclamation is doing its part to support the basic needs of communities, as well as provide for economic growth in the agricultural, industrial, energy and recreational sectors of the economy. Reclamation facilities that are authorized by Federal law store and deliver water for beneficial use by entities of the American public (water districts constituted under state law, Native American tribes, municipalities, etc.). Reclamation facilities also provide clean, renewable hydroelectric power and non-reimbursable public benefits such as recreation, flood control and habitat for fish and wildlife. Reclamation law also addresses Federal policy regarding issues such as contract terms, repayment obligations, and acreage limitations. Reclamation regards actions consistent with applicable State and Federal law and taken pursuant to a legal contract as consistent with the interest of the American public.

The overarching objective behind Reclamation's water-related contracting is to make the deliveries of water, according, in each instance, to applicable law and policy. To do this effectively, Reclamation must take into account each contractor's relevant needs and circumstances, the generally growing demand on the West's water supplies for municipal uses, demands on supplies for environmental needs, and Reclamation's obligation to Native American Tribes. Reclamation contracts must protect both the interests of the United States and those of its water users, while recognizing the relationship of its contracting activities to the numerous and complex issues facing the West (increasing urbanization, changing environmental issues, etc.). Reclamation ensures that the parties to its contracts share its understanding of

contract terms, that contracts protect the Federal investment and ensure that repayment of the reimbursable capital cost is made in accordance with Reclamation law, and that there is an understanding between Reclamation and its water users concerning the respective responsibilities and liabilities of the parties during times when the full amount of water under contract cannot be delivered are vital for protecting the interests of the United States, as well as those of the water users by allowing Reclamation to effectively and equitably deal with shortages in order contracts are "in the interest of the American public".

Re: Proposed changes to Reclamation policy

Questions regarding changes in the interpretation of Bureau of Reclamation Statutes:

Proposed new Reclamation Policies (currently, WTR P02) relating to "transfers" and "pricing," and the Directives and Standards related to those policies, would in a very significant way redefine "irrigation" as used in Reclamation statutes.

1. What are the problems the agency believes would be addressed by Reclamation's proposed changes in its interpretation of Reclamation statute?

   ANSWER: I believe these questions are referring to four separate Draft Reclamation Manual Policies and Directive and Standards (D&S): 1) PEC P05, Water-Related Contracts - General Principles and Policies; 2) PEC P09, Transfers of Project Water; 3) PEC 09-01, Conversions of Project Water from Irrigation Use to Municipal and Industrial Use; and 4) PEC 05-01, Water Rates and Pricing.[2] As discussed further below, the proposed changes: 1) better reflect the relevant authorizing statutes; 2) focus Federal subsidies on the activities they were intended to promote and avoid requiring power users to subsidize water for municipal golf courses, lawns, cemeteries, etc.; 3) potentially create additional sources of revenues for irrigation assistance and needed maintenance for aging project facilities; and 4) relieve non-agricultural irrigators of statutory limitations and requirements that apply to irrigation.

   Reclamation was created in 1902 to promote the growth of western populations and economies by assisting family farming through the provision of irrigation water. Congress authorized other water uses and project purposes later, but never extended the same levels of assistance to them. Consistent with Reclamation's formative purposes, with the statutory indications regarding what Congress has meant in using the term "irrigation" in Reclamation law, and with the 1982 statutory definition of "irrigation water," the draft Policies and D&Ss clarify that non-agricultural water uses do not qualify as "irrigation use" for the purposes of choosing the correct contracting authority, applying limits and requirements associated with irrigation, or providing certain types of financial assistance.

[2] http://www.usbr.gov/recman/Postinginventory.pdf

The Reclamation Reform Act of 1982 (RRA) defines "irrigation water" as "water made available for agricultural purposes." (96 Stat. 1263; 43 U.S.C. §390bb(5)) There are also other, less direct indications that Congress was referring specifically to agricultural irrigation when it used the word "irrigation" in Reclamation laws—for example, requirements regarding maximum and minimum acreages and acreage reporting; irrigation suitability and land classification; and former statutory residency requirements. These requirements cannot be applied logically to non-agricultural irrigation, such as golf courses, cemeteries, and parks, but nevertheless are and must be applied to them under current Reclamation policy.

Information gathered through a contract compliance review process underway since 2001 indicates that it is not uncommon for irrigation water to be delivered for non-agricultural, or municipal and industrial (M&I) use. The proposed revisions help Reclamation assure the consistent application of Reclamation law--specifically, the requirements that different classes of water are priced according to requirements in the Reclamation Projects Act of 1939.

2. What alternatives have been explored for addressing those problems?

ANSWER: The problems being addressed by the revisions to the Reclamation manual have developed over several years. In the past two decades, the Office of Inspector General (OIG) completed two audit reports: 1) *Repayment of Municipal and Industrial Water Supply Investment Costs, Bureau of Reclamation* (Report No. 92-I-1128) in 1992 and 2) *Followup of Recommendations Concerning Repayment of Municipal and Industrial Water Supply Investment Costs, Bureau of Reclamation* (Report No. 00-I-270) in 2000. Reclamation initiated the aforementioned contract compliance review process in response to these OIG audit reports' findings and recommendations. The draft Policies and D&Ss have resulted from these two OIG audit reports and the contract compliance review in order to ensure that Reclamation operates in accordance with current laws.

Reclamation initially set out to avoid providing irrigation subsidies clearly intended for farmers to other water users by adding charges to non-agricultural irrigators' rates. Because Reclamation is not authorized to charge interest on the project capital costs allocated to irrigation, it considered doing this through account charges. While this avoids the need for new contracts in many cases (those where M&I is not authorized under an existing contract), it does not conform the irrigation category to the RRA definition or solve the problems in applying irrigation limitations and requirements to non-agricultural uses. Objections to higher rates by non-agricultural irrigators are foreseeable; however, there is no clear statutory authority for creating two differently treated subcategories of Reclamation irrigation use. The statutory basis for distinguishing agricultural water use from other types of use is consistent throughout Federal Reclamation law. As noted in more detail below, under the proposed Policies and D&Ss, charges for non-agricultural water use are not

mandatory once all obligations for repayment of project construction costs have been met.

3. Do you have a complete list of the projects that have historically used project water as described in the current Reclamation policy, WTR P02, and as referred to in the 2001 memorandum to Regional Directors?

   ANSWER: A list of over 100 contractors so far identified as delivering irrigation water for non-agricultural irrigation purposes was sent to Committee staff at their request on November 12th of 2011 (attached). The list is organized by region, state, and project. It may not be a complete list; not all contractors have conducted contract compliance reviews with Reclamation yet, and relevant circumstances may have changed for some of those that have. From the reviews, Reclamation knows that non-agricultural use of irrigation water is not uncommon.

4. Will the Reclamation contractors within the "many" projects that have historically used project water as described in the current Reclamation policy, WTR P02, be grandfathered?

   ANSWER: Existing contractual terms will be honored, as stated in proposed D&S PEC 09-01. The Policies and D&Ss will be applied prospectively as new contracting actions occur.

Relationship of Bureau of Reclamation Policy with State Law:

1. How are the proposed new Reclamation Policies relating to "transfers" and "pricing," and the Directives and Standards related to those policies, consistent with the Congressional policy reflected in 43 U.S.C.A. § 390b?

   ANSWER: It is consistent with the policy reflected in 43 U.S.C. 390b in the same way that the existing Policy is consistent. The Water Supply Act of 1958, which is the source of the material codified at 43 U.S.C. 390b, did not repeal or modify the Federal contracting laws that distinguish between types of use for purposes of determining what type of contract is available and what the required terms and parameters are. Both the existing and proposed Policies and Directives and Standards address the relevant distinctions. That they draw the distinction between the two major use types differently does not cause any inconsistency with the policy stated at 43 U.S.C. 390b. The proposed revisions are designed to work within the provisions of the Water Supply Act, where applicable, and other conventions of Reclamation law and Congressional policy. Reclamation believes the proposed revisions to the Reclamation Manual are fully consistent with Congressional intent and policy.

Relationship of Bureau of Reclamation Policy with Project Water Rights and Contract Rights:

1. How are proposed new charges for use of project water consistent with beneficial ownership of the project water rights by water users?

   ANSWER: Charges for project water and the pricing distinctions based on type of use are not new, nor is the use of the data sources listed in the proposed pricing Directive and Standard (PEC 05-01). The proposed Directive and Standard would require that these sources be consulted, where available, and that thorough records be kept showing how proposed rates were determined.

   Depending on the project, some Reclamation facilities hold a state-issued water right, and other Reclamation facilities deliver water pursuant to a water right held by others. In the case of water rights owned by non-Federal entities, Reclamation law still requires reimbursement from the project beneficiary to the United States for costs associated with the construction and operation of the facility. The repayment of these costs is accomplished through water contracts. The type of contract that is required and what rate-setting parameters apply depends on the use of the water under the proposed Policies and Directives and Standards, as it does under the applicable laws. The proposed changes to the Reclamation Manual would be implemented prospectively when contracts for the delivery of water from Reclamation facilities are entered into, and are designed to be consistent with existing water rights.

2. Will these proposed new charges be imposed on paid-out projects? If so, how is that consistent with 43 U.S.C.A. § 390mm(a)?

   ANSWER: Construction charges will not be imposed on project water after payout, though contractors have the option to use M&I rates to accumulate funds for reimbursable costs associated with rehabilitation costs for aging infrastructure, safety of dams, and extraordinary operation and maintenance. The rate-setting Directive and Standard will be available to contractors as necessary for assistance in justifying the appropriate rates to be charged. The proposed policy revisions specifically allow project contractors to take advantage of this option after payout. Under the Miscellaneous Purposes Act of 1920, there is the additional option to accumulate these funds in the Reclamation Fund, to the credit of the project, after project payout, to be applied against future obligations. Operation and maintenance charges continue after payout, in accordance with law.

   Section 213 of the Reclamation Reform Act of 1982 (RRA), codified at 43 U.S.C. 390mm, relieves paid-out districts of the RRA's pricing requirements for lands above the acreage limit (and of the acreage limit itself). Other than full cost pricing for excess lands, the section is inapplicable to the question of charges after payout.

APA Implications:

1. Do the new Reclamation Policies relating to "transfers" and "pricing," and the

Directives and Standards related to those policies, require process as required by the APA? If not, please explain why such policies are exempt.

ANSWER: Reclamation policies serve to reflect the philosophy and principles of DOI and Reclamation leadership, and define the general framework in which Reclamation pursues its mission. 5 USC 553(b)(A) specifically states that "Except when notice or hearing is required by statute, this subsection does not apply ...to interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice." Despite this exemption from the APA for Reclamation Manual releases, Reclamation policy does require a 30-day public comment period on all proposed Reclamation Manual Policies and Directives and Standards. See Paragraph 5.A.(5) of Reclamation Manual Directive and Standard, Reclamation Manual (RM) Release Procedures RCD 03-01. In the case of the transfers and pricing policies, Reclamation has significantly extended the period for public comments, and has been very engaged in communicating with interested stakeholders to answer questions, provide information, and seek input.

2. What NEPA compliance is being done regarding these new policies?

ANSWER: These draft Policies and D&Ss meet the definition of an excluded action pursuant to the Department of the Interior's list of categorically excluded actions in 43 CFR 46.210 (i).[3]

Policy Consistency:

In 2005 the Secretary implemented Water 2025 to address prevention of conflicts about water in the West. One principle of that program was:

> Existing water supply infrastructure can provide additional benefits for existing and emerging needs for water by eliminating institutional barriers to storage and delivery of water to other uses. . . .

1. Is it possible that free markets administered on a local level could achieve similar efficiencies as those pursued by the policy relating to "transfers" and "pricing"?

ANSWER: The draft Policies and D&Ss specifically focus on facilitating transfers of water between willing buyers and sellers in a free market fashion, within the parameters set by Federal Reclamation law and relevant project authorities. Specifically, the draft Policies and D&Ss take a broad view of Reclamation's authority to facilitate transfers between irrigation and M&I uses, and allow the exercise of discretion based on sound financial and market principles in setting the appropriate rates for these two different types of uses. The establishment of rates for purposes of project repayment is specifically required to take into account market data for M&I rates. These rates are explicitly

[3] http://frwebgate1.access.gpo.gov/cgi-bin/TEXTgate.cgi?WAISdocID=OFJFgF/1/1/0&WAISaction=retrieve

to be set in a way that encourages beneficial transfers, while complying with the requirements for return of the Federal investment as established in Federal Reclamation law.

FROM SENATOR COONS

1. One of the issues the state of Delaware and the University of Delaware are working to address is climate change and the impacts it will have on our water resources, including saltwater intrusion, flooding, changes in rainfall patterns, and mobility of contaminants. What is the Department of Interior doing to work with states on climate adaptation and water resources management?

   ANSWER: The U.S. Geological Survey (USGS) is working directly with the State of Delaware and coordinating with the University of Delaware in research and monitoring of sea level rise, salt water intrusion and potential impacts to water resources and wetlands. USGS also provides State and university researchers and natural resources managers access to USGS data on other stressors such as contaminants, invasive species floods and droughts, and landscape change. In combination, this information is being used by USGS and its partners to develop and apply adaption strategies for climate change and to assist Delaware and other States in protecting sensitive estuarine environments.

   Specifically, the USGS maintains four tide gages around the Delaware Bay, and five tide gages in Delaware's Atlantic coastal bays. The USGS is an active participant in support of the Mid-Atlantic Region Council for the Oceans (MARCO). As part of these efforts, USGS is coordinating sea level rise and coastal inundation mapping as part of the State's revision of the coastal elevation map, overseen by David Carter of the Delaware Department of Natural Resources and Environmental Conservation (DNREC). Several USGS surface elevation tables (SETs) measure incremental elevation changes in sensitive tidal wetlands in the lower Delaware Basin. Real-time water quality data, which includes salinity, is made available to the States for seven stations on the Delaware Bay and three stations on the lower Delaware River. In addition, in collaboration with the Delaware Geological Survey, the USGS has conducted boat-based geophysical surveys of salt water intrusion on several of the Delaware coastal bays to ascertain potential impacts on water supplies.

   The Delaware River Basin has been chosen as one of only three pilot areas nationwide for the WaterSMART Availability and Use Assessment. Under this program, USGS will assess current and projected water use and availability for meeting both human and ecological requirements. Program components include development of estimates of consumptive use and evapotranspiration, monthly water use estimates for all river segments, and improved monitoring information.

   The USGS New Jersey Water Science Center (NJWSC) is working with the New

Jersey Department of Environmental Protection and the Delaware River Basin Commission (DRBC) on their statewide water supply master plan. The USGS is collaborating with Federal Emergency Management Agency (FEMA) throughout the Northeast to develop flood inundation maps using new, state-of-the-art technology that will define a clear baseline condition against which to assess the effects of climate change on hydrologic systems. In addition, the USGS has cooperative agreements with the DRBC for stream gages in the basin, and was involved in developing the Water Resources Plan for the Delaware River Basin, which discusses how the DRBC intends to address the effects of climate change on the water resources of the Basin. This plan is available at: http://www.state.nj.us/drbc/basinplan.htm. DRBC has also examined the effects of climate change on floods in the basin. USGS researchers have teamed with the DRBC to conduct research on modeling flooding within the Basin and potential flood mitigation using reservoirs within the Basin. We have worked directly with David Wunsch, Delaware State Geologist, and with NOAA to calibrate gages in Delaware to improve the accuracy of our monitoring and flow models. In 2010, USGS teamed with other Federal agencies in hosting workshops in Cambridge, Maryland and in Wilmington, Delaware on climate adaptation. The workshops attracted hundreds of participants from Federal, State and local agencies.

USGS has initiated the Northeast Climate Science Center (CSC), one of eight regional centers that brings together university and Federal research capacities to address climate adaption at the regional level. The Northeast CSC will focus its efforts on the development of climate and global change science in support of adaptation plans being developed by state, local and other management agencies. For example, the Northeast CSC will bring together the Federal, university and state-based research community to work directly on issues such as climate-driven impacts to the water resources of the Delaware Basin. These science efforts will build on existing initiatives so as to support the development of consistent approaches to climate-driven impacts across the region. More information on this priority effort underway at the Department of the Interior can be found at: https://necwsc.usgs.gov/.

In addition, through the WaterSMART Basin Studies program, Reclamation works with States, Indian tribes, local partners, and other stakeholders on a cost-share basis to identify adaptation and mitigation strategies to address the potential impacts of climate change in order to meet future water demands within river basins in the West.

2. Much of the discussion around hydraulic fracturing or "fracking" and water has centered around water quality, but I'd like to discuss water quantity. The Delaware River Basin Commission (DRBC) is in the process of developing regulations for development of the Marcellus Shale deposit in the Delaware River watershed. One of the issues they are concerned with is the significant amount of water required in the process and potential impacts on streamflow and water availability. While water resources are relatively plentiful in the East, we do

experience drought (as Delaware has on several occasions in the not so distant past), and there are many needs that must be met from our existing water supply. Could you discuss how the U.S. Geological Survey (USGS) is working with the DRBC as they develop new regulations, as well as what role they are playing in broader discussions of water supply and fracking?

ANSWER: The USGS is working with and providing information to the DRBC through several mechanisms. The USGS is one of several Federal partners working with and in support of the DRBC who meet on a quarterly basis to discuss and coordinate Basin-related issues. USGS is also a member of and currently chairs the Delaware Basin Federal Interagency Team (DBFIT), whose purpose is to enhance Federal coordination and communication as it relates to issues pertaining to the Delaware River Basin. This team makes recommendations to the Federal Commissioner on DRBC issues and other senior agency leaders for matters concerning the Basin, and provides a single coordinated voice on issues. The DBFIT has a sub-team that addresses issues pertaining to energy development in the Basin and a USGS Water Science Center Director chairs this group. Through ongoing forums and other communications, the USGS regularly provides input to the Federal Commissioner of the DRBC. The USGS has been a participant in the review of DRBC's draft natural gas development regulations. Additionally, through USGS stream gages, groundwater monitoring wells, and basin flow models, DRBC has access to water information that informs their decision making.

USGS is a critical player in water supply discussions in relation to hydraulic fracturing through serving several different functions. For instance, the USGS is leading the effort to develop a Federal agency Comprehensive Plan to assess the environmental effects of Marcellus Shale gas exploration and production in the Delaware, Susquehanna, and Ohio River basins. The potential effect of shale gas production on water quantity is a component of this study. The USGS is also working with the US EPA and DOE to develop a national Federal research program for unconventional hydrocarbons in relation to hydrofracturing. The USGS Office of the Delaware River Master, established by U.S. Supreme Court Decree in 1954, is responsible for administering provisions of the Decree relating to yields, releases, and diversions of water from the New York City reservoirs into the headwaters of the Delaware River and to conserve the Delaware River, its tributaries, and the New York City reservoirs in the Delaware River Basin. The USGS WaterSMART initiative described in response to question #1 will provide a vehicle to measure and calibrate water use and water supply (e.g. ecological flows). These data collection and analysis efforts are being undertaken through a combination of partnerships among Federal, State, NGO, and local programs, and are providing a baseline of information, including water availability, for assessing the effect of hydraulic fracturing on water resources.

Region	State	Project	Year	Contractor	Non-Ag Use Identified	Notes
PN	Idaho	Boise	2011	Pioneer Irrigation District	Yes	Approximately 20 schools, 2 cemeteries, parts of 3 golf courses, and parks in the Cities of Caldwell and Nampa
			2009	Settlers Irrigation District	Yes	15 schools, 1 cemetery, and 11 parks in the Cities of Boise and Meridian.
			2008	Noble Ditch Co.	Yes	1 school and the City of Fruitland (83 shares)
				Big Bend Irrigation District	Yes	8 accounts (out of 34) of 10 acres or less, but 6 of less than 5, which the District does not treat as agricultural property for tax purposes. Checklist identifies 1.42 acres as noncommercial, but states that the water is for pasture.
			2007	Farmers Cooperative Irrigation Co.	Yes	1 cemetery (20 shares), schools (10 shares), parks (50 shares), the Payette County Fair (18 shares), nurseries (30 shares), and the Cities of New Plymouth (13 shares) and Fruitland (53 shares). A substantial majority of accounts are for tracts of less than 10 acres.
				Boise-Kuna Irrigation District	Yes	6 schools, 2 cemeteries, 4 parks, the City of Boise (85.04 acres), the City of Kuna (1,200 acres), the City of Nampa (250 acres), and the City of Melba (36 acres). 2,913 accounts, out of 3,943, for tracts of 10 acres or less.
				Emmett Irrigation District	Yes	Reviewers state that the number of subdivisions and water users associations served within the District has increased greatly in recent years to a total of approximately 46. Also, the District provides service to 2 cemeteries (39 acres), 1 school (14 acres), and 2 parks (8 acres) (though the parks are covered by contract). 1,456 parcels, out of 1,924 accounts, of less than 10 acres, with 600 of one acre or less.
			2006	Wilder Irrigation District	Yes	1 golf course, 1 school, and 2 cemeteries.
			2004	Black Canyon Irrigation District	Yes	In 2003, project irrigation water was delivered to 1,360 acres of subdivisions, 144

						acres at Purple Sage Golf Course, and 13 acres of school parcels in the City of Notus.
		Lewiston Orchards	2004	Lewiston Orchards Irrigation District	Unclear	Reviewers stated that all deliveries were in accordance with the contract without addressing any distinction between commercial and noncommercial irrigation.
		Little Wood River	2010	Little Wood River Irrigation District	Yes	520 acre-feet including 2 parks, 1 school, and 1 fairground, totaling about 8 to 10 acres; approximately 60 acres of town lots, each of less than 3 acres.
		Michaud Flats	2003	Falls Irrigation District	Yes	District reported 436.6 acres of non-agricultural irrigation to lawns, gardens, farmsteads, roads, ditches, drains, subdivisions, dairies, feedlots, and 1 school. No major urbanization has occurred, and is impossible because district is hemmed in by geographical features and an Indian reservation.
		Mann Creek	2006	Mann Creek Irrigation District	Yes	1 cemetery of 2.1 acres. 59 of 115 users on tracts of 10 acres or less.
				Monroe Creek Irrigation District	No	10 of 26 users on tracts of 10 acres or less.
		Minidoka and Palisades	2011	Island Irrigation Co.	No	
				Snake River Valley Irrigation District	Yes	District reported 15 acres serving two cemeteries, 88 acres serving schools in Shelley, 45 acres serving schools in Firth, 45 acres serving City of Blackfoot. District reports serving approximately 20,641 acres in water year under review (2010).
				Long Island Irrigation Co.	Yes	Company reports serving 190.5 shares (190.5 miner's inches) to a water user assoc. (specific uses not noted, but listed as non-commercial irrigation); 59.53 shares held by cemetery but "leased for irrigation use elsewhere."
				Peoples Canal and Irrigation Co.	Yes	Checklist notes "a few small parcels serving Moreland Cemetery, the Snake River School District, and 3 or 4 home owners associations."

			2010	Aberdeen-Springfield Canal Co.	Yes	192 account of less than 10 acres. Reviewers state that "The Company serves noncommercial irrigation uses including 2 cemeteries, 2 schools, and 2 water users associations."
				Burgess Canal and Irrigation Co.	Yes	Reviewers report that 6 to 10% of parcels served are less than 10 acres and the Company delivers irrigation water to "a few small parcels serving 3 small parks, a mini golf course, and some water users associations."
				Pioneer Irrigation District	Yes	District reported service to approximately 20 schools, 2 cemeteries, parts of 3 golf courses, and parks in the Cities of Caldwell and Nampa.
				Broadway Irrigation Co.	Yes	Serves 95% residential homes. Largest user of other 5% is a garden nursery.
				Harrison Canal and Irrigation Co.	Yes	Some shares owned by LDS Church and some small parcels served by City of Ucon.
				Milner Irrigation District	No	35 accounts of 10 acres or less
				Mitigation, Inc.	No	
			2009	Texas Slough Irrigating Canal Co.	Yes	30 out of 42 accounts are 10 acres or less. LDS Church holds one share of District water.
				Enterprise Irrigation District	No	5 accounts (out of 56) of 10 acres or less.
				Liberty Park Irrigation Co.	No	11 accounts (out of 66) of less than 10 acres or less.
			2008	Enterprise Canal Co.	No	58 accounts (out of 171) of 10 acres or less.
				Palisades Water Users, Inc.	No	
			2007	New Sweden Irrigation District	Yes	1 cemetery (4 acres), 1 school and 1 park totaling 5 acres, 800 acres owned by the City of Idaho Falls, and 1 water users association with 8 acres. 651 accounts with tracts of less than 6 acres.
				Idaho Irrigation District	Yes	2 cemeteries, 2 golf courses, 3 schools, and two water users associations with a total of 59

						acres. 1,101 accounts with tracts of 7.5 acres or less.
				North Side Canal Co.	Yes	2 cemeteries, 2 golf courses, 9 schools, 4 cities with a total of 2,316.72 shares, and 110 subdivisions with 4,613 shares.
			2006	Blackfoot Irrigation Co.	Yes	1 school, 1 church, fairgrounds.
			2006	Twin Falls Canal Company	Yes	Reviewers indicate that stockholders are putting water to noncommercial irrigation uses but do not provide details. 2,772 accounts out of 4,385 on tracts of 10 acres or less
			2005	American Falls Reservoir District	Yes	Provides water to residential subdivisions. Reviewers state that Shoshone is a bedroom community of Sun Valley, ID, and more development is expected. Two new housing subdivision of 7 to 8 homes each had been approved recently befor3e the review.
				Butte and Market Lake Canal Co.	Yes	Some deliveries to lots for gardens, yards, and fruit trees. About 3% water delivered to small tracts.
				Progressive Irrigation District	Yes	Reviewers state that there has been significant urbanization since contract execution. At the time of the review, there were 75 housing subdivision, 8 commercial subdivisions, and 2 golf courses receiving water, along with an unspecified number of schools, cemeteries, and churches. 1327 users, out of 2119, are "minimum assessments of 4 acres or less," accounting for 1958 acres in the District.
			2004	Burley Irrigation District	Unclear	Reviewers do not directly address irrigation subcategories, but do state that urbanization is occurring and that, according to the District manager, there have been subdivisions. 1,143 lots, out of 1,769, of 5 acres or less.
			2003	Minidoka Irrigation District	Yes	Roads, schools, Wal-Mart, freeways, etc., though District exceeded acreage limitations and was planning to eliminate these to get within limits. District also served 2 golf courses. Has accounts of 5 acres or less, but

						charges these as non-agricultural a in accordance with state definition.
			2002	A&B Irrigation District	Yes	Farm units have decreased from 661 to 415, with 201 residential tracts. 2001 census reported 2,253.9 non-agricultural acres, including family orchards, gardens, hobby farms, landscaped areas, etc.
		Minidoka and Teton Basin	2009	Fremont-Madison Irrigation District	Yes	954 accounts (out of 1,917) of 10 acres or less. District delivers to "13 subdivisions," and 3 golf courses, 7 schools, and 2 cemeteries.
		Rathdrum Prairie	2009	East Greenacres Irrigation District	No	
	Idaho and Oregon	Owyhee	2003	Gem and Ridgeview Irrigation Districts	Yes	1 cemetery, 2 city parks, and an unspecified number of schools. Manager estimates that less than 5% of acres served were non-agricultural. 118 accounts of 1 acre of less.
	Oregon	Baker	2005	Baker Valley Irrigation District	Yes	District Manager stated that there had been 100 acres in subdivisions in the past and noted that "some of the best agricultural ground [was] being converted to urban uses." Reviewers indicated that urban development was pushing the urban boundary outward, into the agricultural areas. The reviewers also noted that "If non-commercial irrigation is considered to be an unauthorized use of irrigation water by Reclamation, water users putting project water or project facilities to a non-commercial use will have to be identified..."
		Crooked River	2007	Low Line Ditch Co.	No	
			2005	Peoples Irrigation Co.	Unclear	Reviewers state that Company does not deliver to noncommercial irrigation uses, but then notes that noncommercial uses will have to be identified if irrigation definition changes. 19 accounts, out of 34, of less than 10 acres.
				Ochoco Irrigation District	Yes	Crop census report shows 2,919 acres of non-agricultural acres, stating that these include

						family orchards and gardens, hobby farms, landscaped areas, etc. District provided information showing 8 city parks, several county schools, the county road department, the county cemetery district, 1 golf course, and 604 accounts of 10 acres or less. District manager mentioned 166 users with 1 acre or less, with 2/3 being subdivisions and the rest scattered throughout the District. Water is distributed through both open ditches and pipes.
		The Dalles	2006	The Dalles Irrigation District	Yes	2 churches (2.8 acres and 3.7 acres, respectively) and one cemetery of 28.2 acres, of which 25 acres are farmed. Approximately 31 acres of tracts of less than 10 2 acres each.
		Deschutes	2008	Crook County Improvement District No. 1	Yes.	4 of 19 customers with tracts of less than 10 acres. .75 acre parcel for lawn and garden use.
				Arnold Irrigation District	No	
			2007	Central Oregon Irrigation District	Yes	Reviewers reported that the District supplies project irrigation water to a variety of noncommercial irrigators, such as parks, schools, cemetery, golf courses, and small tracts.
			2002	N. Unit Irrigation District	Yes	1 nursery, 1 golf course, 1 driving range, 1 county park, and small tracts. District estimated less than 1% of water in non-agricultural uses. 190.9 acres in accounts with 2 acres or less, 550.2 acres in accounts of 3 – 10 acres.
		Owyhee	2002	Owyhee Irrigation District	Yes	2 sod farms, 2 golf courses, 1 cemetery, and 1 school in Adrian. 186 accounts under 2 acres, 290 of 2 – 5 acres, and 373 of 5 – 10 acres.
		Rogue River Basin	2003	Medford Irrigation District	Yes	6 golf courses, "a few playgrounds," and 2 cemeteries. 1,220 acounts, out of 1,678, under 5 acres and 188 between 5 and 10 acres.
				Talent Irrigation District	Yes	1 golf course, city parks, cemeteries, and schools in Cities of Talent, Ashland, and

						Phoenix. 3,726.5 acres in accounts of less than 5 acres each.
				Rogue River Valley Irrigation District	Yes	2 golf courses, city parks, and schools in the Cities of Medford and Central Point. 496 accounts of less than 5 acres and 187 between 5 and 10 acres.
		Tualatin	2004	Tualatin Valley Irrigation District	Yes	5 golf courses. 92 parcels of less than 11 acres, for total of 512.7 acres. Also serves water to other non-agricultural purposes under letter agreements with Reclamation.
		Umatilla	2009	West Extension Irrigation District	Yes	838 accounts (out of 937) of 10 acres or less. 1 golf course in Morrow County, 1 school, and 1 park in the City of Irrigon.
				Westland Irrigation District	No	175 accounts (out of 267) of 10 acres or less.
			2004	Hermiston Irrigation District	Yes	1 school (40 acres). 966 of 1,144 accounts are 10 acres or less.
				Stanfield Irrigation District	Yes	1 school (4.2 acres), 2 cemeteries (11.5 acres). 137 of 252 accounts are 10 acres or less.
		Vale	2005	Vale Oregon Irrigation District	Yes	1 cemetery (2 acres), 1 school (6.59 acres). 35 users, out of 337, on small tracts.
	Washington	Chief Joseph	2007	Whitestone Reclamation District	No	
			2005	Bridgeport Bar Irrigation District	Yes	The contract allows irrigation water for "4H land," which is land designated suitable for residences, rather than agriculture. The contract provides for 385 acres of 4H land, versus only 43 acres of "4F land," which is designated suitable for fruit production. The project is irrigation-only.
			2003	Lake Chelan Reclamation District	Unclear	Not addressed.
				Brewster Flat Irrigation District	Unclear	Not addressed.
			2002	Greater Wenatchee Irrigation District	Unclear	Not addressed.

		Columbia Basin	2008	E. Columbia Basin Irrigation District	No	
			2007	S. Columbia Basin Irrigation District	Yes	5 dairies
		Rathdrum Prairie	2005	Dalton Gardens Irrigation District	Unclear	Desktop review (in-house, rather than onsite) and reviews state that the only authorized purpose is irrigation, therefore all deliveries are for irrigation.
			2004	Avondale Irrigation District	Yes	Reviewers state: "A lot of urbanization has taken place and water that was once used for agricultural crop irrigation is now being used for watering lawns and gardens. District personnel stated that the largest irrigated tract of land they have is 9 acres, with most tracts sizes being .25 acres."
				Hayden Lake Irrigation District	Yes	Reviewers state: "A lot of urbanization has taken place and water that was once used for agricultural crop irrigation is now being used for domestic purposes as well as irrigation of smaller tracts of land. The District stated that the largest irrigated tract of land they have is 20 acres and the tract sizes range from there down to .14 acres."
		Yakima	2010	Cascade Irrigation District	No	
				Union Gap Irrigation District	No	
			2009	West Side Irrigating Co.	Yes	Company estimates that 30% of deliveries are noncommercial irrigation.
			2008	Yakima Valley Canal Co.	No	
				Naches-Selah Irrigation District	No	
				Selah-Moxee Irrigation District	Yes	40% noncommercial irrigation.
				Terrace Heights Irrigation District	Yes	40% noncommercial irrigation
			2007	Sunnyside Valley	Yes	Plans for subdivisions, and 2 present golf

				Irrigation District		courses. District estimated that 60 acres have changed to noncommercial irrigation in recent years, but also stated that it does not track uses.
			2006	Benton Irrigation District	No	
			2005	Roza Irrigation District	Unclear	Desktop review (in-house, rather than onsite) and reviews state that the only authorized purpose is irrigation, therefore all deliveries are for irrigation.
			2004	Kittitas Reclamation District	Unclear	Reviewers do not address use distinction.
			2003	Yakima-Tieton Irrigation District	Yes	10 – 15% of acres had changed to non-agricultural irrigation, such as lawns and gardens, small pastures, etc.
			2002	Kennewick Irrigation District	Yes	Reviewers state that "The percentage of non-commercial agriculture has increased substantially over the term of the contract," but elaborate only by stating that 9,608 accounts were for 5 acres or less, accounting for over half of the District's total acreage (10,593 acres out of 20,201 total). 5 acre tracts are non-agricultural under state law, but not necessarily under federal law related to contract type available and pricing and other contractual matters. Kennewick has commented on the proposed policy and stated that it has a significant amount of non-agricultural irrigation.
MP	California	Cachuma	2006	Montecito Water District	No	
				Goleta Water District	No	
				Carpinteria Valley Water District	No	
			2005	Santa Ynez Water Conservation District,	No	Contract definitions align with relevant law and proposed policy.

				Improvement District No.1		
		CVP (Note: most CVP contracts define "irrigation water" as "water which is used primarily in the production of agricultural crops or livestock," in accordance with the RRA definition. They define M&I to include things like landscaping and pasture animals kept for personal enjoyment, and water delivered to landholdings of less than a stated minimum acreage (usually 5 acres). The CO can determine that tracts of less than 5 acres are eligible to receive irrigation water. Overall, the typical CVP contract already aligns well with the relevant law and the proposed policy. The Majority of contractors have systems in place to collect information from their water users that is required to confirm that they are complying with terms of delivery, including those imposed by the contractor's contracts with Reclamation. Based on the CCR findings and documentation the region provides with their completed checklists, these systems tend to work well.)	2010 2003	Arvin Edison Water Storage District	No	Reviewers note 2 potential project M&I water users—a golf course and something called "East Niles," but that these had so far been served by ground water.
			2010 2004	Madera Irrigation District	No	
				Patterson Irrigation District	No	
				San Benito County Water District	No	
			2010	Santa Clara Valley Water District	No	
				Stockton East Water District	No	
			2010 2007	Stony Creek Water District	Yes	257 acre-feet of 549 acre-feet of irrigation water delivered in water year under review (2009) were to rescue facility for abused farm animals.
			2010 2002	Colusa County Water District	No	Had delivered to a golf course but had either discontinued or changed to M&I (unclear form checklist).
			2009	County of Fresno	No	
				Lewis Creek Water District	No	
			2009 2007 2003	Natomas Central Mutual Water Co.	No	Though reviewers state that future reviews are warranted because the Company is being surrounded by development as the population of the Greater Sacramento area grows.
			2008 2003	Bella Vista Water District	Yes	Reviewer's consensus was that very little irrigation in the District was commercial agriculture, and that the predominant use was appeared to be rural residential.
				Westlands Water District	No	
			2008 2004	Clear Creek Community	Yes	Reviewer's consensus was that very little irrigation in the District was commercial

				Services District		agriculture, and that the predominant use was appeared to be rural residential.
			2008	Tranquility Irrigation District	No	
				International Water District	No	But reviewers recommend regular reviews due to area urbanization.
				San Luis Water District	No	Reviewers state that regular review is warranted due to urbanization and known development projects.
			2007	Byron-Bethany Irrigation District	No	
			2006	Tulare Irrigation District	No	
				Porterville Irrigation District	No	
				Panoche Water District	No	
				Lindmore Irrigation District	No	
				Garfield Water District	Yes	101 acre-feet to home owners assoc., revised to M&I in accordance with contract terms.
				Feather Water District	No	
				Del Puerto Water District	No	Delivers M&I water for landscaping.
			2007 2005	Rag Gulch Water District	No	
				Kern-Tulare Water District	No	
			2005	Ivanhoe Irrigation District	No	
				Meridian Farms Water Co.	No	
				Anderson-Cottonwood Irrigation District	No	
				Southern San Joaquin	No	

				Municipal Utility District		
				W. Stanislaus Irrigation District	No	
				Orange Cove Irrigation District	No	
			2007 2005 2003	Westside Irrigation District	No	Reviewers noted that the District lands were being progressively annexed into the City of Tracy, and that the additional revenues from the higher M&I rates were allowing the District to charge lower irrigation rates of its remaining customers.
			2004	Santa Clara Valley Water District	No	
				San Luis Water District	No	
				Lindsay-Strathmore Irrigation District	No	
				Kanawha Water District	No	
				Fresno Irrigation District	No	
			2007 2004	Dunnigan Water District	No	
			2007 2003	Banta Carbona Irrigation District	No	
				Corning Water District	No	
				Shafter-Wasco Irrigation District	No	District delivers M&I water to cemeteries, parks, and golf courses.
				Terra Bella Irrigation District	No	
				County of Tulare	No	
			2002	El Dorado Irrigation District	No	
				Plainview Water District	No	About 10% of lands have converted to M&I, in accordance with the contracts terms.

				Delano-Earlimart Irrigation District	No	Reclamation performed field compliance check on two small parcels that were paying M&I and determined that they were viable agricultural enterprises eligible to receive irrigation water.
		Solano	2009	Solano County Water Agency	No	Contract definitions align with relevant law and proposed policy.
			2001	Solano Irrigation District	No	Does provide agricultural water for plant nurseries. This is not expressly deemed M&I under proposed policy. Contract has been interpreted to permit it.
	California-Oregon	Klamath	2009	Klamath Drainage District	No	
				Tulelake Irrigation District	Yes	Tulelake High School (17 acres), Grade School (14 acres), Fairgrounds (31 acres).
			2007	Enterprise Irrigation District	No	
				Klamath Irrigation District	No	
LC	Arizona	Boulder Canyon	2011 2001	Mohave Valley Irrigation and Drainage District	No	
			2009 2004	Coachella Valley Water District	Yes	But there is no charge for water and no contractual distinction in types of use.
				Cibola Valley Irrigation & Drainage District	No	Contract defines "agricultural water" as water for commercial agricultural uses on tracts of at least 5 acres.
		CAP	2011 2002	New Magma Irrigation & Drainage District	No	Contract defines "agricultural water" as water for commercial agricultural uses on tracts of at least 5 acres. 2002 Reviewers state that the District needs to be monitored on an annual basis to ensure that water is delivered according to the agricultural definition due to rapid urbanization in the area.
			2011	Maricopa-	No	Contract defines "agricultural water" as water

			2003	Stanfield Irrigation & Drainage District		for commercial agricultural uses on tracts of at least 5 acres.
				Tonopah Irrigation District	No	Contract defines "agricultural water" as water for commercial agricultural uses on tracts of at least 5 acres. 2003 review noted rapid urbanization and found that District had not been fully reporting M&I water uses.
			2010 2002	Chandler Heights Citrus Irrigation District	No	
				Queen Creek Irrigation District	No	Contract defines "agricultural water" as water for commercial agricultural uses on tracts of at least 5 acres. 2002 Reviewers state that the District needs to be monitored on an annual basis to ensure that water is delivered according to the agricultural definition due to rapid urbanization in the area.
				San Tan Irrigation District	No	Contract defines "agricultural water" as water for commercial agricultural uses on tracts of at least 5 acres.
			2003	Hohokam Irrigation & Drainage District	No	
				Central Arizona Irrigation & Drainage District	No	
			2007 2002	Central Arizona Water Conservation District	No	
		Gila	2008 2003	N. Gila Valley Irrigation & Drainage District	No	
				Yuma Irrigation	No	

				District		
				Yuma-Mesa Irrigation & Drainage District	No	
			2006 2001	Wellton-Mohawk Irrigation & Drainage District	No	
		SRPA	2010	Gila River Farms	No	
		Yuma	2008 2003	Yuma County Water Users Assoc.	No	
		Yuma Auxiliary	2008 2003	Unit B Irrigation & Drainage District	No	
	California	Boulder Canyon	2009 2004	Imperial Irrigation District	Yes	But there is no charge for water and no contractual distinction in types of use.
				Palo Verde Irrigation District	Yes	
		SRPA	2009	Eastern Municipal Water District	No	
				Elsinore Valley Municipal Water District	No	
UC	New Mexico	Carlsbad and Brantley	2010 2003	Carlsbad Irrigation District	No	
		Middle Rio Grande	2008	Middle Rio Grande Conservancy District	Unclear	No charges for water.
		San Juan-Chama	2010 2003	Pojoaque Valley Irrigation District	Unclear	Not addressed.
			2010	Town of Red River	No	
		Ft. Sumner	2004	Fort Sumner Irrigation District	No	
		Tucumcari Project	2004	Arch Hurley Conservancy District	Yes	Through 3rd-party contracts. The authority for the District to sell water for M&I but pay irrigation rates to the U.S. has to be

						examined.
		Vermejo	2003	Vermejo Conservancy District	No	
		Hammond	2003	Hammond Conservancy District	No	
	Colorado	Paonia	2010 2002	NN. Fork water Conservancy District	No	
		Grand Valley	2010 2001	Grand Valley Water Users Assoc.	Yes	The Association delivers water to a natural gas refinery, a private golf course, the county/city airport for landscaping, subdivision homeowners associations, and a city park.
		Silt	2010 2004	Silt Water Conservancy District	Unclear	Not addressed
		San Luis Valley	2008	Conejos Water Conservancy District	No	
		Collbran	2005	Collbran Conservancy District	Unclear	Project authority includes M&I but contract does not. Reviewers note this, but don't specify whether any of District's irrigation water is used for noncommercial irrigation.
		Dolores (CRSP)	2005	Dolores Water Conservancy District and Ute Mt. Ute Tribe	No	Contract defines "irrigation water" in line with RRA and proposed policy. It does allow for small tracts of irrigable land, which still aligns with policy so long as the land is used to produce agricultural goods for commercial purposes.
		Fruitgrowers' Dam	2005	Orchard City Irrigation District	Yes	District estimated less than 25% was noncommercial irrigation.
		Uncompahgre	2004	Uncompahgre Valley Water Users Association	No	Noncommercial irrigation authorized by Congressionally approved contract.
		Dallas Creek	2004	Tri-County Water Conservancy District	No	
		Pine River	2004	Pine River	Yes	PRID's urban irrigation policy describes how

				Irrigation District and Southern Ute Indian Tribe		PRID water will no longer be used for crop irrigation, but would be used for urban type irrigation such as ball fields, parks, common areas, raw water systems to irrigate lawns, etc.
		Smith Fork	2003	Crawford Water Conservancy District	No	But reviewers state that District records show only quantity diverted, released, and delivered. Reviewers note that the number of large farms in the District is declining.
		Bostwick Park	2003	Bostwick Park Water Conservancy District	No	
		Florida	2003	Florida Water Conservancy District and Southern Ute Indian Tribe	No	
	Idaho	Preston Bench	2010 2002	Preston, Riverdale, and Mink Creek Canal Co.	Unclear	Follow-up needed; ditch rider's health issues inhibit reviewers' ability to obtain needed information.
	Utah	Central Utah	2010 2005	Central Utah Water Conservancy District	Yes	Reviewers did not separately record non-agricultural uses, but attached a letter from the Region notifying the District of WTR P02 and confirming authority to deliver project irrigation water for noncommercial irrigation uses, in answer to the District's request.
		Moon Lake	2008	Moon Lake Water Users Assoc.	Yes	1% noncommercial irrigation.
		Newton	2010 2005	Newton Water Users' Assoc.	Yes	Reviewers' comments are somewhat confusing, stating that 30% of deliveries in 2004 were for commercial use, but only 45 acre-feet were delivered for noncommercial uses.
		Ogden River	2010 2003	Ogden River Water Users Assoc.	Yes	District staff estimated approximately 60% of water used non-commercially, i.e., for watering lawns, gardens, small tracts, etc.
		Provo River	2005	Provo River Water Users'	Yes	45,527 for "culinary." The Association has commented on the proposed policy changes

				Assoc.		stating that it does not believe it is affected by them. Art. 14 of its contract expressly acknowledges the Association's ability to use the 1920 Act for delivery of irrigation water for other uses.
		Strawberry Valley	2008	Strawberry Valley Water Users Assoc.	Yes	About 1/3 delivered for noncommercial irrigation.
		Sanpete	2007	Horseshoe Irrigation Co.	No	
				Ephraim Irrigation Co.	No	
		Weber Basin	2005	Weber River Water Users Assoc.	Yes	16,000 acre-feet to noncommercial irrigation uses. Assoc. is aware of 1920 Act for use in delivering M&I water under its irrigation-only contract.
			2011 2004	Weber Basin Water Conservancy District	Yes	During 2011 review, District expressed concern over noncommercial irrigators having to comply with RRA regulatory requirements.
		Scofield	2006	Carbon Water Conservancy District	No	
		CUP	2004	Uintah Water Conservancy District	No	"Irrigation water" defined as "water made available to irrigators for use primarily in the commercial production of agricultural crops and livestock."
		Emery County	2003	Emery County Water Conservancy District	No	
		Hyrum	2003	S. Cache Water Users Assoc.	Unclear	Reviewers state that contract defines "irrigation" as "water sued for commercial production of agricultural crops," but do not specify sues and go on to say that the Association's water use is consistent with WTR P02, not with the contract definition.
	Wyoming	Eden Valley	2006	Eden Valley Irrigation and Drainage District	Yes	1 to 2% of deliveries for noncommercial irrigation.

GP	Colorado	Frying Pan-Arkansas	2011 2002	Southeastern Colorado Water Conservancy District	No	
		C-BT	2003	Northern Colorado Water Conservancy District	Unclear	Reviewers are not clear on this, but do note use of 1920 Act authority. This does not clarify what uses are deemed irrigation or M&I.
	Kansas	PSMBP, Solomon	2010	Kirwin Irrigation District	No	
		Almena	2010 2005	Almena Irrigation District	No	
		Harlan County Dam, Lovewell Dam	2006	Kansas Bostwick Irrigation District No. 2	No	
		Webster	2005	Webster Irrigation District No. 4	No	
		Glen Elder	2004	Glen Elder Irrigation District No. 8	No	
		PSMBP, Kirwin	2003	Kirwin Irrigation District	Unclear	Not addressed and review done by desktop.
	Montana	Buffalo Rapids	2005	Buffalo Rapids Irrigation District No. 1	Yes	Subdivision and a golf course near the City of Glendive, MT.
				Buffalo Rapids Irrigation District No. 2	No	
		Milk River	2008	Paradise Valley Irrigation District	No	
				Dodson Irrigation District	No	
				Zurich Irrigation District	No	
			2007	Malta Irrigation District	No	
				Harlem Irrigation District	Unclear	Reviewers state that all deliveries were for crops but also state that records were inadequate to document types of use.

			2003	Glasgow Irrigation District	Unclear	Not addressed.
		PSMBP, Crow Creek	2005	Toston Irrigation District	No	
		Sun River Irrigation	2004	Ft. Shaw Irrigation District	No	
				Greenfields Irrigation District	No	
		PSMBP, Canyon Ferry	2004	N. Helena Water Supply, Inc.	Unclear	Not addressed, but reviewers note that "If lands change from commercial agriculture to suburban use, lawns and gardens payment in advance is to be announced by contracting officer."
		PSMBP, Yellowstone	2002	Savage Irrigation District	No	
	Montana and N. Dakota	Lower Yellowstone	2003	Lower Yellowstone Irrigation Districts nos. 1 & 2	No	
	Nebraska	Mirage Flats	2011	Mirage Flats Irrigation District	No	
		PSMBP, Sandhills	2010 2004	Ainsworth Irrigation District	No	
		N. Platte	2008	Farmers Irrigation District	No	
				Gering Irrigation District	No	
			2007	Brown's Creek Irrigation District	No	
				Beerline Irrigation Canal Company	No	
			2004	Gering Ft. Laramie Irrigation District	No	
				Pathfinder Irrigation District	Unclear	Reviewers do not address, but do state that "For water year 2003 the Pathfinder Irrigation District received a net supply of 281,514 acre-feet with a farm delivery of 101,376 acre-

						feet." Since the contract does not provide for M&I, either the District lost well over half its water to transportation losses, or it delivered irrigation water for other uses.
		PSMBP, N. Loup	2007	Twin Loups Irrigation District	No	
		Medicine Creek, Trenton, and Red Willow	2007	Frenchman Cambridge Irrigation District	No	
		Enders Dam	2006	Frenchman Valley Irrigation District	No	
	N. Dakota	PSMBP, Buford-Trenton	2007	Buford-Trenton Irrigation District	No	
		PSMBP, Ft. Clark	2011 2003	Ft. Clark Irrigation District	Unclear	Not addressed. Reviewers note that irrigation within district has declined substantially over the life of the contract, but do not elaborate.
		PSMBP, Heart Butte	2005	Lower Heart Irrigation District	No	
				Western Heart River Irrigation District	No	
	Oklahoma	W.C. Austin	2004	Lugert-Altus Irrigation District	No	
	S. Dakota	PSMBP, Angostura	2010	Rapid City and S. Dakota Rapid Valley Water Conservancy District	No	
			2010 2003	Angostura Irrigation District	No	
		PSMBP, Hilltop	2007	Hilltop Irrigation District	No	
		PSMBP, Grey Goose	2006	Gray Goose Irrigation District	No	
		Rapid Valley	2003	Rapid Valley Water Conservancy District	Unclear	Non-agricultural use is not clearly addressed. Reviewers do recommend regular follow-up with District due to urbanization.
	Wyoming	PSMBP, Glendo	2011	Burbank Ditch	No	

				Wright & Murphy Ditch	No	
		PSMBP, Highland-Hanover	2010	Highland-Hanover Irrigation District	No	
				Upper Bluff Irrigation District	No	
		PSMBP, Keyhole	2006	Crook County Irrigation District	No	
		PSMBP, Riverton	2003	Midvale Irrigation District	Yes	District issued 175 lawn and garden permits in 2002.
		PSMBP, Owl Creek	2002	Owl Creek Irrigation District	No	
		N. Platte	2006	Chimney Rock Irrigation District	No	
				Central Irrigation District	No	
			2005	Goshen Irrigation District	Yes	Approximately 127.4 acre-feet to subdivisions, though it's not clear whether any are farmed.
				Hill Irrigation District	No	
				Rock Ranch Irrigation Ditch Co.	No	
		Shoshone	2003	Willwood Irrigation District	Yes	District gives water to county for road work at no cost. 53 tracts of 9 acres or less.
		Kendrick	2001	Casper Alcova Irrigation District	Yes	1 cemetery (36.6 acres). Reviewers noted a conversion of 156 acre-feet from irrigation to noncommercial irrigation without elaborating. District also reported 1,174 acre-feet as "non-irrigation," but not as M&I. The District delivers irrigation water 76 acres on 2 tree farms, but this is not expressly non-agricultural under the proposed policy.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN 18 2012

TAKE PRIDE IN AMERICA

The Honorable Jeff Bingaman
Chairman
Committee on Energy and Natural Resources
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 Thursday, May 10, 2012, hearing on S. 2374, the Helium Stewardship 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
Committee on Energy and Natural Resources

QUESTIONS FOR THE RECORD

Legislative Hearing on S. 2374, Helium Stewardship Act of 2012

Thursday, May 10, 2012

Mr. Timothy R. Spisak
Deputy Assistant Director, Minerals and Realty Management
Bureau of Land Management
U.S. Department of the Interior

Barrasso Q1: When did the Bureau of Land Management (BLM) stop accumulating crude helium? How much Federally-owned crude helium is currently in the Federal Helium Reserve?

Answer: The Federal government stopped accumulating helium in 1973 when the Federal helium program was still under the management of the Bureau of Mines. As of the beginning of FY 2012, there is a total of 16.18 billion standard cubic feet (scf) of Federally-owned helium in the Reserve. Of this total, 13.73 billion scf is conservation helium and 2.44 billion scf is in the native natural gas. Additionally, there is 1.15 billion scf of privately-owned helium in the Reserve.

Barrasso Q2: S. 2374 would extend the Secretary of the Interior's authority to sell Federally-owned crude helium from the Federal Helium Reserve for use in the private sector until the Reserve reaches 3 billion cubic feet. At that point, the Secretary would only be authorized to sell Federally-owned crude helium from the Reserve for use by Federal users. A. When will the Reserve reach 3 billion cubic feet? B. How long will 3 billion cubic feet meet the demand of Federal users as defined under S. 2374?

Answer:

A. If S. 2374 were enacted, the BLM estimates that the Reserve would reach 3 billion scf in approximately 2021.

B. If S. 2374 were enacted, the BLM estimates that the 3 billion scf remaining in the Reserve would meet the demand of Federal users until approximately 2029.

Barrasso Q3: I understand that there are six private helium refineries connected to the Federal Helium Reserve. These refineries process the crude helium drawn from the Reserve. A. Can you explain when these refineries were built and under what circumstances? B. Are there any legal obstacles for other private entities to build new refineries connected to the Reserve? If so, what are those legal obstacles?

Answer:

A. The six private helium refineries connected to the Reserve have always been private plants built and operated by the helium industry. The list below includes the year each plant was built, the name of the original company that built it, and the name of the company that currently owns and operates it.

Year Built	Original Company	Current Company
1965	Otis	Linde
1968	Jayhawk	Praxair
1979	Bushton	Praxair
1982	Sherhan	Air Products
1991	National	Air Products
1995	Keyes	DCP Midstream

B. The BLM is not aware of any legal obstacles that would prohibit other private entities from building new refineries connected to the Reserve.

Barrasso Q4: In your written testimony, you state that BLM anticipates full repayment of the helium debt in Fiscal Year 2013. You explain that the Helium Fund would then be dissolved and all future receipts would be deposited directly into the General Fund. A. Once the helium debt is paid off, what are the impacts on the operation of the Reserve? B. Will the Secretary be able to sell crude helium from the Reserve after the helium debt is paid off?

Answer:

A. Once the helium debt is paid off and the Helium Production Fund is terminated, the BLM would have to undertake an orderly shutdown of the Reserve unless there is discretionary funding appropriated for crude helium sales and Reserve operations.

B. Current law (50 USC §167d) provides indefinite authority for the Secretary to sell crude helium. However, current law (50 USC §167d(e)(2)(A)) also terminates the Helium Production Fund upon repayment of the helium debt. Therefore, any continued crude helium sales and Reserve operations would have to be paid for with discretionary funding.

Barrasso Q5: In August of 2008, the Department of the Interior's Inspector General (IG) issued a report entitled, "Immediate Action Needed to Stop the Inappropriate Use of Cooperative Agreements in BLM's Helium Program." What steps, if any, has BLM taken to address the concerns raised and the recommendations made in the IG's report? Please submit as part of the hearing record BLM's formal response(s) to the IG's report.

Answer: On August 19, 2008, the Department of the Interior, Office of the Inspector General (OIG) issued a report entitled "Immediate Action Needed to Stop the Inappropriate Use of Cooperative Agreements in BLM's Helium Program." The BLM responded to this report with official memoranda dated September 19, 2008, and May 9, 2009, which are attached.

On July 6, 2010, the Department of the Interior informed the OIG that the BLM had taken the necessary steps required to warrant closure of the recommendations contained in the 2008 OIG report, and that the Department of the Interior considered the report closed. The closure request memo and supporting documentation, which outline the rationale for the closure, are attached.

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
http://www.blm.gov

TAKE PRIDE IN AMERICA

SEP 19 2008

In Reply Refer To:
1245 (830)

Memorandum

To: Assistant Inspector General for Audits
Office of Inspector General

Through: C. Stephen Allred SEP 19 2008
Assistant Secretary - Land and Minerals Management

From: James L. Caswell
Director

Subject: Response to Office of Inspector General Report Entitled "Immediate Action Needed to Stop the Inappropriate Use of Cooperative Agreements in BLM's Helium Program," Report No. WR-IV-BLM-003-2008/OI-CO-07-0206-I, August 2008

Thank you for the opportunity to respond to the subject report by the Office of Inspector General (OIG). The Bureau of Land Management (BLM) has thoroughly reviewed the report and considers the matters raised to be significant. The BLM agrees that the program authorized by the Helium Privatization Act of 1996 must have adequate management controls to ensure the appropriateness of (1) its relationships with individuals/companies with whom it conducts business, (2) its procurement activities, and (3) its financial activities, as well as the other administrative activities supporting it.

Prior to entering into the existing agreements, the BLM consulted with the appropriate Departmental entities. These agreements were entered into within the purview of BLM authority, both DOI and BLM policy, and with the review and concurrence of these entities. At this time, the BLM has no reason to believe that it has acted improperly.

The BLM appreciates the perspective of the OIG and takes the findings of this draft report seriously. For this reason, the BLM has sought counsel from the Office of the Solicitor to advise and assist in these matters. It also is in the process of engaging the services of an independent consulting firm to examine all of the records described in the OIG's report, as well as all financial transactions relating to the Helium Fund for Fiscal Years (FY) 2000 through 2008. This review, which will focus on the OIG report findings and recommendations, will begin

immediately and will be completed early in the second quarter of FY 2009. The BLM will specifically address the recommendations contained in the OIG report following completion of these activities.

Regarding the recommendation to immediately stop the renewal of the agreements, the BLM has stopped all renewal activities except for actions necessary to ensure that the Helium Program continues to achieve its intended purpose pending the results of the ongoing review.

The BLM appreciates the OIG's time and effort in preparing the report, and concurs with the overall goal of strengthening the Helium Program by thoroughly reviewing the processes, procedures, and transactions related to the program. The BLM also appreciates the opportunity to review these processes, procedures, and transactions prior to providing a definitive discussion of the OIG's recommendations.

Questions relating to this response should be directed to Michael A. Ferguson, Assistant Director, Business and Fiscal Resources, and Chief Financial Officer, at (202) 208-4864.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

TAKE PRIDE IN AMERICA

JUL 06 2010

Memorandum

To: Kimberly Elmore
Assistant Inspector General for Audits, Inspections & Evaluations
Office of the Inspector General

From: Eric Eisenstein
Branch Chief, Internal Control and Audit Follow-up
Office of Financial Management

Subject: Closure of Recommendations 1, 2, 3, 4, and 5 of the Office of Inspector General Report Titled *Immediate Action Needed to Stop the Inappropriate Use of Cooperative Agreements in BLM's Helium Program* (Report No. WR-IV-BLM-0003-2008/OI-CO-07-0206-I)

The subject report was referred to PFM by the OIG for tracking of implementation of five recommendations for the Department:

Recommendation 1 *Immediately stop the renewal of both cooperative agreements and replace them with appropriate contract(s).*

Recommendation 2 *Choose the proper contractual instrument using appropriate procurement guidelines. This includes a) reviewing and properly establishing indirect cost rates, processes for appropriate billing, clear guidelines as to what is to be considered major maintenance and when work is to be considered outside the scope of the contract; b) adjusting the ratio of costs to reflect the percentage of ownership in the assets as they change over time; and c) performing a critical review of profit fees.*

Recommendation 3 *Perform a thorough review of all agreement costs paid to determine allowability and appropriateness and recoup those costs determined to be unallowable or inappropriate, including any double-billed costs.*

Recommendation 4 *Review the BLM/Contractor payment billing process and implement a process that eliminates any repetition of the existing arrangement.*

Recommendation 5 *Determine whether the Government has already reimbursed the contractor for the entire amount of actual costs incurred to build the equipment. If so, the new contractual instrument should not include these capital cost line items.*

BLM has followed up with a series of discussions with the OIG subsequent to the response provided in 2009. Of significance, please note the DOI Solicitor's Office concurred that the use of cooperative agreements were proper. Further, according to the OIG's request, BLM followed up with an independent review of a contractor's report that was completed as a follow up to the OIG audit. The Department's Office of Policy Analysis (PPA) conducted this independent review.

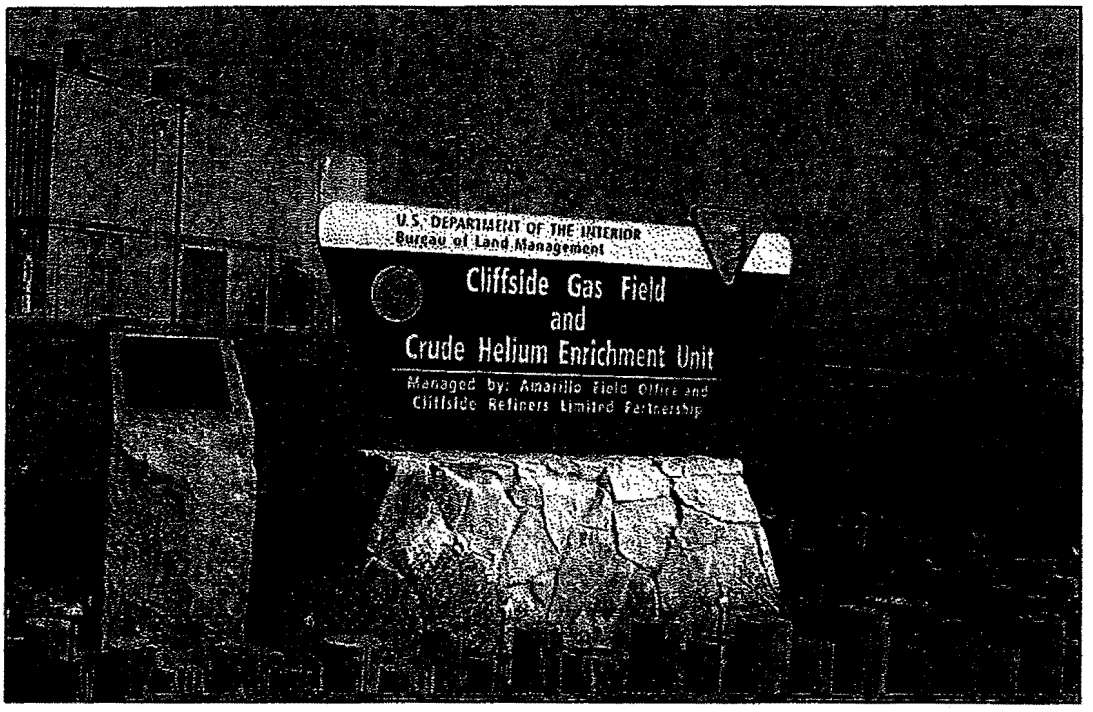
Attached is a copy of the PPA's independent review of the Federal Helium Program. The primary focus of the review was on the recommendations in the subject OIG Report. Also, PPA has provided several recommendations (see Page 29) that should be considered before the current cooperative agreements, which will expire in 2015, are renewed.

Based on the above, PFM has determined that BLM has taken the necessary steps required to warrant closure of the above recommendations and considers the report closed.

If you have any questions, please contact Nancy Thomas at 202-208-7954.

Attachment

Review of Selective Aspects of the Federal Helium Program



June 2010
Office of Policy Analysis

Review of Selective Aspects of the Federal Helium Program

Executive Summary

The Bureau of Land Management (BLM) requested that the Office of Policy Analysis (PPA) provide an independent review of the Federal Helium Program, with a primary focus on reviewing the recommendations contained in the August 2008 Inspector General's (OIG) Report, "Immediate Action Needed to Stop the Inappropriate Use of Cooperative Agreements in BLM's Helium Program," Report No. WR-IV-BLM-003-2008/OI-CO-07-0206-I. The OIG report examined the agreements between BLM and helium refiners and the means by which helium processing facilities constructed subsequent to the enactment of the Helium Privatization Act were financed. The following is a summary of the OIG findings:

1. Improper use of cooperative agreements: BLM improperly used cooperative agreements with Helium refiners instead of following proper procurement procedures.
2. The government is being overcharged: BLM is possibly being overcharged for an investment fee on equipment. BLM may end up paying over $32 million more than it should have had to pay by the time the agreement ends. BLM had enough funds to pay for the equipment, but let the contractor build the equipment at a substantial profit.
3. Possible double billing: BLM is possibly being double billed for maintenance of equipment.
4. Short-term financing: The complex billing process will allow the contractor to incur $8,000 interest over the term of the agreements.
5. Seemingly unjust cost allocations: Equipment costs are allocated at 80% government and 20% refiners based on ratio of stored gases. However, the amount of helium that the government owns has decreased, and therefore, BLM should adjust the cost ratio to reflect these changes.

BLM specifically requested that PPA address the following:

1. Review the available documentation, methods used, and analytical approach to determine the extent to which conclusions drawn in the OIG report are appropriate given the analysis and data relied upon.
2. Evaluate the extent to which the Federal government receives a *fair* rate of return on its capital investment to support the Helium program.

PPA was not asked to review whether the *use* of cooperative agreements was appropriate or any of the procurement issues associated with the acquisition of helium facilities.

Summary of PPA Findings and Recommendations

PPA reviewed: the contracts and cooperative agreements governing the operation of the Helium program; a report prepared by consultants to BLM subsequent to the OIG report; a draft National Academy of Sciences study on implementation of the Helium Privatization Act; and other relevant documents. PPA also conducted discussions with Helium Program staff; and visited the Helium Program facilities in Amarillo Texas. This paper provides findings and recommendations that reflect PPA's

assessment of the OIG report and a number of other issues related to BLM's participation in the helium market that arose during the course of our review.

In general, PPA found that the "investment fee" associated with the Crude Helium Enrichment Unit is not excessive when evaluated properly, though BLM could have financed the construction of the CHEU had a decision been made to do so at the time. PPA also found that the Helium Program is providing a very substantial return to the Federal government presently. The issues raised in the OIG report flow logically into questions concerning the 1996 Helium Privatization Act (HPA) and future operation of the Helium Program. The HPA requires BLM to market helium in a very specific manner that may constrain its participation in markets. As the 2015 statutory deadline for repayment of the helium reserve debt approaches, consideration needs to be given to the extent to which new statutory authorities may be required.

With respect to the specific issues raised in the OIG report, PPA found the following:

- Fair rate of return. The question of whether or not the Federal government is receiving a *fair* rate of return for the Helium Program is difficult to answer objectively. A variety of factors impact the rate of return and it is not possible to determine in all cases (and over all time periods) how alternative practices would result in greater returns compared to the returns currently being received. The returns currently being received appear to be substantial: the debt is being repaid with interest (and the interest represents a return to the Federal government), and the program is generating sufficient revenues to accumulate a surplus.
- Investment fee. The Office of Policy Analysis reviewed the investment fee paid to the Cliffside Refiners Limited Partnership (CRLP) for the Crude Helium Enrichment Unit (CHEU) capital costs. Our review determined that the rate of return is approximately 7.45%. This level of return does not appear to be excessive. Funding by BLM for the construction of the CHEU may have been possible, but would have associated opportunity costs as these funds would not be available for other uses.
- Billing processes and short-term financing. The Office of Policy Analysis review did not reveal problems in these areas. The analysis conducted by BLM's contractor appears to satisfactorily address these issues.

While the OIG report did not address royalty rates, PPA notes that helium royalty rates vary across locations and across product types (crude v. refined). In the context of reevaluating onshore oil and gas royalty rates, helium royalty rates should also be reevaluated.

The terms of the cooperative agreements governing the Federal Helium Program operation will begin to expire in 2015. Based on its review, PPA provides the following recommendations that should be considered before the cooperative agreements are renewed.

- Capital costs for new equipment. In future Helium Program agreements, BLM should evaluate whether it should provide capital costs for all equipment and facilities that fall under Section 4(c)(5) of the Helium Privatization Act. The revenue stream flowing from helium and natural gas sales should be sufficient to fund any necessary future capital investments.
- Cost allocations. The current allocation of costs for CHEU operations represents only one possible allocation. The rationale for the existing 80/20 allocation could have been more thoroughly documented, including an analysis of the implications of alternative approaches for cost allocation. BLM should re-examine and evaluate other approaches for cost allocation as

the end of the term of the CHEU and associated agreements approaches. If additional capital investments are to be made to maintain the operational integrity of the Cliffside Reservoir, pipeline, and other facilities, careful and systematic consideration should be given to evaluating cost allocation issues.

- Transparency. BLM should ensure that the arrangements with the CRLP and refiners are transparent and easily explainable, including cost rates and billing processes. Many of the original OIG concerns could have been addressed earlier through clearer explanation of agreements and how they tie to specific pieces of capital equipment.
- Maintenance funds. In future agreements, the BLM should develop clear and specific definitions for routine and major maintenance and establish a clearer delineation for when each fund should be used. BLM should also consider developing a system to track major maintenance funds provided to the CRLP to ensure that funds are being used in a way that is consistent with the cooperative agreements. Major maintenance funds that are paid to private entities should be tracked to ensure that funds are used appropriately.

PPA also notes that the Helium Privatization Act stipulates that BLM is to offer for sale all Federal helium in excess of 0.6 billion cubic feet by 2015. All helium sales are held at administratively determined prices. However, a review of past open market sales and possible future open market sales implies that complete liquidation of helium stock by 2015 may not be feasible. This suggests that:

- BLM should revaluate its projections for future open market sales and subsequent payment of the outstanding debt by 2015.
- The HPA does not address the extent to which in-kind sales continue after sell-off of excess Federal helium has been completed. The BLM needs to proactively address this possibility, including consultations with the Office of the Solicitor.
- The price BLM charges for helium sold via the in-kind program and open market sales needs to be reevaluated. Relying on an administratively determine price, mechanically adjusted by CPI annually, may not be in the best interests of the Federal government. The HPA only requires that the helium sales generate sufficient revenue to pay off the helium debt the 2015.
- Once the helium reserve has been largely liquidated, BLM's revenue stream to operate the helium program will be substantially diminished. BLM needs to plan for this eventuality. This planning should include evaluating whether BLM can make changes to the existing cooperative agreements or enter into new cooperative agreements that meet the needs of the BLM
- The method by which helium is offered for sale should also be revaluated. Rather than offering fixed proportions of the total offering to existing refiners on the pipeline, BLM should evaluate other approaches including the use of sealed bid auctions.

Table of Contents

I. Introduction

Introduction

The Bureau of Land Management (BLM) requested that the Office of Policy Analysis (PPA) provide an independent review of the Federal Helium Program, with a primary focus on the recommendations in the August 2008 Inspector General's (OIG) Report, "Immediate Action Needed to Stop the Inappropriate Use of Cooperative Agreements in BLM's Helium Program," Report No. WR-IV-BLM-003-2008/OI-CO-07-0206-I.

BLM requested that PPA address the following:

1. Review the available documentation, methods used, and analytical approach to determine the extent to which conclusions drawn in the OIG report are appropriate given the analysis and data relied upon.
2. Is the Federal Government receiving a *fair* rate of return on its capital investment to support the Helium program?

The following is a summary of the OIG findings:

1. Improper use of cooperative agreements: BLM improperly used cooperative agreements with Helium refiners instead of following proper procurement procedures.[1]
2. The government is being overcharged: BLM is possibly being overcharged for an investment fee on equipment. BLM may end up paying over $32 million more than it should have had to pay by the time the agreement ends. BLM had enough funds to pay for the equipment, but let the contractor build the equipment at a substantial profit.
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5. Seemingly unjust cost allocations: Equipment costs are allocated at 80% government and 20% refiners based on ratio of stored gases. However, the amount of helium that the government owns has decreased, and therefore, BLM should adjust the cost ratio to reflect these changed.

PPA reviewed: the contracts and cooperative agreements governing the operation of the Helium program; a report prepared by consultants to BLM subsequent to the OIG report; a draft National Academy of Sciences study on implementation of the Helium Privatization Act; and other relevant documents. PPA also conducted discussions with Helium Program staff; and visited the Helium Program facilities in Amarillo Texas. This paper provides findings and recommendations that reflect PPA's assessment of the OIG report and a number of other issues related to BLM's participation in the helium market that arose during the course of our review.

[1] PPA was not asked to review the extent to which the *use* of cooperative agreements was appropriate, or procurement issues.

II. Background and Context

This section provides a brief description of the authorizing legislation and governance of BLM's helium program.

Legislation: The Federal Helium Program has been extensively described in a variety of documents including the August 2008 Inspector General report[2], internal BLM documents, and in two National Academy Reports. For the purposes of this analysis, we note that P.L. 103-274, the Helium Privatization Act of 1996:

- Directed the Secretary of the Interior to close all government-owned refined helium production facilities and terminate the marketing of refined helium;
- Modified the terms of the "in-kind" program and required Federal agencies to purchase refined helium from private helium refiners, who in turn purchase crude helium from the BLM;
- Authorized BLM to continue to provide helium storage, transportation and withdrawal services as long as the agency recovers from users the full costs associated with these activities; and
- Directed BLM to offer for sale all but 600 mmcf of the crude helium in storage at the time (estimated at 35 bcf). These "open market" sales were to be conducted on a straight-line basis and at a price sufficient to cover the Reserve's operating costs and to generate revenues sufficient to reimburse the Federal government in full (on an inflation adjusted basis), including accrued interest, for purchases of stored helium. All sales were to be completed by January 1, 2015.

Governance: The Helium Program is governed by a collection of cooperative agreements and contracts. These agreements define the BLM's relationship with helium refiners and extractors connected to the BLM helium pipeline and the partnership that owns the Crude Helium Enrichment Unit (CHEU) and Crude Helium Compression Station (CHCS). Prior to initiating the open market crude helium sales program in 2003, the BLM entered into a series of cooperative agreements with the Cliffside Refiners Limited Partnership (CRLP) that governed many aspects of the Helium Program, in particular the construction and operation of the CHEU and CHCS. These capital investments were perceived as critical by the BLM and the helium refiners connected to BLM's helium pipeline for providing reliable flows and industry-standard quality crude helium as feedstock for the refiners. The financing for and construction of the CHEU and the CHCS were the responsibility of the CRLP. The operation of these facilities benefits both the government and the private helium refiners.

Without the CHEU, each individual refiner would have to provide additional refining capability to produce commercial grade helium, and it is likely that unit costs would be higher and that enrichment capacity would be underutilized. Thus, in concept, the CHEU allows the refiners a larger profit margin than would be the case without the CHEU (how much larger is uncertain). The refiners were able to construct the CHEU with capacity sufficient to serve all of their needs, taking advantage of economies of scale in sizing the CHEU. The refiners are able to capture the benefits of the enrichment unit services in the price they charge for refined helium. However, because the price the government receives for its crude helium is determined by formula, the government is not able to capture any gains associated with providing a more refined crude helium product to refiners.

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[2] *Immediate Action Needed to Stop the Inappropriate Use of Cooperative Agreements in BLM's Helium Program*, Report No. WR-IV-BLM-0003-2008/OI-CO-07-0206-1.

The CHEU benefits the government by providing the ability to separate helium from natural gas, which is sold by the BLM (all of the natural gas in the Cliffside Reserve is owned by the government). The government clearly benefits because prior to the construction of the CHEU, BLM was not able to market natural gas (though some royalties on natural gas may have been received). Absent the CHEU, separation of natural gas and helium would take place at helium refineries and much of the natural gas would likely be vented, burned off or otherwise wasted. If the natural gas were marketed by the refiners, they would owe royalties to the Federal government.

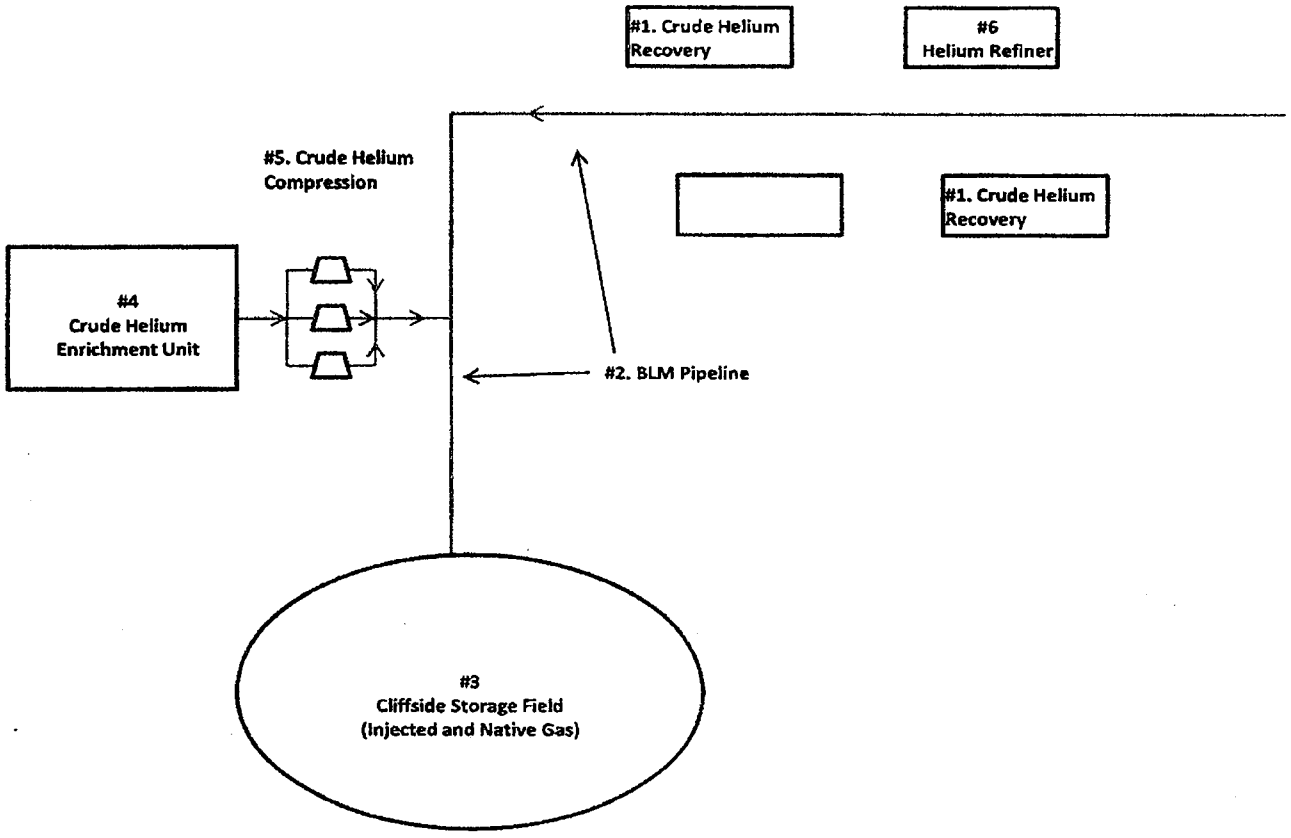
Table 1 summarizes how major equipment at the Cliffside facility is governed by the cooperative agreements between the CLRP and the BLM. Figure 1 is a simplified illustration of the BLM pipeline and storage reservoir system. The numbers on the figure are tied to each of the helium facilities identified in Table 1.

Table 1. Major Helium Program Equipment and Facilities

Major Helium Program Equipment and Facilities						
	Crude Helium Extraction Plant	**Helium Pipeline**	**Cliffside Storage Field**	**Crude Helium Enrichment Unit (CHEU)**	**Crude Helium Compression Station (CHCS)**	**Helium Refinery**
Purpose	Deposits crude helium into the helium pipeline to helium refiners.	Transports helium and other gases from the Cliffside Field to private refiners and from the extractors to refiners.	Stores Federal and private helium and other gases.	Enriches gas mixtures drawn from various wells in the Cliffside Field to 75% helium, which then flows to the CHCS. Enables BLM to separate and sell natural gas.	Compresses crude helium from the CHEU to pipeline and/or reinjects into the Cliffside Field.	Crude helium is sent to the helium refinery for final processing, resulting in >99% pure helium.
Ownership	Private Extractors	BLM	BLM	Private (CRLP)	Private (CRLP)	Private Refiners
Operated by:	Private Extractors	BLM	BLM	BLM	BLM	Private Refiners
Agreement(s)	Not Applicable	Storage Contract (Effective dates vary by individual contracts with private entities.)	Storage Contract (Effective dates vary by individual contracts with private entities)	1) Helium Reserve Management Agreement (Effective through July 2016) 2) BLM Crude Helium Enrichment Unit Operating Agreement (Effective through July 2016) 3) BLM Crude Helium Enrichment Unit Construction and Services Agreement (effective through July 2016)	**The CHCS is governed by CHEU agreements and provisions when compressing the outflow of crude helium from the CHEU.** 4) Helium Reservoir Management Agreement (Effective through July 2016) 5) BLM Crude Helium Compressor Construction and Compression Services Agreement (effective through August 2015)	Not Applicable
Investment fee	Not Applicable	Not Applicable	Not Applicable	Annual fee of 19.6% of investment; Costs are allocated 80% BLM, 20% Refiners (total FY2009 fee - $4.4M)	Annual fee of 19.6% of investment; 100% costs paid by Refiners (total FY2009 fee - $394,051)	Not Applicable
Major maintenance	Paid by crude helium extractors	Paid by BLM; Some costs recouped from Refiners	Paid by BLM; Some costs recouped from Refiners	2.4% of capital; Costs are allocated 80% BLM, 20% Refiners (total FY 2009 fee - $534,973)	2.4% of capital; 100% costs paid by Refiners (total FY2009 fee - $50,325)	Paid by Refiners

Major Helium Program Equipment and Facilities						
	Crude Helium Extraction Plant	**Helium Pipeline**	**Cliffside Storage Field**	**Crude Helium Enrichment Unit (CHEU)**	**Crude Helium Compression Station (CHCS)**	**Helium Refinery**
Routine operations and maintenance	Paid by crude helium extractors	Paid by BLM; Some costs recouped from Refiners	Paid by BLM; Some costs recouped from Refiners	O&M services provided by BLM; Costs are allocated 80% BLM, 20% Refiners (total FY 2009 fee - $447,544)	O&M services provided by BLM; 100% cost paid by Refiners (total FY 2009 fee - $14,058)	Paid by Refiners
Risk sharing	Crude Helium Extractors bear all risk.	BLM bears all risk of catastrophic failure	BLM bears all risk of catastrophic failure	CRLP bears all risk of catastrophic failure; "normal" business risks are shared via insurance included in the CHEU fees; CRLP bore all risks prior to turning over facility to the government	CRLP bears all risk of catastrophic failure; "normal" business risks are shared via insurance included in the CHCS fees; CRLP bore all risks prior to turning over facility to the government	Private Refiners bear all risk
Illustration of physical facilities – numbers key to Figure 1	#1	#2	#3	#4	#5	#6

Figure 1. BLM Helium Pipeline and Storage System



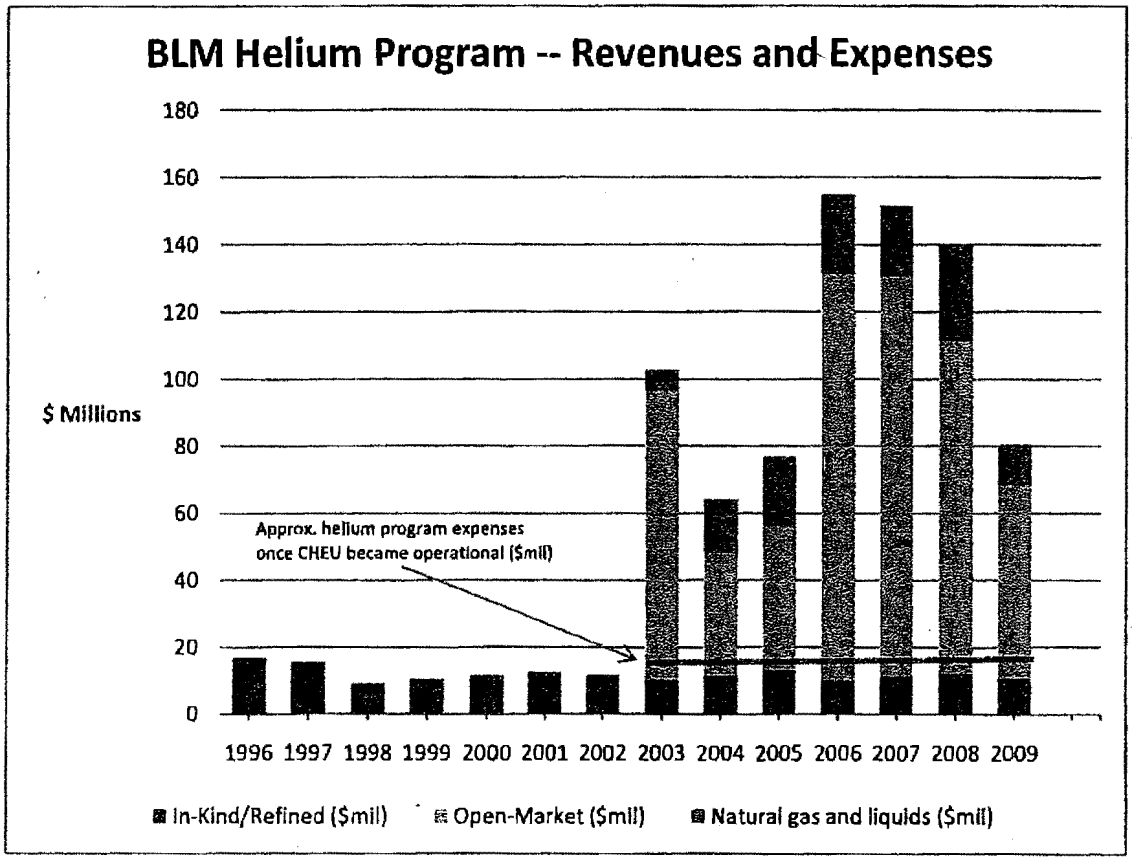
III. Returns to the Government: Helium and Natural Gas Revenues and Royalties

This section discusses returns to the government from BLM's helium activities. The Federal government receives a return from helium in the following ways:

- Revenues from helium sold via "in kind" marketing or the "open market" sales programs;
- Royalties on helium produced from Federal mineral leases;
- Revenue from natural gas sales after the helium is extracted from the natural gas;
- Revenue from use of the helium storage and pipeline system by private entities; and
- Payment of the "loan" plus interest that was provided to construct the crude helium pipeline and purchase helium currently stored in the Cliffside field.

Figure 2 displays Helium Program revenue generated via helium sales from 1996 through 2009. The figure is a stark illustration of the Helium Program's finances. Prior to the CHEU and open market sales of helium, annual revenues were on the order of about $10 million (with the exception of 1996 and 1997 when revenues were almost $20 million). Appendix A contains additional detail on the BLM Helium Program revenues and expenses from FY 2005 to FY 2009. Detailed information was not available for BLM Helium Program expenses prior to FY 2005.

Figure 2. Helium Program Revenues, 1996-2009



Source: BLM.

Table 2. Sources of Helium Program Revenues

Source of Revenue	Gross Rate of Return to the Government
"In kind" and "open market" sales	Sale price determined by formula in P.L. 104-273. 2010 sales price: $64.75/mcf
Natural gas sales	Returns depend on market price for natural gas
Royalties on crude helium	
Federal leases in TX, OK, KS	25% – 50%
Leases in other locations	12.5%
Federal leases acquired under the FFMC	12.5% or 6.25%
Royalties on refined helium	
Federal leases in WY, CO, UT	8.3%

Source: BLM.

Revenue from helium sales

The sale price for crude helium is determined by P.L. 104-273, which requires BLM to establish a price at least sufficient to generate enough revenue to reimburse the Federal government for the amounts expended (including interest) to purchase the stored helium. The price in FY 2010 is $64.75/mcf. Subsequent to the construction of the CHEU and the initiation of open market helium sales in 2003, the Program's revenues have been substantial. Gross receipts from helium sales, including in-kind sales, were about $68 million in 2009; $111 million in 2008; about $130 in 2006 and 2007; and about $56 million in 2005. The fluctuations in revenues are largely due to different quantities of helium being sold.

The price the government receives for crude helium and the annual quantities offered for sale have a substantial bearing on the returns received by the government. A 2010 draft National Academy of Sciences report on the Helium Program discussed the implications of the pricing policy that was mandated by P.L. 104-273. The report's findings will not be repeated in detail here, other than to note that in the view of the Academy, the pricing policies may no longer serve the interests of the U.S. and that procedures should be put in place that open federally owned helium to a more market-oriented pricing scheme.

Revenue from natural gas sales

The CHEU allows BLM to separate natural gas and natural gas liquid from helium and other gases and to market the natural gas. Natural gas sales provide an important source of revenue to the helium program. Gross revenues for natural gas sales were as high as $28 million in FY 2008, declining to about $12 million in FY 2009, with an annual average of about $18.2 million from FY 2003 to FY 2009. Net revenues from natural gas sales, after BLM's expenses for the CHEU, averaged about $13 million from FY 2005 to FY 2009[3]. Revenues are heavily dependent on natural gas prices. Prior to the CHEU becoming operational in FY 2003, BLM was not able to capture revenues from natural gas sales.

Royalty Revenue

Royalty rates vary across locations and across product types (crude v. refined). While it is logical that the royalty rate on refined helium would be lower than the rate on crude helium because the refined product is of higher value, the rationale for the 8.3% rate on refined helium is not clear. The explanation for the variation in the royalty rates associated with crude helium produced in different locations is also not clear. In the context of reevaluating onshore oil and gas royalty rates, helium royalty rates should also be reevaluated.

Fees and charges

BLM assesses several fees and charges to private refiners and crude helium extractors for shared use of government equipment and facilities and to reimburse the government for agreed portions of operating expenses.

[3] Information on BLM's Helium Program expenses not available prior to FY 2005.

Helium Program expenses

Categories of BLM expenses for the Helium Program include labor, utilities, maintenance, insurance and overhead. Annual Helium Program expenses have remained relatively constant over the period of 2005-2009 at about $16 million (see Appendix A for additional detail). Information was not available for BLM Helium Program expenses prior to FY 2005.

Returns to the government

In general, the rate of return to the government from the investments made by the helium program are defined by the stream of revenue generated from helium and natural gas sales over time, weighed against the capital and operational costs (including the cost plus interest of acquiring the helium) over time. The magnitude of returns depends significantly on the price received by BLM for sales of helium and natural gas as these two items are the primary sources of revenue. Furthermore, the revenues generated from helium and natural gas sales are contingent upon the availability of helium in the reserve to market. When the marketable helium in the reserve is liquidated, revenues can only be generated via pipeline operations or by reservoir management activities associated with privately owned helium.

The initial cost of acquiring the helium contained in the reserve is estimated at approximately $280 million. These costs were incurred over 1960 - 1973. The helium in the reserve was purchased with funds borrowed from the U.S. Treasury at a defined interest rate. The BLM uses revenue from the Helium Program to pay back its debt to the Treasury. However, the borrowed funds did not have a defined repayment schedule (e.g., repayment period and payment amounts). The total debt, including interest, was approximately $1.4 billion as of 1995, when interest charges were frozen as a result of the passage of the HPA.[4] The HPA required the total debt to be repaid by 2015, but it did not specify an annual payment amount. As of 2009, approximately $794 million has been repaid to the U.S. Treasury with $579 million outstanding. BLM currently projects that its debt will be paid off by FY 2015. Table 3 shows the annual amounts repaid to Treasury since 1996 and the remaining balance.

[4] Freezing the debt did not eliminate the ongoing opportunity costs associated with the "loan" from the Treasury. In fact, capping the debt might be considered a subsidy to the Helium Program. An analogous situation might be freezing the repayment obligation associated with a home mortgage loan prior to the end of the defined repayment period.

Table 3 Helium Debt Repayment

Year	Amount Paid to Treasury ($M)	Cumulative Payments ($M)	Remaining Balance ($M)
Beginning balance			1,373.2
1996	8.0	8	1,365.2
1997	8.0	16	1,357.2
1998	8.0	24	1,349.2
1999	10.0	34	1,339.2
2000	10.0	44	1,329.2
2001	10.0	54	1,319.2
2002	10.0	64	1,309.2
2003	110.0	174	1,199.2
2004	60.0	234	1,139.2
2005	65.0	299	1,074.2
2006	160.0	459	914.2
2007	150.0	609	764.2
2008	120.0	729	644.2
2009	65.0	794	579.2
2010 est	60.0	854	519.2
2011 est	90.0	944	429.2
2012 est	120.0	1,064	309.2
2013 est	120.0	1,184	189.2
2014 est	100.0	1,284	89.2
2015 est	70.0	1,354	19.2
2016 est		1,354	19.2
2017 est		1,354	19.2

Source: BLM.

As stated previously, the government has invested a substantial amount in the purchase of helium (expenditures of approximately $280 million over the period 1960-1973). The funds to purchase the helium were essentially "borrowed" from the Treasury and as such they have an opportunity cost. To date, the government has directly invested a relatively modest amount of capital in physical facilities associated with the Helium Program: about $7 million for the pipeline and associated facilities.[5] The government has also "invested" in the CHEU, however the facilities are owned by the CLRP. Essentially, the government "rents" the facility from the CRLP. Currently, the operational cost of the Helium Program is approximately $16 million per year.

Determining the government's rate of return from Helium Program investments depends primarily on how the debt accrued prior to the 1996 HPA is treated in a rate of return calculation. This is because the

[5]The pipeline was constructed in 1962. BLM owns 450 miles of pipeline and associated surface facilities. The pipeline stretches through Kansas, Oklahoma, and Texas and connects 17 private crude-helium production and refining plants to the Federal reservoir. This does not included the capital costs associated with Bureau of Mines facilities constructed to refine crude helium, as these facilities no longer exist.

debt is the single largest annual cost item the Helium Program incurs and the annual dept payment amount is not fixed over the repayment period (i.e., 1996-2015). However, in concept, the Federal government is at least earning a rate of return equal to the interest rate charged on the funds previously "borrowed" from the U.S. Treasury to purchase the helium because the principal balance and interest accrued through 1995 is being repaid in full.

On a simple annual cash flow basis, since the CHEU has been operational the Helium Program has averaged net annual revenue of about $120 million. Payments to Treasury have averaged about $112 million annually and annual operational expenses have been about $15 million. In contrast, for the timeframe after the HPA and prior to operation of the CHEU (i.e., 1996-2002), the Helium Program averaged net annual revenue of about $12.5 million, and payments to Treasury averaged about $9 million annually. When comparing annual revenues to annual expenses *absent* the annual debt payment amount, the Helium Program earns substantial annual returns: expenses represented about 13% of revenues on average from FY 2005 through FY 2009 (i.e., revenue to expense ratio of approximately 8:1). It should be noted that not all of the increase in revenue that resulted after the CHEU became operational can be attributed directly to the CHEU. Open market helium sales, which contribute a significant portion of Helium Program revenue, began the same year the CHEU went online. Absent the CHEU, it is presumed that open market sales could still have occurred. As such, the appropriate comparison would involve the level of open market sales that would have occurred absent the CHEU to what has been observed with the CHEU. However, it is not possible to determine the level of open market sales and potential revenues that would have occurred absent the CHEU.

Evaluating whether the government is *maximizing* its returns as a resource owner is extremely complex.[6] While the helium program is constrained in a number of ways (e.g., fixed quantity offered annually; administratively determined price) the extent to which removing these constraints would result in greater net returns is not clear. A variety of factors impact the rate of return and it is not possible to determine in all cases whether an "unconstrained" helium operation would result in greater returns. Some of the factors include:

- The price that BLM would receive if crude helium was sold at a market price;
- The quantity that would be sold;
- The marginal cost of extracting helium;
- Whether costs are being minimized;
- U.S. and international helium supply; and
- Real interest rates.

[6]The problem of maximizing returns from helium is essentially the "Hotelling" problem faced by the owner of an exhaustible resource. In this context, assuming marginal costs are zero, the resource owner chooses an extraction time path in such a manner as to equate the "royalty" or "user cost" with the real interest rate. The royalty is equivalent to the market price less the marginal extraction cost.

Summary

The government receives a substantial level of return from the Helium program from helium and natural gas sales and from royalty revenues. In FY 2009 net revenues were about $65 million. While it is difficult to evaluate whether the government is maximizing its revenue, it is receiving a rate of return equivalent to the interest rate on the "loan" from Treasury that was used to purchase helium for storage in the reserve.

IV. Cost Allocation Issues: Crude Helium Enrichment Unit (CHEU) and the Crude Helium Compressor Station (CHCS)

The Crude Helium Enrichment Unit, which came online in 2003, was designed and constructed by the CRLP and is operated jointly by BLM and the CRLP. The purpose of the CHEU is to enrich helium that is fed from the Bush Dome Storage Field and injected into the BLM Helium pipeline for delivery to refiners or for reinjection into the storage field. The CHEU essentially begins the refining process of crude helium by separating hydrocarbons and many other impurities from crude helium. The enrichment plant (plus the associated compressors) benefits all of the helium refiners along the BLM owned pipeline. The fact that the refiners jointly agreed to design, construct, and operate the plant suggests that they benefit collectively. The extent to which refiners benefit by the provision of joint enrichment services is the difference between the cost of providing enrichment services jointly less the cost of each refiner providing this capacity individually. It is not possible to estimate the magnitude of this cost differential absent additional information. If enrichment was necessary to ensure that Federal helium could be marketed[7], then the Federal government also benefits to the extent that jointly provided enrichment services are lower cost than enrichment services provided by each refiner individually. However, a complicating factor is the fact that the price the Federal government receives for crude helium is administratively determined, thus the extent to which the government realizes the benefit of relatively lower cost enrichment services is not clear. The Federal government also benefits from the ability to separate the natural gas from helium extracted from the Reserve. The CHEU allows the natural gas to be separated and sold, with the resulting revenues used to finance the BLM's helium program and repay the "loan" to the Treasury.

Complex cost sharing arrangements are at the core of the cooperative agreements between BLM and the CRLP. Cost allocations are needed whenever the financial responsibility for a project must be divided among the responsible entities. A number of standard approaches are available to systematically allocate costs among users or uses, including the separable cost-remaining benefits method (SCRB), and the use-of-facilities (UoF) method. Which method is used depends on the data that is available since the methods have different data requirements. The SCRB method requires specific derivation of benefits for each function served. The UoF method rests on the assumption that the degree of use of the facilities provides a reasonable proxy for benefits received. Additional information on the various cost allocation methods is contained in Appendix B. The allocations of costs to operate the CHEU and the CHCS do not appear to be based on any of the methods identified above.

Included in any allocation of costs are direct, indirect, and incremental costs. Direct costs, or separable costs, are costs that are related to a single type of service and are related to one type of output or user such as, a sector-to-sector hand-off. Indirect costs are related to more than one type of service, such as, overhead costs. Incremental costs change with the level of output produced. Incremental costs measure changes in output, e.g., differences in staffing levels or staffing costs at a facility that is based on traffic count.

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[7] BLM personnel have stated that the CHEU facility was essential for the Federal government to market crude helium of sufficient quality due to declining trends in the producing helium content from the storage field. However, PPA was not provided documentation concerning an evaluation of resources needed to market crude helium to meet HPA requirements or the consideration of alternatives other than construction of the CHEU facility. Absent the CHEU, refiners would have likely have had to make capital investments to ensure that they could process the helium being removed from the reservoir.

The basic components of the CHEU cost sharing arrangements are as follows (note that compressors #2 and #3 were incorporated into the CHEU). The physical ratio of gases in the Cliffside reservoir was approximately 20% helium and 80% other gases (including natural gas) in 2001 when the CHEU agreement was signed. This estimate of the helium gas/other gas ratio contained in the reserve at this point was used to allocate the costs associated with the CHEU. The cost allocation has not been revisited since this date.

While the cost sharing ratio established in the CHEU Agreement was based on the *physical* ratio of gases in the reservoir in 2001, the actual *ownership* of gases in the reservoir has been changing over time as helium has been withdrawn from the reservoir. Table 4 shows how the ownership shares of the helium in the reservoir have changed since 2000. At the end of FY 2009, privately owned helium represented less than 4% of the total helium in the reservoir; in FY 2000 privately owned helium represented about 13% of the total helium in the reservoir. The explanation for the increase in the proportion of Federally-owned helium since 2000 may be associated with the refiners' efforts to minimize their local tax liability associated with holding costs and property taxes. As such, the reserve may have allowed the private refiners to draw down their holdings because they have an assured supply available from the Federal government.

Table 4. Federal and Privately Owned Helium in the Cliffside Reserve, 2000-2009

Fiscal Year (end of year)	Privately owned helium (bcf)	Federally owned helium (bcf)	Total helium (bcf)	Percentage Federally owned
2000	4.4	29.7	34.1	87
2001	3.1	29.4	32.5	90
2002	1.9	29.2	31.1	93
2003	2.0	27.8	29.8	93
2004	1.9	26.8	28.7	93
2005	1.0	25.5	26.5	96
2006	1.3	23.1	24.4	97
2007	1.3	20.9	22.2	94
2008	1.1	19.2	20.3	95
2009	0.7	18.1	18.8	96

Source: BLM.

All gas processed through the CHEU is assessed a common per unit charge. As discussed in more detail below, the charge is made up of a fixed, semi-fixed, and variable component. The cost allocation agreements were based on the following rationale:

- Since the natural gas and other gases are all Federally owned, the Federal government bears 80% of the CHEU capital and operating costs.
- The remaining 20% of the costs are allocated to helium. This share of the costs is recovered, from the entity that owns the helium being processed, via the per unit reservoir management fee charged to refiners for the CHEU services. Helium sold via "open market" and "in kind" sales is assessed the reservoir management fee, with the fee being paid by the refiner that has purchased the helium (the fee is paid, however, only when the refiner takes delivery of the

crude helium). The reservoir management fee is designed to ensure that BLM recovers 20% of the CHEU costs from the refiners.[8]

From a cash flow perspective, BLM provides up front funding (on a monthly basis) to fund all of the operations of the CHEU. The CRLP subsequently reimburses 20% of this amount to BLM.

The CHCS is covered under separate agreement. The CHCS only includes compressor #1, with 100% of the costs associated with the CHCS allocated to helium refiners. Essentially, helium refiners pay 100% of the per unit compression costs to the BLM for the services provided by compressor #1.

The costs associated with compressors #2 and #3 are allocated in a manner similar to the CHEU and are governed by the CHEU agreements. The per unit CHCS fees for compressors #2 and #3 are also composed of fixed, semi-fixed, and variable cost components. The same percentages are used in the CHCS as were used in the CHEU for recovering capital investment (19.6%) and major maintenance fees (2.4%).

The agreements raise a number of issues for consideration:

1. Should the cost allocation for the CHEU be revisited at the end of, or prior to, the 15-year term of the agreements? The cost allocation was based on the physical proportions of gas in the reservoir in the late 1990s. These proportions have changed since that time. Revaluating the cost allocation approach should include analyzing alternative approaches to allocating costs. Some of the relevant issues with respect to cost allocation include the extent to which:

    - Costs could be allocated on a different basis rather than the 80/20 split contained in the existing agreements;
    - A standard approach for allocating costs could be applied; and
    - A systematic and transparent way to allocate overhead costs could be established.

2. How should costs for the CHEU be allocated once all or most of the helium in the reserve has been sold? The allocation of costs under the current framework is linked to the need to separate natural gas and helium via the CHEU before the helium is sent to the refiners. However, once the excess Federal helium has been sold the need to retrieve natural gas is no longer clear or necessary. At this point the benefit the CHEU provides for BLM is not clear.

Summary

Complex cost sharing arrangements are at the core of the cooperative agreements between BLM and the CRLP. While the cost sharing ratio established in the CHEU Agreement was based on the *physical* ratio of gases in the reservoir in 2001, the actual *ownership* of gases in the reservoir has been changing over time as helium has been withdrawn from the reservoir. Other approaches for allocating costs could have been used. The major issues raised by the Agreements include:

- Should the cost allocation for the CHEU be revisited at the end of, or prior to, the 15-year term of the agreements?;

[8] The reservoir management fee is charged on a per thousand foot (mcf) basis at the time of redelivery of crude helium.

- Should costs be allocated on a different basis rather than the 80/20 split contained in the existing agreements?; and
- How should costs for the CHEU be allocated once all or most of the helium in the reserve has been sold?

V. Capital Costs and Investment Fee for the Crude Helium Enrichment Unit

Much of the Office of Inspector General (OIG) report focused on issues related to the agreements governing the Crude Helium Enrichment Unit (CHEU). Specifically, OIG had concerns with the Cliffside Refiners Limited Partnership (CRLP) providing the initial capital for the CHEU and concerns about the investment fee paid by the BLM to CRLP to reimburse CRLP for the original capital. This section addresses those concerns.

Capital Costs for Crude Helium Enrichment Unit

The terms and conditions of the BLM CHEU Construction and Services Agreement define the responsibilities of the CRLP regarding the construction of the CHEU and the provision of enrichment services by the CRLP to BLM. The Agreement provided that the CRLP would fund the approximate $22 million construction cost of the CHEU. The CHEU Construction and Services Agreement also specifies three cost categories (defined as Fixed CHEU fee, Semi-fixed CHEU fee, and Variable CHEU fee) that are paid to the CRLP by users of the CHEU (i.e., BLM and helium refiners).

The OIG report questioned whether BLM should have paid for all the initial capital costs for the CHEU instead of allowing CRLP to pay, which OIG and BLM have agreed will cost BLM over $40 million through FY 2015. The BLM responded to the OIG assessment by stating that revenue from natural gas sales resulting from the CHEU will allow BLM to pay off all its debt to the Treasury by FY 2012. The BLM also stated that the decision to allow CLRP to provide the initial capital was also based on the acceptance of risk and potential liability for CRLP associated with the design, engineering, testing, and implementation of equipment to handle volatile gases.

Our analysis tends to agree with OIG in that BLM *could* have provided the initial capital costs for construction of the CHEU. It is also the case that BLM has received an average of about $20 million per year in additional revenue (out of an annual average of $135 million in total revenue over 2005-2009) from natural gas and natural gas liquid sales as a result of the CHEU. However, it is unclear how the additional revenue is related to the initial capital expenditure for the CHEU. BLM presumably would be receiving the same revenue from natural gas had BLM supplied capital costs for construction of the CHEU. Additionally, according to the CHEU operating agreement, BLM assumed all risk of loss or damage to the CHEU during the term of the agreement. Thus, it appears that the level of risk accepted by CRLP for the construction of the CHEU and for bringing the equipment up to operational capacity was relatively low, and it wasn't clear if the expected cost of the risks that might have been assumed by BLM were ever estimated.

Section 4(c)(1) of the Helium Privatization Act of 1998 directed the Secretary of the Interior to dispose of all facilities, equipment, and other real and personal property and all interests therein, held by the United States for the purpose of *producing, refining* and *marketing* helium. Section 4.(c)(5) exempted the disposal of equipment, facilities, or property necessary for the *storage, transportation,* and *withdrawal* of crude helium or that is required to *maintain the purity, quality control,* and *quality assurance* of crude helium in the Cliffside Field.

The Helium Reserve Management Agreement states that the objective of the CHEU is to *manage the Federal Helium Reserve* and *facilitate the delivery* of crude helium through the government-owned crude helium pipeline and to *allow continuous operation* of the privately-owned helium refineries taking delivery of helium from the crude helium storage system. Based on this description of the equipment, it would appear that primary function of the CHEU is for transportation and maintaining the purity of crude helium, which would fall under Section 4(c)(5) of the Helium Privatization Act. The Act does not appear to *preclude* BLM from funding and owning equipment used for these purposes.

Investment Fee for Crude Helium Enrichment Unit

Part of the "fixed" CHEU fee includes an "investment fee" based on a percentage of the total initial construction cost of the CHEU. The Agreement sets this annual investment fee at $196 per $1,000 of the capital costs of the facilities (19.6% of the total initial CHEU construction cost) and it is fixed for the 15 year term of the cooperative agreement. The OIG report questioned the investment fee charges and indicated that over the 15 year CHEU cooperative agreement the sum total of the annual investment fee payments would be more than the total initial construction costs.

As a starting point for our analysis, it is appropriate to recognize that the 19.6% investment fee is more akin to a rental fee paid to the CRLP rather than a rate of return or a measure of profit. To determine the rate of return earned by the CRLP for the CHEU requires calculation of the interest rate the CRLP would need to earn on an investment in an interest bearing account that would equal the sum total amount the CRLP collects in CHEU investment fees over the 15-year term.

Table 5 below provides an illustrative analysis of the CHEU investment fee charges. According to the CHEU Construction and Services agreement, the annual investment fee amount is $3.9 million based on the initial investment amount of $20 million, where 80% of the investment fee is paid by the BLM and 20% is paid by helium refiners (this allocation of costs was discussed above in Section 0). Over the 15-year term, we estimated that the CRLP will collect approximately $58.8 million in investment fees. The difference between the initial investment amount (approx. $20 million) and the sum collected over the 15-year term results in an annualized return of approximately 7.45%. The column under "CRLP Investment of CHEU Construction Funds" demonstrates that if the CRLP were to instead invest the initial CHEU construction funds in an interest bearing account at 7.45% it would result in a balance of $58.8 million after 15 years. The rationale is that the CRLP should be indifferent between receiving the agreed upon investment fee for 15 years or investing the present value of the stream of investment fee payments and earning 7.45%. The calculations in the table indicate that the rate of return that is earned by the CRLP for the investment fee is approximately 7.45% and not 19.6%. Furthermore, the 7.45% rate of return is a nominal rate of return and does not reflect effects of inflation. Therefore, the real rate of return earned by the CRLP would be lower after accounting for inflation. The 7.45% rate of return calculated here is roughly equivalent to OMB's estimate of the nominal before tax opportunity cost of capital of 7% and therefore, indicates the investment fee amount is not excessive.[9]

[9]OMB Circular A-94 states that a real discount rate of 7 percent should be used as a base-case for regulatory analysis. However, the 7 percent rate is an estimate of the average before-tax rate of return to private capital in

Our findings do not indicate that the investment fee in itself was excessive, once the decision was made to allow the CRLP to provide the initial capital for the CHEU. However, our analysis does question BLM's decision to allow the CRLP to provide the initial capital. No information was provided for this analysis indicating that BLM did not have the financial or logistical resources necessary to provide the initial capital for the CHEU. In future agreements, BLM should consider providing capital costs for all necessary equipment and facilities that fall under Section 4.(c)(5) of the Helium Privatization Act.

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the U.S. economy. It is a broad measure that reflects the returns to real estate and small business capital as well as corporate capital. It approximates the opportunity cost of capital, and it is the appropriate discount rate whenever the main effect of a regulation is to displace or alter the use of capital in the private sector. It is also a nominal rate.

Table 5. Analysis of Crude Helium Enrichment Unit (CHEU) Investment Fee Charges

Total Initial Investment for CHEU[1]	$20 million
Fixed Annual Investment Fee Payment ($196/$1,000 of total initial investment)	$3.921 million

Year	CHEU Construction by CRLP Investment Fee Payment	CRLP Investment of CHEU Construction Funds End of Year Value
0	$0	$0
1	$3,920,980	$21,496,201
2	$3,920,980	$23,098,558
3	$3,920,980	$24,820,357
4	$3,920,980	$26,670,501
5	$3,920,980	$28,658,558
6	$3,920,980	$30,794,807
7	$3,920,980	$33,090,295
8	$3,920,980	$35,556,892
9	$3,920,980	$38,207,353
10	$3,920,980	$41,055,383
11	$3,920,980	$44,115,709
12	$3,920,980	$47,404,156
13	$3,920,980	$50,937,729
14	$3,920,980	$54,734,699
15	$3,920,980	$58,814,700
Total	**$58,814,700**	**$58,814,700**
Annualize Return	**7.45%**	**7.45%**

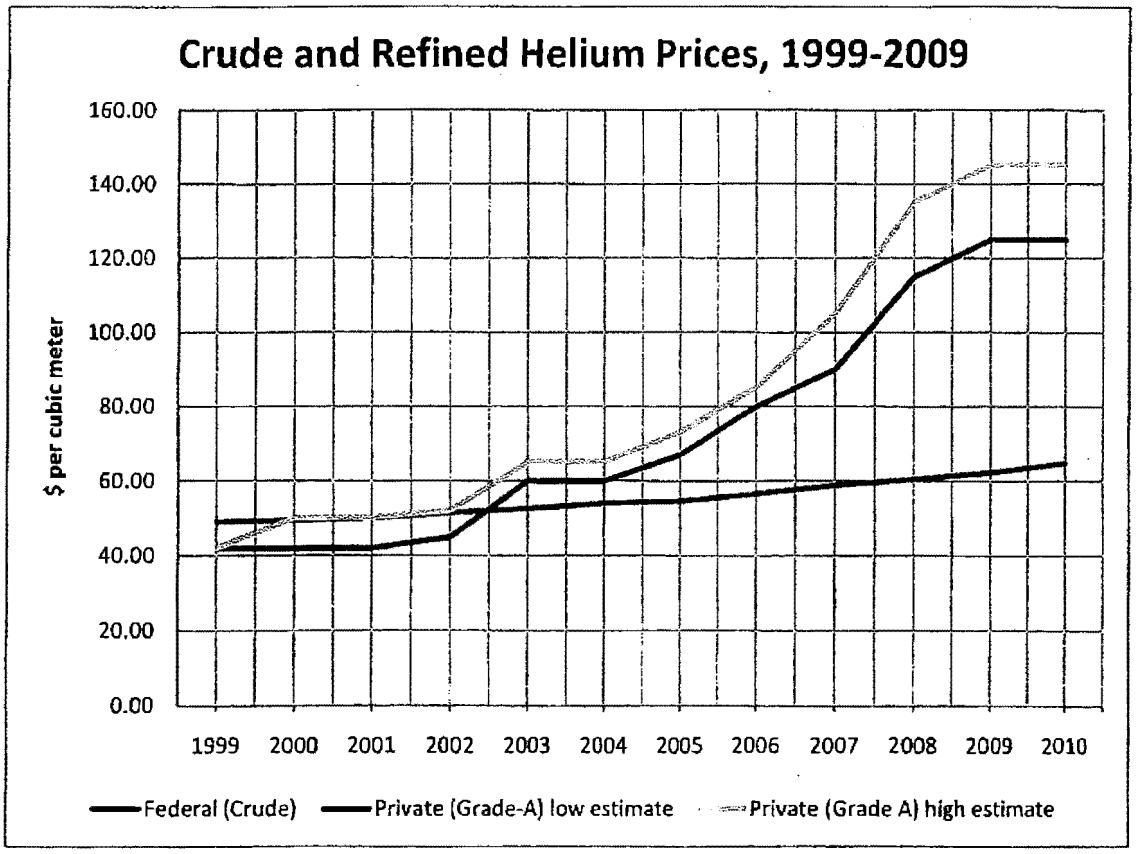
[1] Total initial investment for CHEU based on estimated figures reported in BLM Crude Helium Enrichment Unit Construction and Services Agreement dated June 27, 2001.
Note that the analysis is based on the total annual investment fee, not BLM's share of the investment fee as the general results would be unchanged.
Source: Office of Policy Analysis calculations.

VI. Helium Market Issues

This section provides a conceptual overview of the crude helium market and how the market is potentially impacted by the 1996 Helium Privatization Act's (HPA) requirements for BLM to offer for sale all crude helium in the reservoir in excess of 0.6 BCF on a straight line basis at fixed price by 2015. In general, the fixed price, the lack of competitive sales, and resulting incentive structure all create market distortions that may encourage "over use" of the Bush Dome crude helium supply.

Information provided by BLM indicates that the price of Federal crude has diverged substantially from the price of refined grade-A helium. Figure 3 shows crude and refined helium prices over 1999 – 2009. During 1999 – 2002 crude and refined prices were closely aligned. However, after 2002, crude and refined prices diverged substantially, with the price of refined helium rising to over $120 per cubic meter while the crude price remained at about $64 per cubic meter. Presumably the refiners have benefited as the grade-A price has risen and diverged from the Federal crude prices. Under the existing legislation, BLM must offer a fixed quantity for sale at a fixed price. Refiners are not obligated to purchase at this price. To the extent the price of crude helium rises above BLM's fixed price, BLM is not able to share in any of the revenues gains that might be associated with higher prices.

Figure 3. Helium Prices, 1999-2009[10]



[10] Source: BLM and USGS Mineral Commodity Summaries.

Figure 4 illustrates a partial explanation for the prices observed in the market. Beginning in approximately 2005, the quantity of Federally owned helium purchased as a percentage of helium offered began to increase, rising from about 20% to over 90% in 2008. The percentage sold fell to 0% in the third quarter of 2009, but has increased sharply in the third quarter of 2010 to over 90 percent. The rapid increase in the percentage purchased in 2010 may reflect refiners purchasing prior to an anticipated price increase.

There are currently six active extraction plants connected to the pipeline, owned by three companies. There are six refineries connected to pipeline, owned by four companies. Only refineries on the pipeline can purchase Federal helium. Essentially the refiners, extractors, and BLM are all bound together by the pipeline in a network relationship.

Figures 5-7 present a graphical analysis of what is believed to be the current condition of the crude helium market. Because the 1996 HPA requires the BLM to essentially supply annually a fixed quantity of crude helium at a fixed price, the supply of crude helium can be described as a "step" line. The horizontal part of the supply curve (S_0) corresponds to the fixed amount of crude helium offered annually by the BLM at the fixed price. If all helium were supplied via private facilities, the supply line could then be described as a single upward sloping line (i.e., solid line connected to the dashed line). However, the fixed amount offered annually by BLM causes the supply curve to "shift out" by the fixed quantity above the BLM fixed price.

In Figure 5, the market demand curve for crude helium (D_0) is shown intersecting the market supply curve at a point along the horizontal part of the curve. Therefore, the "market" price for crude helium is equivalent to BLM's fixed price and BLM is only able to sell a percentage of the fixed quantity offered for sale annually. Support for characterizing the crude helium market as shown in Figure 5 is provided by the following:

- The 2010 Draft National Academy Study states that the private market price of crude helium is on average roughly equivalent to BLM's fixed price for crude helium (see page 1-15 of the draft NAS report).
- Review of recent open market sales transactions for BLM's crude helium indicates that the full quantity offered for sale has never been sold, but BLM has at least been able to sell some portion of the fixed quantity offered.

Figure 4. Helium Purchased as a Percentage of Helium Offered for Sale

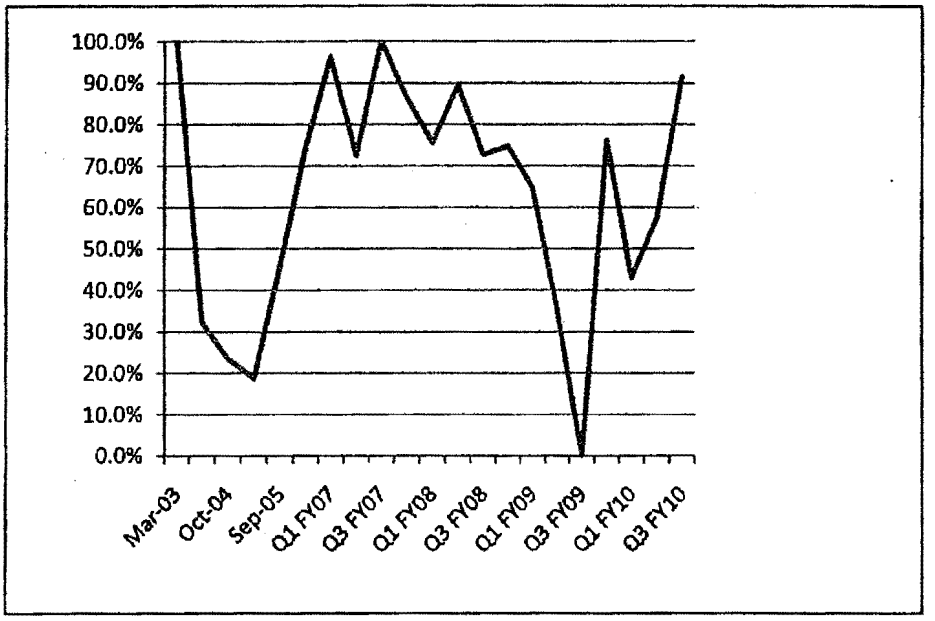


Figure 6 shows market conditions under the assumption that demand is relatively "low." Under this scenario, the full quantity demanded can be provided via private suppliers of crude helium and the market price for crude helium is below BLM's fixed price (i.e., the demand curve intersects the supply curve to the left of the horizontal portion). As such, BLM is not able to sell any helium because helium demanders can purchase all helium needed from private suppliers at a price lower than what BLM offers.

The market conditions presented in Figure 7 assume demand is relatively "high." Under this scenario, the full quantity demanded is met by a combination of private and BLM supply and the market price for crude helium is higher than BLM's fixed price (i.e., the demand curve intersects the supply curve to the right of the horizontal portion). BLM is able to sell the full quantity offered for sale annually, but the price BLM receives is fixed by the Helium Privatization Act and it is lower than the market price. BLM could sell additional crude helium, but is unable to do so due to the requirements of the HPA restricting how BLM is to dispose of the excess crude helium in the Bush Dome Reservoir.

The following points flow from the graphical analysis presented above:

1. BLM appears unable to sell all of the helium offered annually given current market conditions. Therefore, helium in excess of the 0.6 bcf required by the HPA will be available after 2015 and further analysis may be necessary to determine an appropriate method to market the remaining helium as well as to determine its price.
2. The draft 2010 NAS report suggests additional supply is expected in the coming years.[11] Thus, the increasing percentage of helium sold since the third quarter of FY 2009 may not be indicative of an emerging trend. If worldwide refining capacity increases in coming years, one

[11] Foreign supplies are discussed in chapter 4 of the draft NAS report.

result is likely to be a reduction in demand for BLM's fixed price crude helium. This would further complicate BLM's ability to sell the quantities of excess helium offered for sale annually through 2015.

3. The draft 2010 NAS report suggests BLM is permitted under the HPA to get the market price for crude helium if it is at or above legislated minimum (i.e., legislated minimum price serves as a "price floor" for BLM).
    - Current market conditions suggest that if BLM were to offer a fixed quantity and accept market price, the market price may be lower than what BLM currently receives, but the full quantity offered annually could be sold.
    - If demand increased sufficiently enough and BLM continued offering fixed quantity for sale annually, BLM could receive a market price higher than the fixed price under the current HPA regime and the full quantity offered annual could be sold.
    - Under the current regime, if demand increased sufficiently enough in the near term, BLM could sell full quantity offered annually, but the price received by BLM would be lower than market price.
4. Changes to the 2015 deadline to repay the debt to the Treasury and the requirement to liquidate the helium reserve on a straight-line basis will also have market implications if BLM were to begin accepting market price for helium. With debt essentially "frozen," there is no incentive to repay the debt immediately. However, the timeline to repay debt and the fixed quantity offered annually reduces flexibility in repaying debt and in responding to changes in market conditions.

Figure 5 – Crude Helium Market: Current Demand

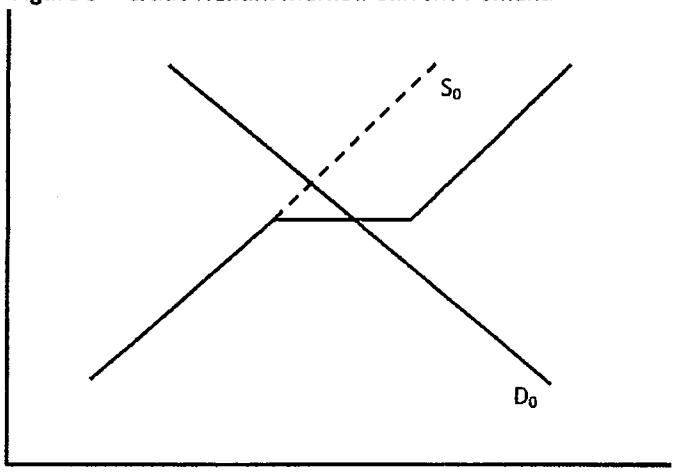


Figure 6 – Crude Helium Market: Scenario 1 – Low Demand

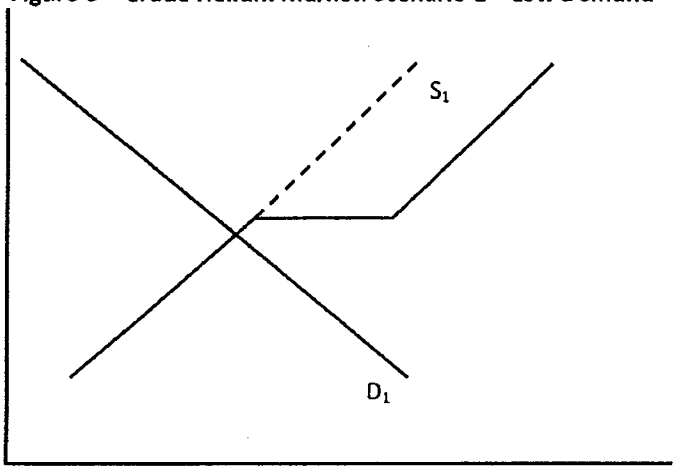
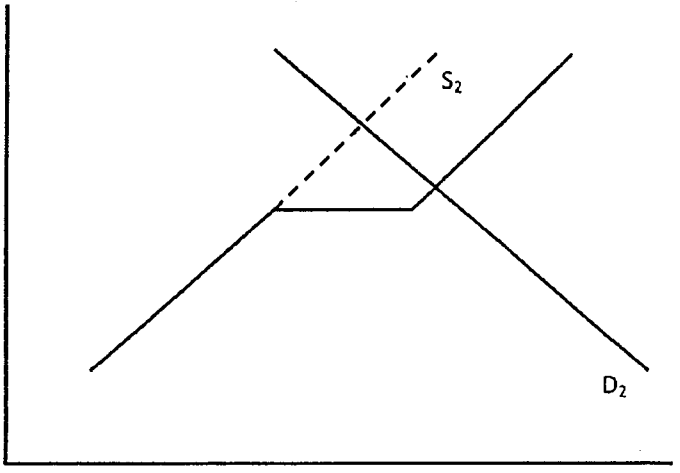


Figure 7 – Crude Helium Market: Scenario 2 – High Demand



VII. Double billing and Short-term Financing Issues

Double Billing

Our analysis did not reveal any clear situations of double billing. The OIG report does not specify under which agreement or at what point of operation they believe double billing is occurring. However, BLM presumes that the OIG was referring to purchases to enhance the ability for BLM to separate and market natural gas, such the "chiller skid". The BLM indicated in its response to the OIG that BLM is the sole owner and beneficiary of the chiller skid, and was therefore responsible for all capital costs, maintenance and operational costs associated with that equipment. Additionally, based on the cost allocation formula established in the CHEU and CHCS agreements, upgrades that were made to equipment beyond original capital costs may require additional funds to be collected for major maintenance.

Some questions remain regarding major maintenance. Our review indicates that BLM is not fully aware of how the CRLP manages funds for major maintenance, only that CRLP is responsible for providing major maintenance. Additionally, the definition of routine and major maintenance in the cooperative agreements could be articulated more clearly to enhance transparency. We recommend that BLM develop a system to track major maintenance funds provided to the CRLP to ensure that funds are being used in a way that is consistent with the cooperative agreements. We also recommend that BLM develop clearer definitions for routine and major maintenance and clearer delineation for when each fund should be used.

Short-term financing

Our analysis did not reveal problems with short-term financing. While CRLP accounts that temporarily hold BLM funds do bear interest, the total amount earned over the term of cooperative agreements is not significant and is simply a function of the billing process and how funds are transferred from one account to another. This issue appears to have been adequately addressed in the report prepared by the BLM consultants.[12]

[12] Kforce Government Solutions, *Helium Program Final Report*, November 6, 2008.

VIII. Findings and Recommendations

Findings

- Fair rate of return. The question of whether or not the Federal government is receiving a *fair* rate of return for the Helium Program is difficult to answer objectively. A variety of factors impact the rate of return and it is not possible to determine in all cases how alternative practices would result in greater returns compared the returns currently being received. The returns currently being received appear to be substantial: the debt is being repaid with interest (and the interest represents a return to the Federal government), and the program is generating sufficient revenues to accumulate a surplus.

- Investment fee. The Office of Policy Analysis reviewed the investment fee paid to the CRLP for the CHEU capital costs. Our review determined that the rate of return is approximately 7.45%. This level of return does not appear to be excessive. Funding by BLM for the construction of the CHEU may have been possible, but would have associated opportunity costs as these funds would not be available for other uses.

- Billing processes and short-term financing. The Office of Policy Analysis review did not reveal problems in these areas. The analysis conducted by BLM's contractor appears to satisfactorily address these issues.

- Royalties. While the OIG report did not address royalty rates, PPA notes that helium royalty rates vary across locations and across product types (crude v. refined). In the context of reevaluating onshore oil and gas royalty rates, helium royalty rates should also be reevaluated.

Recommendations

- Capital costs for new equipment. In future Helium Program agreements, BLM should evaluate whether it should provide capital costs for all equipment and facilities that fall under Section 4(c)(5) of the Helium Privatization Act. The revenue stream flowing from helium and natural gas sales should be sufficient to fund any future capital investments thought necessary.

- Cost allocations. The current allocation of costs for CHEU operations represents only one possible allocation. The rationale for the existing 80/20 allocation could have been more thoroughly documented, including an analysis of the implications of other approaches for cost allocation. BLM should re-examine and evaluate other approaches for cost allocation as the end of the term of the CHEU and associated agreements approaches. If additional capital investments are to be made to maintain the operational integrity of the Cliffside Reservoir, pipeline, and other facilities, careful and systematic consideration should be given to evaluating cost allocation issues.

- Transparency. BLM should ensure that the arrangements with the CRLP and refiners are transparent and easily explainable, including cost rates and billing processes. Many of the original OIG concerns could have been addressed earlier through clearer explanation of agreements and how they tie to specific pieces of capital equipment.

- Maintenance funds. In future agreements, the BLM should develop clearer definitions for routine and major maintenance and clearer delineation for when each fund should be used. BLM should also consider developing a system to track major maintenance funds provided to the CRLP to ensure that funds are being used in a way that is consistent with the cooperative agreements. Major maintenance funds that are paid to private entities should be tracked to ensure that funds are used appropriately.

The following recommendations relate to the Helium Privatization Act (HPA):

- The HPA stipulates that BLM is to offer for sale all Federal helium in excess of 0.6 billion cubic feet by 2015. However, a review of past open market sales and possible future open market sales implies that complete liquidation of helium stock by 2015 may not be feasible.
  - BLM should revaluate its projections for future open market sales and subsequent payment of the outstanding debt by 2015.
  - The HPA does not address the extent to which in-kind sales continue after sell-off of excess Federal helium has been completed. The BLM needs to proactively address this possibility, including consultations with the Office of the Solicitor.
  - The price BLM charges for helium sold via the in-kind program and open market sales needs to be reevaluated. Relying on an administered price, mechanically adjusted by CPI annually, may not be in the best interests of the Federal government. The HPA only requires that the helium sales generate sufficient revenue to pay off the helium debt the 2015.
  - Once the helium reserve has been largely liquidated, BLM's revenue stream to operate the helium program will be substantially diminished. BLM needs to plan for this eventuality. This planning should include evaluating whether BLM can make changes to the existing cooperative agreements.
  - The method by which helium is offered for sale should also be revaluated. Rather than offering fixed proportions of the total offering to existing refiners on the pipeline, BLM should evaluate other approaches including the use of sealed bid auctions.

Appendix A: Helium Program Revenues and Expenses

Table A1. Helium Program Revenues and Expenses ($)

	FY2005	FY2006	FY2007	FY2008	FY2009
Revenue					
Helium sales revenues					
In-Kind sales	13,226,000	10,222,380	11,318,118	12,276,047	10,687,925
Open Market Sales	43,055,000	121,122,500	118,675,000	99,099,000	57,581,250
Subtotal	56,281,000	131,344,880	129,993,118	111,375,047	68,269,175
In-kind Volume Sold (Mcf)	247,235	182,637	194,807	204,442	172,952
Open Market Volume Sold (Mcf)	790,000	2,165,000	2,020,000	1,638,000	925,000
Subtotal volumes sold	1,037,235	2,347,637	2,214,807	1,842,442	1,097,952
Storage and Transmission					
contract fees	123,000	120,000	120,000	108,000	96,000
connection pt fees	200,000	180,000	180,000	180,000	180,000
activity charges	2,686,700	2,762,900	2,408,154	3,198,309	3,652,235
low purity charges	18,000	24,450	9,962	4,143	2,852
subtotal	3,027,700	3,087,350	2,718,116	3,490,452	3,931,087
Compression Services					
Cost recovery from refiners	717,733	704,352	689,752	741,865	716,279
Cost recovery from CRLP	192,179	178,798	164,198	208,179	183,646
	909,912	883,150	853,950	950,045	899,925
CHEU Operations					
Reservoir Management Fee	1,995,000	2,318,172	2,912,967	2,529,525	2,015,966
Natural Gas Sales	19,562,000	22,346,786	19,976,733	26,571,943	11,364,876
Natural Gas Liquid Sales	836,000	1,083,095	994,098	1,818,632	738,998
	22,393,000	25,748,053	23,883,798	30,920,100	14,119,840
Federal Leaseholds					
Fee sales & Royalties	6,609,907	7,577,485	7,433,070	8,227,057	7,674,454
Natural Gas royalties	19,895	28,103	25,340	24,724	10,187
Natural Gas rentals	0	0	0	640	640
Interest	497	0	$1,782	0	0
	6,630,299	7,605,588	7,460,192	8,252,421	7,685,281
Total revenue	89,241,911	168,669,021	164,909,174	154,988,064	94,905,307
Expenses	FY2005	FY2006	FY2007	FY2008	FY2009
In-Kind and Open Market					
labor	75,000	105,816	108,225	116,946	106,668
operations	25,000	8,600	21,491	13,604	42,477
Allocated Overhead	42,500	35,880	37,312	45,866	44,215
subtotal	142,500	150,296	167,027	176,416	193,360
Storage and Transmission					
labor	1,640,900	1,473,781	1,605,201	1,451,159	1,511,347
operations	651,100	884,609	1,126,613	1,576,870	1,071,699
Allocated Overhead*	839,800	888,452	637,647	733,854	705,457
subtotal	3,131,800	3,246,842	3,369,461	3,761,883	3,288,503
Compression Services					
CRLP compression charges	717,733	704,352	689,752	741,865	716,279
BLM actual expenses*	128,075	128,121	111,556	176,156	161,119
subtotal	845,808	832,473	801,308	918,022	877,398

	FY2005	FY2006	FY2007	FY2008	FY2009
*includes labor (1 FTE), routine maint, and site OH.					
CHEU Operations					
Fixed cost (Ef) - Capital Cost (includes compressors #2 & #3)	4,438,824	4,491,660	4,547,412	4,924,476	4,369,450
Fixed cost (Ef) - Major Maint	541,884	548,340	549,564	581,880	534,973
Semi-Fixed cost (Es) - Insurance, Joint Venture Overhead, taxes	582,000	582,000	582,000	623,400	801,886
Labor (BLM)	612,411	695,424	837,804	915,156	1,384,872
Routine Maintenance (BLM	183,164	270,192	366,252	323,568	447,545
Site overhead (BLM)	240,000	240,000	373,116	391,764	588,146
VariablefFee (Ev) - Utilities (electric)	1,396,000	1,769,375	1,601,940	1,749,034	1,789,790
Metered Compressor Fuel/Process	644,545	1,130,256	892,554	1,172,707	453,398
subtotal	8,638,828	9,727,247	9,750,642	10,681,985	10,370,061
El Paso Natural Gas FT/IT fees	330,487	338,390	335,964	338,827	332,916
Infrastructure improvements (BLM)	125,000	167,835	383,919	111,661	392,673
Total	9,094,315	10,233,472	10,470,525	11,132,473	11,095,650
Federal Leaseholds					
Labor	699,481	697,938	654,969	795,255	798,016
Operations	62,164	67,170	140,400	75,544	57,606
Allocated Overhead	140,000	148,000	478,235	550,391	529,093
subtotal	901,645	913,108	1,273,604	1,421,190	1,384,715
Total expenses	14,116,068	15,376,191	16,081,925	17,409,983	16,839,626
Net revenue	*75,125,843*	*153,292,830*	*148,827,249*	*137,578,081*	*78,065,682*
					Source: BLM.

Appendix B: Additional Information on Cost Allocation Methods

This Appendix provides additional information on various methods used to allocate costs. As a first step, the following terms are typically used in the allocation methods.

- Benefits: quantifiable gains resulting from the use of the facilities.
- Investment costs: cost of all inputs required to construct the facilities.
- O&M costs: costs required to operate and maintain the facilities.
- Separable costs: The combination of specific single-purpose costs and imputed single-purpose costs.
- Specific single-purpose costs: The cost of a part of the facility that functions exclusively for a single service function, but is not an integral part of the common works of the facility, for example, a power plant that is specifically separable from a dam. Removal of that part of the facility would not impact the cost of or service from any other component of the facility.
- Imputed single-purpose costs: The cost of a feature that is an integral part of the common works. A hydropower penstock that is built into a dam is an example. It is integrated into the dam, but it serves only the power purpose. Such a cost can be separated from the dam, but in so doing, the cost of the dam itself would be changed. Such costs can be separated by comparing the cost of the dam without penstocks with the cost of the dam with penstocks. The difference in cost of the dam with penstocks and the dam without penstocks is the imputed separable cost that is assignable to the hydroenergy function. This requires a major effort in engineering design which is normally conducted during the planning stage prior to construction.
- Joint costs: The joint cost is the cost remaining after subtracting all separable costs from the total cost of the facility.
- Single-purpose alternative costs: The cost of the most likely alternative way of providing the same level of benefits of a single-purpose facility if the proposed (existing in this case) multipurpose facility were not built. An example would be the cost of the most likely way the same level of power benefits could be provided if the multipurpose facility being evaluated were not built. Clearly, the consideration of single-purpose alternates is best dealt with in an a priori planning setting where irreversible commitments have not already been made.

Separable Cost-Remaining Benefit Method of Cost Allocation (SCRB)

The SCRB method is the most likely to yield more equitable results when used in a planning setting. However, it is the most demanding of data. Usually the heavy data demands are only met in an a priori planning setting, that is, during the planning stage before the facility has been built. Data requirements include total project costs, benefits provided by the project for each user group, single-purpose alternative costs, specific costs, imputed separable costs, and joint costs. The basic steps involved in applying the SCRB method are:

1. Derive the benefits for each purpose served by the facility (hydropower, irrigation, flood control, etc.).
2. Derive the alternative costs of single-purpose projects for each purpose served that would yield the same level of benefits as the multi-purpose facility would provide for each of those purposes.
3. Identify the specific costs.
4. Derive the imputed separable costs for each purpose which is the difference in project cost with and without each purpose.

5. Deduct the separable costs for each purpose from either the benefits or the alternative single-purpose costs associated with each purpose, whichever is less, to determine the remaining justifiable expenditure for each purpose.
6. Deduct the sum of all of the separable costs from the cost of the total facility to determine remaining joint costs.
7. Allocate the remaining joint costs to the purposes served in proportion to the remaining justifiable expenditures derived in step 4.
8. Sum the separable costs and allocated remaining joint costs to get the total allocated costs for each purpose served.

Use of Facilities (UoF) Method of Cost Allocation

The UoF method of cost allocation was developed to address the situation where project benefits for each function served are not available and the derivation of such benefits are beyond the scope of the allocation study. Also, it can be used in cases where derivations of separable costs and single-purpose alternative costs are beyond the scope of the cost allocation effort. The method rests on the assumption that the level of use of the facilities is an acceptable approximation of the benefits received. Physical relationships such as quantities of water delivered are commonly used as measurements of the level of use of facilities. The steps employed are:

1. Derive the level of use of joint project facilities for each purpose. Measures such as flow rates, water deliveries, reservoir capacity assigned to each purpose, and energy consumption are often used to represent the level of use by each purpose.
2. Identify the separable costs for each purpose.
3. Deduct all separable costs from the total project cost to determine the remaining joint cost.
4. Allocate remaining joint costs to each purpose served in proportion to the use-of facilities factors developed in step 1.
5. Sum the separable and allocated remaining joint costs to get the total allocated costs for each purpose served.

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
http://www.blm.gov

TAKE PRIDE IN AMERICA

MAY 8 2009

In Reply Refer To:
1235 (800)

Memorandum

To: Assistant Inspector General for Audits
Office of Inspector General

MAY 18 2009

Through: Ned Farquhar
Acting Assistant Secretary - Land and Minerals Management

From: Mike Pool
Acting Director

Subject: Review of the Bureau of Land Management's (BLM) Helium Program in Response to the Office of Inspector General (OIG) Report "Immediate Action Needed to Stop the Inappropriate Use of Cooperative Agreements in BLM's Helium Program," Report No. WR-IV-BLM-003-2008/OI-CO-07-0206-I, August 2008

In September 2008, in response to Report No. WR-IV-BLM-003-2008/OI-CO-07-0206-I, August 2008, by the OIG on cessation of the use of cooperative agreements in the BLM's Helium Program, the BLM retained the services of a consulting firm, Kforce Government Solutions (KGS), to provide an independent review of its Helium Program at the Bush Dome Reservoir near Amarillo, Texas. The review team also included two employees from the Department of the Interior's (DOI) Office of Financial Management. This review, completed in early November 2008, encompassed:

- Examination of the three operational components where contractual, financial, and agreement transactions occur. These components are storage, compression, and enrichment of crude helium. Documentation and data pertaining to all three processes were collected and key Helium Program officials in Washington, D.C., Santa Fe, New Mexico, and Amarillo, Texas, were interviewed. These interviews included current and former BLM procurement staff, field managers and other field officials, and state office officials and former DOI procurement staff and solicitors. Also included is documentation provided by the Cliffside Refiners Limited Partnership (CRLP) General Manager related to negotiation of fees used in the billing process.

- In addition, pertinent laws, regulations, policies, and contract and agreement documents were reviewed; financial data/documentation for Fiscal Years (FY) 1999 through 2008 for the storage, compression, and enrichment components were sampled and analyzed; and the Government Accountability Office Principles of Federal Appropriations Law, the Federal Acquisition Regulations (FAR), and pertinent Office of Management and Budget circulars were analyzed in evaluating the BLM's Helium Program.

The BLM recognizes that the source of information contained in the subject OIG report emanated from a hotline complaint. The OIG, both in its report and transmittal memorandum, acknowledged that they performed only limited validation of the data presented by the complainant. The OIG also acknowledged that their review was suspended so information could be provided to the DOI that would facilitate expeditious action to correct the potentially serious issues that were outlined in the report.

Based on the independent review of BLM's Helium Program by KGS, the BLM has identified information which does not support many of the conclusions included in the OIG report. The remainder of this correspondence will provide the BLM's response to the recommendations contained in the subject report, along with a discussion of the basis for the response.

Recommendation 1: "Immediately stop the renewal of both cooperative agreements and replace them with appropriate contract(s)."

BLM Response: The BLM does not concur with this recommendation.

Upon receipt of the subject OIG report, the BLM suspended its renewal activities of one 5-year cooperative agreement, which was the only agreement that was in need of renewal at that time. However, based on the KGS independent review completed in early November 2008 and advice of the Solicitor's Office, the BLM is proceeding with the renewal of two 5-year agreements.[1]

Discussion: The BLM requested the Solicitor's Office's opinion regarding whether the law required the actions in this recommendation. The following represents the Solicitor's legal analysis, which reveals that there is no basis to conclude that the relevant statutory or regulatory authorities require use of contracts. To the contrary, they give the Secretary broad discretion in selection of the appropriate instrument, including the use of a cooperative agreement. And, in this circumstance, the underlying facts support a conclusion that the use of cooperative agreements adequately protects the public interest.

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[1] There are actually five 15-year agreements associated with the Helium Program. The subject report focused on the funding documents associated with two of these 15-year agreements between the BLM and the CRLP. The two agreements discussed in the subject report are the Crude Helium Compressor Station (CHCS) Construction and Compression Service Agreement, which was signed August 15, 2000, and the Crude Helium Enrichment Unit (CHEU) Operating Agreement, which was signed on July 17, 2001. Clearly, neither of these 15-year agreements has expired, nor are they close to expiration. It was one of the 5-year funding agreements for which the performance period had expired.

When considering whether the BLM's cooperative agreements with CRLP were proper, the starting point is the language used by Congress. *See Exploration Partners, infra* (citing *Consumer Prod. Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980)); *Decision of Cleve, infra.* The Helium Privatization Act of 1996, codified at 50 U.S.C. §§ 167 *et seq.*, provides that "The Secretary may enter into agreements with private parties for the recovery and disposal of helium on Federal lands upon such terms and conditions as he deems fair, reasonable and necessary." 50 U.S.C. §167a(a)(1). The Act also provides that "An agreement under paragraph (1) (and any extension or renewal of an agreement) shall contain such terms and conditions as the Secretary may consider appropriate." *See* §167a(a)(6) (parentheses in original). By contrast, the Helium Act Amendments of 1960, P.L. 86-777, provided that the Secretary was authorized to "make just and reasonable contracts and agreements." Although the Helium Act Amendments of 1960 probably also was intended to grant the Secretary significant discretion, we find it notable that the Helium Privatization Act of 1996 stated that "The Secretary may enter into agreements" and left out the word "contracts." In the Helium Privatization Act of 1996, Congress specifically chose to use the term "agreement"—and also expressly gave significant discretion to the Secretary when entering into such agreements—and likely understood the term "agreement" to have a meaning distinct from the term "contract."

It is a cardinal rule of statutory construction that no clause, sentence, or word shall be read as superfluous, void, or insignificant. *Exploration Partners, LLC*, B-298804, December 19, 2006, 2006 CPD ¶ 201 (citing *TRW v. Andrews*, 534 U.S. 19, 31 (2001)). In *Exploration Partners*, the Government Accountability Office (GAO) considered the Space Act, which permits an agency to "enter into and perform such contracts, leases, cooperative agreements, *or other transactions* as may be necessary in the conduct of the work and on such terms as it may deem appropriate" with any of a broad range of entities. *See* 42 U.S.C. § 2473(c)(5) (emphasis added). The GAO determined that the phrase "other transactions" authorized transactions apart from procurement contracts. Accordingly, it dismissed a bid protest challenging National Aeronautics and Space Administration's (NASA) award to a competitor, concluding that NASA's award of a Space Act agreement "pursuant to its 'other transactions authority' is not tantamount to the award of contracts for the procurement of goods and services."[2]

Another instructive decision is *Capital Health Services, Inc., et al*, B-281439.3, *et al*, March 23, 1999, 99-1 CPD ¶ 63, a protest against the Department of Defense's (DOD) decision noncompetitively to add the operation of two clinics to an existing contract awarded under its TRICARE program. There, the Secretary of Defense could "enter into an agreement providing for the sharing of resources between facilities of the uniformed services and facilities of a civilian health care provider or providers that the Secretary contracts with under [other sections of 10 U.S.C.] *if the Secretary determines that such an agreement would result in the delivery of health care . . . in a more effective, efficient, or economical manner.*" *See* 10 U.S.C. § 1096(a) (emphasis added). As in *Exploration Partners*, the GAO found the statute "does not anticipate

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[2] *See, also, Rocketplane Kistler*, B-310471, Jan. 28, 2008, 2008 U.S. Comp. Gen. LEXIS 10, a protest against the follow-on action to the award considered in *Exploration Partners*. There, the GAO considered the Federal Grant and Cooperative Agreement Act's "principal purpose" test and found that a relationship "supporting and stimulating efforts in support of a lawfully mandated public policy" supported not using a procurement contract.

an acquisition of goods or services." The GAO found it significant that "the pool of eligible recipients of these agreements is expressly limited to those with whom the government already has a managed health care contract."

In this regard, under the Helium Privatization Act of 1996, the Secretary "may not enter into any agreement by which the Secretary sells such helium *other than to a private party with whom the Secretary has an agreement for recovery and disposal of helium.*" 50 U.S.C. §167a(a)(3) (emphasis added). Furthermore, the Secretary's helium agreements "shall be subject to any rights of any affected Federal oil and gas lessee that may be in existence prior to the date of the agreement." *Id.* at §167a(a)(5).

We believe that the Helium Privatization Act of 1996 was not a "procurement statute" because it contemplated other than a fully competitive environment. As in *Exploration Partners*, it used a term other than "contract" and, specifically, gave the Secretary the discretion to use an "agreement," which could include a cooperative agreement, to develop and operate the facilities at Bush Dome Reservoir. As in *Capital Health Services*, the Act gave deference to existing rights and relationships in carrying out its purposes. All of this is further borne out by the "facts on the ground."

The compression (CHCS) and enrichment (CHEU) facility is roughly centered within the Bush Dome Helium Reservoir, which covers approximately 14,000 acres of private surface area. The location of the refineries and interconnection of the pipeline system was and remains fundamental to the relationship between BLM and a limited number of refiners. Indeed, the four CRLP members are Air Products and Chemicals, Inc., The BOC Gases Group (sometimes identified as Linde), El Paso Natural Gas, and Praxair, Inc. Except for El Paso, all CRLP members have facilities located along, and physically connected to, the 425-mile helium storage pipeline extending from BLM's Cliffside facility in Texas, through Oklahoma, and into Kansas. *See* KGS Report at 14. Except for Keyes, which is not a CRLP member, all CRLP members are physically connected to the pipeline. But even Keyes once was owned by a company named CIG, which was one of the original CLRP members. The CIG later was purchased by El Paso, which is a CRLP member. Thus, the CRLP represents, by direct interest or successor-in-interest, all refiners along and physically connected to the helium pipeline.

One still could ask whether it might have been feasible to acquire the CHCS and CHEU facilities through open-market contractors. It was not. A general contractor undertaking this work would have required the expertise and proprietary knowledge to design and build helium refineries and it also would have required specific knowledge of the helium properties at Bush Dome Reservoir and myriad considerations relating to the pipeline. This kind of specific knowledge only could be obtained from or through the entities already conducting operations along the pipeline; namely, the refiners, themselves. Although BLM considered the alternative of competitively obtaining the facilities in 2000, it was determined that the only viable alternative was to draw upon the expertise and experience of the stakeholders along the pipeline. Since no one stakeholder could fairly, efficiently, or perhaps even lawfully contract for, build, and operate a facility that would affect all stakeholders, the CRLP was created.

The OIG suggests impropriety when it characterizes the CRLP as a "shell company" made up of four refiners "for the sole purpose" of entering into a relationship with BLM. *See* OIG Report at 4. To the contrary, KGS found that the CRLP was "created in order to avoid committing violations of anti-trust laws and to maintain arm's length relationships between the individual refineries and BLM." *See* KGS report at 8. Under the "messenger model," CRLP serves as a "third-party negotiator between the competing partners," collecting "price and other statistical data" from each partner, while also keeping the information confidential. *Id.* Upon receiving this information from CRLP, BLM makes pricing and contract offers to the partners, which is conveyed to them by CRLP, and the partners can individually decide whether or not to accept BLM's terms. *Id.* Since the refinement and compression operations benefited only the refiners along the pipeline and only those refiners had the collective expertise and knowledge to build the CHCS and CHEU, the CRLP was formed to effectuate this purpose.

It may have been impossible to obtain competition between entities other than those represented on, or through, the CRLP. The combination of physical connection to the pertinent infrastructure by a limited number of refiners, the unique helium properties and concerns associated with the pipeline, the statutory and practical requirement to maintain a relationship with those refiners, and a highly competitive environment between those refiners made creating an entity like the CRLP indispensible to accomplishing the purposes of the Helium Privatization Act of 1996. Congress likely recognized these "facts on the ground" when giving the Secretary significant discretion in the type of transaction to use to accomplish the purposes of the Act.

The Federal Grant and Cooperative Agreement Act (FGCA), 31 U.S.C. §§ 6301 *et seq.*, sometimes is regarded as an unyielding template against which to judge whether a particular relationship is appropriate for a cooperative agreement, grant, or procurement contract. When it enacted the FCGA, Congress recognized that there was "uncertainty as to the meaning of such terms as 'contract,' 'grant,' and 'cooperative agreement' and [that] the relationships they reflect cause operational inconsistencies, confusion, inefficiency, and waste for recipients of awards as well as for executive agencies." *Henke v. United States Department of Commerce*, 317 U.S. App. D.C. 397, 83 F.3d 1445, 1452 (D.C. Cir. 1996) (internal cites omitted). But the FGCA "established the *general* criteria" agencies must follow in deciding whether to use a procurement contract or an assistance relationship. *Energy Conversion Devices, Inc.*, B-260514, June 16, 1995, 95-2 CPD ¶ 121 at 2-3 (emphasis added). And, while the FGCA "provides a *basis* for examining whether an arrangement should be a contract, grant, or cooperative agreement, determinations of whether an agency has authority to enter into one of these types of relationships must be found only in the agency's authorizing legislation." *Decision of Cleve*, B-210655, April 14, 1983, 1983 U.S. Comp. Gen. LEXIS 1866 at *6 (emphasis added). Accordingly, an agency's decision to use an assistance relationship is one that the GAO will not question "unless it appears that the agency disregarded statutory and regulatory guidance or lacked authority to enter into a particular relationship." *Civic Action Inst.*, B-206272, September 24, 1982, 82-2 CPD ¶ 271, 61 Comp. Gen. 637, 1982 U.S. Comp. Gen. LEXIS 424 at *5.

Along these lines, the GAO will consider the propriety of an agency's use of a cooperative agreement "where there is a showing that the agency chose to use the cooperative agreement process to avoid the competitive requirements of the procurement statutes and regulations." *Fischbach, McCoach & Assoc., Inc.*, B-207612, Nov. 5, 1982, 82-1 CPD ¶ 411, 1982 U.S. Comp. Gen. LEXIS 247 at *2. In *Capital Health Services, supra*, the GAO also considered

whether the agency "improperly used resource sharing agreements where competitive procurement should have been conducted." *Id.*, 1999 U.S. Comp. Gen. LEXIS 54 at *11-*14. But the GAO found that the agreements in question were "well within the parameters of the authorizing statute" and concluded that the agency had not used the agreements "improperly as a substitute for competitive procedures." *Id.* at *14-*15. Notably, the GAO's analysis turned upon understanding the intent of the relevant statute rather than upon an analysis of the "principal purpose" test under the FGCA.

As noted, the Helium Privatization Act of 1996 contains expansive language. Specifically, it uses the term "agreement" and authorizes the Secretary to make agreements in furtherance of its purposes "upon such terms and conditions as he deems fair, reasonable and necessary" and, similarly, upon "such terms and conditions as the Secretary may consider appropriate."[3] Accordingly, we cannot view BLM's entering into the cooperative agreements with CRLP either as "disregarding" statutory guidance or as acting with a knowing lack of authority.

Furthermore, KGS found that BLM carefully deliberated the merits of using agreements rather than contracts to execute the Helium Program. *See* KGS report at 3, 5-6. Prior to awarding any of the 15-year agreements, discussions took place with the DOI Solicitors' Offices, the BLM Procurement Chief, a BLM Grants Management Officer, and contracting officials at BLM's Denver Federal Center, all in consultation with the DOI Grants Manager. Upon completion of the discussions, the BLM Amarillo Field Manager, New Mexico State Assistance Officer, New Mexico State Procurement Analyst, Washington, D.C., Grants Management Officer, and the DOI Regional Solicitor explicitly determined that a cooperative agreement was an acceptable instrument to use in carrying out the requirements of the Helium Privatization Act of 1996. Thus, even if one questions the conclusion that resulted from these extensive and careful deliberations, the processes used and the deliberation undertaken do not support the view that BLM's course of action was an effort to avoid procurement requirements.

Even if the Helium Privatization Act of 1996 had not explicitly granted the Secretary the discretion to use "agreements," we believe that "the principal purpose of the relationship" between BLM and CRLP is "to carry out a public purpose of support or stimulation authorized by a law of the United States" and that "substantial involvement is expected between" BLM and CRLP. *See* FGCA, 31 U.S.C. § 6305(1) and (2). The agreements with CRLP facilitate achieving the goals of the Helium Privatization Act of 1996; namely, to extract and dispose of helium on non-Federal lands through the engine of the private sector (*i.e.*, to get the Government out of the helium business as much as possible) while accomplishing work that probably could not be done in open procurement by private industry due both to practical barriers and anti-trust considerations. The fact that this may help BLM carry out its own programmatic purposes does not mean that a cooperative agreement is inappropriate.

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[3] *Compare Department of Agriculture—Cooperative Agreement for the Use of Aircraft*, B-308010, Apr. 20, 2007, 2007 U.S. Comp. Gen. LEXIS 71, where the GAO found proper the use of a cooperative agreement to obtain aircraft to use in aerial eradication where Agriculture had authority "to conduct a program of wildlife services with respect to injurious animal species and take any action the Secretary considers necessary in conducting the program."

In *Electronic Space Systems Corp.*, 61 Comp. Gen. 428 (1982); 1982 U.S. Comp. Gen. LEXIS 970, the Department of Energy issued a "program opportunity notice . . . for the design, fabrication, test and performance evaluation of a prototype solar parabolic dish/Stirling engine system module." 1982 U.S. Comp. Gen. LEXIS 970 at *1. The protester argued this should have been conducted as a procurement because—like the CHCS and the CHEU at Bush Dome Reservoir—a "stand-alone electrical generating system would be very useful at remote military and weather stations and that this direct benefit falls within the definition of a 'procurement'" under the FGCA. *Id.* at *4.

The GAO rejected the "direct benefit" approach, however, finding that "[r]ather than rely on 'benefit,' [GAO] has expressed the position that whether any specific project or undertaking should be accomplished through a procurement, grant or cooperative agreement *should be determined by the purpose of the proposed activity*—that is, whether it is the Government's principal purpose to acquire the services or goods in question, *or whether it is the Government's purpose to stimulate or support their production.*" *Electronic Space Systems Corp.* at *5-*6 (emphasis added). Upon reviewing the relevant statutory authority, the GAO found that the relationship reflected the "broader support and stimulation purposes of the Solar Energy Research Development and Demonstration Act of 1974, *supra*, rather than an intent to acquire services or technology, and, therefore, was correctly denominated a cooperative agreement."[4] *Id.* at *6. *See also Rocketplane Kistler*, B-310741, January 28, 2008, 2008 U.S. Comp. Gen. LEXIS 10 at *9-*10 ("we agree with NASA that the agreement's purpose should control whether the services are 'principally' for the agency's direct benefit or use, or, as is the case here, to support or stimulate a public purpose authorized by law").

We have addressed the meaning and context of the Helium Privatization Act of 1996, the discretion that it gives to BLM, how this supports BLM entering into these agreements, and the fact that BLM proceeded in good faith in 2000 and 2001 without a purpose to evade procurement requirements. We contend that, even though construction and operation of the CHCS and CHEU may benefit BLM's operations or help BLM meet its responsibilities, the principal purpose of this facility is to serve a statutorily prescribed public purpose. Any one or more of these considerations support the propriety of the agreements in question here.

There are additional considerations that argue against the use of a competitive procurement in this situation. There are two principal considerations when deciding whether to use a FAR procurement contract or another kind of instrument, such as a cooperative agreement. The first is to ensure that there is competition in instances where competition is appropriate.[5] At this point, eight or more years after the fact, competitive harm to a hypothesized interested party is no longer a consideration from either a legal or practical standpoint. The facilities are completed, accepted, and are more than half-way through a 15-year lifecycle. They are serving their primary stakeholders through the CRLP.

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[4] The relevant statutory language was 42 U.S.C. § 5551(b)(1) through (3), which remains apparently unchanged from when it was analyzed in *Electronic Space Systems.*

[5] *See* Federal Grant and Cooperative Agreement Act, 31 U.S.C. § 6301 *et seq.*, one purpose of which is to "maximize competition in making procurement contracts, and encourage competition in making grants and cooperative agreements." 31 U.S.C. § 6301(3).

The second reason to use a procurement contract is that, in some cases, it may best protect the Government's interests.[6] As set forth in greater detail below, KGS carefully scrutinized the series of relationships between BLM and CRLP, the purposes that they serve, and the benefits and duties to and from each party associated with them. As to the portion of the agreements that remain to be performed, except for relatively minor areas of recommended possible improvement (*see* KGS report at 4, 13, 17), KGS concluded that "[p]rogram operations, invoicing and billing, and the cost analyses were within the purview and completed in accordance with the agreements" between BLM, CRLP and the refiners. *See* KGS report at 4.

The agreements are adequately protective of the Government's interests. For example, either directly or by reference to related agreements, they explicitly incorporate 43 CFR § 12.961, *Termination*, which gives DOI the right to terminate based on CRLP's material noncompliance with terms and conditions. The agreements reference the balance of 43 CFR Part 12 (the "common rule"), which contains audit and accountability provisions comprehensively addressing numerous contingencies. They acknowledge that they create no Government obligations in advance or excess of appropriations and place applicable Federal regulations highest in the order of precedence. They are for defined terms and recognize the primacy of Federal law, and they contain clauses addressing ethical proscriptions and socio-economic goals.

The BLM entered into these cooperative agreements eight or more years ago and CRLP long ago completed construction of the CHCS and CHEU facilities, which were accepted by BLM. As both a legal and practical matter, it is impossible to "undo" this *fait accompli*. When a contract or provision thereof, even if it violated law, has been fully performed, courts have variously sustained it, reformed it to remove any offending term, or allowed recovery under an implied contract theory. They have not, however, simply declared the contract void. *See, generally, Fluor Enterprises v. United States*, 64 Fed.Cl. 461, 492-495 (Ct. Cl. 2005). A court will only regard a contract as void where the "award or performance of the contract would be plainly illegal." *Cubic Applications, Inc. v. United States*, 37 Fed.Cl. 345, 355-56 (1997). Here the agreements were entered pursuant to the Helium Privatization Act of 1996, after prolonged negotiation and open deliberation. Furthermore, if the Government reasonably has viewed a contract as lawful—as BLM has for all of these years—then courts will normally follow suit. *United States v. Amdahl Corp.*, 768 F.2d 387, 395 (Fed. Cir. 1986). In light of KGS' findings and BLM's experience with CRLP, there is no basis to cancel or substantially reform these agreements without considerable disruption to the Helium Program.

The above discussion, coupled with the full KGS report, demonstrates that the use of these cooperative agreements with CRLP does not constitute an improper or illegal act on the part of the BLM.

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[6] For example, with a procurement contract, the Government has a clear avenue for resolving claims or contract performance issues before the U.S. Civilian Board of Contract Appeals and U.S. Court of Federal Claims. *See* Contract Disputes Act of 1978, 41 U.S.C.S. § 601 *et seq*. There is no reason to suppose, however, that a cooperative agreement containing all of the elements of a contract—namely, offer, acceptance, consideration, and a government representative who had authority to bind the Government—would be any less enforceable than a procurement contract. *See, e.g., Total Medical Management, Inc. v. United States*, 104 F.3d 1314, 1319-20 (Fed. Cir. 1997); *United States v. Harvard College*, 323 F.Supp. 2d 151, 163-165 (D. Mass. 2004).

Recommendation 2: "Choose the proper contractual instrument using appropriate procurement guidelines. This includes a) reviewing and properly establishing indirect cost rates, processes for appropriate billing, clear guidelines as to what is to be considered major maintenance and when work is to be considered outside the scope of the contract; b) adjusting the ratio of costs to reflect the percentage of ownership in the assets as they change over time; and c) performing a critical review of profit fees."

BLM Response: The BLM does not concur with this recommendation.

Discussion: This recommendation is based on the assumption that the CHCS and CHEU agreements are improper and that a contract is the appropriate instrument. The discussion related to recommendation 1 above, coupled with the KGS report, demonstrates that the BLM not only had the authority to enter into the agreements, but also followed proper procedures and obtained proper reviews and approvals for the agreements.

Parts a, b, and c of recommendation 2, relate to the allocability of operating costs between the CRLP and the BLM, and the entity responsible for absorbing those costs. Regarding part a of the OIG recommendation, the KGS review did not find evidence of improper indirect cost rates, inappropriate billing processes, or double billing for major maintenance, all of which are discussed under recommendations 3 and 4 below. Part c of the recommendation is discussed under recommendation 3 and 4 (Overcharging) and 5 below.

Part b of the recommendation relates to the allocation of operational costs for the CHEU. During the KGS interview of the former Amarillo Field Manager, he stated that he mistakenly advised the OIG investigator that the ownership ratio of stored helium in the Bush Dome Reservoir was 80 percent BLM owned and 20 percent CRLP owned. In fact, the former Amarillo Field Office Manager erred in his information, and meant to state that 20 percent of total gas in the Bush Dome Reservoir was helium, and 80 percent represented other gasses. The helium (20 percent) is mixed ownership while the other gases (80 percent) are owned solely by the Government.

The OIG report contends that as the Government sells off its portion of the helium stored, the 80/20 ratio should be adjusted to collect more from the refiners for the operation of the CHEU because the Government no longer receives 80 percent of the benefit. In reality, however, using the factual basis for the 80/20 split, the opposite of the OIG statement is true. In examining the ratio of helium to other gases in the storage reservoir as of September of each of the years of operation, one finds a slight decline in the helium side of the ratio and an offsetting slight increase in the other gases side of the ratio.

Planned Actions: In its discussion on the appropriate acquisition mechanism, the OIG indicated that the problems identified in the report stem from a lack of oversight on the part of the BLM's New Mexico State Office and Division of Fluid Minerals. Although the independent review did not substantiate this statement, the BLM will take actions to eliminate the perception of inadequate oversight.

- By June 15, 2009, the BLM New Mexico State Director will provide written documentation to the BLM Director identifying specific actions taken to increase and

strengthen the management oversight of the Helium Program by the BLM New Mexico Associate State Director and the BLM New Mexico Deputy State Director, Division of Fluid Minerals.

- By June 15, 2009, a technical program lead for the helium operation will be established within the New Mexico State Office, Division of Fluid Minerals to provide budget and policy oversight for the helium operation in Amarillo Field Office. This individual will also represent the New Mexico State Office at reservoir management meetings with CRLP and will attend operation budget development meetings with the Amarillo Field Office and the CRLP.

The OIG report also stated that a 2005 BLM Acquisition Management Review identified that both of the agreements under discussion should have been contracts. In actuality, the Acquisition Management Review contained one sentence in one paragraph that dealt primarily with documentation and prompt pay issues. This sentence stated: "The undersigned reviewed these awards and the extensive files that support these awards, yet the undersigned remains unconvinced this was the appropriate tool for accomplishing this important work." The acquisition review did not identify the reviewer's reasons for being "unconvinced," and does not conclude that the awards are inappropriate. However, it does show that BLM's Acquisition Management Review process could be improved.

- By June 15, 2009, the BLM Assistant Director, Business and Fiscal Resources, will strengthen BLM's Acquisition Management Review process by requiring reviewers to conduct adequate research, document the basis for their findings, and thoroughly explain in writing to the organization being reviewed what is incorrect, why it is incorrect, and what the appropriate action should have been.

Recommendation 3: "Perform a thorough review of all agreement costs paid to determine allowability and appropriateness and recoup those costs determined to be unallowable or inappropriate, including any doubled billed costs."

BLM Response: This recommendation was implemented as of November 6, 2008, upon completion of the KGS review.

Recommendation 4: "Review the BLM/contractor payment billing process and implement a process that eliminates any repetition of the existing arrangement."

BLM Response: The BLM has completed the first part of this recommendation by reviewing the billing and payment processes. The BLM does not concur with the second part of this recommendation, and will continue to follow the procurement, payment, and billing processes available under Federal, DOI and BLM rules, regulations, and policies.

Discussion for Recommendations 3 and 4: The independent review and assessment conducted by KGS included a random sample analysis of the Helium Program's financial data to perform the following:

- A review of the annual budgets (Compression Assessment) prepared by the CRLP General Manager for FYs 1999 through 2008 was conducted. The review team concluded that these budgets were completed in accordance with the signed agreements between the CRLP, BLM, and the refiner users.

- A review of the allocation process that distributes the budgeted costs to each of the user refiners was conducted. It was determined that the monthly allocations of costs to each user based on the prior year's usage were proper. The review team concluded that the allocation process was completed in accordance with the signed agreements between the CRLP, BLM, and the refiner users.

- A review of the actual determination of the allocations based on prior years' usages for FYs 2000 through 2002 was conducted and the review team found the allocations were correct. The review team traced these allocation percentages to each of the refiner users and found the allocation percentage was properly assessed. The review team also traced each of the usage allocations back to the individual refiner user invoices and found them to be accurate. The review team concluded that the allocation process was completed in accordance with the signed agreements between the CRLP, BLM, and the refiner users.

- The team reviewed the prior-year budget allocations for FYs 2000 through 2008 and determined that each of the FYs totaled 100 percent of total costs incurred, which ensures that 100 percent of the costs were allocated to the refiner users.

- The team reviewed the FY 2004 allocation of costs back to the refiner users and determined that the budgeted costs were over-allocated to the users by $517, which the review team considered to be immaterial.

- The review team calculated the monthly allocations that should have been charged to each of the refiner users and concluded that the monthly allocations were accomplished in accordance with the signed agreements between the CRLP, BLM, and the refiner users.

- The review team reviewed the costs incurred monthly by the BLM that are reimbursable to the BLM by CRLP. These costs consist of site overhead, labor, routine maintenance, and variable compression fees (utilities). The review team concluded that these costs were properly calculated, properly allocated, and properly reimbursed to the BLM in accordance with the agreements in place.

- The team reviewed the cost adjustments arising from the installation of the CHEU during FY 2003 and concluded that the costs associated with this addition to the facility were properly reflected in the allocations to the refiner users.

Overcharging: The investment fee paid by the Government will be approximately $44 million by FY 2015. However, the CRLP's initial investment in the CHEU was over $20 million, whereas the Government's initial investment and risk if the CHEU did not produce the desired outcome were zero.

When the Government initiated the Helium Program, the mining of crude helium was significantly less efficient. The Government did not have access to a quality natural gas product until the CHEU was brought online. The BLM now uses this natural gas product as a major source of revenue to fund the Helium Program and to pay back the debt owed to the U.S. Department of Treasury (U.S. Treasury) resulting from the initiation of the Government operated Helium Program in FY 1929. Prior to the installation of the CHEU, the helium extraction process was inefficient and wasteful as the natural gas was burned off, vented, or otherwise lost. The U.S. Treasury has received more than $660 million of its $1.3 billion ($272 million principal, $1.03 billion interest) debt since the CHEU came online in FY 2003. Interest accrual was frozen in FY 1995, and the entire debt is on track to be fully repaid in FY 2012. Before the CHEU, the BLM was only paying the U.S. Treasury approximately $10 million per year.

Double Billing: The review team found no evidence that BLM is being double billed for major maintenance. Major maintenance is a fixed fee category that covers major repairs to the compressors and the CHEU. The BLM pays the CRLP monthly for this service fee that the CRLP accumulates into a "contingency account" for use when major repairs are needed.

There were amendments made to the CHEU cooperative agreement authorizing the construction of additional equipment to enhance the output of the natural gas operation of the CHEU. When the CHEU was first brought online, it was discovered that there was too much moisture and other impurities in the gas that caused the natural gas to fail to meet industry standards. To correct this problem, the BLM amended the CHEU agreement authorizing the construction of the "chiller skid" and storage tank that extracts the "heavies" (impurities) out of the mined gas. The BLM is the sole owner of this equipment. As a result of this additional equipment authorized under the amendments, the natural gas not only meets industry standards, but another by-product in the form of "liquid gas" is produced that generates another source of revenue for BLM.

Short-Term Financing: There is a delay in issuing invoices to the CRLP for the natural gas used to operate the compressors and the CHEU. Although the volume of gas used in the operation of the compressors and CHEU are metered, it takes the BLM 2 months to obtain the actual price (value) of gas sold from their natural gas buyer. This does create a short-term financing situation between the BLM and the CRLP, but the $8,000 in potential accrued interest over the life of the 15-year agreement is immaterial ($533 per year).

The BLM has an obligation to redeliver the privately-owned crude helium to the refiners. The CHCS allows the redelivery of privately-owned crude helium at pressures and quantities required by the refiners at their process facilities. The CHCS allows for the sale of the crude helium stockpile to the private helium refining industry by providing a raw feed stock of crude helium in sufficient quantity and quality to economically refine it into a saleable product in the private and Government helium markets.

Compression Invoicing: Invoicing occurs in a three-phase process as follows:

Phase 1 – On the first of each month the BLM sends an invoice to each of the four refiners for

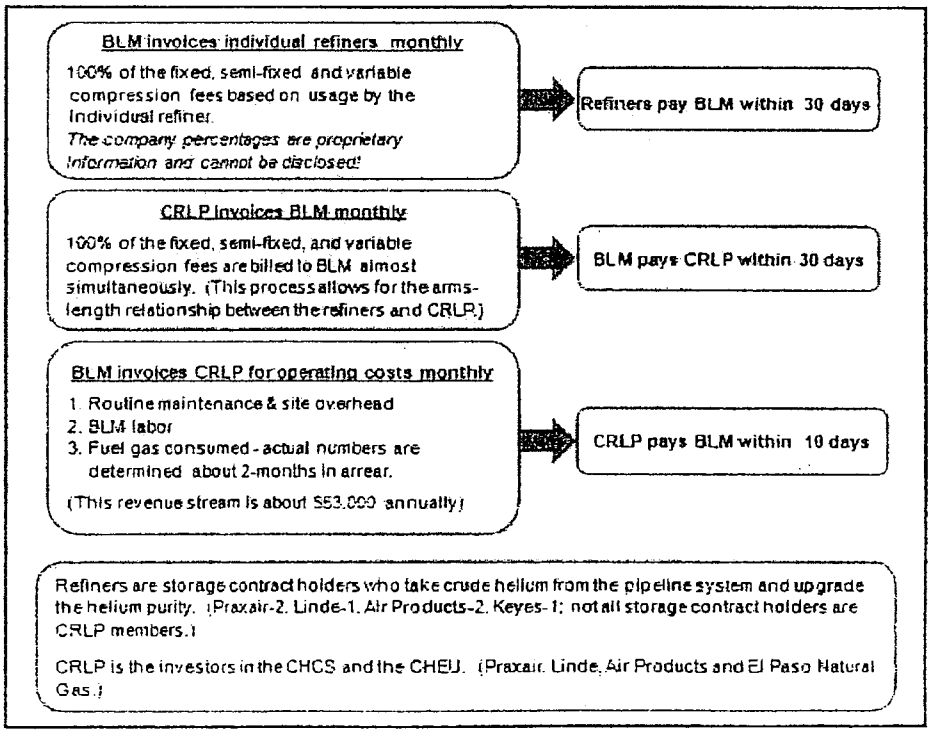
100 percent of the monthly compression costs. Compression costs vary since the percentage used to bill each refiner is based on company ownership ratio (proprietary information). The percentages are recalculated each year and based on each company's prior-year activity divided by the total activity. The refiner receiving the greatest benefit pays the highest cost. The BLM ensures that company percentages are kept confidential and not disclosed even to the General Manager of the CRLP.

Phase 2 – Simultaneously, on the first of each month, the BLM supplies the CRLP General Manager with the actual fuel cost information. With that information, the CRLP Manager invoices the BLM for the total invoiced amount that was billed out to the refiners. Phase 1 and Phase 2 are accomplished during the same 30-day period; therefore, the refiners pay within 30 days and the BLM pays within 30 days.

Phase 3 – On the first of the next month, the BLM generates an invoice to the CRLP General Manager to reimburse the BLM for the actual costs incurred for routine maintenance, site overhead, BLM labor, and the fuel gas consumed by the compressor for the month. The General Manager generally submits payment to the BLM within 7 to 10 days.

As stipulated in the agreement, the end result of the billing process is that the CRLP reimburses BLM for the costs of operating the compressor. The footnote on page 3 of the OIG report indicates that $6.8 million has already been obligated but fails to acknowledge the fact that BLM has been reimbursed for the entire amount.

This process is depicted graphically on the right where the money flow and timelines for compression services are shown. The graphic depicting the billing/payment process on page 7 of the OIG report is incorrect. In order to understand the process, one must differentiate between the refiner users and the CRLP.



Planned Actions: To eliminate the perception that the BLM is providing cash flow to the CRLP, the BLM will take the following action:

- By May 30, 2009, the Amarillo Field Manager will institute a billing methodology that eliminates the delayed billing for natural gas used in operations. One concept that will be considered is to implement a fuel plan similar to a residential "budget plan" or "payment equalization plan" that calculates the average monthly payment based on historical natural gas usage, then makes adjustments based on actual gas usage costs.

The BLM also believes that it can strengthen the financial processes at the Amarillo Field Office by providing management oversight by an individual with financial management expertise.

- By June 1, 2009, the BLM Amarillo Field Manager will establish and fill a financial management position with an accountant to assist Field Office officials in financial decisions, review financial issues and proposals, and counsel the Field Manager on financial matters. The BLM New Mexico State Director or her designee will approve the selection. Until this position is filled, the New Mexico State Office Administrative Officer will fulfill this function.

Recommendation 5: "Determine whether the Government has already reimbursed the contractor for the entire amount of actual costs incurred to build the equipment. If so, the new contractual instrument should not include these capital cost line items."

BLM Response: The BLM does not concur with this recommendation.

Discussion: As stated earlier in this response, it was never the intent of the BLM to own the CHCS or the CHEU. There were many factors that received consideration when the agreements were being negotiated. One of the factors was return on investment, but others, including the risk and potential liability associated with the design, engineering, testing, and implementation of equipment that will be handling volatile gases, such as natural gases and methane, were also considered. The system had to be designed to handle a multiplicity of conditions over the life of the operation. The CRLP bore these risks, not the Government.

The KGS review related to this recommendation included an examination of the following areas:

Review of fixed fees related to the CHEU:

In its analysis of the CHEU fixed fees, the review team examined the invoices paid to the CRLP by the BLM for the periods from April 11, 2003, to September 16, 2008. A total of 75 invoices were reviewed and the amount of capital investment fees invoiced was determined. Each invoice reviewed listed the "monthly fixed CHEU fee" and according to the agreement, this is the charge whereby the CRLP recovers a return on their investment. From a memorandum dated March 1, 2000, the review team determined that the total estimated amount of capital investment made by the CRLP for the design and construction of the CHEU was $22 million. The BLM has paid the CRLP a total of $29,114,954 (fixed fee) for the CHEU.

Based on the above, the review team concluded that the CRLP has recovered the total amount of construction costs for the CHEU. However, the cooperative agreements entitle the CRLP to an investment fee throughout the 15-year term of the agreements. The review team does not take

exception to this because it is common practice in all forms of enterprise. For example, a landlord does not cease to charge rent on a rental property when he has made his last mortgage payment on the property. Instead the user fee continues to be charged.

Identification of the total amount paid by the BLM under the amendments to the cooperative agreements:

Part A: The review team reviewed invoices received from the CRLP for the period April 2003 to September 2006 and determined that the BLM was invoiced a total of $26,479,508 that covered capital improvement costs, monthly major maintenance costs, the semi-fixed costs, and the variable CHEU fees. All costs were billed by the CRLP in accordance with the agreement. The review team determined that the total of the payments made by the BLM was $25,609,846 covering the same period of time.

The review team traced each of the invoices and the appropriate payments to the CHEU cooperative agreement amendments 1-7. This analysis revealed that there are outstanding balances due on six of the amendments. The review team concluded that the BLM owes the CRLP a total of $869,661 and that there were no overcharges or duplicate payments made. This amount is in agreement with an accounts payable schedule generated by the BLM.

Part B: As part of the agreement, the CRLP is required to reimburse the BLM for labor, site overhead, routine maintenance, and variable compression fees. During the period FYs 2001 through 2008, the total reimbursable expenses were $3,993,929. The review team concluded that these costs were properly reimbursed by the CRLP.

Evaluation of the CHEU cooperative agreement for compliance with criteria for sharing costs between the Government and the refiners to operate and maintain the unit:

> The review team examined the process that allocates the budgeted costs to each of the user refiners. It was determined that the monthly allocations of costs to each user based on the prior year's usage were proper and that the allocation process was completed in accordance with the agreements signed between the CRLP, BLM, and the refiner users. The review team concluded that the billing and reimbursement process implemented is consistent with the enrichment unit cooperative agreement criteria for sharing costs between the Government and the refiners to operate and maintain the unit.

Please feel free to contact me at any time if you would like to discuss this matter further. Specific questions relating to this response may also be directed to Janine Velasco, Assistant Director, Business and Fiscal Resources and Chief Financial Officer, BLM, at (202) 208-4864.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 25 2012

The Honorable Jeff Bingaman
Chairman,
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the Department of the Interior to written questions submitted following the November 17, 2011, oversight hearing on Secretarial Order No. 3315 and the Proposed BLM/OSM Consolidation.

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

Chairman Bingaman for Deputy Secretary David Hayes:

1. Please provide for the record any analyses, opinions, memoranda, or other documents, including those from the Office of the Solicitor, regarding the legality of Secretarial Order 3315 providing for the consolidation of the Office of Surface Mining Reclamation and Enforcement into the Bureau of Land Management.

Response: Any written product prepared by the Solicitor's Office entails the provision of legal advice to the Department of the Interior and thus is confidential attorney-client and predecisional material. It should be noted that the report issued to the Secretary on February 15, 2012, titled *Report for the Secretary on the Proposed BLM/OSM Consolidation* (Report), which can be found at: http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&pageid=283745, recommended that the Office of Surface Mining continue to operate as an independent bureau within the Department and that the Director of the Office of Surface Mining continue to report to the Secretary through the Assistant Secretary for Land and Minerals Management. Secretarial Order No. 3320, issued on April 13, directs implementation of the recommendations made in the Report.

2. Please provide for the record any analyses, opinions, memoranda, or other documents regarding the pros and cons of consolidating the Office of Surface Mining Reclamation and Enforcement into the Bureau of Land Management. Please include any documents regarding budgetary savings from such a consolidation.

Response: Documents associated with this process reflect internal, pre-decisional deliberations. Regarding budgetary savings, actual savings will depend on the successful consolidation of various shared support services between the two bureaus, in accordance with the recommendations set forth in the February 15 Report.

3. To whom will the OSM Director report within the Department?

Response: As noted above, the February 15, 2012, Report recommends that the Office of Surface Mining continue to operate as an independent bureau within the Department and that the Director of the Office of Surface Mining continue to report to the Secretary through the Assistant Secretary for Land and Minerals Management. Secretarial Order No. 3320, issued on April 13, directs implementation of the recommendations made in the Report.

4. Please describe the federal-state-tribal relationship – the so-called "primacy model" contemplated by the Surface Mining Act? What are OSM's ongoing responsibilities under the Surface Mining Control and Reclamation Act once a State or Tribe attains primacy?

Response: Congress recognized the unique needs of states and tribes and the unique environmental conditions within state and tribal boundaries. Thus, the Surface Mining

Control and Reclamation Act encourages states and tribes to enact and administer their own regulatory programs – that is, to attain "primacy" – within federal minimum standards contained in SMCRA and OSM's implementing regulations. Once OSM approves a state or tribal regulatory program, the state or tribe becomes the primary regulator, with respect to the approved program, within its boundaries, while OSM provides guidance and technical assistance to the state or tribe, conducts oversight of approved programs, and provides backup federal enforcement as necessary.

5. One of the witnesses on the second panel stated that it can take 7 to 10 years to get all the permits necessary to mine on BLM lands. The same witness indicated that there are 14 levels of review in the Department's Washington, D.C, office for NEPA Federal Register notices. Is this correct? If not, please provide the correct information for the record.

Response: Each year, the Bureau of Land Management's State Offices send from 300 to 500 *Federal Register* notices to the BLM Washington Office for review, which is designed to improve the overall quality and consistency of the BLM's *Federal Register* notices. Errors are identified and corrected in about 90 percent of notices submitted for review. Generally speaking, larger mine projects involve longer permitting timeframes. Such projects typically require more analysis under the National Environmental Policy Act or may entail more controversy than a smaller mine project. Larger projects can also be more complicated for mine operators, who may have to amend their plans after submission. Litigation can also contribute to the length of permitting timeframes. The agency is continuing its efforts to review and process permits and to prepare *Federal Register* notices in accordance with applicable laws.

6. There has been controversy surrounding OSM's efforts to review and revise the stream buffer zone rule. This issue is raised in the statements of some of the witnesses on the second panel. Please provide for the record an explanation of the process being undertaken by the agency and why the regulation is being reviewed.

Response: Congress specified several purposes for SMCRA, intending that the Department strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal. OSM must ensure not only the coal supply essential to the Nation's energy requirements is provided but also that American coal mines operate in a manner that protects people and the environment and that the land is restored to beneficial use following mining.

As OSM proceeds with development of its proposed Stream Protection Rule, it will consider the extensive comments it has already received from the public and state and federal agencies. It will also consider the benefits, as well as the costs, of the agency's regulatory alternatives. OSM began seeking comments very early in the rulemaking process.

The Environmental Impact Statement (EIS) that OSM is developing in support of the rule will examine a range of alternatives. In addition to analyzing the significant

environmental impacts of the proposed Stream Protection Rule and its alternatives, the EIS will evaluate the economic impacts of each alternative and will provide OSM with critical information needed to inform decisionmakers and the public. OSM will take the time necessary to make informed decisions on the rulemaking, taking into account the EIS analysis, and will provide ample opportunity for public input on both the proposed rule and the associated Draft EIS.

Sen. Murkowski for Deputy Secretary David Hayes:

1. In response to a question regarding written materials from the Solicitor's Office at the Department of the Interior related to the Secretary's Order #3315, you agreed to provide the Committee with copies of such materials. I respectfully ask that you do so.

Response: As reflected in the transcript of the hearing, the Deputy Secretary agreed during the hearing to look into the question of whether written materials from the Solicitor's Office could be released. Any written product prepared by the Solicitor's Office entails the provision of legal advice to the Department and thus is confidential attorney-client and predecisional material. It should be noted that the report issued to the Secretary on February 15, 2012, titled *Report for the Secretary on the Proposed BLM/OSM Consolidation* (Report), which can be found at: http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&pageid=283745, recommended that the Office of Surface Mining continue to operate as an independent bureau within the Department and that the Director of the Office of Surface Mining continue to report to the Secretary through the Assistant Secretary for Land and Minerals Management. Secretarial Order No. 3320, issued on April 13, directs implementation of the recommendations made in the Report.

2. President Clinton's Executive Order No. 13132 on Federalism requires a federalism impact statement be provided to the Office of Management and Budget – containing a description of the agency's consultation with the States, a summary of the nature of State concerns and the extent to which those concerns have been met – when policy actions that have a substantial impact on the States are taken. In relation to Order #3315, will this mandate be honored?

Response: The Department has been clear that OSM's core duties and responsibilities prescribed by SMCRA would remain intact and under the purview of the OSM Director, and the recommendations contained in the February 15 report are consistent with this position. As such, the Department does not anticipate that any proposed consolidations will have a substantial impact on State SMCRA programs. While the provisions of the Executive Order No. 13132, referenced in this question, pertain specifically to the issuance of regulations, significant consultations and meetings with Departmental employees, tribes, state agencies and local communities, industry representatives, and congressional staff have taken place as the Department has developed an implementation plan for the original order.

3. How will Order #3315 affect the existing productive working relationship between OSM field personnel and state program personnel?

Response: We do not intend to alter the productive working relationships in place between OSM field personnel and state program personnel. From the beginning of this process, the goal has been to evaluate how the Department might be able to more efficiently and cost-effectively combine expertise and resources of the two bureaus in

areas that make sense, reducing the drain on OSM resources associated with maintaining stand-alone support services for a bureau that has a small employee and budget base.

4. Will Order #3315 affect the allocation of funds for state coal mine regulatory programs?

Response: While the Department cannot comment on budget allocations that are yet to be made, the goal has been to make government work better by increasing efficiencies, building upon existing strengths, and getting the most out of limited resources. As recommended in the February 15 report, the allocation of grant monies will continue to be made in accordance with existing OSM practices, and we do not anticipate that any proposed consolidations will affect how these funds for state coal mine regulatory programs are allocated.

5. Will Order #3315 affect the allocation of funds to state abandoned mine land programs?

Response: As noted in response to the previous question, while the Department cannot comment on budget allocations that are yet to be made, the intent of any proposed consolidations is to make government work better by increasing efficiencies, building upon existing strengths, and getting the most out of limited resources. As recommended in the February 15 report, the allocation of funds to states for SMCRA Title IV abandoned mine land programs will continue to be made in accordance with existing practices, and we do not anticipate that any proposed consolidations will affect the amount or allocation of such funds.

6. Will Order #3315 change the oversight of state regulatory and AML programs?

Response: The February 15 report recommended that OSM's core duties and responsibilities, including oversight of state regulatory and AML programs, will remain intact and under the purview of the OSM Director, and once a state or tribe attains primacy to administer its own approved SMCRA regulatory and AML programs, OSM retains oversight authority to assure compliance with SMCRA and the approved programs.

7. Are there better ways to improve government operations than shuffling boxes on the Interior Department's organization chart? For example, could actions be taken to enable the BLM to benefit from the OSM's high successful TIPS program and technology transfer programs with states?

Response: The Department and its bureaus are always searching for opportunities to improve program performance, and this effort is a positive, substantive attempt to make government work better, to build on our strengths, and to get the most out of available resources.

8. How much money could be saved by reducing waste at the OSM caused by a management decision to turn regional or local issues (e.g., mountaintop mining and revised stream protection rules) into national issues which are not germane to most parts of the country?

Response: Congress specified several purposes in SMCRA, intending that we strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal. OSM must ensure not only the coal supply essential to the Nation's energy requirements is provided but also that American coal mines operate in a manner that protects people and the environment and that the land is restored to beneficial use following mining. Mountaintop mining and the protection of streams from the potential adverse effects of coal mining are critical issues of national importance. Such national issues are traditionally coordinated at OSM headquarters, with appropriate input from regional and field offices. This time-honored and effective approach does not constitute waste.

9. How will the inevitable change in culture that follows a consolidation of agencies affect state regulatory programs?

Response: The Department has been clear that OSM will continue to fulfill the core missions assigned to it by statute, including approval of state and tribal regulatory programs and subsequent program amendments and oversight of those programs. Thus, we anticipate that the OSM-state/tribal relationships will remain largely the same. As discussed in the February 15 report, the goal is to improve OSM's ability to perform core functions by leveraging the existing expertise and resources of BLM and OSM in areas that make sense, and reducing the drain on OSM resources that is associated with maintaining stand-alone support services for a bureau that has a small employee and budget base.

10. Would Order #3315 affect existing cooperative agreements under which states regulate coal mining on federal lands? Would a consolidation affect other agreements between western states and DOI, such as agreements on the regulation of non-coal mining on federal lands?

Response: We do not anticipate that any of the recommendations contained in the February 15 report will result in changes to these cooperative agreements.

11. Where will the cost savings from the consolidation be realized and in what exact amounts, over time?

Response: One of the goals is to create efficiency in administrative functions in order to maximize the resources available to perform core agency functions. Actual savings will depend on the successful consolidation of various shared support services between the two bureaus, in accordance with the recommendations set forth in the February 15 Report.

12. Why were the states not consulted about this matter since they are the primary stakeholders under the various organic laws affected by this consolidation? How and when does Interior plan to consult with the states and tribes to receive their input on the consolidation and what it may mean for interaction between the federal government and state governments under both SMCRA and the federal land management laws?

Response: Significant consultations and meetings with Departmental employees, tribes, state agencies and local communities, industry representatives, and congressional staff have taken place as the Department has moved forward with its review.

13. How will Order #3315 impact the role of the states under SMCRA, especially in terms of funding for state Title V (regulatory grants) and Title IV (AML grants)? How will it specifically impact the administration of the AML program under Title IV of SMCRA? Does it reflect a further attempt to accomplish by Secretarial order what the President has proposed for the AML program as part of his deficit reduction plan?

Response: OSM's core duties and responsibilities, including oversight of state regulatory and AML programs, will remain intact and under the purview of the OSM Director, and once a state or tribe attains primacy to administer its own approved SMCRA regulatory and AML programs, OSM retains oversight authority to assure compliance with SMCRA and the approved programs. Moreover, while the Department cannot comment on budget allocations that are yet to be made, the allocation of grant monies and funds for SMCRA Title IV abandoned mine land programs will continue to be made in accordance with existing practices.

14. How will the consolidation affect the current chain of command within the Interior Department, especially with regard to federal oversight of state programs? How could this consolidation impact the cooperative working relationship that has generally attended the implementation of SMCRA and FLPMA? Who will have primary lead responsibility for the new organization – BLM or OSM? How can a "consolidation" result in the continued viability of two separate agencies, as suggested by some of the press materials distributed by the Department of the Interior?

Response: The February 15 report recommends that the Office of Surface Mining continue to operate as an independent bureau within the Department and that the Director of the Office of Surface Mining continue to report to the Secretary through the Assistant Secretary for Land and Minerals Management.

15. Does the Department of the Interior anticipate that changes will be needed to the organic acts affected by the consolidation? How does the Department of the Interior intend to reconcile the differing missions of BLM and OSM under the various organic laws affected by the consolidation?

Response: As discussed in the February 15 report, the focus of the proposal is on those functions in the two bureaus that are complementary, including environmental restoration activities and administrative support functions. As a result, no changes to the organic acts are needed to implement the recommendations contained in the February 15 report.

16. How will this consolidation save money and achieve governmental efficiency, other than the potential for combining some administration functions? Will the combination of other functions (inspection, enforcement, oversight) actually result in the expenditure of more money, especially if the federal government assumes responsibilities that were formally entrusted to the states?

Response: As discussed in the February 15 report, efficiencies will be gained through a consolidation of some functions, though there may be transition costs in the early stages of implementation. The Department can advance the congressionally-mandated missions of both bureaus more efficiently and cost-effectively by combining the expertise and resources of BLM and OSM in areas that make sense. We do not anticipate that the federal government will assume responsibilities that are currently entrusted to the states.

17. Historically, BLM's primary mandate has been on the management of public lands in western states. Under Order #3315, how would the agency effectively shift to managing mining operations on state and private lands in the central and eastern portions of the country? How will this save money?

Response: The February 15 report recommended that OSM continue to perform the core duties and responsibilities assigned to it under SMCRA. The focus of the proposal is on those functions in the two bureaus that are complementary, including environmental restoration activities and administrative support functions.

18. SMCRA specifically states that OSM cannot merge with any legal authority, program, or function of an agency that promotes the leasing of coal or regulates the health and safety of miners in 30 USC 1211(b). Are you aware of this provision?

> *30 USC 1211(b)*
>
> ***The Office may use, on a reimbursable basis when appropriate, employees of the Department and other Federal agencies to administer the provisions of this chapter, providing that* no legal authority, program, or function in any Federal agency which has as its purpose promoting the development or use of coal or other mineral resources or regulating the health and safety of miners *under provisions of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742) [30 U.S.C. 801 et seq.],* shall be transferred to the Office.**

Response: The Department is aware of this provision and any proposed reorganization would be implemented in compliance with this provision and any other applicable laws.

19. In Order #3315, you propose integration of core OSM and BLM functions, including regulation, inspection and enforcement, state program oversight, and fee collection. But as noted above, SMCRA specifically prohibits the transfer of such legal authority to OSM. Isn't this proposed integration prohibited by law?

Response: We continue to be mindful of all provisions of SMCRA, and intend to continue compliance with the law, as we move forward.

20. Does Reorganization Plan #3 give full discretion to the Secretary to organize the department as he sees fit?

Response: Reorganization Plan No. 3 of 1950 gives the Secretary broad reorganization authority, subject to other express statutory language, such as 30 U.S.C. 1211(b), as cited above.

21. Is that authority not limited by subsequent Congressional action that specifically addresses the organization of the Department?

Response: As noted in response to the previous question, the broad reorganization authority under Reorganization Plan No. 3 of 1950 may be exercised subject to other express statutory provisions.

Sen. Barrasso for Deputy Secretary David Hayes:

1. A number of witnesses at the Committee's hearing questioned whether the Secretary has the legal authority to merge the Bureau of Land Management (BLM) and the Office of Surface Mining Reclamation and Enforcement (OSM).

- **Has the Solicitor issued a written legal opinion on the proposed merger?**

- **If so, would you make the written legal opinion available to the Committee?**

Response: Any written product prepared by the Solicitor's Office entails the provision of legal advice to the Department and thus is confidential attorney-client and predecisional material. It should be noted that the report issued to the Secretary on February 15, 2012, titled *Report for the Secretary on the Proposed BLM/OSM Consolidation* (Report), which can be found at: http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&pageid=283745, recommended that the Office of Surface Mining continue to operate as an independent bureau within the Department and that the Director of the Office of Surface Mining continue to report to the Secretary through the Assistant Secretary for Land and Minerals Management. Secretarial Order No. 3320, issued on April 13, directs implementation of the recommendations made in the Report.

2. Why did the Secretary fail to consult with the States and Indian tribes before issuing Order No. 3315?

Response: As indicated in the February 15 report, significant consultations and meetings with Departmental employees, tribes, state agencies and local communities, industry representatives, and congressional staff have taken place as the Department has moved forward with its review.

3. It is my understanding that the Secretary plans to consult with the States and tribes sometime in the future.

- **When will the Secretary consult with the States and tribes?**

- **How will the Secretary ensure that such consultation is meaningful given that it will take place after the effective date of Order No. 3315?**

Response: As indicated in the response to the previous question, significant consultations and meetings with Departmental employees, tribes, state agencies and local communities, industry representatives, and congressional staff have taken place as the Department has moved forward with its review.

4. The state regulators at the Committee's hearing expressed concerns that the proposed merger will affect the Abandoned Mine Land (AML) program under the Surface Mining Control and Reclamation Act (SMCRA).

- **Will the proposed merger affect the AML program?**

- **If so, how?**

Response: OSM's core duties and responsibilities, including oversight of state regulatory and AML programs, will remain intact and under the purview of the OSM Director, and once a state or tribe attains primacy to administer its own approved SMCRA regulatory and AML programs, OSM retains oversight authority to assure compliance with SMCRA and the approved programs.

5. The state regulators at the Committee's hearing expressed concerns that the proposed merger will affect the States' regulatory authority under SMCRA.

- **Will the proposed merger affect the States' regulatory authority under SMCRA?**

- **If so, how?**

Response: We do not anticipate changes to state regulatory authority under SMCRA. The Department has been clear that OSM's core duties and responsibilities prescribed by SMCRA will remain intact and under the purview of the OSM Director, and once a state or tribe attains primacy to administer its own approved SMCRA regulatory and AML programs, OSM retains oversight authority to assure compliance with SMCRA and the approved programs.

6. The state regulators at the Committee's hearing expressed concerns that the proposed merger will affect OSM's regulatory grants to States under SMCRA.

- **Will the proposed merger affect OSM's regulatory grants to States under SMCRA?**

- **If so, how?**

Response: We do not anticipate that the administration of the AML program under Title IV of SMCRA will be affected. The Department has been clear that OSM's core duties and responsibilities prescribed by SMCRA will remain intact and under the purview of the OSM Director. Once a state or tribe attains primacy to administer its own approved SMCRA regulatory and AML programs, OSM retains oversight authority to assure compliance with SMCRA and the approved programs. Moreover, while the Department cannot comment on budget allocations that are yet to be made, the allocation of grant

monies and funds for SMCRA Title IV abandoned mine land programs will continue to be made in accordance with existing practices.

7. A witness at the Committee's hearing expressed concerns that the proposed merger will result in permitting delays.

- **What steps will the Secretary take to ensure that the proposed merger will not result in permitting delays at OSM and BLM?**

Response: This proposal is a positive, substantive attempt to make government work better, to build on our strengths, and to get the most out of available resources. As indicated in the February 15 report, significant consultations and meetings with Departmental employees, tribes, state agencies and local communities, industry representatives, and congressional staff have taken place as the Department has developed an implementation plan for the original order.

Sen. Barrasso for OSM Director Joe Pizarchik:

1. A number of witnesses at the Committee's hearing expressed concerns about OSM's increased use of ten day notices.

- **Why is OSM increasing its use of ten day notices?**

Response: OSM has undertaken oversight improvement initiatives that include increasing the number of OSM's oversight inspections, including independent inspections, for the purpose of evaluating how states administer their SMCRA regulatory programs. The number of Ten Day Notices (TDNs), the instrument that OSM uses to notify states of alleged or actual violations, has increased along with the number and type of inspections. These notifications allow states to take action to rectify those violations or show good cause for not taking action, such as demonstrating that the violation does not exist under the approved program. Most TDNs are resolved cooperatively with state regulatory authorities.

2. A number of witnesses at the Committee's hearing expressed concerns about OSM's proposed stream protection regulations and the manner in which the agency has conducted the rulemaking process.

- **What steps will OSM take to ensure that state regulators, especially regulators representing cooperating agencies for the purposes of the National Environmental Policy Act, have a meaningful opportunity to comment during the rulemaking process?**

- **What steps will OSM take to ensure that the public has a meaningful opportunity to comment during the rulemaking process?**

Response: All state agencies will have the opportunity to comment on the proposed stream protection rule and DEIS when the proposed rule and notice of availability of the DEIS are published in the *Federal Register*. Nineteen state agencies, including 11 state regulatory authorities, are serving as cooperating agencies in development of the DEIS under NEPA, and OSM is carefully considering their input in the ongoing process of preparing the DEIS. OSM values the expertise of the state cooperating agencies, and appreciates the time and resources they are contributing to the development of the proposed rule.

The public will be given the opportunity to comment on the proposed rule and DEIS, in accordance with applicable Federal law, including the Administrative Procedure Act and NEPA. OSM will respond to the public comments it receives, and consider them when taking final action on the rule and EIS. Any final rule and final EIS will be published in the *Federal Register*. Publication of the draft rule will build upon earlier extensive public outreach conducted by OSM. Although not required by law, OSM issued an Advance Notice of Proposed Rulemaking to solicit early public comments on issues that ought to

be addressed in the regulation. This advance notice generated over 32,000 public comments. OSM also conducted 15 stakeholder outreach sessions with a broad cross-section of stakeholders, including state and tribal regulatory authorities, industry, environmentalists and others, to obtain further input. Additionally, OSM held nine public scoping meetings across the country to obtain initial public input for the development of the DEIS, consistent with the requirements of NEPA.

3. It is my understanding that OSM's former contractor estimated that the proposed stream protection regulations would cost thousands of jobs. I am concerned that OSM's new contractor may be subject to improper influence with respect to job loss estimates.

- **What steps is OSM taking to ensure that the individuals responsible for estimating job losses from the proposed stream protection regulations will not be subject to improper influence?**

Response: OSM is currently completing an analysis of the environmental impacts of the rule under development, in accordance with NEPA and other applicable federal law. This analysis will include relevant socioeconomic impacts, including impacts to jobs, costs, etc, as appropriate. OSM staff is completing those portions of the analysis for which the agency has in-house expertise. For certain other portions of the NEPA analysis, OSM has hired a contractor with significant technical expertise and experience in the Federal NEPA process. The completed analysis will be based on sound science and clearly articulated methodologies. As required by NEPA, it will make explicit reference to scientific and other sources relied upon for its conclusions. To help ensure confidence in the integrity of the process, OSM has also arranged for the DEIS analysis and conclusions to be evaluated in a peer review process. When OSM completes the DEIS and proposed rule, they will be made available for public review and all interested parties will at that time have the chance to comment on OSM's analysis, methodologies, assumptions and conclusions.

Sen. Heller for Deputy Secretary David Hayes:

1. As you know, the Department of the Interior (DOI) natural resource development on public lands brings in vast revenue for the federal government. Additionally, the resource development industry has been one of the few areas of our economy where we have seen growth in recent years. Increased production means more jobs, more economic activity, and ultimately, more money to the federal treasury.

I am generally concerned about this Administration's approach to energy and natural resource development—especially during these challenging times when jobs, revenue, and affordable energy resources are more important than ever.

In my home state of Nevada, the mining industry is one of the few bright spots in our economy. Nevada's unemployment is 13.4%, but in our largest mining region, it is more than 6% lower. Our mining industry could be even more robust if DOI had policies that promoted responsible development. In fact, I recently introduced S. 1844, which is legislation to address administrative delays for public lands permitting. My legislation would give DOI 45 days to complete required Washington office reviews of Notices of Availability required by the National Environmental Policy Act prior to publication in the federal register.

I don't know if you are aware that this one administrative requirement can add up to a year to the permitting process for a mining plan of operations. This is ridiculous. I would suggest that adopting my legislation would be a good first step towards real reform of duplicative and unnecessary regulations within DOI.

Policies that promote responsible resource development are good for our economy. In that light, my question to you is: with this proposal to merge BLM and OSM functions, how can you be certain that it won't complicate an already cumbersome permitting process and further delay job creation?

Response: The Department and its bureaus are always searching for opportunities to improve program performance, and the consolidation of certain overlapping functions implemented by two bureaus in the same Departments is a positive, substantive attempt to make government work better, to build on our strengths, and to get the most out of available resources. The agencies are continuing their efforts to process various mining applications, permits, and notices of availability in a timely fashion with a view to meeting the requirements of applicable laws.

2. I also have a question that relates to broader issues of access to public lands. I am aware of a new draft proposal by DOI to limit access to certain federal lands for shooting sports. I do not take restriction of 2nd Amendment rights lightly. Nearly 85% of Nevada is controlled by the federal government—and most of that land is under the management of the Bureau of Land Management (BLM). Access to public land is vital for the economic health and character of my state. The mere

assertion that some people "freak out" about gun rights isn't enough of a reason to alter the Constitution.

1. **Can you give me specific examples in Nevada of places where the B LM has determined "social conflicts" relating Second Amendment rights exist?**
2. **Who should decide what constitutes a "social conflict" that merits federal action – DOI? Congress? Voters?**
3. **Do you believe Congress has been unclear in defining the scope of Americans' Second Amendment rights?**
4. **Does DOI believe that different backcountry activities, such as hunting and hiking, are mutually exclusive?**
5. **Given that a DOI employee has stated that this policy is not a result of public safety concerns, does the draft policy reflect a position that sportsmen's activities do not enjoy equal protection under BLM multiple-use mandate? Please explain.**

Response: The Department supports opportunities for hunting, fishing and recreational shooting on federal land. By facilitating access, multiple use and safe activities on public lands, the Bureau of Land Management helps ensure that the vast majority of the 245 million acres it oversees are open and remain open to recreational shooting. Based on feedback received from the Wildlife and Hunting and Heritage Conservation Council, Secretary Salazar directed the BLM, on November 23, 2011, to take no further action to develop or implement the draft policy on recreational shooting referenced in your question and to manage recreational shooting on public lands under the status quo under existing authorities.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL 11 2012

The Honorable Barbara Boxer
Chairman
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Chairman Boxer:

Enclosed are responses prepared by the United States Geological Survey to questions submitted following the Committee's Tuesday, October 4, 2011, oversight hearing titled "Nutrient Pollution: An Overview of Nutrient Reduction Approaches."

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 James M. Inhofe
Ranking Minority Member
Committee on Environment and Public Works

Environment and Public Works Committee Hearing

October 4, 2011

USGS Responses to Follow-up Questions

Questions from Senator Cardin

Question 1: Please help us to better understand the scope and scale of the nutrient problem. How much work is needed for us to be able to get this problem under control? Is this a situation where, with a few minor adjustments, the nation's waters will become clean within a few years, or will this require more effort?

Response: The natural biogeochemical cycling of nitrogen and phosphorus has been extensively altered globally through production and application of fertilizers, cultivation of nitrogen-fixing crops, animal waste disposal, wastewater and industrial discharges, and combustion of fossil fuels (for nitrogen see Galloway and others, 1995, and Vitousek and others, 1997; for phosphorus, see Howarth and others, 2000, and Elser and Bennett, 2011). In the United States, the use of nitrogen and phosphorus fertilizers alone has increased by 10-fold and 4-fold, respectively, between about 1950 and the early 1980s. These human alterations have approximately doubled the rate of nitrogen inputs into the terrestrial nitrogen cycle and have greatly increased the transfer of nitrogen from rivers to estuaries and other sensitive receiving waters. Human activities also have profoundly influenced the cycling of phosphorus through the environment, increasing the environmental flow of phosphorus four-fold and doubling the rate of phosphorus delivery from land to the oceans.

The impact of the increased flow of nutrients into the environment on streams, groundwater, and coastal waters has been profound and widespread. Recent studies by the USGS and USEPA show that excessive nutrient enrichment is a widespread cause of ecological degradation in streams and that nitrate contamination of groundwater used for drinking water, particularly shallow domestic wells in agricultural areas, is a continuing human-health concern.

- USGS data show that most agricultural and urban streams across the Nation have measured concentrations of nitrogen and phosphorus 2 to 10 times greater than U.S. Environmental Protection Agency (USEPA) recommended nutrient criteria that generally represent nutrient levels that protect against the adverse effects of nutrient pollution (Criteria reported in USEPA, 2002; see list of references).

- Information provided by the States for the 2004 reporting cycle describing the condition of their assessed waters, as required under Section 305(b) of the Clean Water Act, indicates that nutrients are one of the leading causes of impairment in the nation's assessed waters. Impaired waters are unable to support one or more basic uses, such as fishing or swimming. In 2004, the states cited nutrients as a problem in 16% of impaired river miles, 19% of impaired lake acres, and 14% of impaired estuarine square miles. (USEPA, 2009)

- A national assessment of wadeable streams found that about 30 % of the nation's streams have high concentrations of nitrogen and phosphorus. In fact, of the stressors assessed in the survey, nitrogen and phosphorus are the most pervasive in the nation's streams, followed by excess sedimentation. Streams with high levels of these pollutants were found to be about two times more likely to have poor biological health USEPA, 2006).

- A survey of the nation's lakes, ponds, and reservoirs found that nearly 20% of lakes show high concentrations of nitrogen and phosphorus. Lakes with excess nutrients are 2 ½ times more likely to have poor biological health. (USEPA, 2010).

- The incidence of conditions in estuaries and coastal waters when dissolved-oxygen concentrations in water fall below levels necessary for healthy aquatic communities (a condition referred to as hypoxia) has increased 30-fold since 1960, affecting more than 300 water bodies. (National Center for Coastal Oceans Science, 2011). Hypoxic waters typically have dissolved oxygen-concentrations less than 2-3 mg/L that may result, in part from excess nutrients, primarily nitrogen and phosphorus, Excess nutrients can promote algal growth. As algae die and decompose, oxygen is consumed in the process, resulting in low levels of oxygen in the water. Impacted water bodies are located on all coasts of the Nation and the Great Lakes, including such critical resources such as the Gulf of Mexico, Chesapeake Bay, Puget Sound, and Lake Erie.

- In groundwater, nitrate concentrations exceeded the USEPA drinking-water standard Maximum Contaminant Level (MCL) of 10 milligrams per liter (as nitrogen) in 7 percent of about 2,400 private wells sampled by the USGS. Wells exceeding the MCL were widely distributed across the Nation: Nitrate concentrations exceeded the MCL in samples from one or more wells in 83 percent of studies of shallow groundwater wells in agricultural areas.

- Additional impacts of nutrient enrichment include toxic algal blooms, increased water treatment costs, increased concentrations of carcinogenic disinfection byproducts, and decreased recreational uses (fishing, swimming, and boating).

- USGS trend analyses suggest that despite major Federal, State and local nonpoint-source nutrient control efforts for streams and watersheds across the Nation, limited national progress has been made on reducing the impacts of nonpoint sources of nutrients during this period. Instead, concentrations have remained the same or increased in many streams and aquifers across the Nation, and continue to pose risks to aquatic life and human health. For example, nitrate transport to the Gulf of Mexico during the spring is one of the primary determinants of the size of the Gulf hypoxic zone. At times of high spring streamflow during the period studied, the concentration of nitrate decreased at the study site near where the Mississippi River enters the Gulf of Mexico, indicating that some progress has been made in reducing nitrate transport during high flow conditions. However, during times of low to moderate spring streamflow, concentrations increased. The net effect of these changes is that nitrate transport to the Gulf was about 10% higher in 2008 than 1980. This increase in nitrate transported to the Gulf can largely be attributed to the large upstream nitrate increases in the Mississippi River Basin above the Clinton, Iowa monitoring site

and in the Missouri River Basin (Sprague and others, 2011). There are some exceptions to the findings in the Mississippi. For example, recent USGS findings show decreased nutrient concentrations in the Susquehanna and Potomac Rivers since 2000; but increasing concentrations in the Rappahanock and James Rivers (Hirsch and others, 2010).

These degraded conditions are the result of a massive increase in the amount of nutrients in the environment over more than six decades. Restoring beneficial uses will require effort and time on a similar scale. For example, the large amounts of nitrate already present in shallow groundwater in many agricultural areas of the country present one challenge (Puckett and others, 2011). Nitrate concentrations are likely to increase in aquifers used for drinking-water supplies during the next decade, or longer, as shallow groundwater with high concentrations moves downward into the groundwater system. Improvements in groundwater quality will likely lag behind changes in land-management practices by years or decades because of the slow rates of groundwater flow. Groundwater contributions of nutrients to streams can also be important, and thus, improvements in stream quality may also lag behind changes in land use practices by long time periods. The recent report on reactive nitrogen in the United States by the USEPA Science Advisory Board Integrated Nitrogen Committee recommended four goals of action to decrease reactive nitrogen entering the environment that, using existing and emerging technologies and practices, could potentially reduce loadings to the environment by about 25 percent within 10 to 20 years. The report also noted that "however, further reductions are undoubtedly needed for many N-sensitive ecosystems and to ensure that health-related standards are maintained" (USEPA, 2011a. p. 75-79).

More specific proposals for nutrient reduction have been developed for coastal receiving waters that have been severely degraded. For example, the Chesapeake Bay Program has developed nutrient reduction goals that would reduce zones of low oxygen and protect the ecological integrity of the Bay. Through a coordinated effort, each of the Chesapeake Bay States with tidal waters established water-quality standards for dissolved oxygen, chlorophyll *a*, and water clarity, all of which are designed to support ecological endpoints of living resources in a restored Bay. Water-quality models were then applied with equitable and consistent decision rules to determine the level of nutrient reduction needed in the watershed to attain the water-quality standards in all of the Bay mainstem segments, tidal tributaries, and embayments (http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/FinalBayTMDL/CBayFinalTMDLSection6_final.pdf). Based on that detailed methodology, the overall basin-wide reduction goals for the Chesapeake Bay were set at a 25 percent reduction in total nitrogen from 2009 estimated levels, and a 24 percent reduction in total phosphorus. For the Mississippi Atchafalaya River Basin, an analysis by the EPA Science Advisory Board has estimated that an even larger reduction—a 45 percent reduction in both nitrogen and phosphorus—is needed to reduce the size of the hypoxic zone to the established goal of less than 5,000 square kilometers (USEPA, 2008); the size of the zone in late summer of 2011 was 17,520 square kilometers.

Nutrient management strategies need to be dynamic and capable of responding to unanticipated changes that occur to the natural and anthropogenic factors affecting water-quality conditions. The history of the water-quality conditions in Lake Erie serves as an example of the types of changes that can occur (USEPA, 2011b). In response to massive blooms of blue-green algae in Lake Erie during the 1960s, the U.S. and Canada forged the 1972 Great Lakes Water Quality Agreement which led to an approximate 60% reduction in phosphorus loading to Lake Erie. Lake Erie responded with reduced phosphorus concentrations, and no massive algal blooms were reported during the 1980s. Due to the interactions of nutrient enrichment and invasive species—Zebra mussels, which arrived in the mid-to late-1980s—large algal blooms reappeared by the mid-1990s and persisted through 2006. Moreover, unlike earlier blooms, these have been dominated by the blue-green alga *Microcystis aeruginosa*, which produces the toxin microcystin. Although it is believed that some water treatment procedures can be effective in removing the toxin, this is of concern to the municipalities along the lakeshore that obtain drinking water from Lake Erie. Water-quality monitoring and assessment can help to identify important shifts in water quality conditions and provide the understanding needed to guide changes to nutrient management strategies.

Question 2: During the hearing we heard you speak about some of the source sectors of nutrient pollution. Can you give a bit more detail of the various sectors involved, including: agriculture, wastewater treatment, air deposition, street runoff, and residential lawns? Please provide us with the extent to which each source sector contributes to the total problem of nutrient pollution.

Response: Different sources of nutrients predominate in different regions of the country and are described in Dubrovsky and others (2010) (See http://water.usgs.gov/nawqa/nutrients/pubs/circ1350/ and Preston and others (2011) (See http://water.usgs.gov/nawqa/sparrow/mrb/).

- Agriculture is the largest source of nutrients throughout most of the upper Midwest, as well as in other parts of the Nation where agriculture is the predominant land use. Commercial fertilizer and other sources of nutrients associated with cultivation (e.g., manure applied as fertilizer, Nitrogen fixation[1] by legumes, mineralization) are the major sources of nitrogen throughout the upper Midwest. Manure is the dominant nitrogen source throughout much of the upper Missouri, lower Mississippi, and western Gulf of Mexico drainages. Manure is also identified as the major source of phosphorus on a much more widespread basis than nitrogen in all of the regions except the Pacific Northwest.

- Urban sources—Treated effluent from point sources and urban runoff from developed land tend to be locally dominant in major urban areas throughout the Nation. Treated wastewater effluent can be the dominant source of nitrogen in some urban streams, particularly during the dry season in areas of the semiarid West.

[1] Soybeans and alfalfa are legumes that use atmospheric nitrogen gas as their primary source of nitrogen. These plants are able to "fix" nitrogen gas from the atmosphere to create a form of nitrogen needed for plant growth and reproduction.

- Atmospheric deposition is the largest nonpoint source of nitrogen in undeveloped watersheds in the eastern part of the country where the deposition rates are highest, such as in the Connecticut River Basin, in areas near the Great Lakes, and the arid and mountainous West where human development is very sparse.

The loading at any particular point in a stream is also a function of where the sources in the watershed are located. An online, interactive decision support system that was recently released by the USGS provides easy access to the six regional models described in Preston and others (2011). http://water.usgs.gov/nawqa/sparrow/mrb/ and the ability to determine the largest sources of nutrients to specific stream reaches. These relatively detailed characterizations of nutrient sources have been accomplished despite major deficiencies in available data. Improved accounting and tracking of nutrient sources would facilitate development of more efficient and cost effective nutrient management plans. Improvements in the data for the following sources would be helpful.

- *Point Sources*: Data from USEPA's Permit Compliance System (PCS) national database was used to estimate annual loads of nitrogen and phosphorus discharged to streams from individual municipal and industrial facilities. Concentration and effluent flow data were examined for more than 118,000 facilities in 45 states and the District of Columbia. Inconsistent and incomplete discharge locations, effluent flows, and effluent nutrient concentrations limited the use of these data for calculating nutrient loads. Reporting from facilities discharging more than 1 million gallons per day was more complete than for smaller facilities. Annual loads were calculated using "typical pollutant concentrations" to supplement missing concentrations based on the type and size of facilities. Annual nutrient loads for about 22 percent of the facilities were calculated in this manner for at least one of the three years studied (Maupin and Ivahnenko, 2011). More work is needed in this area.
- *Fertilizer use*: Annual fertilizer sales data are compiled by the Association of American Plant and Food Control Officials (AAPFCO) (Gaither and Terry, 2004) from annual State reports. Because of the absence of national reporting requirements, there are inconsistencies in the level of detail provided. This is especially true for non-agricultural sales estimates, as the reporting of the code distinguishing farm and non-farm use is optional (Ruddy, 2006). Because the AAPFCO data report the point of fertilizer sales and not the point of use, it is critical that the U.S. Department of Agriculture (USDA) continues to collect fertilizer expenditures data—which reflects the point of use—as part of the Census of Agriculture (U.S. Department of Agriculture, 2006).

- *Concentrated Animal Feeding Operations (CAFOs)*: Information on the number of animals (used to estimate loadings of animal manure) is available by county from the Census of Agriculture. But, this scale is generally too coarse to be able to associate estimates of manure loadings to specific watersheds and downstream monitoring. If the loadings are attributed to the wrong streams or spread out over a large area such as a county, then their influence may not be captured accurately or at all using water-quality models.

Question 3: Which regions, according to the United States Geological Survey's data and information, have the highest nutrient pollution levels? Why?

Response: Concentrations of nutrients occur at elevated levels in developed landscapes in all regions of the country. More specific characterizations of which regions have the highest nutrient pollution levels can be made by breaking the question down into three specific perspectives: with respect to drinking water standards; with respect to ambient water quality criteria for streams; and for ecological condition of receiving waters (lakes and estuaries).

Which regions have the highest nutrient pollution levels with respect to drinking water? Most streams with concentrations greater than the drinking water standard for nitrate, or Maximum Contaminant Level (MCL) are located in the upper Midwest (Dubrovsky and others, 2010). These streams had high concentrations of nitrate because they drain agricultural watersheds where fertilizer and (or) manure application rates are among the highest in the Nation. The elevated concentrations also reflect landscape characteristics and land-management practices that promote rapid transport of runoff from fields to streams, including relatively impermeable soils and artificial drainage, such as subsurface tile drains. Nitrate concentrations greater than the MCL are uncommon in streams draining watersheds dominated by other land uses, and nonexistent in samples from streams draining undeveloped watersheds. (See question 6 for additional detail.)

In contrast to streams, groundwater with concentrations exceeding the MCL were widely distributed across the Nation: 83 percent of studies of shallow groundwater in agricultural areas had one or more samples (of 20 to 30 wells sampled) with a nitrate concentration greater than the MCL. Nitrate concentrations greater than the MCL are most common in areas with favorable geochemical conditions (that is, groundwater with dissolved oxygen; see McMahon and others, 2009), with young groundwater (recharged after 1952), and with larger inputs of nitrogen to the land surface.

Which regions have the highest nutrient pollution levels with respect to ambient water quality criteria for streams? USGS data show that exceedance of recommended nutrient criteria that generally represent nutrient levels that protect against the adverse effects of nutrient pollution (USEPA, 2002) is widespread in developed landscapes. In fact, as noted in question 1 above, agricultural and urban streams across the Nation have measured concentrations of nitrogen and phosphorus 2 to 10 times greater than these recommended criteria (see chapter 7, Dubrovsky and others, 2010). These data indicate that both agricultural and urban sources are routinely capable of producing elevated instream concentrations.

Which regions have the highest nutrient pollution levels with respect to the ecological condition of receiving waters? Excessive loading of nutrients has degraded the ecological condition of lakes and estuaries throughout the country. Degradation of these waters has been documented in reports by States to the USEPA (USEPA, 2009) and the National Oceanic and Atmospheric Administration (NOAA). For example, NOAA reported that "The majority of U.S. estuaries assessed displayed at least one symptom of eutrophication, suggesting a large-scale, national problem" (Bricker and others, 2007). They further reported that estuaries with highly eutrophic conditions were most common in the Mid-Atlantic region, and occurred in all regions of the nation except the North Atlantic.

Although the scope of the USGS National Water Quality Assessment Program does not include coastal waters, USGS monitoring of the mass of nutrients transported by major rivers to coastal waters provides the critical data that link the condition of these resources to upstream sources of nutrients. Note that unlike the metrics for assessment of drinking water quality and ecological impact which are based on concentration (mass per unit volume, such as milligrams per liter), controlling excess nutrient levels in coastal waters is also a function of the mass of nitrogen and phosphorus delivered per unit time, expressed as "load" (with units such as tons per year). Monitoring of loads at upstream sites can also be converted into yields (mass per unit area, calculated as mass transported by a river divided by the drainage area of the river basin) to identify areas that contribute the largest amount of nutrient per unit area of watershed. For example, application of the SPARROW model to watersheds draining to the Great Lakes determined that the highest loads were from tributaries with the largest watersheds, whereas highest yields were from areas with intense agriculture and large point sources of nutrients (Robertson and Saad, 2011). These calculations facilitate the ranking of tributaries for prioritization of remediation efforts based on their relative loads and yields to each lake.

The National Lakes Survey showed that lakes within the northern, temperate, and coastal plains of the United States had the highest concentrations of nutrients as compared to other regions of the United States. The temperate plains showed 60% and 70% of lakes exceeded regionally specific reference based thresholds for phosphorus and nitrogen, respectively. The coastal plains showed 50% and 45% of lakes exceeded regionally specific reference based thresholds for phosphorus and nitrogen, respectively. Finally, the northern plains showed 70% and 90% of lakes exceeded regionally specific reference based thresholds for phosphorus and nitrogen, respectively. This high level of nutrients in the northern plains is also coupled with the highest taxa loss for any region of the nation, with regard to lakes, with phytoplankton communities showing greater than 40% taxa loss in greater than 90% of the lakes in this region (USEPA, 2010).

Question 4: Nutrient pollution can cause algal bloom growth, leading to "dead zones," or areas where no plant or animal life can survive. How do algal blooms create "dead zone"? What do these dead zones mean for water bodies like the Chesapeake Bay? What are some of the ecological harms associated with these dead zones? What are some of the economic harms associated with dead zones?

Response: The term "dead zone" is often used to describe areas that are hypoxic, or contain low concentrations of dissolved oxygen (generally 2 to 3 milligrams per liter). Hypoxia can be caused by saline and temperature gradients and excessive nutrients. Hypoxia in the northern Gulf of Mexico is caused by excess nutrients delivered from the Mississippi River in combination with seasonal stratification of Gulf waters. Excess nutrients promote algal growth. When the algae die, they sink to the bottom and decompose, consuming available oxygen. Stratification of fresh and saline waters prevents mixing of oxygen-rich surface water with oxygen-depleted bottom water. Immobile species such as oysters and mussels are particularly vulnerable to hypoxia and become physiologically stressed and die if exposure is prolonged or severe. Fish and other mobile species can avoid hypoxic areas, but these areas still impose ecological and economic costs, such as reduced growth in commercially harvested species

and loss of biodiversity, habitat, and biomass (Committee on Environment and Natural Resources, 2010). Fish kills can result from hypoxia, especially when the concentration of dissolved oxygen drops rapidly.

The effect of hypoxia is to decrease productivity and resilience of exploited populations, making them more vulnerable to collapse in the face of heavy fishing pressure.
The ecological impacts of hypoxia may be described in terms of the ecosystem services normally provided by a healthy ecosystem, but lost as a result of hypoxia. A full assessment of ecosystem services lost helps bridge the gap between ecological functions lost and their impact on people. In some cases, though not without challenges, ecosystem services can be assigned a reasonable dollar value. In these cases, analysis of services helps convey the economic costs associated with ecological impacts.

Fisheries yield is one ecosystem service that can be impacted both directly and indirectly by hypoxia. Mortality of fisheries species is a direct mechanism by which services are lost. Loss of forage for bottom-feeding fish and shellfish due to hypoxia is probably more important in most cases. In the Chesapeake Bay, seasonal hypoxia lasts about three months and reduces the Bay's total benthic secondary production[2] by about 5% (Diaz and Schaffner, 1990), or roughly 75,000 metric tons of biomass (Diaz and Rosenberg, 2008). This is enough to feed about half the annual blue crab catch for a year. In the northern Gulf of Mexico, severe seasonal hypoxia can last up to six months and reduces benthic biomass by about 212,000 metric tons when the hypoxic zone is 20,000 km^2 (Rabalais and Turner, 2001). This lost biomass could feed about 75% of the brown shrimp catch for a season (Diaz and Rosenberg, 2008

One of the less obvious ecosystem services lost during hypoxia is sediment mixing by benthic organisms, or 'bioturbation.' Reworking of sediments via bioturbation promotes oxygenation of sediments, improving habitat for benthic animals and promoting biogeochemical feedback processes that reduce nutrient recycling and limit eutrophication. There are a growing number of literature citations on the ecological consequences of hypoxia, but economic evaluations are lacking. Economic effects attributable to hypoxia are subtle and difficult to quantify even when mass mortality events occur. Much of the problem is related
to multiple stressors (habitat degradation, overfishing, Harmful Algal Blooms, and pollution) acting on targeted commercial populations as well as factors that impact fishery' economics (aquaculture, imports, economic costs of fishing, and fisheries regulations). Economic impacts that stem from the effects of hypoxia on fishery stocks are mostly tied to ecological
impacts through reduced growth and reproduction. Other economic costs imposed on fishers are related to increased time on fishing grounds and costs of to reach more distant fishing grounds beyond areas impacted by hypoxia. How these costs translate to impact on profits is complex, however, because in addition to the ramifications of reduced quantity, the unit value of landings on the market affects its total value and must be considered when evaluating the economic impacts.

[2]Secondary production refers to the mass of organisms near the base of the food web that are produced in a season or year in a given area. Benthic refers to organisms that live on or near the bottom of rivers, lakes, and oceans. Benthic secondary production is usually expressed as grams of carbon per square meter or per square kilometer (km^2).

Although quantifying costs of hypoxia-related mortality events is difficult, there are some published examples. Hypoxia in the early 1970s in Mobile Bay, Alabama was estimated to have killed over $500,000 worth of oysters (May, 1973). An even greater economic cost was associated with the declining stock size associated with mortality and poor recruitment of oysters in years with severe hypoxia. A modeling study in the Patuxent River in Maryland estimated that the net value of striped bass fishing alone would decrease over the long-term by over $145 million if the entire Chesapeake Bay were impacted by hypoxia, which would preclude fishing in other sites (Lipton and Hicks, 2003). Impacts of hypoxia on the overall health of the striped bass population and impacts to other Chesapeake fisheries were not included in this estimate but would substantially increase the overall economic consequences to fishers in the region.

Question 5: Based on your data, nutrient levels in groundwater are contributing substantially to the problems of nutrient pollution that we see today.

a. Are there different approaches to reducing nutrient levels in groundwater vs. in surface water?

Response:
Approaches used to reduce nutrient levels from nonpoint sources in groundwater and surface water usually involve manipulating the amount, timing, form, and method of application of fertilizer and other sources of the nutrients. However, Ribaudo and others (2011) concluded that: "Reducing the application of nitrogen fertilizers appears to be the most effective Best Management Practice (BMPs) for reducing the emission of nitrogen into the environment" because most of the BMPs used to minimize nutrient transport to streams via surface runoff (dissolved transport) and erosion (particulate transport) increase the amount of time that water from precipitation or irrigation remains on the agricultural fields. The longer the water remains on the field the greater the potential for infiltration and the potential for transport of dissolved nitrogen to groundwater. (Note that phosphorus is usually not transported to groundwater because of its low solubility and tendency to bind to soils and aquifer materials.) Methods that minimize the exposure of nitrogen to runoff by incorporating the fertilizer into the soil also increase the transport of dissolved nitrogen to groundwater.

b. What do these differences mean for our attempts to reduce nutrient pollution in our waters?

These differences mean that the benefits of using BMPs to protect streams by retarding runoff must be carefully weighed against the potential for these practices to increase groundwater contamination. A recent summary on the topic by the USDA Economic Research Service concludes that: "in areas where leaching to drinking water sources is a concern, improvements in nitrogen use efficiency could focus on application rate reductions or improvements in timing" (Ribaudo and others, 2011).

In areas where management measures promote transport of nitrogen from runoff to groundwater, we trade a near-term improvement in stream quality for the potential long-term degradation of groundwater, along with the prospect that the high-nitrogen groundwater may eventually discharge to a stream in the future. In some riparian zones next to streams, where groundwater moves through organic rich soils, nitrate can

be transformed by microorganisms to harmless nitrogen gas, a scenario in which the threat to both streams and groundwater resources is ameliorated.

Question 6: What impact does nutrient pollution have on human health?

Response: Elevated concentrations of nutrients, particularly nitrate, in drinking water may have both direct and indirect effects on human health. The most direct effect of ingestion of high levels of nitrate is methemoglobinemia, a disorder in which the oxygen-carrying capacity of the blood is compromised; the USEPA Maximum Contaminant Level (MCL) of 10 mg/L for nitrate in drinking water was adopted to protect people, mainly infants, against this problem. High nitrate concentrations in drinking water also have been implicated in other human health problems, including specific cancers and reproductive problems (Ward and others, 2005), but more research is needed to corroborate these associations. The indirect effects of nutrient enrichment of surface waters on human health are many and complex, including algal blooms that release toxins and the enhancement of populations of disease-transmitting insects, such as mosquitoes (Townsend and others, 2003).

Nitrate concentrations in streams across the nation seldom exceeded the USEPA MCL of 10 mg/L as nitrogen—nitrate exceeded the MCL in two percent of 27,555 samples, and in 1 or more samples from 50 of 499 streams (Dubrovsky and others, 2010). Nitrate concentrations greater than the MCL are more prevalent and widespread in groundwater than in streams. Concentrations exceeded the MCL in seven percent of about 2,400 private wells sampled by the USGS. Contamination by nitrate was particularly severe in shallow private wells in agricultural areas, with more than 20 percent of these wells exceeding the MCL. The quality and safety of water from private wells—which are a source of drinking water for about 15 percent of the U.S. population—are not regulated by the Federal Safe Drinking Water Act.

Concentrations exceeding the MCL were less common in public-supply wells (about three percent of 384 wells) than in private wells. The lower percentage in public wells reflects a combination of factors, including: (1) greater depths and hence age of the groundwater; (2) longer travel times from the surface to the well, allowing denitrification and (or) attenuation during transport; and, (3) locations of most public wells near urbanized areas where sources of nitrate generally are less prevalent than in agricultural areas.

Nitrate concentrations are likely to increase, in deep aquifers typically used for drinking-water supplies during the next decade, despite nutrient reduction strategies, as shallow groundwater with high nitrate concentrations moves downward to deeper aquifers. USGS findings show that the percentage of sampled wells with nitrate concentrations greater than the USEPA drinking water standard increased from 16 to 21 percent since the early 1990's. Similarly, the probability of nitrate concentrations exceeding the MCL has increased from <1% in the 1940's to >50% by 2000 for young groundwater in agricultural settings (Puckett and others, 2011).

Nitrate can persist in groundwater for years or decades and may continue to occur at concentrations of concern to human health because of previous land management practices. Because of the slow movement of groundwater, there is a lag time between what happens on the land surface and chemical changes in water that reaches a deep well. This means that improvements in water quality that might result from reducing nutrient sources on the surface may not be apparent in some watersheds for years or even decades.

Question 7: Do you think a nutrient-trading program would be an effective way to manage and reduce nutrient pollution? Why or why not?

Response: Nutrient trading is now widely expected to increase the cost-effectiveness and efficiency of aquatic nutrient control. Nutrient trading programs are operating in watersheds in 15 States and three other countries, and are under development in many additional jurisdictions (Selman and others, 2009). It is estimated, for example, that nitrogen trading among publicly owned treatment works in Connecticut will ultimately save over $200 million dollars in achieving the nitrogen reductions required under a Long Island Sound TMDL (USEPA, 2003). Preliminary findings from USGS research and use of USGS models show that total national savings of several billion dollars per year would result from expanding trading markets to regional scales, including full participation of both point and nonpoint sources, and optimizing both the location of nitrogen controls and the control technologies employed (Smith and others, 2008).

Questions from Senator Inhofe

Question 8: At the hearing you discussed that contributions of groundwater must be taken into account for TMDLs for surface waters. A Franklin & Marshall University study on the Chesapeake Bay watershed and a study by Agricultural Research Service hydrologist Glenn Wilson on the Mississippi River watershed both indicate that a large amount of the sediment that reaches the Chesapeake Bay or the Northern Gulf of Mexico is from stream bank erosion, and is not from the surrounding land. How can these contributions be better taken into account when developing TMDLs?

Response:

Accounting for groundwater contributions when developing nutrient TMDLs for streams: Standard methods exist to estimate the percentage of streamflow that is from groundwater, and to estimate the percentage of nutrient loads that come from groundwater discharge. Bachman and others (1998) and Spahr and others (2010), provide examples of how this has been done at the regional (Chesapeake Bay area) and national levels, respectively. Both studies used streamflow records to estimate the proportion of annual flow that is from groundwater discharge, and then used water-quality measurements and streamflow records together to estimate the proportion of the annual load of selected nutrients that is carried to the stream by groundwater discharge.

The graphical methods used by Spahr and others (2010) and Bachman and others (1998) could be used to better understand the role of groundwater discharge to streams in other areas. It is commonly recognized that the graphical methods generally underestimate the amount of groundwater discharge during storm events (Sklash and Farvolden, 1979), but the method continues to be used because the method: 1) only requires a streamflow record (which is available for most gaged streams across the United States), and 2) provides an initial estimate that can be used to understand the general patterns of groundwater discharge.

Progress towards reaching a TMDL may be difficult in watersheds where a large percentage of the nutrient load is from groundwater discharge. The difficulty arises in understanding the lag time between when water and nutrients enter an aquifer, and when they subsequently discharge to streams. Models can be used to help predict groundwater residence times (Sanford and Pope, 2007). Such models can estimate mean lag times for watersheds, and predict future changes in stream loads given future changes in nitrogen loadings to the land surface. Measurements of chemicals known as age-dating tracers in shallow groundwater, and in some cases streams, can help estimate groundwater lag times. At the watershed scale, even the initial water-quality improvement in surface water bodies may not be seen for years, and even if management practices were implemented basin-wide, the full response may not be seen for decades. However, practices are rarely implemented across an entire basin simultaneously, thus making it even more difficult to observe responses in surface water bodies. In addition, the larger the watershed, the longer the length of time before changes in water quality due to groundwater discharge will occur.

Thus, we can determine the magnitude of the nutrient load contributed by groundwater to a stream and the practices that are available to manage those loads. However, monitoring the response to those changes may require novel approaches such as monitoring of shallow groundwater near streams, because it may take years before changes in water quality can be observed in the stream itself.

Accounting for streambank erosion in the development of sediment TMDLs: The relative importance of streambank erosion to instream sediment loads is increasingly recognized within and outside of the United States (Trimble, 1997; Walling and others, 1999; Simon and Rinaldi, 2006; Gellis and others, 2009), indicating that accurate accounting of streambank erosion is necessary to adequately manage stream and river sediment loads. While there are no widely accepted models that predict rates of bank erosion across a wide range of environments (De Rose and Basher, 2011), advances in geographic information systems, surveying techniques, modeling, and computing power continue to improve the tools that enable scientists and water-quality managers to characterize streambank erosion processes.

USGS has developed statistical models (SPARROW) that use existing streamflow, sediment, and spatial data to characterize factors influencing suspended-sediment loads at regional and national scales (Schwarz, 2008; Brakebill and others, 2010). These models account for erosion and/or deposition of sediment from different land uses and in stream channels, and can be accessed and manipulated (in the case of Schwarz, 2008) through a new decision support system (http://cida.usgs.gov/sparrow/) that provides the user with the ability to characterize the relative importance of various sediment sources at user-defined locations on a mean-annual basis. These models conclude that streambanks represent a significant source of sediment loads. While these sediment models have the potential to quickly inform managers of the relative importance of various sediment sources (as well as the certainty with which those

sources can be ascribed), the accuracy and timeliness of these models for the future is likely to be limited by the decline in sediment monitoring that has occurred over the last two decades (Gray, 2002).

Existing spatial datasets have also been used to characterize the relative importance of streambank erosion to downstream water bodies. These datasets include historical and current aerial photography (Lawler, 1993; Trimble, 2008) and LIght Detection And Ranging (LIDAR) techniques which provide accurate, spatially-detailed elevation datasets (Thoma and others, 2005; Newell and Clark, 2008). The USGS Earth Resources Observation and Science (EROS) center works to archive and serve these and other sources of data for scientists and managers (http://eros.usgs.gov).

While the analysis of existing sediment and spatial data can provide information on long-term, average sediment contributions from streambanks, understanding the mechanisms and causes of streambank erosion requires more intensive data collection and/or modeling efforts. Wilson and his colleagues, whose work is referenced in the question, have published on various processes that affect streambank failure http://www.ars.usda.gov/is/AR/2011/feb11/streambanks0211.htm, and have incorporated their findings into the Bank Stability and Toe Erosion model. While the science is far from settled, it is clear that streambank erosion is an important process; and that the type of process research that Wilson and others are doing is an important/critical complement to instream and field monitoring efforts that are necessary to help refine and improve watershed models such as SPARROW. New surveying techniques, such as aerial (Kinzel and others, 2006; McKean and Isaak, 2009) and terrestrial LIDAR (Collins and Kayen, 2006) can provide more temporally-dense, site-specific estimates of streambank erosion. Compilation of sediment budgets through surveys and through the collection of physical and geochemical sediment tracers have allowed researchers to quantify the relative importance of various sediment sources (Walling, 2005; Gellis and Walling, 2011). In addition, the USDA has developed models that simulate bank erosion processes using available and newly collected data (Langendoen and others, 2001; Simon and others, 2011).

Question 9: Some areas of the country have extensively modified streams and rivers, which were channelized into concrete lined flood control channels

Should nutrients in concrete lined flood control channels be regulated the same as natural streams?

Response:
States have some degree of flexibility under the Clean Water Act regarding how they apply Clean Water Act standards to a specific waterbody. Concrete-lined flood control channels may or may not meet the statutory and regulatory definition of "waters of the United States" and therefore may or may not be subject to the provisions of the Clean Water Act.

If a specific waterbody such as a heavily modified stream is jurisdictional under the Clean Water Act, States have some flexibility under the Clean Water Act in how they apply water quality standards to that waterbody. For example, states may be able to tailor the specific designated uses of a particular waterbody to its characteristics. Where a State determines that achieving a designated use that provides

for the protection and propagation of fish, shellfish, and wildlife or recreation in and on the water (e.g., a Clean Water Act section 101(a)(2) aquatic life or recreation use) is not attainable, States may change the designated use of a water by conducting an assessment of what uses are attainable. If a State analysis supports a change in the designated use, States may change the designated use in their Water Quality Standards regulations. A change in designated use can often result in a change to the water quality criteria that must be met. See (http://water.epa.gov/scitech/swguidance/standards/uses/uaa/index.cfm)

How should nutrient criteria for these altered habitats (warmer water temperature, no reproducing populations of fish and poor general habitat) be different than the criteria for more natural streams?

Response: Under the CWA, States must adopt water quality criteria to protect the designated uses that have been previously set by the State. If the State determines that the designated use for an altered habitat is not achievable, then the State can conduct a use attainment analysis. EPA's Web site contains information on water quality standards and use attainment analysis that may apply to the situation in the preceding question. Many of our waters do not meet the aquatic life or recreation water quality goals envisioned by Section 101(a)(2) of the Clean Water Act. In some cases, it will not be possible to reach this water quality goal and States have the ability to demonstrate through analysis that the Clean Water Act section 101(a)(2) aquatic life or recreation use goal is not attainable for a particular water and to establish a different designated use in their WQS regulations based on this analysis. See (http://water.epa.gov/scitech/swguidance/standards/uses/uaa/index.cfm)
EPA's regulations require that States must also ensure attainment of standards in downstream waters. This is important as modified streams may carry nutrients to downstream waters. States can establish numeric water-quality criteria based on EPA's recommended Section 304(a) criteria guidance, modifications of the guidance recommendations reflecting site-specific conditions, or criteria based on other scientifically defensible methods.

Question 10: Does USGS have suggestions for measuring the success of nutrient management programs, given they may not achieve their goals for years or decades?

Response: USGS recommends four actions that will enable long-term evaluation of the success of nutrient management programs locally and nationally:

1) Restore and enhance multi-scale, long-term monitoring of nutrients in the Nation's surface water and groundwater resources.

2) Improve existing water-quality models for extrapolation of nutrient occurrence in space and time.

3) Establish a network of targeted watershed studies that track nutrients from source areas to receiving waters and groundwater discharge locations across a representative range of nutrient management programs.

4) Improve the detail and reliability of information on sources of nutrients, and establish requirements that all nutrient management programs document the type, location, and extent of practices implemented in each watershed or aquifer.

The first three actions are largely included as part of recommended plans for the next 10 years of the National Water Quality Assessment Program. Accomplishing these tasks would require substantial rebuilding and enhancements of current monitoring and assessment activities to address these critical public issues. The National Research Council (2011) has reviewed the plans and supports the recommendations. However, at present, agency resources are insufficient to fully address these needs. The fourth action is a critical information requirement; but should be addressed by those agencies responsible for nutrient management programs.

It is worth recognizing that existing USGS efforts can complement the significant work underway by the EPA and States under the Clean Water Act. For example, the EPA/State National Aquatic Resource Surveys are effectively using limited resources to survey nutrients and other core parameters and report on changes at the national and regional scale of the condition of the nation's surface waters, including rivers, streams, lakes, reservoirs, and coastal waters. States allocate some of the Nonpoint Source Program grants under Section 319 of the Clean Water Act to monitoring the localized effectiveness of best management practices, including those aimed at reducing nonpoint source nutrient loads.

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL 17 2012

The Honorable Barbara Boxer
Chairman
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Chairman Boxer:

Enclosed are responses prepared by the United States Fish and Wildlife Service to questions submitted following the Committee's Tuesday, April 24, 2012, hearing on conservation legislation: **S. 357**-- A bill to authorize the Secretary of the Interior to identify and declare wildlife disease emergencies and to coordinate rapid response to those emergencies, and for other purposes; **S. 810**--A bill to prohibit the conducting of invasive research on great apes, and for other purposes; **S. 1249**--A bill to amend the Pittman-Robertson Wildlife Restoration Act to facilitate the establishment of additional or expanded public target ranges in certain States; **S. 1266**--A bill to direct the Secretary of the Interior to establish a program to build on and help coordinate funding for the restoration and protection efforts of the 4-State Delaware River Basin region, and for other purposes; **S. 1494** A bill to reauthorize and amend the National Fish and Wildlife Foundation Establishment Act; **S. 2071**--A bill to grant the Secretary of the Interior permanent authority to authorize States to issue electronic duck stamps, and for other purposes; **S.2156**-- A bill to amend the Migratory Bird Hunting and Conservation Stamp Act to permit the Secretary of the Interior, in consultation with the Migratory Bird Conservation Commission, to set prices for Federal Migratory Bird Hunting and Conservation Stamps and make limited waivers of stamp requirements for certain users and **S. 2282**--A bill to extend the authorization of appropriations to carry out approved wetlands conservation projects under the North American Wetlands Conservation Act through fiscal year 2017.

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

Sincerely,

Pamela Baker

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

Enclosure

cc: The Honorable James M. Inhofe
Ranking Minority Member

Environment and Public Works Committee
Legislative Hearing – April 24, 2012
Director Dan Ashe Follow-up Questions for Written Submission

Senator Barbara Boxer

1. Can you please describe the importance of investing in the conservation programs that would be authorized or reauthorized by the legislation considered at this hearing? What wildlife and economic benefits can be expected?

Response: A number of the programs for which legislation was heard by the Senate Environment and Public Works Subcommittee on Water and Wildlife on April 24, 2012 have a long history of benefits to wildlife and to the American economy. Two of these, the Federal Duck Stamp and the North American Wetlands Conservation Act (NAWCA), have provided decades of conservation value for waterfowl and other wetland-dependent wildlife, through the protection and restoration of wetland habitats across the nation. Through these and other programs, the U.S. Fish and Wildlife Service (Service) implements its responsibility to conserve sustainable populations of migratory birds. Alone and in combination with other conservation efforts, these two programs have helped re-establish and sustain healthy waterfowl populations, and they benefit other wetland-dependent species, as well. Ninety-eight cents of each dollar from Federal Duck Stamp sales goes toward the purchase of fee title or easements to protect waterfowl habitat – wetlands and associated uplands. Since its inception in 1934, the Federal Duck Stamp has protected more than 5.3 million acres of such habitat. With the additional receipts that would be generated from the proposed price increase, the Service anticipates the ability to acquire an additional 7,000 acres in fee and 10,000 acres in conservation easement, approximately, each year. Total acres acquired for 2013 would then be approximately 24,000 acres in fee title and 33,000 acres in perpetual conservation easements. These funds are and would be targeted to acquire habitats for waterfowl that can provide the greatest possible conservation benefit.

NAWCA was enacted, in part, to implement the North American Waterfowl Management Plan, which is a tri-partite agreement among the U.S., Canada, and Mexico to recover and sustain North American waterfowl. NAWCA provides federal funds to restore wetlands through partnership projects – wetlands that support waterfowl nesting in the north, migration throughout the continent, and wintering habitat, primarily in the U.S. and Mexico. In the critical waterfowl breeding grounds of the prairie pothole region in the north-central U.S., NAWCA has conserved more than 2.1 million wetland and associated grassland acres by leveraging $104 million in Federal funds to generate another $170 million in partner contributions since the start of the program in 1991.

These programs can provide additional lands for hunting and other wildlife-associated recreation, and they help ensure the birds are there to enjoy for future generations. Waterfowl hunting provides significant economic support to rural communities across the nation, and it serves as an economic anchor for several such communities. According to the Service's Survey of Fishing, Hunting and Wildlife-Associated Recreation, last conducted in 2006, 1.3 million Americans participated in waterfowl hunting and 15.4 million traveled in the country to view or photograph

waterfowl. Migratory bird hunters spent $1.3 billion in trip and equipment-related expenses, while wildlife watchers -- ninety-four percent of which are bird watchers -- spent more than $45.6 billion. Without these and other migratory bird conservation programs, the U.S. and the communities that support hunting and wildlife-watching would not realize these economic benefits.

Since 1984, the National Fish and Wildlife Foundation (NFWF) has leveraged approximately $576 million into over $2 billion to fund 11,600 grants for on-the-ground projects that benefit conservation in all 50 states. This includes more than 3,700 grants supported with funding through the Service, leveraging $174 million in Service funds into more than $618 million for conservation. Its efforts to increase the public fund investment in the conservation of fish and wildlife resources have yielded an average 3-to-1 ratio in private matching funds, although its statutory requirement is a 1-to-1 match. NFWF has provided and will continue to facilitate mechanisms through which the greatest conservation benefit can be achieved through a combination of federal and non-federal funds, and the projects that have funding facilitated through NFWF help ensure fish and wildlife populations are sustained for the enjoyment of all Americans and for the economic support of communities that depend on wildlife-associated recreation.

The Service has acknowledged the tremendous economic impacts of the Delaware River to the highly populated region in which the river basin lies, and a landscape-level approach to conserving its fish and wildlife and other resources can be cost effective. The North Atlantic Landscape Conservation Cooperative is the larger landscape-level effort to identify priority science products needed to conserve fish and wildlife in the region, and participation of the larger Delaware River Basin partnership in the North Atlantic LCC will help ensure that limited resources for conservation science across the region will be used most effectively.

It is difficult to predict the conservation or economic benefits of the Wildlife Disease Emergency Act while it has no identified source of funds. The primary purpose of the Act is to establish a Fund through which the Secretary of the Interior can rapidly dedicate the resources necessary to put into place infrastructure to address emerging diseases that threaten our ecosystems as they arise. With the resources to support a fund, the bill could contribute to ensuring that the Department can mount the necessary response to contain and manage the outbreak of fish and wildlife diseases that threaten their populations in the wild, the ecosystems that support their habitats, and the economic benefits derived from them.

2. Can you please describe the successful partnership with Canada and Mexico on migratory bird conservation? How has the North American Wetlands Conservation Act contributed to this partnership? What benefits do sportsmen in the U.S. receive from conservation efforts in Canada and Mexico?

Response: The U.S. has a long-standing partnership with Canada and Mexico to conserve the migratory bird species we share. Because migratory birds use nesting habitat in northern latitudes, migrating habitat across the continent, and winter habitat in more southern latitudes, their conservation depends upon each nation having laws that prevent unsustainable mortality rates and programs to protect migratory bird habitats. In 1916, the U.S. entered into a treaty with Great Britain (for Canada) to protect birds species that migrate between the two North American

nations. In 1936, the U.S. joined Mexico in signing the Convention between the U.S. and Mexico for the Protection of Migratory Birds and Game Mammals. The Migratory Bird Treaty Act of 1918 (16 USC 703-713) (MBTA) was first enacted in the U.S. to implement our treaty with Great Britain (Canada), and it was later amended to accommodate the provisions of the 1936 treaty with Mexico. It was subsequently amended further to accommodate similar treaties with Japan in 1974 and Russia in 1978.

The MBTA implements the underlying obligation of the United States for the conservation of migratory birds. It prohibits the "take" of protected species without a federal permit, and it provides for conditions under which permits may be given. "Take" includes killing, possessing, transporting, or selling any protected bird or part of a bird, egg, or nest. Despite the measures taken by the Federal government, in partnership with the states, to conserve migratory waterfowl, North American populations of several species declined, and by the late-1970's and early 1980's, the declines were alarming. By 1985, the Service estimated that 53 percent of the original 221 million wetland acres found in the contiguous United States had been destroyed since early settlement, while 29 to 71 percent of wetland losses across Canada were lost in that time frame. In 1986, the United States and Canada signed an agreement, called the North American Waterfowl Management Plan (Plan), to rescue waterfowl populations through regional implementation of management approaches by Federal-state-tribal-private partnerships, called Joint Ventures, and through the financial support of partnership projects specifically to restore wetland habitats through the North American Wetland Conservation Act (NAWCA). In 1994, Mexico also signed on to the Plan. On May 31, 2012, Secretary Salazar joined with representatives from the Canadian and Mexican governments to recommit to the Plan in a revision that addresses three overarching goals for waterfowl conservation: 1) abundant and resilient waterfowl populations to support hunting and other recreational uses without imperiling habitat; 2) sufficient wetlands and related habitats to sustain waterfowl populations at desired levels, while providing places to recreate and ecological services that benefit society; and 3) increasing numbers of waterfowl hunters, other conservationists and citizens who enjoy and actively support waterfowl and wetlands conservation. To implement the Plan, NAWCA, and the Joint Ventures for migratory birds, the Service works closely with relevant agencies in Canada and Mexico.

Senator Tom Carper

1. Based on your expertise as Director of the U.S. Fish and Wildlife Service, can you please expand upon the importance that you mentioned in your testimony of protecting the Delaware River basin watershed? What are some of the risks, ecological, economic and otherwise, that might come to be if investments are not made in protecting the Delaware River?

Response: The Delaware basin, like the Chesapeake Bay and other coastal and aquatic systems, supports myriad native species. A number of these species fall into the Service's Trust species, including those protected by the Migratory Bird Treaty Act and the Endangered Species Act. Within its focused role for conservation in the basin, the Service has pointed out in testimony that the Delaware River is the largest undammed river east of the Mississippi, with 330 miles of unimpeded river flow. This is particularly valuable for the anadromous species that fall within the Service's purview. The Delaware Bay supports the largest known spawning aggregation of

horseshoe crabs, and these are of critical importance to red knots and other shorebirds, as well as to the biomedical and human health industry. To support the conservation of anadromous and other inter-jurisdictional fish species, the Service currently has a Delaware River Coordinator Office. This office works with the four Delaware River basin states: Pennsylvania, Delaware, New York, and New Jersey to assist in all interstate activities related to anadromous fish management and restoration as well as activities related to management and restoration of other inter-jurisdictional fish species with economic or ecological significance in the Delaware basin.

Over 15 million people (approximately five percent of the nation's population) rely on the waters of the Delaware River Basin for drinking, agricultural, and industrial use. This figure includes about seven million people in New York City and northern New Jersey who live outside the basin. New York City gets roughly half its water from three large reservoirs located on tributaries to the Delaware. Management of the water quality and distribution, now the focus of the Delaware River Basin Commission, are of paramount importance to fish and wildlife and among the greatest challenges faced by the human and fish and wildlife inhabitants of the region.

The landscape conservation model for large, aquatic ecosystems has evolved through our experiences in addressing Chesapeake Bay, Everglades, Great Lakes, and other large, aquatic ecosystems and their restoration. Beyond the underlying challenges of preserving or restoring water quality and managing distribution of water to meet human needs, the landscape conservation challenge we face, in part, is identifying the scale at which an aquatic resource should be conserved and at what scale should the scientific research, monitoring, and management tools be developed to identify and address underlying and priority conservation challenges, such as the extraction of fuels or energy production. Environmental conditions and landscape challenges, including climate change, invasive species, disease, and drought can greatly impact the success of more focused fish and wildlife conservation initiatives. To that end, the Service has led the creation of a North Atlantic Landscape Conservation Cooperative in the region in which the Delaware River basin lies. Landscape Conservation Cooperatives (LCCs) are self-directed, multi-partner entities that develop science-based and adaptive tools for conservation at the landscape level, and this approach – including 22 such entities across the nation – was spearheaded by the Department of the Interior through Secretarial Order 3289. The Service encourages the stakeholders involved in the Delaware River Basin initiative to work with the North Atlantic LCC to identify priority landscape-level conservation science needs.

Senator Frank R. Lautenberg

1. The Wildlife Disease Emergency Act would authorize the Secretary of the Interior to declare wildlife disease emergencies and lead cross-agency efforts to fight those diseases. It would also authorize additional resources.

   How could those new tools help your agency address outbreaks of wildlife diseases?

Response: The Service currently has the authority to develop the infrastructure necessary to respond to the outbreak of wildlife diseases and to establish a committee similar to that described in Section 6. The new authority proposed in S. 357 for the Secretary – to enable the Secretary to declare a "Wildlife Disease Emergency"— would be of assistance to the agency in dedicating resources to the rapid establishment of infrastructure necessary to quickly assemble partners.

identify and conduct or contract necessary research, and identify and implement management steps to contain or eradicate the disease. However, without an identified funding source to support the Wildlife Disease Emergency Fund, the effect of this authority, beyond the Service's existing authorities, is limited.

2. In the last few years, the Delaware River Basin has experienced serious flooding on a regular basis.

   What conservation and habitat restoration programs could you implement under the Delaware River Basin Conservation Act that would also help control flooding in the region?

Response: The Service anticipates a role under the Delaware River Basin Restoration Act that coordinates and supports the functions of existing Federal and state agencies and regional entities, such as the Delaware River Basin Commission, in carrying out their existing and separate statutory authorities and responsibilities. One of the ways habitat restoration and conservation provides benefits to society is by restoring fully functioning wetlands and riparian habitats, which mitigate the impacts of flooding. Accordingly, under the legislation, the Service would continue to work with the relevant states and other stakeholders to restore fully functioning wetlands and other riparian habitats in the watershed. In addition to mitigating the impacts of flooding, investments in proactive, on-the-ground habitat restoration provide significant conservation benefit to migratory birds, anadromous fish, and threatened and endangered species and also buttress the ecosystem services on which we so critically depend. Another key consideration is that each of these benefits enhance the economy, including by reducing flood damage and enhancing opportunities for wildlife dependent activities.

Senator Benjamin Cardin

Target Practice and Marksmanship Training Support Act (S. 1249)

1. Does the Service support use of funds to develop and maintain shooting ranges?

   a. Why/why not?

Response: The Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669-669i) authorizes the Secretary of the Interior to cooperate with the States, through their respective State fish and game departments, in wildlife-restoration projects. The Act also provides for grants for a variety of uses including reintroduction of declining wildlife species, wildlife population surveys, species research, hunter education, acquisition of wildlife habitat, and public target ranges. S. 1249, the Target Practice and Marksmanship Support Act, would amend the Pittman-Robertson Wildlife Restoration Act to change the funding requirements to allow up to 90 percent of target range

construction and maintenance to be paid for with Pittman-Robertson funds, thus reducing the match burden on state and local governments. The Department supports S. 1249 because it creates an opportunity for young Americans to learn about responsibility, about dedication, about accomplishment. Yes, we support the use of funds to develop and maintain shooting ranges.

2. Do you see detrimental impacts to FWS wildlife conservation and protection efforts resulting from shooting ranges on public lands?

Response: The Service does not maintain shooting ranges on public lands and therefore does not possess comprehensive data on the impacts to wildlife conservation and protection from these areas. Any potential detrimental impacts to wildlife conservation and protection from a proposed shooting range construction and operation would be evaluated through an environmental assessment in accordance with the National Environmental Policy Act.

a. Are these impacts offset by potential benefits to local economies or state revenues?

Response: The Service does not maintain data on the benefits to local economies or state revenues generated by shooting ranges on public lands. The 1991 Survey of Fishing, Hunting and Wildlife-Associated Recreation included questions about hunters participating in target shooting, but the Service did not pursue this data in the 1996, 2001, or 2006 surveys, and the 1991 data did not represent all target shooters.

b. Could FWS mitigate these negative impacts to wildlife?

Response: As noted above, the Service does not maintain shooting ranges on public lands and therefore does not possess comprehensive data on the impacts to wildlife conservation and protection from these areas. The Service believes that any impacts to wildlife can be addressed through current laws, regulations and policies.

Delaware River Basin Conservation Act (S. 1266)

3. As we've seen in the Chesapeake Bay, regional coordination on large water bodies is one of the most effective ways to protect the habitats of wildlife dependent on these systems and improve overall improve environmental conditions.

a. Does FWS suggest any corrections to the bill to ensure that this legislation is an effective conservation tool? Please elaborate.

Response: The Service is concerned that the legislation, as statute, could be interpreted to overlap the statutory authorities and obligations of existing federal and state agencies and regional entities, such as the Delaware River Basin Commission, the Environmental Protection Agency, the U.S. Army Corps of Engineers, and relevant state agencies with jurisdiction over those waters. Section 4(b) should be redrafted to clarify that: 1) the Secretary's role is in coordinating (and not implementing) the conservation work occurring in the basin beyond its existing statutory authorities. Section 4 (c), entitled "Coordination" should be followed by direction for the Secretary to coordinate, not "consult" with the list of agencies that follow. Absent these changes, the Service recommends including a clause which clearly states that the

Act is not intended to supersede existing federal authorities or state jurisdiction.

North American Wetlands Conservation Extension Act (S. 2282)

4. The North American Wetlands Conservation Act provides an excellent return on every federal dollar spent. For each federal dollar used in the program, the average match is over three dollars. This wetlands conservation protects a range of wildlife.

    a. Does FWS support this bill?

Response: The Service strongly supports reauthorizing the North American Wetlands Conservation Act (NAWCA). S. 2282 would simply authorize this program through 2017.

    b. Does FWS recommend any alterations to the bill?

Response: The Service appreciates the Committee's leadership in supporting and perfecting NAWCA throughout its history. No further statutory changes are needed at this time.

Senator James Inhofe

1. You mentioned that 70% of the prairie wetlands are in private ownership. In your opinion, are land owners in this area of the country willing to take part in voluntary conservation efforts?

Response: Based on our experience in implementing wetland conservation programs under our authority and in our work with USDA's Natural Resource Conservation Service in implementing the Farm Bill's Wetland Restoration Program, more landowners are interested in wetland restoration project support, on a voluntary basis, than there are Federal funds to accommodate them.

2. How do you coordinate conservation efforts with other federal agencies to ensure minimizing duplication and maximizing proper use of federal funds? How do you coordinate with private and state efforts?

Response: The Service has responsibility, directed by Congress, for the conservation of certain wild and native fish, and wildlife species of national significance. These statutes include the Endangered Species Act, the Migratory Bird Treaty Act, the National Wildlife Refuge System Administration Act, the Federal Aid in Sportfish Restoration Act, and the Federal Aid in Wildlife Restoration Act. In the implementation of our statutory responsibilities, the Service engages the states, with which we share federal and state statutory obligations, respectively, to conserve. These include federally endangered or threatened species, migratory birds, and certain species of anadromous fish. We have developed efficient and effective partnerships and joint processes to carry out these obligations, some of which date to the turn of the 20th Century, and these partnerships have demonstrably contributed to the restoration of fish and wildlife populations and to the provision of hunting, fishing and wildlife-associated recreation. Although the Service manages National Wildlife Refuges for purposes directed by Congress, we work closely with state wildlife agencies and local governments to ensure that

the purpose of each Refuge is supported by local policies and constituents. Congress has directed or authorized the Service to carry out a wide range of conservation partnership programs, and the Service works to ensure that funds appropriated for these purposes are directed toward projects that are in line with Congressional direction and that address priorities shared by all relevant partners. In addition, the Service has initiated partnerships under existing authorities, to implement its conservation responsibilities, such as the Joint Ventures for migratory birds. These landscape level partnerships not only strengthen the cooperative work of the partners, including states, tribes, other federal agencies, private organizations, and academic institutions, but they also help clarify the roles of each partner so that duplication of effort is minimized. The Service has led the development of several Landscape Conservation Cooperatives (LCCs) and is now a partner in all 22 of these self-directed, multi-partnered entities – including relevant Federal, state, tribal and local government agencies – to identify priority science needs and to develop science-based, adaptive conservation tools to address landscape-level challenges to fish, wildlife, and other natural and cultural resources. Through LCCs, spearheaded by the Department of the Interior through Secretarial Order, all participating agencies that are statutorily or otherwise responsible for these resources can pool together and maximize the conservation value of limited resources by reducing redundancies and magnifying the effectiveness of each partner.

Senator Jeff Sessions

1. Would S. 2071 (the Permanent Electronic Duck Stamp Act) allow the States to save some costs over current practice? Would it be easier for purchasers of duck stamps if they had an electronic option? Would duck hunters, who prefer receiving the paper duck stamp, still be able to obtain the traditional stamps?

Response: P.L. 109-266 required the Service to conduct a pilot program to offer the sale of electronic Federal Duck Stamps and to prepare a report to Congress to describe its results. The report was released in August of 2011. The Service included data in the report to show that the percentage of total Federal Duck Stamp sales purchased online in each participating state increased during the first two years. In several participating states, the increase was dramatic, indicating that this mechanism appeals to Duck Stamp purchasers. All waterfowl hunters must carry a paper stamp into the field, and each hunter purchasing a Federal Duck Stamp receives a paper stamp. Hunters purchasing the Federal Duck Stamp online will receive a paper Duck Stamp in the mail, but they may use their receipt from the online sale – with its unique serial number – for 45 days after its purchase. Each state has its own game laws and administrative process for issuing hunting licenses, including Federal Duck Stamps. The Service has not surveyed the states for relative costs of administering the direct Duck Stamp sales versus electronic sales, but the current law allows the states to charge "a reasonable fee" to recover costs associated with the electronic Duck Stamp sales. All but one of the participating states has charged a fee, ranging from $1 per stamp to $3.50 per stamp.

2. Our federal debt is unsustainable. All programs have to take a serious look at doing with less. In your view, is it possible to reauthorize programs like the National Fish & Wildlife Foundation program at somewhat reduced authorization levels and still accomplish the program's primary objectives? If so, what level would be appropriate in your view?

Response: The Service will do everything possible to maximize the conservation value of every dollar appropriated by Congress for this and other programs. The National Fish and Wildlife Foundation (NFWF) is a highly efficient conduit for federal conservation dollars, and cutting funds for NFWS would also eliminate this facilitator of nonfederal funds for important projects. However, the Service defers to NFWF regarding what specific authorization level is necessary to accomplish its primary objectives.

3. The Fish & Wildlife Service plays an important role in administering the North American Wetlands Conservation (NAWCA) program. My understanding is that NAWCA currently requires 30-60% of the program's funds to be spent on projects in Canada and Mexico. Should this committee give consideration to recalibrating that percentage, to increase the amount of conservation dollars spent in the United States? How much is Canada spending on wetlands conservation programs of a similar nature to NAWCA?

Response: Most North American waterfowl nesting habitat lies in Canada, and Mexico contains important winter habitat for many of these species. Migratory waterfowl species depend on nesting habitat in northern latitudes, migrating habitat across the continent, and winter habitat in more southern latitudes, and it is critical to invest in conservation of these habitats to meet their transcontinental and seasonal needs. NAWCA was enacted as part of the implementation of the North American Waterfowl Management Plan (the Plan), a tri-partite agreement among the United States, Canada, and Mexico, initiated in 1986 by Canada and the U.S. to combat historical declines in waterfowl recorded in the late 1970's and early 1980's. NAWCA is the mechanism through which wetland acres -- prime waterfowl habitat -- are conserved and restored through partnership projects across the nation and in Canada and Mexico. Because much of the nesting habitat for our waterfowl species lies in Canada, the Service recommends that NAWCA funds, as appropriate, be spent on Canadian projects. A smaller percentage of funds are invested in Mexico to conserve winter habitat for those species that migrate to Mexico. At this time, the Service does not believe it is appropriate, for the purposes of waterfowl conservation, to recalibrate the percentage of NAWCA funds that may be invested in Canada and Mexico. It is simply not possible to capture, within the borders of the U.S., the significant, latitude-dependent waterfowl nesting habitat found in Canada or the important wintering habitat found in Mexico. The current flexibility of percentages of NAWCA funds that may be awarded to projects in Canada and Mexico ensures that the Service can apply all available funding to the most productive projects across the continent each year. NAWCA projects in Canada are matched with Canadian funds. The Service would be pleased to provide a detailed account of Canadian NAWCA projects. The Service defers to the Canadian government to provide detailed accounting of other spending its Federal government, provincial governments, or private organizations spend on wetland restoration.

4. NAWCA currently requires a 1:1 match for federal dollars, but I understand that the program is highly competitive and over-subscribed. I also understand that, on average, NAWCA obtains a 3:1 level of non-federal matches for projects. That is very good. Should this committee consider recalibrating the ratio to maximize the ability to leverage non-federal support for our scarce federal dollars?

Response: Although it is possible for NAWCA projects to achieve a 3:1 match, the current

match gives the Service the flexibility to apply available funds toward projects that will yield the greatest benefits to waterfowl and other wetland-dependent migratory bird species across the continent and in the United States. Although more applications are received than can be funded, not all projects are equally valuable to these resources. The Service is usually able to fund all of the highest quality projects proposed. Setting the bar for match at 3:1 in statute would eliminate funding for many projects that have significant value for wetland habitat conservation. In the prairie pothole region, where most North American waterfowl species nest, matches for NAWCA projects on average remain at about 1:1.

5. The Fish & Wildlife Service recently entered settlement agreements with environmental organizations whereby your agency agreed to publish listing determinations for more than 750 species-more than 150 of which are in Alabama. This is an enormously expensive undertaking that re-shuffled federal priorities under the Endangered Species Act without the involvement of Congress. In November, Sen. Inhofe and I asked your agency to provide us with copies of communications between your agency and the plaintiffs related to the litigation and settlement agreements. Your agency responded that the documents were protected by "attorney-client privilege." We did not agree with your agency's response, as no attorney-client relationship existed between the government and plaintiffs. On March 23rd, you wrote a letter to me stating that the documents would not be disclosed because of a federal district court's "local rules" that prohibit disclosure of "any written or oral communication made in connection with or during any mediation session."

    a. Wouldn't you agree that, as the Ranking Members of the EPW Committee and Water & Wildlife Subcommittee, Sen. Inhofe and I have oversight responsibilities with regard to these issues?

    b. Has your agency sought leave of court to provide any documents that are responsive to our request?

    c. Could you tell us when mediation began in this litigation, and how many responsive documents in your agency's possession were produced either before mediation began or after it was concluded?

    d. Will you give me your personal assurance that your agency will do everything it can, within the law, to ensure that Sen. Inhofe and I are able to review all documents that are responsive to our request?

Response: We agree that the Senate Environment and Public Works Committee has oversight responsibility for issues related to the Endangered Species Act. In this regard, it is important to clarify that these settlement agreements neither re-shuffled federal priorities nor resulted in enormous expense. The settlements actually reflect our biological priorities and restore our ability to set biologically-driven priorities in the future. We can meet all of our obligations under these settlements within our current funding levels.

Your questions were also raised in your May 24, 2012, letter, co-signed by Senator Inhofe, and

we are working closely with our legal counsel in the Office of the Solicitor and the Department of Justice on the response, which we will provide under separate cover. The Service is committed to working with you to address your information request in a manner that respects the bureau's confidentiality interests and legal obligations.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

AUG 2 1 2012

The Honorable Jeff Bingaman
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the United States Geological Survey to questions submitted following the Committee's Tuesday, June 19, 2012, oversight hearing on *"The potential for induced seismicity from energy technologies, including carbon capture and storage, enhanced geothermal systems, production from gas shales, and enhanced oil recovery."*

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 Minority Member

FROM SENATOR BINGAMAN

1. Dr. Zoback has testified that the risk of venting stored carbon dioxide from small, induced seismic events is a primary concern and obstacle to the scaling up of CCS technologies to play a significant role in mitigating global greenhouse gas emissions to the atmosphere. Do you agree with this assessment?

Dr. Zoback's study identified the need to carefully study any prospective CCS projects and to evaluate potential risks associated with particular projects. We agree that induced earthquakes could be a significant risk to the efficacy of large-scale CCS and that this hazard needs to be carefully studied and better understood. Although injection of CO_2 into depleted oil and gas reservoirs (for example, as used in secondary oil recovery) may pose a *low* risk for induced seismicity, such is not the case during injection of CO_2 into normally pressurized, undepleted aquifers. For injection in undepleted reservoirs, the geologic sequestration of CO_2 is probably not significantly different from other large-volume liquid-injection projects, such as wastewater disposal at depth, for which there are numerous case histories involving earthquakes large enough to be of concern to the public. One of the early case histories concerned the injection of 625,000 cubic meters of wastewater at the Rocky Mountain Arsenal (RMA) well in the mid-1960s, which induced earthquakes of about magnitude 5 and caused damage to structures in the Denver, CO, area.

Over the next three years, a DOE-sponsored demonstration project in Decatur, IL, will inject 1 million tons –about 1.4 million cubic meters of CO_2– into an undepleted brine aquifer within the Mt. Simon sandstone at a depth of about 2 km. Injection at the Decatur well began in November 2011. Although the induced earthquakes at this site have been tiny as of July 2012, it is much too early to know what the seismic response will be as the injection grows; the total planned volume of injected CO_2 at Decatur is more than double what was injected at the RMA. If the induced earthquake pattern at Decatur turns out to be similar to that at RMA, then some of the larger induced earthquakes that would occur at the site could indeed pose threats to the integrity of the capping seals. It is also possible that high pressures generated within the Mt. Simon sandstone could be communicated to "hidden" faults within the underlying granite basement. Although such faults have not been seen in the seismic data collected at Decatur so far, it is notoriously difficult to image faults in deep granitic rocks. Thus, a prudent approach would be to assume that there could be an earthquake risk to nearby communities during this project.

To assess these seismic hazards, it is necessary to monitor induced earthquakes at each CCS pilot project with a seismic network designed to locate events precisely in three dimensions and thereby determine the exact nature of the seismic source. Microearthquake locations enabled by such a network would allow us to identify previously unknown faults within the underlying basement, as well as determine the maximum likely fault slip associated with these and other faults, including those located near the sealing formations. Other types of field and laboratory research will be needed

to achieve a comprehensive understanding of the risk to reservoir seals from earthquake slip in various geological settings.

2. *As USGS considers the amount of available storage for CCS, is the possibility of leakage from small seismic events something that is factored in?*

The 2007 Energy Independence and Security Act (Public Law 110–140, section 711) authorized the USGS to conduct a national assessment of geologic storage resources for carbon dioxide (CO_2). The methodology that was developed for the national assessment (Brennan and others, 2010, http://pubs.usgs.gov/of/2010/1127/) addresses the geographical extent, the capacity, injectivity (permeability), and the risk associated with potential storage formations. We evaluate the risk of a potential formation by providing maps of existing well penetrations which, in some cases, may be potential CO_2 leakage pathways (for example well penetration maps see Covault and others, 2012, http://pubs.usgs.gov/of/2012/1024/a/). The USGS methodology also incorporates the Environmental Protection Agency (EPA) guidelines to prevent CO_2 leakage to the surface and CO_2 contamination of underground sources of drinking water (USDW) and overlying aquifers. EPA's guidelines are: (1) a regional, well defined sealing unit to be present above each storage assessment unit, and (2) only assessing storage assessment units that have formation waters that are greater than 10,000 parts per million total dissolved solids. The risk of induced seismicity associated with a particular CO_2 storage project depends on local storage reservoir fluid pressure management and CO_2 injection rates and volumes, and is, therefore, an engineering problem that is not specifically evaluated in the current USGS CO_2 storage assessment efforts. We do, however, note that a potential storage formation may be located in a region of the country where natural seismic risks are more likely. We are incorporating a discussion of the proximity of a potential storage formation to seismically active areas in the geologic framework reports for each assessed area that will be published during the coming year.

3. *Dr. Zoback's testimony noted that offshore formations similar to the one utilized by the Sleipner project in Norway and also depleted oil and gas reservoirs could potentially be suitable for long-term storage of high volumes of carbon dioxide. The Department of Energy indicates there may be as much as 7.5 trillion tons of CO_2 storage capacity in offshore formations in the Gulf Coast that are similar to the Sleipner project in Norway. The most recent estimates from the National Energy Technology Laboratory indicate that there may be as much as 20 billion tons of CO_2 storage capacity in depleted oil and gas reservoirs.*

a. *Could you please comment on these assessments of storage capacity and their suitability for the long-term storage of high volumes of carbon dioxide?*

b. Could you provide an estimate of how much storage is available in the types of formations that Dr. Zoback has described as having suitable characteristics for such long-term storage?

a. The North American Carbon Storage Atlas (2012, available at: http://www.netl.doe.gov/technologies/carbon_seq/global/nacap.html), published jointly by the Department of Energy and representative agencies from the governments of Canada and Mexico, indicates that within the Atlantic, Gulf of Mexico, and Pacific offshore regions of the United States, there is an estimated range of 467 billion to 6.4 trillion metric tons of potential CO_2 storage capacity in saline formations. The North American Storage Atlas also reports that oil and gas reservoir CO_2storage resources for the United States (onshore and offshore) are approximately 124 billion metric tons. In addition, a report by Kuuskraa and others (2011, http://www.netl.doe.gov/energy-analyses/pubs/storing%20co2%20w%20eor_final.pdf), that was prepared for the National Energy Technology Laboratory, indicates that nearly 20 billion metric tons of CO_2may be needed to economically produce oil using "Next Generation" enhanced-oil-recovery techniques utilizing a mixture of naturally occurring CO_2produced from CO_2-rich underground reservoirs and $CO_2$from anthropogenic sources. The resource numbers reported by the North American Carbon Storage Atlas (2012), the Carbon Sequestration Atlas of the United States and Canada (NETL, 2010, http://www.netl.doe.gov/technologies/carbon_seq/natcarb/index.html), and Kuuskraa and others (2011) are general estimates of potential geologic CO_2storage resources in various regions of North America and the United States.

The USGS is currently working on a comprehensive assessment of onshore areas and State waters that will identify and evaluate the Nation's potential CO_2 storage resources. Data used in the previous DOE assessments and data provided by State geological surveys are being integrated with USGS data to conduct these assessments. The USGS typically does not assess Federal offshore U.S. resources and refers to or works with the Bureau of Ocean Energy Management (BOEM) when evaluating offshore resources. By 2013, the USGS Geologic CO_2Sequestration Assessment Project will have geologically characterized and assessed more than 200 potential storage formations in 37 basins across the United States. This assessment will be the most comprehensive accounting of the Nation's CO_2storage potential ever completed, and provide quantitative, probabilistic estimates of resource storage potential. A summary report is in preparation that will provide the storage assessment results for the Nation. In addition, the Geologic CO_2Sequestration Project is building an assessment methodology and associated engineering database that can be used for a detailed national assessment of recoverable hydrocarbon resources associated with CO_2injection and sequestration. USGS assessments are impartial, robust, statistically sound, and widely cited in the scientific literature and public media.

b. The USGS assessment of CO_2storage capacities of onshore areas and State waters of the United States is scheduled to be completed in 2013. We do not have resource estimates available at this time. As mentioned in the answer for question 2 above, the

risk of induced seismicity associated with a particular CO_2storage project depends on local storage reservoir fluid pressure management and CO_2injection rates and volumes, and is, therefore, a scientific and engineering problem that is not specifically evaluated in the current USGS CO_2storage assessment. The scope of research needed to better predict seismic risk in particular geologic settings is discussed further in the answer to question 1. In order to provide resource estimates for formations that are not likely to be prone to induced seismicity, an additional set of screening geologic and engineering criteria will need to be developed and applied to the assessment results generated by the current USGS Geologic CO_2Sequestration Assessment Project.

4. Is USGS doing, or planning to do work to better understand the risks of induced seismicity due to large-scale CCS as indicated in the report? Are there efforts at other agencies or national labs?

The USGS is currently proposing to monitor induced seismicity at one or more DOE-funded CCS pilot projects, and we have been in contact with the operators of two such projects: one at Decatur, Illinois, and the other at Kevin Dome, northern Montana. Although no agreements have been reached so far, the USGS, as an objective science agency, is in a unique position to provide scientific knowledge needed to better understand and mitigate the potential seismic risk associated with CCS. In so doing, it is critical that these data and analyses be maintained in the public domain, to be amenable to full scientific peer review and to maintain public trust.

The USGS recently purchased seismic recording equipment sufficient for a ten-station monitoring network that includes three seismometers that will record down boreholes about 500 feet deep. In the lower-noise environment at the bottom of these boreholes, we anticipate that the magnitude threshold for earthquake detection will be reduced considerably.

The DOE-funded National Laboratories have conducted earthquake monitoring at CCS sites in Algeria and Australia, and perhaps other sites. In addition, the National Laboratories maintain an active and highly visible program in monitoring induced seismicity associated with Enhanced Geothermal Systems demonstration projects at several locations in the United States.

The President's budget request for fiscal year 2013 includes, as part of the hydraulic fracturing initiative, a proposed $1.1 million increase to the Earthquake Hazards Program for work assessing the factors controlling the triggering of earthquakes due to fluid injection activities, developing a method to forecast the magnitude-frequency distributions of induced earthquakes including the maximum-magnitude earthquakes resulting from a specified fluid injection operation, and accounting in National Seismic Hazard Maps for the additional hazards due to fluid disposal-induced earthquakes.

5. The NAS study we heard about indicates that there have been relatively few induced seismic events that are directly attributable to the energy technologies considered here.

At the same time, your testimony shows a sharp increase in the number of mid-continent earthquakes that USGS has measured over the past decade.

a. *Is there something else going on that could be causing this trend in earthquakes?*
b. *Is this a measurement issue, or is it just that more work needs to be done to figure out what caused these earthquakes?*

a. USGS believes that the increase in the number of magnitude 3 and larger earthquakes in the U.S. midcontinent is most probably caused by increased wastewater injection activities. The increase is most pronounced in Arkansas, along the Colorado-New Mexico border, and in Oklahoma. Earthquakes have also been noted in Texas, Ohio, and West Virginia, where they are otherwise uncommon. Research published since the NAS report was written demonstrates that the increase in earthquake activity in Arkansas is due to injection of wastewater related to shale gas development and production: http://srl.geoscienceworld.org/content/83/2/250. Studies recently completed by the USGS show that the earthquakes along the Colorado-New Mexico border are due to wastewater injection from coal-bed methane production in the Raton Basin. Studies to identify the underlying cause or causes of the increase in seismicity in Oklahoma are underway.

b. USGS is certain that the rate change discovered is not a measurement issue. Three lines of evidence support this conclusion. First, earthquakes with magnitudes of 3 and above (those used to detect the rate change) have been uniformly detected through the midcontinent since the 1970s by the USGS. Second, while improvements in seismic instrumentation and installation of additional seismic stations have improved earthquake location accuracy, the algorithms for computing magnitude have remained unchanged. Third, both the USGS catalog and the catalog of the Oklahoma Geological Survey independently document the increase in activity that began in that state in 2009.

To understand the factors that have led to the increased rate of induced earthquakes in the central and eastern United States, more work is clearly needed. Site-specific investigations will be required to identify the underlying causes and improve our understanding so that the risk of induced earthquakes can be managed in the future.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

AUG 3 0 2012

The Honorable Mark Udall
Chairman
Subcommittee on National Parks
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the National Park Service to follow-up questions from the legislative hearing held on June 27, 2012.

Thank you for the opportunity to provide you with this information.

Sincerely,

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

Enclosure

cc: The Honorable Rand Paul, Ranking Minority Member
Subcommittee on National Parks

Questions for the Record
Subcommittee on National Parks
Senate Committee on Energy and Natural Resources
Hearing on June 27, 2012
Herbert Frost, Associate Director of Natural Resources Stewardship and Science, National Park Service, Department of the Interior

From Senator Lisa A. Murkowski

S. 2273 – Designating the Talkeetna Ranger Station in Talkeetna, Alaska, as the Walter Harper Talkeetna Ranger Station:

1) **As we discussed at the hearing, the National Park Service's official position on S. 2273 is one of "no objection." My understanding of the reasoning behind a "no objection" position on S. 2273, as opposed to an official position of support, is that because Mr. Harper passed away before Denali National Park actually existed, it is therefore impossible for there to be any real ties between him and the park. Is there anything my office can do to convince the Park Service that regardless of when Mr. Harper passed away, this is a bill the agency should support, not simply hold no objection to? Is the Park Service open to even considering a change in their support level on S. 2273?**

Response: We believe that the position taken by the National Park Service (NPS) on the naming of the Talkeetna Ranger Station for Walter Harper strikes the appropriate balance between recognizing Mr. Harper's historic accomplishment and upholding NPS policy. The NPS policy on commemorative works is to refrain from supporting naming park structures for a person unless the association between the park and the person is of exceptional importance. While the fact that Mr. Harper was the first person to reach the Mt. McKinley summit is noteworthy in the history of Denali National Park, his achievement occurred before the park was established and therefore, there was no direct association between the two.

S. 2372 – Cape Hatteras National Seashore Recreational Area Access:

1) **While the Cape Hatteras National Seashore is far from my home state, based on everything I've heard and read about the situation at Cape Hatteras, it appears that the National Park Service has closed large areas of the Cape Hatteras National Seashore far beyond what is needed to address resource challenges, and the impacts on the community have been challenging. Why is the Park Service instituting resource protection buffers at Hatteras far greater than we've seen anywhere else? And why are such massive buffers put in place for species that are not under endangered species act protections?**

Response: Species protection measures cannot reasonably be compared from one site to another without fully considering the specific circumstances at each site and the context provided by the number and variety of protected species involved, the levels of off-road vehicle (ORV) use, and the underlying restrictions provided by the respective ORV management plans and special regulations. The Cape Hatteras plan was specifically designed to be effective with the high level of ORV use that is still allowed at Cape Hatteras. Less protective buffer distances may be adequate at locations where the level of ORV use is much lower to begin with.

The laws, regulations, and policies applicable to Cape Hatteras require the NPS to conserve and protect other species, not just those listed as endangered under the Endangered Species Act. Buffer distances, specific to each species, are designed to minimize the impacts of human disturbance on nesting birds and flightless chicks in the majority of situations, given the level of visitation and recreational use in areas of sensitive wildlife habitat. The buffer distances selected by the NPS were developed after considering the best available science. They will be reevaluated and adjusted, if necessary, through a five-year periodic review process.

2) **Executive Order 13474, which amended Executive Order 12962, states that "recreational fishing shall be managed as a sustainable activity in national wildlife refuges, national parks, national monuments, national marine sanctuaries, marine protected areas, or any other relevant conservation or management areas or activities under any Federal authority, consistent with applicable law." How is the final ORV rule, which essentially closes the majority of the most popular surf fishing areas in the park, compatible with this executive order?**

Response: The final ORV management rule is consistent with the Executive Order on recreational fishing, because the order addresses fishing as a sustainable activity "consistent with applicable law." In order to be consistent with the laws requiring the NPS to conserve and protect wildlife at Cape Hatteras National Seashore, it has been necessary to restrict ORV access to certain fishing areas at certain times.

The special regulation does not permanently close the majority of the most popular surf fishing areas of the park to visitor access. Temporary seasonal resource protection measures are used to ensure that nesting habitat is available for use by protected species of beach nesting birds and sea turtles during the breeding season. This results in temporary seasonal closures of some popular fishing areas that are located in sensitive wildlife habitat, but it does not close these sites to visitor access during the rest of the year, nor does it restrict all visitor access to these areas during the breeding season.

S. 1897 – Gettysburg National Military Park Expansion:

1) **Mr. Frost, when reading this bill and your testimony it was made clear that one of the main reasons for this legislation was that the borough government no longer wanted to budget the funds necessary to operate the Train Station**

property, so they have asked that the National Park Service (Federal Government) take over the property and pay to maintain the property. My question for you is, do you think we should set this type of precedent for state and local governments to rid themselves of property to the Federal Government if they no longer wish to pay to maintain a property?

Response: While it is true that the Borough of Gettysburg has asked the NPS to take over ownership and operation of the Gettysburg Train Station, the resource is one that the NPS believes is very important to protect, and its preservation, operation, and management, in cooperation with partners, is a goal of the park's General Management Plan. The anticipated acquisition cost for the completely rehabilitated train station is approximately $772,000, subject to an appraisal by the federal government. It is expected that funding to acquire this land would not come from federal appropriations, but would be provided by non-governmental entities. The park has a preliminary commitment from the Gettysburg Convention and Visitor Bureau (CVB) to provide all staffing requirements for operations of an information and orientation center in the train station, thereby alleviating the park of staff costs. Anticipated operating costs for the train station that will be the responsibility of the NPS are limited to utility costs, with the rest being paid by the Gettysburg CVB. In the event that the Gettysburg CVB is unable to provide staffing and funding for operations, the NPS would seek another park partner to cover these costs and requirements.

From Senator Dean Heller

S. 2372 – Cape Hatteras National Seashore Recreational Area Access:

1. **The Park Service is claiming that the restrictions under the ORV plan are not having significant economic impacts on the community, but this is based off of information for the entirety of Dare County. Why hasn't the park service conducted an economic study based upon the areas most directly affected by park operations – Hatteras Island and Ocracoke Island?**

Response: The NPS did, in fact, evaluate the potential economic impacts of the proposed ORV management actions on the eight villages of Hatteras and Ocracoke islands in both the November 2010 final *Cape Hatteras National Seashore ORV Management Plan / Environmental Impact Statement* process and in the *Benefit-Cost Analysis of Final ORV Use Regulations in Cape Hatteras National Seashore.* These analyses considered the Outer Banks portion of Dare and Hyde counties as the economic region of influence, the geographic area in which the predominant social and economic impacts for the action would likely take place, but the analyses focused on the villages of Ocracoke and Hatteras islands as being the communities most affected by the proposed NPS actions because they are located within the Seashore.

The analyses for the NPS action found that the economic region of influence would experience negligible to minor long-term adverse impacts and small businesses in the Seashore villages would experience negligible to moderate long-term adverse impacts, with the potential for larger short-term impacts during the breeding season to specific businesses that cater most directly to ORV users. The analyses found that the designation of vehicle-free areas under the final rule would be beneficial for pedestrians and could increase overall visitation, increasing the probability that overall revenue impacts would be at the low rather than the high end of the range. The long-run impact of the NPS action would depend in part on how current and new visitors adjust their trips and spending in response to the management changes and the adaptations made by the business community to these changes.

2. **Why is the Park Service instituting resource protection buffers for nesting birds far greater than in other federal or state parks? Any why are such massive buffers put in place for species that are not under endangered species act protections?**

Response: Please see the response to the first Cape Hatteras question from Senator Murkowski, above.

3. **Executive Order 13474, which amended Executive Order 12962, states that "recreational fishing shall be managed as a sustainable activity in national wildlife refuges, national parks, national monuments, national marine sanctuaries, marine protected areas, or any other relevant conservation or management areas or activities under any Federal authority, consistent with**

applicable law." How is the final ORV rule, which essentially closes the majority of the most popular surf fishing areas in the park, compatible with this executive order?

Response: Please see the response to the second Cape Hatteras question from Senator Murkowski, above.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 0 2 2012

The Honorable Jeff Bingaman
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Reclamation to the questions for the record submitted following the Tuesday, July 31, 2012, legislative hearing on S. 3385, the **"Authorized Rural Water Projects Completion 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
Committee on Energy and Natural Resources

07.31.12 Senate Committee on Energy & Natural Resources Hearing on S. 3385 Rural Water Projects

FROM CHAIRMAN JEFF BINGAMAN:

1. **Need for Rural Water Projects – There are many agencies involved in rural water matters. Can you please describe the particular niche that the Bureau of Reclamation's program fills?**

ANSWER: Reclamation has, over its more than 100 years in existence, designed and constructed some of the largest and most important water supply projects in the Western United States including Hoover Dam, Grand Coulee Dam, and the Central Valley Project. Because of that expertise, rural communities have often sought Reclamation's expertise and assistance to address their need for potable water supplies. Public Law 109-451 authorized Reclamation to investigate, identify, plan, design and oversee the construction of rural water projects that serve rural areas and small communities or Indian tribes in the Reclamation states and which meet certain criteria outlined in the statute such as promoting and applying a regional or watershed perspective to water resources management and addressing an urgent or compelling need. Reclamation's recently completed draft assessment report titled "Assessment of Reclamation's Rural Water Activities and Other Federal Programs that Provide Support on Potable Water Supplies to Rural Water Communities in the Western United States" (www.usbr.gov/ruralwater/docs/Rural-Water-Assessment-Report-and-Funding-Criteria.pdf) details the separate role played by various Federal agencies involved in rural water matters. Reclamation's program complements these other Federal programs, as well as State programs established to support the construction of discrete water treatment facilities and/or water distribution systems for particular communities.

- **What is the need for these projects?**

ANSWER: Many rural communities in the United States have an ongoing need for potable water supplies. Non-Federal parties have traditionally been responsible for constructing municipal water supply systems. The six ongoing congressionally authorized Federal rural water projects exist in communities that are experiencing urgent needs for a potable water supply due to poor quality of the existing supply or the lack of a secure, reliable supply. For example, in rural Montana, some communities have, from time-to-time, been subject to "boil water" orders due to the unsafe conditions of the existing drinking water supplies. In eastern New Mexico, existing communities currently rely on the diminishing Ogallala Aquifer, and the current drinking water supplies are projected by the Eastern New Mexico Rural Water Authority to be depleted within 40 years.

- **Should we not build these projects because relatively few Americans will be served by them?**

ANSWER: Constructing these infrastructure projects will not only help provide the health and economic benefits of a clean, reliable, drinking water system that most

Americans take for granted, but will also assist in creating jobs in the short-term through ongoing construction.

2. Costs of the Projects – **Your testimony states that by building the projects at an accelerated rate we can actually save the Treasury money. How much will be saved? What is the basis for this analysis?**

ANSWER: The cost of these projects is dependent upon the rate of completion. In general, the longer it takes to complete authorized rural water supply projects, the higher the cost ceiling for incomplete projects. Each of the Acts of Congress authorizing Reclamation's involvement in rural water supply projects generally requires that the cost ceilings included in the legislation be indexed to adjust for inflation that includes the rising cost of materials and labor, which was estimated to be 4% annually. The result of this requirement is that the overall cost of rural water projects that are under construction has risen and continues to rise, and the total funding required to complete these projects is now $2.6 billion, which is substantially higher than the original authorizations, which totaled $2.0 billion. Increased non-Federal funding could also serve to contain these costs.

The analysis conducted as part of the draft assessment report cited above determined that Reclamation would continue to make progress toward completion of authorized rural water supply projects at an annual funding level of approximately $50 million for construction. However, some of the currently authorized projects would not be completed until after 2063 despite close to $4.0 billion in Federal funds being invested by that time. It is estimated that as of 2063, an outstanding balance of approximately $1.1 billion in Federal funding would remain to complete construction of currently authorized projects at an annual funding level of $50 million. In contrast, at an annual funding level of $80 million, all currently authorized projects would be completed by 2039 at a total cost of approximately $3.4 billion.

3. Competing Needs – **Do you view these projects and the spending provided for by this bill as competing with other water needs in the West?**

ANSWER: Yes, The Rural Water Program must compete with other priorities within Reclamation's budget, including aging infrastructure, Indian water rights settlements, environmental compliance and restoration actions, facilitating more sustainable water supplies, and other priorities intended to address future water and energy related challenges.

- **Is there sufficient funding in the Reclamation Fund to meet these needs even if we dedicate $80 million per year to address the construction backlog for the authorized projects?**

ANSWER: Based on the incoming revenues, averaging $2 billion annually, the commitment in S. 3385 to dedicate $80 million per year to construction for

Congressionally authorized projects would fit within the revenues available from the Reclamation Fund. However, any monies expended from this fund would require a PAYGO offset, and even if an equivalent and acceptable offset is identified, use of those funds must be weighed against other priorities across the Federal government, including deficit reduction. This is one of the reasons why the Administration supports discretionary funding for these projects.

4. Drought – **Many parts of the West are experiencing extreme weather and a prolonged period of drought. Will these rural water supply projects help in addressing drought? If so, how?**

ANSWER: Yes, completing infrastructure for a dependable potable water supply will help these communities to withstand some of the uncertainties associated with drought. While the vast majority of water use in rural areas is for agriculture, drought can also impact potable drinking water supplies. These projects would help to alleviate the severity of drought's impact on potable water supply by providing local communities with clean, safe, reliable sources.

5. Ogallala -- **I believe you are familiar with the extremely serious situation in eastern New Mexico where several communities rely on the Ogallala Aquifer as their sole source of water supply for domestic use. Can you give us any information on the time horizon for construction of the Eastern New Mexico Rural Water Supply project without this legislation?**

ANSWER: The Eastern New Mexico Rural Water Supply project is the newest addition to the Bureau's current portfolio of six ongoing, authorized rural water projects. At the 2012 enacted level of Federal funding (approximately $50 million for construction), and assuming no non-Federal funding beyond the minimum requirement of 25 percent, Reclamation would continue to make progress toward completion of authorized rural water supply projects and the Eastern New Mexico Rural Water Supply project would likely be completed sometime after 2063. However, constrained Federal budgets do not preclude the ability of non-Federal parties to move forward with important investments in water resources infrastructure and the Department stands ready to support that effort.

- **Do you have any information you can provide for the record of how long the Ogallala will remain a viable sole source of water for the communities in the eastern part of the state?**

ANSWER: Reclamation has not completed an in-depth analysis of how long the Ogallala aquifer will remain a viable source of water. Reclamation has been provided information by the Eastern New Mexico Rural Water Authority through a groundwater memorandum which indicates that, based on saturated thickness and drawdown rates, current drinking water systems reliant upon the aquifer are projected to be depleted within 40 years, with cost and water quality issues likely to arise before then.

FROM SENATOR LISA MURKOWSKI

1. **What do you consider is the main mission of the Bureau of Reclamation? Please describe whether projects that provide water for municipal and industrial (M&I) uses in rural areas—has evolved into a core mission of the BOR? Has this evolution been congressionally or administratively led?**

ANSWER: The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. Success in this approach will help ensure that Reclamation is doing its part to support the basic needs of communities, as well as provide for economic growth in the agricultural, industrial, energy and recreational sectors of the economy. Although Reclamation generally does not distinguish between Reclamation's "mission" and "core mission", the Department supports the goals of encouraging vibrant rural economies and ensuring safe, reliable sources of drinking water for rural residents, as authorized by Congress through authorized rural water projects and the Rural Water Supply Program. For instance, the Administration has supported Reclamation's rural water program over the last four years, allocating $231 million of funding, in the FY 2010-2013 budgets, to construct, operate, and maintain authorized rural water projects in addition to $232 million provided for these projects in the Recovery Act. Still, the rural water program must compete with a number of other priorities within the Budget, including aging infrastructure, Indian water rights settlements, environmental compliance and restoration actions, and other priorities intended to address future water and energy related challenges. At the direction of Congress, Reclamation is working on six ongoing authorized rural water projects to promote certainty, sustainability, and resiliency for those who use and rely on water resources in those project areas and to support the basic drinking water needs of those rural communities.

2. **How has Reclamation addressed M&I water deliveries from a programmatic level prior to the rural water program that you recently released? Are these types of systems generally incidental to larger Reclamation project purposes?**

ANSWER: Prior to establishment of the Rural Water Supply Program authorization in 2006 (P.L. 109-451), Reclamation had no specific program to address rural water projects. Instead, Reclamation carried out individual Congressional directives, some that authorized M&I water deliveries from existing projects and some that directed our involvement in specific rural water projects. With only incidental participation in the

technical and engineering aspect of the planning process for determining how to best meet the needs, Reclamation only became formally involved in aspects of each rural water project as authorized by Congress, typically after the design was already determined and authorized. Prior to P.L. 109-451, all of the options for addressing the water supply needs were not necessarily explored and therefore, the most cost effective and technically superior option may not have been selected. The establishment of the Rural Water Supply Program allowed Reclamation to formally coordinate with rural communities to explore all options through appraisal and feasibility studies – complying with the full scope of requirements that exist for all appraisal and feasibility studies carried out by Reclamation.

3. **How many federal agencies have programs designed specifically for rural areas to construct or improve water and wastewater facilities? In addition, please describe the different program and requirements for eligibility within those programs? Are there any currently authorized rural water projects within the BOR that could meet the funding requirements of other agencies supporting similar projects?**

ANSWER: Reclamation issued a draft assessment report titled "Assessment of Reclamation's Rural Water Activities and Other Federal Programs that Provide Support on Potable Water Supplies to Rural Water Communities in the Western United States" (www.usbr.gov/ruralwater/docs/Rural-Water-Assessment-Report-and-Funding-Criteria.pdf) that provides in depth information related to federal rural water programs. This report was available for a 60-day public review with Reclamation seeking comments in order to ensure that it accurately and appropriately reflects these programs.

In addition to the Reclamation Rural Water Supply Program and the information referenced above, there are a number of federal programs that provide assistance for drinking water and wastewater infrastructure to rural communities referenced in the April 2012 Congressional Research Service (CRS) report titled "Federally Supported Water Supply and Wastewater Treatment Programs." The CRS report identified 10 programs located in the Departments of the Interior (Reclamation), Agriculture (Rural Utilities Services), Housing and Urban Development, Commerce (Economic Development Administration), the Army Corps of Engineers, and the Environmental Protection Agency. Further, in November 2001, the General Accounting Office (now the Government Accountability Office) reported that four agencies – EPA, USDA, HUD and Commerce accounted for 98% of the total Federal funding for drinking water and wastewater capital improvements.

Each of the individual programs referenced above have unique authorities which require specific eligibility criteria and meet specifically authorized needs as defined by their Congressional mandates. Reclamation's draft assessment report provides more detailed information related to the individual programs and requirements for eligibility within those programs.

A component that is integral to Reclamation's Rural Water Supply Program is the requirement that Reclamation coordinate with other Federal agencies to both minimize the overlap between its efforts and those of other agencies, as well as leverage the budgetary and financial resources of other agencies involved in the similar geographic area. This is discussed in detail in the publically available draft assessment report.

4. **Please describe the repayment obligations for each project specified within the bill. How do these repayment obligations coincide with your programmatic goals and prioritization criteria for rural water projects?**

ANSWER: As we read the bill, S. 3385 does not enumerate individual projects nor specify particular repayment obligations. The legislation instead creates a Federal funding source for existing, already authorized projects which have varying levels of non-Federal cost share specified in their individual authorizations. As summarized in the testimony, the Department's Rural Water Program assesses needs and studies particular projects to address those needs through a priority-based process.

5. **Will the build out of these rural water projects have any direct impact on project power rates in their regions?**

ANSWER: The impact of rural water projects to power rates depends on a number of factors. There is not likely to be an immediate impact on rates, but as an increasing number of water systems are completed, more pressure will be placed on a limited resource. If the rural water projects were to grow significantly larger in size or quantity, Western Area Power Administration (WAPA) may have to withdraw federal power marketed to power customers, meaning the customers would in turn purchase power from supplemental suppliers, effectively raising their own rates. WAPA has not withdrawn any Federal power to date for this reason. Alternatively, if projects grow significantly, WAPA could purchase more power, a scenario that would also place upward pressure on rates.

6. **Please describe how the prioritization and funding of your rural water activities are reviewed by the Office of Management & Budget? What type of controls does OMB require, as they review rural water funding? Are the authorized projects within the bill going to go through any additional review by OMB prior to receiving funding, if this legislation becomes law?**

ANSWER: The Office of Management and Budget (OMB) reviews Reclamation's budget submittals each year to ensure that they are consistent with the goals, policies and priorities of the President's budget government-wide. This includes ensuring that the Federal investment in rural water projects is the best and most cost effective investment and that it furthers the priorities of the Administration. It is our expectation that analysis would continue – to ensure that the investments best protect the taxpayer's financial investment in these activities.

7. **Of the currently authorized projects eligible for funding within the bill, what was or has been the involvement of Reclamation during project development?**

ANSWER: Prior to about 1980, Reclamation generally did not have congressional authorization to provide more than limited technical assistance in the scoping and development of rural water projects. Congress specifically authorized Reclamation's involvement in certain projects to deliver potable water supplies to rural communities -- generally not in the initial project scoping, but in the implementation and construction of a project. The majority of rural water projects were authorized prior to passage of the Rural Water Supply Act. Because Reclamation did not have a rural water program at the time of these authorizations, our role and involvement in the planning and scoping was very limited. In most cases, the studies to determine the need and to evaluate the options for how to address the water supply needs of these communities were completed by non-Federal project sponsors. Reclamation did not direct or publish these early reports.

In most cases, Reclamation's full role was determined after the projects were scoped out, designs were mostly determined, and Congress enacted legislation for Reclamation to build those projects. Although Reclamation implemented the construction of these projects cost effectively, all potential options for how the needs could be met had not been explored.

In 2006, the Rural Water Supply Act of 2006, (P.L. 109-451), authorized the Secretary of Interior to establish and carry out a rural water supply program in the 17 western states to:

> (a) Investigate and identify opportunities to ensure safe and adequate rural water supply projects for domestic, municipal and industrial use in small communities and rural areas of the Reclamation States;

(b) Plan the design and construction of rural water supply projects through the conduct of appraisal investigations and feasibility studies; and
(c) Oversee, as appropriate, the construction of rural water supply projects that are recommended for construction by Reclamation in a feasibility report developed under the Rural Water Supply Program and subsequently authorized by Congress.

8. **Of the authorized projects in the bill, given the competing budgetary demands among rural water projects and within Reclamation's overall budget, how do you ensure that the money is spent on the most feasible, and cost effective project? Is it possible to work in the most cost effective manner when the BOR was not involved in the scope and complexity of these authorized rural water systems during the planning and the development stages of these projects? Which of the projects, if the bill becomes law, would meet your requirements to ensure projects provide sustainable water supplies at the least cost?**

ANSWER: Given current fiscal constraints, Reclamation must make tough decisions and set priorities across all investments, including rural water projects. Reclamation has developed a set of objective prioritization criteria to guide its decision making to maximize the agency's ability to meet its programmatic goals, to maximize water deliveries to rural communities in as short a period as possible, and to reflect the diverse needs and circumstances facing each individual project. The draft criteria are publically available and were open for public comment through September 10, 2012.

9. **In developing your new rural water assessment program, what lessons have you learned from the authorized projects in the bill that you do not want to occur in the future? How will implementation of the Rural Water Supply Act enhance the likelihood of the success of projects?**

ANSWER: In most cases, the legislation authorizing the 11 rural water projects underway or constructed to date was adopted without Administration support, and prior to the completion of detailed feasibility studies for the projects. As a result, the non-Federal cost-shares, appropriation ceilings and other features were not consistent with the "beneficiaries pay" principle that underlies most traditional Reclamation water projects. Nevertheless, the Department is committed to completing the authorized projects as directed in as expeditious manner possible given existing budget constraints. Implementation of the Rural Water Supply Act, and the prioritization criteria referenced in the draft Assessment, will enhance the successful allocation of resources to the projects through application of six priority criteria.

10. If S. 3385 were to be enacted, and the $80 million per year disbursed to fund rural water project construction, how would OMB look at these types of projects within your budget submittal. In addition, do you believe that Congress would view these amounts as additional to annual appropriations allocations for the Bureau of Reclamation? If not, please describe your reasoning.

ANSWER: S. 3385 creates a mandatory Federal appropriation for rural water projects which, under current law, receive Federal funding through discretionary appropriations. It is not possible to answer this question on how OMB may view future funding on behalf of prospective future Congresses or Administrations, or future budget requests.

11. If the Bureau is to get $200 million in mandatory spending, once the $120 million per year of mandatory funding for Indian water rights settlements kicks in in 2020, do you perceive that you will continue to get your current $50 million appropriation on top of that?

ANSWER: As stated in the answer above, S. 3385 creates a mandatory federal appropriation for rural water projects which, under current law, receive federal funding through discretionary appropriations. Discretionary funding levels in the Budget would continue to be determined on an annual basis.

12. Current appropriations for rural water project construction are not even close to this level of funding. If this were to occur, wouldn't other projects funded in Reclamation's appropriation be impacted by this reduction in discretionary appropriation levels? Is it possible that you will get more money overall, but lose your ability to direct funding to any new or different priorities?

ANSWER: S. 3385 creates a mandatory federal appropriation for rural water projects which, under current law, receive federal funding through discretionary appropriations. This change would require a PAYGO offset. However, even if an equivalent and acceptable offset is identified, use of those funds must be weighed against other priorities across the Federal government, including deficit reduction.

13. The Reclamation Fund was designed to fund construction of new federal water projects in the West. There are many areas of the West in dire need of new storage facilities, renewable hydroelectric projects, and other infrastructure where the federal nexus is an existing federal project or restrictions due to federal law, such as the Endangered Species Act. Should these projects be allowed the ability to qualify

for similar or greater funding levels from the Reclamation Fund in the same manner proposed by S. 3385?

ANSWER: New storage facilities and other significant new infrastructure contemplated for an existing Federal project would require new Congressional authorization. S. 3385 would create a funding stream for already-authorized projects. As amended, the laws that created the Reclamation Fund were written to allow for a source of discretionary appropriations for authorized projects from the Fund. The Department's testimony stated that the Administration supports the goals of encouraging vibrant rural economies and ensuring safe, reliable sources of drinking water for rural residents. However, the Department believes that Federal investments in such projects must recognize the current fiscal constraints and the need to make tough choices in prioritizing those investments and therefore, supports , the use of discretionary funding for these projects.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 05 2012

The Honorable Ralph M. Hall
Chairman
Committee on Science, Space and Technology
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the United States Geological Survey to questions submitted following the Committee's September 8, 2011, oversight hearing on "Impacts of the LightSquared Network on Federal Science Activities."

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 Eddie Bernice Johnson
Ranking Minority Member

Draft Response (10/7/2011)

U.S. House of Representatives
Committee on Science, Space, and Technology

Questions for the Record

"Impact of the LightSquared Network on Federal Science Activities"

Thursday, September 8, 2011
2:00 p.m. - 4:00 p.m.
2318 Rayburn House Office Building

Questions for Dr. David Applegate,
Associate Director, Natural Hazards, U.S. Geological Survey

Questions Submitted by Rep. Ralph Hall, Chairman

1. How common are the wideband and high precision GPS receivers that are at risk of interference from LightSquared's modified business plan that starts commercial operations with just the "lower" portion of its spectrum?
    - How much do they cost?
    - What is the normal upgrade or re-equipage cycle for these GPS receivers at your agency?

Wideband high-precision GPS receivers are fairly commonplace. The Department of the Interior owns over 6,000. They are used for a variety of applications from surveying and mapping to earthquake and volcano monitoring. The testing conducted to date shows that high-precision GPS receivers are susceptible to interference from the lower portion of the spectrum proposed for use by Lightsquared. These receivers come in a variety of makes and models and their prices vary from about $5,000 to as much as $30,000. The typical upgrade cycle for this type of equipment ranges from 8 to 15 years.

For example, the US Geological Survey's (USGS) Earthquake Hazards Program is in the process of upgrading high-precision GPS receivers that monitor crustal deformation in earthquake-prone southern California. Of the 102 high-precision receivers operated by the USGS in that region, 38 are fifteen years old, 35 are less than ten years old but are now obsolete and no longer manufactured, and 29 are the new modern receivers. The USGS is in the process of upgrading all 38 of the oldest receivers, and most of the 35 older receivers.

2. LightSquared has agreed to a "standstill" on the use of the "upper" portion of their spectrum, the portion closest to the GPS signal. LightSquared has stated they would like to work with the GPS

community to develop mitigation strategies in order to initiate commercial operations of the upper spectrum within two to three years.

- Is USGS prepared to upgrade or re-equip all their GPS equipment in that timeframe?
- What would be the cost to implement this strategy within your agency?
- Is two to three years a reasonable timeframe to expect federal agencies to upgrade or re-equip?

There are no known mitigation strategies that have been shown to be effective, particularly for the upper portion of the LightSquared spectrum. So it seems very unlikely that effective mitigation can be accomplished for the upper portion of the spectrum in 2 to 3 years. It would be equally difficult for the USGS to re-equip all of our GPS equipment even if mitigation for the upper portion were realized. For instance, the USGS has replaced 38 receivers in one year as part of the modernization effort by the USGS Earthquake Hazards Program. The USGS upgrades were delayed because of technical problems that are now resolved but which added months to the modernization process, which is expected to be completed later this year. This small number of receivers took over a year to be replaced, and the process is still not complete.

It is difficult to estimate the cost of replacing GPS equipment in a 2-3 year time frame. However, based upon the 2010 DOI GPS Survey, the USGS estimates $20-40 million has been invested for current USGS GPS hardware and software. If we include labor and training cost, the USGS believes a GPS replacement strategy would double the estimated cost resulting in expenditures between $40-80 million. It does not seem reasonable for Federal agencies to re-equip in this short time frame even if we had the resources to do so.

3. LightSquared's modified business plan starts commercial operations with just the "lower" portion of its spectrum and will be limited to urban areas. Does this satisfy your concerns about short-term interference issues to wideband and high precision GPS receivers? If not, why not?

No, LightSquared has acknowledged, and the testing showed, operations in the lower portion of their spectrum cause harmful interference to high-precision GPS receivers. No known techniques have yet been shown to mitigate this harmful interference. The USGS has a range of applications in urban areas using high-precision GPS receivers. For example, the USGS and its partners operate a network of high-precision GPS receivers for monitoring earthquakes in urban areas of Alaska, California, Nevada, Utah and Washington states. In addition, of the 9,000 nationwide USGS watergages, many are located in or near urban areas and may also be impacted because they use GPS timing receivers for data transmissions.

4. Given that LightSquared has clearly shown that it intends to ultimately utilize both the upper and the lower portion of its spectrum, even with its new business proposal to start with just the lower portion, how is the new proposal really any different to your agency than their original proposal?

LightSquared's new plan is different in that it starts with the lower portion of the spectrum. Testing on this lower portion of the spectrum has been limited so further testing on this lower portion of the spectrum is needed to better understand whether LightSquared's signal causes harmful interference for GPS.

The higher portion of the spectrum is clearly problematic for the foreseeable future. The use of LightSquared's transmissions in the higher portion of their proposed spectrum is already known to cause harmful interference to GPS.

5. I understand there are now other companies exploring a similar terrestrial broadband business plan but in an entirely different part of the spectrum that would not interfere with the GPS signal. If we can accommodate the President's goals for the Broadband Initiative using spectrum that doesn't interfere with GPS, why should we risk the taxpayer investment in GPS?

GPS is a critical technology for the USGS. If different spectrum can be found located further from the GPS band for broadband signals, such a move would solve the harmful interference concerns.

6. Does USGS feel that adequate testing has been done on all of the issues associated with LightSquared interference on their agency's missions? Should there be more testing on high precision units?

The USGS believes that additional testing of the lower portion of LightSquared's spectrum is needed. This new approach by LightSquared was not tested nor was it part of LightSquared's original plan. High-precision receivers were particularly impacted in the limited testing that has been done on LightSquared's lower portion of the spectrum. The USGS believes that additional testing of high-precision receivers is needed particularly to evaluate whether mitigation techniques to eliminate harmful interference are feasible without impacting performance.

7. Will the filters proposed by JAVAD GNSS and LightSquared mitigate the interference problem to wideband and high precision GPS receivers? If not, why not? If so, what testing has been done to demonstrate their effectiveness? Who should pay for this testing?

USGS has examined the filtering techniques that are proposed by JAVAD GNSS. USGS believes this is a serious effort that holds some promise of mitigating the harmful interference effects of the lower portion of LightSquared's spectrum. It should be noted, however, that this filtering technique does not mitigate the higher portion of LightSquared's spectrum, nor was it designed to. As of Oct 7, 2011, no equipment or filters have been manufactured by JAVAD GNSS. Once this equipment is available, it will need thorough testing and evaluation to see if it does effectively mitigate the harmful interference without impacting the performance of high precision receivers.

Plans for testing are under consideration, and the USGS believes that government-led testing is appropriate to obtain unbiased results and analysis. The cost of the testing, however, would not be insignificant and is not included the FY 2012 Budget.

8. Are there currently any mitigation strategies that make sense for wideband or high precision GPS receivers?

No known mitigation techniques have been shown to work for harmful interference from LightSquared's signals. High-precision receivers that employ a wide bandwidth are particularly susceptible to this harmful interference. Alternative spectrum has been recommended by the Space-Based Positioning, Navigation, and Timing Advisory Board.

9. How much would it cost your agency to mitigate the interference issues from the LightSquared signal on your missions?
    - Does your agency currently have funds set aside for this purpose?

No known mitigation techniques have been shown to work for harmful interference from LightSquared's signals. It is not clear what the cost of mitigation would be. The USGS estimates the replacement cost of current GPS equipment to be about $40-80 million. The USGS does not have funds set aside to mitigate harmful interference from LightSquared's signals, nor are those costs included in the FY 2012 Budget.

10. Since August 15, the FCC has had the ability to rule on the LightSquared proposal, and to my knowledge, NTIA has yet to submit comments to the FCC on behalf of affected agencies.
    - Has NTIA provided your comments to the FCC?
    - Will USGS submit its comments directly to the FCC if NTIA fails to do so? If so, when?
    - Would you agree that your agency's assessment should be made public so that everyone can understand the extent to which LightSquared interference to GPS will impact the ability of your agency to perform its duties, and the costs that may be incurred due to this interference?

The USGS is unaware of what specific actions NTIA has taken with the information that has been provided by the Department of the Interior. The USGS will continue to work within the Department to convey additional comments as appropriate. These comments contain core deliberative communications from Executive Branch agencies that provide critical advice to NTIA in its role as spectrum manager on behalf of the federal government. Agency comments have not yet been released to the public in keeping with this deliberative process.

11. The Department of Interior letter to the NTIA states that impacts to natural disaster response, law enforcement, and seismic and volcanic monitoring will be caused by the LightSquared network. The Department estimates the costs to mitigate the problems associated with those areas range from $250M to $500M.
    - Do these costs stay the same if LightSquared is allowed to begin commercial operations utilizing the "lower" portion of its spectrum?
    - Does this level of additional funding currently exist in the Department's budget? In other words, would the Department need additional funding to carry out its mitigation strategy or are there sufficient funds available?
    - What sort of hard choices would need to be made to offset that spending? Are there modernization plans or capabilities that would be put on hold to deal with the interference issues?

The Department of the Interior estimated the replacement costs of the existing GPS infrastructure within the Department. The Department, including the USGS, does not know what the cost to mitigate LightSquared's signals will be because it has not yet been shown they can be mitigated. Without additional testing, including demonstration of mitigation techniques, it will be difficult to know what mitigation actions will be effective, the impact on performance, and what their cost might be.

Whatever the cost, the USGS has not planned for any funding to pay for receiver-based mitigations.

Any decision about how to implement a receiver-based mitigation strategy over a short period of time would pose a significant challenge. It is likely our services that rely on GPS would be impacted. As we learn more about mitigation techniques and implementation decisions, the USGS will be able to refine its approach to mitigation.

At present, the USGS is continuing to implement GPS equipment modernization. For example, the USGS is planning on installing 60 modern high precision GPS receivers in the next year to enhance its earthquake monitoring capabilities.

12. The Department of Interior letter to the NTIA states that the Department has approximately $100M to $200M invested in GPS technology. Of particular note, the letter states that The Department spent almost $2M last year on state-of-the-art GPS equipment for its Earthquake and Volcano Hazards Programs. If LightSquared is allowed to begin commercial operations would that new expensive equipment essentially become obsolete?

No, the equipment would still be state-of-the-art, but it would be susceptible to interference from LightSquared's signals. The equipment would work fine in areas far enough away from LightSquared base station transmissions. For example, the equipment could be used for post-disaster missions in foreign countries, where Lightsquared is not operating.

13. This summer the country battled forest fires in Texas, flooding in the northeast, and recently experienced a rare earthquake here in the Washington area. How would our understanding of these events be impacted by the LightSquared network?

Our understanding of the potential impact of the LightSquared network is based on an understanding of our current activities and those of other bureaus in the Department of the Interior. The LightSquared signals would make it more difficult to fight fires, and to collect earthquake, flood, and volcano data, because of the harmful interference to GPS. In short, it would set back USGS mission activities, and our understanding of these events would be more limited, compromising situational awareness for emergency response.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 1 8 2012

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

Dear Mr. Chairman:

Enclosed are responses prepared by the United States Fish and Wildlife Service to questions submitted following the Subcommittee's October 25, 2011, hearing on legislation related to the Service's mission.

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 Gregorio Sablan, Ranking Minority Member

QUESTIONS FOR THE RECORD
MR. JAMES W. KURTH
ASSISTANT DIRECTOR, NATIONAL WILDLIFE REFUGE SYSTEM
U.S. FISH AND WILDLIFE SERVICE

SUBCOMMITTEE ON FISHERIES, WILDLIFE, COEANS AND INSULAR AFFAIRS
LEGISLATIVE HEARING
OCTOBER 25, 2011

H. R. 2154 - Coastal Barrier Resources System Modification:

(1). Does the Service have any information or evidence regarding the FL 70P boundary and the actual Gasparilla Island State Park boundary that contradicts the facts and documentary evidence from the State Park, CSX Corporation, Lee County or the South Bay homeowners as presented to the Subcommittee?

Response: The U.S. Fish and Wildlife Service (Service) does not recommend removing land from the Coastal Barrier Resources System (CBRS) unless there is compelling evidence that a technical mapping error led to the inclusion of the land within the CBRS. In order to determine whether a technical mapping error exists, the Service conducts a comprehensive review of the history of the CBRS unit in question which includes an assessment of the Service's records for the unit, the controlling and historical CBRS maps of the area, the vegetation and geomorphology of the area, the historical development status of the area, and any materials submitted by interested parties. The Service is conducting a comprehensive review of this unit. Because this review is not yet complete, we are unable to comment at this time on the availability of information or evidence regarding the Unit FL-70P boundary and the actual Gasparilla Island State Park boundary that contradicts the facts and documentary evidence from the State Park, CSX Corporation, Lee County, or the South Bay homeowners as presented to the Subcommittee. The Service will carefully assess any information provided by all interested parties at the time that we conduct a comprehensive review of Unit FL-70P.

(2). Does the Service have any facts or evidence in its possession that indicate the FL 70P boundary was supposed to be drawn to the east of the State Park boundary to encompass the adjacent privately owned and developed lands?

Response: The Service has not yet comprehensively reviewed the Unit FL-70P boundaries; therefore we cannot comment on whether we have any facts or evidence in our possession that indicate the FL-70P boundary was supposed to have been drawn to the east of the State Park boundary to encompass the adjacent privately owned and developed lands. In general, otherwise

protected area (OPA) boundaries are intended to follow the boundaries of underlying conservation or recreation areas, such as state parks. However, in reviewing claims of technical mapping errors, the Service conducts a comprehensive review of the boundaries for the entire OPA to ensure that all of the OPA boundaries are correctly depicted on a draft revised map for Congressional consideration. The Service acquires property parcel data and reviews the area's ownership and development history. In the case of OPAs, the Service also examines the existing park boundaries to help determine whether any adjustments may be appropriate to the OPA boundaries. The Service works with the park manager to ensure that we have correctly depicted the park boundaries on a base map. That base map is then used to develop the draft revised map for Congressional consideration. The Service also assesses whether there are any privately-held lands within the OPAs, however, OPAs may contain privately-held inholdings (i.e., private properties contained within the boundaries of the park).

H. R. 2236: Wildlife Refuge System Conservation Semipostal Stamp Act:

(1). What has been the position of the U. S. Postal Service in terms of supporting Congressional mandated semipostal stamps?

Response: The U.S. Fish and Wildlife Service cannot speak for the Postal Service; however, the Administration supports this legislation.

(2). What are the expectations in terms of the amount of money that might be raised through the sale of a refuge semipostal stamp? Other than local Post Offices, where are these stamps likely to be sold if this legislation is enacted?

Response: Assuming the Refuge System semipostal operates similar to the Save Vanishing Species semipostal issued on September 20, 2011, the Refuge System will receive approximately $9 million. Please note that prior estimates stated that the Refuge System could net as much as $10 million. However, the First Class postage rate will increase from 44-cents to 45-cents on January 22, 2012. Therefore, the differential available to the Refuge System would be 10-cents per semipostal as opposed to 11-cents per semipostal.

In addition to local post offices, the Postal Service would offer the Refuge System semipostal on-line at www.usps.gov and through the USA Philatelic catalog. Other outlets such as Refuge System book stores may be able to sell the semipostal on consignment.

H. R. 2714: Amend the Marine Mammal Protection Act Concerning Northern Sea Otters

(1). Fish and Wildlife enforcement agents working in the Alaska region report to D.C. officials, why not the head of the region?

Response: In 2002, the Secretary of the Interior issued a directive to the Service ordering reorganization of the Division of Law Enforcement in support of reforms aimed at enhancing the law enforcement program and operations. These changes were formalized in Director's Order number 147, issued October 1, 2002, which renamed and reorganized the Division of Law Enforcement to the Office of Law Enforcement (OLE). Changes included the adoption of line authority, with staff reporting through their law enforcement chain of command to the Chief, OLE and not their respective Regional Directors as had previously been the case.

(2). Did the enforcement agents always report to D.C. officials? If enforcement agents once reported to the region, why was the change made to have them report to D.C. rather than the region?

Response: Please refer to the response to the previous question.

(3). How are enforcement agents trained with regard to handicraft items? What information are they given to assess a handicraft item and to make the determination of a 'significantly altered' marine mammal product?

Response: New agents assigned to Alaska spend approximately one year in on-the-job training. As part of this training, agents are provided numerous examples of what constitutes an authentic native handicraft. They are also provided examples of marine mammal products that are not significantly altered, and would not qualify as authentic native handicrafts.

New agents field numerous calls, with the assistance from a field training agent, from the native community on what would and would not qualify as an authentic native handicraft.

New agents and veteran agents regularly attend meetings, with input from the Regional Solicitors Office, during which the topic of "significantly altered" is discussed and consistency in response to questions is developed.

Two major points are stressed. First, we do not judge an item on its artistic value. That is to say, we examine the degree to which the original marine mammal part has been altered, not the quality of the handicraft. Secondly, when considering whether a marine mammal part has been significantly altered to the point it would be considered an authentic native handicraft, the most basic determining factor we use is this: "if the marine mammal product (handicraft) can be easily converted back to its natural state (tusk, pelt etc.) or has only been tagged and/or signed it would not be considered an authentic native handicraft".

(4). You reference the definition of "significantly altered" yet there is no definition of this term in your regulations. The term is contained in your definition of "Authentic native articles of handicrafts and clothing means". What is the definition for the term "significantly altered" the Service is using and can you provide it to the Committee?

Response: The term "significantly altered" should be used in its entire text ... "significantly altered from their natural form." The MMPA and regulations allow for the sale by Indians, Aleuts, and Eskimos to non-Natives of handicraft made from marine mammals. The Act does not allow for the sale to non-Natives of marine mammal parts. Marine mammal (parts) include raw, dressed, or dyed fur or skin (16 U.S.C. 1362(6)). To be transformed from a marine mammal "part" to an authentic native handicraft, the part must be "significantly altered" and the buyer is purchasing the handicraft and not the part. The Congressional Record includes discussion describing these handicrafts in terms of finished goods exhibiting a high degree of workmanship and skill, "wonderfully intricate hand-carved bones and tusks [and] decorated parkas and boots"; and "fashioned painstakingly and with great skill." Additionally, the Service considers items to be significantly altered "from their original form" if the alteration is sufficient so the item cannot be put into commerce as a raw part.

(5). NMFS regulations have the same definition for 'Authentic native articles of handicrafts and clothing', yet it appears the two agencies implement the definition differently. Why is this difference occurring and is the Administration working to correct this problem?

Response: The Service consistently implements our regulations relating to the creation and sale of Alaska Native handicrafts containing marine mammal parts. The Service is unable to offer an opinion on NOAA's implementation of NOAA regulations which are substantively the same as those of the Service. We recognize that clarity regarding the definition of marine mammal handicrafts benefits all subsistence users and we are currently participating in a joint NOAA Fisheries/Service working group to provide that clarity. At the suggestion of the Service, representatives from the Indigenous People's Council for Marine Mammals have been included in this working group. We believe that inclusion of stakeholders from the Alaska Native community in these discussions will benefit not only the marine mammal resource, but also provide greater understanding to the Alaska Native subsistence hunting community on the use of marine mammals subsequent to their harvest.

(6). Can Alaska Natives currently harvest Southwestern sea otters for subsistence and handicraft purposes? In Kurth's testimony, it stated sea otters are listed in Appendix II of the Convention on the International Trade in Endangered Species and it would be difficult for the Service to make the required findings to allow for export of a sea otter specimen. However, H.R. 2714 would only allow for the export of a Native handicraft. Is it the Service's position that it could not make a CITES finding for handicraft items or pelts?

Response: Section 10(e) of the Endangered Species Act (ESA) provides an exemption for Alaska Natives to take species listed under the ESA, including the Southwest Alaska sea otter, if such taking is primarily for subsistence purposes and is not accomplished in a wasteful manner. The Service's regulations at 50 CFR 17.3 define subsistence as "the use of endangered or threatened wildlife for food, clothing, shelter, heating, transportation and other uses necessary to maintain the life of the taker of the wildlife, or those who depend upon the taker to provide them with such subsistence, and includes selling any edible portions of such wildlife in native villages and towns in Alaska for native consumption within native villages and towns." The pelts of

Southwest Alaska sea otters taken for subsistence purposes may be used to make authentic Native handicrafts and clothing. Only authentic Native articles of handicrafts and clothing made from sea otters taken under the exemption may be sold in interstate commerce.

All sea otter populations are listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Therefore, exports of raw or finished products require a CITES export document before legally leaving the United States. Our issuance of a CITES Appendix-II export permit for a sea otter handicraft relies on two findings: (1) the specimen being exported was legally acquired (i.e., came from a legally-harvested otter and otherwise complied with legal requirements, including applicable requirements of the MMPA and ESA), and (2) the export is not detrimental to the survival of the species, such as by contributing to the unsustainable harvest of sea otters to produce such items. If an item is derived from a legally-authorized and sustainable subsistence harvest and otherwise complies with the legal requirements for such handicrafts, the Service can issue a CITES export permit for it.

As written, H.R. 2714 would not preclude non-Alaska Natives from creating handicrafts, garments, or art, and allow the international commerce of these products. Further, H.R. 2714 does not require pelts to be significantly altered before entering into commerce. If pelts are not required to be "significantly altered," these products could include raw or tanned hides, which could create an unregulated commercial market for raw or tanned sea otter pelts. H.R. 2714 establishes two "classes" of handicrafts that are virtually indistinguishable from each other: those from the non-listed Southcentral or Southeast stocks that could be legally exported; and those from the listed Southwest stock that could not be legally exported. Because there is no distinguishable difference in the appearance of sea otters from the three stocks, it would be very difficult for the Service to determine from which stock (listed or non-listed) a pelt was taken without extensive documentation from the Native Alaskan who harvested the otter and a complete record of all commercial transactions and changes of ownership leading up to the potential export. For these reasons, it could be difficult to make both the legal acquisition and non-detriment findings necessary to issue the required CITES export documents, since we would need to be able to definitively state that the item was legally acquired and that the export would not be detrimental. The absence of proof that an item was illegally acquired is not sufficient for CITES purposes.

(7). Mr. Ragen suggested the use of section 101(a)(3)(A), which allows the Secretary to waive the moratorium, provided the taking is in accord with sound principles of resources protection and conservation and is consistent with the purposes and policies of the Act. Has this waiver authority ever been used by the Secretary of the Interior? If yes, can you provide the Committee with the information on when and why it was used?

Response: On January 31, 1973, the State of Alaska requested management authority over certain marine mammals, including polar bears, sea otters, and Pacific walrus, pursuant to Federal approval of State of Alaska marine mammal regulations. On April 5, 1976, the Service, pursuant to Section 101(a)(3)(A) of the MMPA, waived the moratorium on the taking of walrus,

subject to certain provisions; a determination to waive the moratorium on sea otters and polar bears was deferred at that time. On August 2, 1979, and after notification from the State of Alaska that it was suspending walrus management and enforcement activities, the Service suspended that April 1976 waiver of the moratorium and management, under Federal authority, of the Pacific walrus resumed.

(8). What is the Fish and Wildlife Service's position on the proposal suggestion by Mr. Miller to allow for the sale of pelts under a Harvest Management Plan?

Response: Mr. Miller's testimony appears to suggest that the sale of pelts be limited so as to "...be consistent with the existing exemptions of the MMPA related to Alaska Natives." The Service believes that the sale of pelts, as allowed in the MMPA, between and amongst coastal-dwelling Alaska Natives is consistent with the purposes and policies of the exemption which recognizes the important social, cultural, and economic role that marine mammals play in the lives of Alaska Natives. The Service supports the development of Harvest Management Plans and is prepared to work with the Alaska Native community to develop such plans which continue the conservation of the species, and are based on scientific principles, including Traditional Ecological Knowledge, to allow for local management of subsistence harvest.

(9). The Marine Mammal Protection Act does not currently prohibit the subsequent sale of a handicraft product after the initial sale from the Alaska Native to a non-Native. How has this worked under current law, have there been enforcement issues?

Response: Under the MMPA an Alaska Native may sell a handicraft item to a non-Native who may, in turn, keep it for themselves, give it away, or resell the item. While the Service does not monitor the resale of such items, we are aware that such resale does occur; for example, gift, art and curio shops in Alaska re-sell handicrafts obtained from Alaska Natives. Because resale is legal there are no enforcement issues.

The ESA differentiates between the allowable sale of edible portions of fish or wildlife and the allowable sale of authentic hand-crafted items; the sale of edible portions of fish or wildlife is limited to native villages and towns in Alaska. However, both the ESA and the MMPA allow for the interstate commerce of authentic native articles of clothing or handicrafts. Specifically, under Section 10(e)(1) of the ESA "Non-edible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing." Similarly, section 102(b)(2) of the MMPA provides "That only authentic native articles of handicrafts and clothing may be sold in interstate commerce". Thus, once an item is transformed into an authentic article of handicraft or clothing, it may legally enter into commerce and, once in commerce, may be sold or resold by anyone.

H. R. 3009: National Wildlife Refuge Review Act

(1). Of the 555 national wildlife refuges in this country, how many of them were legislatively created? Please provide the Subcommittee with an updated list.

Response: The mission of the National Wildlife Refuge System (Refuge System) is to administer a national network of lands and waters for the conservation, management and, where appropriate, restoration of the fish, wildlife and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. Encompassing more than 150 million acres of land and water, the Refuge System is the world's premier network of public lands devoted to the conservation of wildlife and habitat. The Service recognizes the importance and value of legislatively creating refuges. Of the 555 national wildlife refuges, 57 refuges or 10 percent were established by a specific Act of Congress. The table below lists these refuges.

Legislatively Authorized National Wildlife Refuges			
Station Name	**State**	**Citation**	**Date**
Alaska National Interest Lands Conservation Act Refuges: Alaska Maritime, Alaska Peninsula, Arctic, Becharof, Innoko, Izembek, Kanuti, Kenai, Kodiak, Koyukok, Nowitna, Selawik, Tetlin, Togiak, Yukon Delta and Yukon Flats National Wildlife Refuges (16 units).*	AK	PL 96-487	12/02/1980
Atchafalaya National Wildlife Refuge	LA	PL 98-548	10/26/1984
Baca National Wildlife Refuge	CO	PL 106-530	11/22/2000
Bandon Marsh National Wildlife Refuge	OR	PL 97-137	12/12/1981
Bayou Cocodrie National Wildlife Refuge	LA	PL 101-593	11/16/1990
Bayou Sauvage Urban National Wildlife Refuge	LA	PL 99-645	11/10/1986
Bear River Migratory Bird Refuge	UT	45 Stat 448	04/23/1928
Boque Chitto National Wildlife Refuge	LA, MS	PL 96-288	06/28/1980
Bon Secour National Wildlife Refuge	AL	PL 96-267	06/09/1980
Cahaba National Wildlife Refuge	AL	PL 106-331	09/25/2002
Silvio O. Conte National Wildlife Refuge	MA, VT, NH, CT	PL 102-226	12/11/1991
Crab Orchard National Wildlife Refuge	IL	PL 80-361	08/05/1947
Egmont Key National Wildlife Refuge	FL	PL 93-341	07/10/1974
Featherstone National Wildlife Refuge	VA	PL 91-499	10/22/1970
Grays Harbor National Wildlife Refuge	WA	PL 100-406	08/19/1988

Great Dismal Swamp National Wildlife Refuge	VA	PL 93-402	08/30/1974
John Heinz National Wildlife Refuge at Tinicum	PA	PL 92-326	06/30/1972
Humboldt Bay National Wildlife Refuge	CA	PL 99-290	06/28/1980
Klamath Marsh National Wildlife Refuge	OR	68 Stat 718	08/13/1954
Stewart B. McKinney National Wildlife Refuge	CT	PL 98-548	10/26/1984
Minnesota Valley National Wildlife Refuge	MN	PL 94-466	10/08/1976
National Bison Range	MT	53 Stat 267	05/23/1908
National Elk Refuge	WY	37 Stat 293	08/10/1912
National Key Deer Wildlife Refuge	FL	PL 85-164	08/22/1957
John H. Chafee NWR/Pettaquamscutt Cove National Wildlife Refuge	RI	PL 100-610	11/05/1988
Protection Island National Wildlife Refuge	WA	PL 97-333	10/15/1982
Red River National Wildlife Refuge	LA	PL 106-300	10/13/2000
Rocky Flats National Wildlife Refuge	CO	PL 107-107	12/28/2001
Rocky Mountain Arsenal National Wildlife Refuge	CO	PL 102-402	10/09/1992
Don Edwards San Francisco Bay National Wildlife Refuge	CA	86 Stat 399	10/08/1974
Seal Beach National Wildlife Refuge	CA	PL 92-408	07/05/1974
Steigerwald Lake National Wildlife Refuge	WA	PL 98-396	08/22/1984
Tensas River National Wildlife Refuge	LA	PL 96-285	06/28/1980
Tule Lake-Klamath National Wildlife Refuges: Tule Lake, Upper Klamath, Lower Klamath and Clear Lake National Wildlife Refuges (4 units)	CA, OR	PL 88-567	09/2/1964
Upper Mississippi River Wildlife and Fish Refuge	IL, IA, MN, WI	43 Stat 650	06/07/1924
Vieques National Wildlife Refuge	PR	PL 106-398	10/30/00
Wallkill River National Wildlife Refuge	NJ	PL 101-593	11/16/1990
Wichita Mountains Wildlife Refuge	OK	33 Stat 614	01/24/1905
Wyandotte NWR Name Changed to Detroit River International Wildlife Refuge via PL 107-91, 12/21/2001	MI	87-119	08/03/1961
Total number = 57			

** Public Law 96-487, commonly known as the "Alaska Lands Act" or "ANILCA], greatly expanded the Refuge System in Alaska, and consolidated all Refuge System units in the State. All 16 ANILCA units, totaling approximately 77,000,000 acres, are counted here as "legislatively created" even though some units, or portions thereof, existed prior to ANILCA by administrative action.*

(2). Please explain why the establishment of a new national wildlife refuge unit is so inherently unique that bringing Congress into the process at the beginning and not after the financial commitment has been made is a bad idea?

Response: In the Fish and Wildlife Service, there is a long history of creating refuges through both administrative and legislative processes. With regards to the administrative process – the Department believes that it is essential to meeting the statutory directive to strategically grow the Refuge System. The process for studying and approving new refuges is an extensive effort founded on good scientific information, input from public, partnership with many, and regular consultation with Congress. The administrative process puts the Service in the best position to be able to capitalize on the opportunities presented to strategically grow the Refuge System. Those opportunities are for land areas where conservation values that are critical to wildlife and the mission of the Refuge System align with the presence of willing sellers and a strong level of public support. When that happens, the administrative process allows the Service to act relatively quickly.

The administrative process is relatively quick, but it involves a thorough deliberative public process that provides substantial opportunity for public input. The Service often has non-Federal partners who support and encourage our efforts. The Service coordinates with Members of Congress and local officials and informs them of the ongoing process at key stages. The refuge is created with the first acquisition of property, after the planning process and Director approval, but it usually takes many years before the Service is able to acquire most of the lands within an approved acquisition boundary. Congress has always served a key role in oversight over acquisitions for refuge through the appropriations process, hearings or other legislative actions.

It is because of the cooperative efforts of the Administrations and Congress over the last century that the Refuge System has been able to grow to meet its conservation mission and become a vital part of fish and wildlife conservation in the United States.

(3). What is the current financial estimate to acquire 1 million acres at the Flint Hills Conservation Area in Kansas?

Response: The Flint Hills Conservation Area is and will be comprised entirely of conservation easements. The Service is not proposing to acquire title to this land, rather a conservation easement which is a legal agreement voluntarily entered into by a property owner and the Service. The property would remain in private ownership and continue to contribute to the local tax base. The landowner may choose to live on the land, sell it, or pass it on to heirs. Easements contain permanent restrictions on the use or development of land in order to protect its conservation values. For the Flint Hills Conservation Area, the estimated cost for such easements is $300 per acre, or a total of $330,000,000 for the 1.1 million acres authorized for easement acquisition.

(4). What is the current financial estimate to acquire at least 150,000 acres for inclusion within the Everglades Headwaters National Wildlife Refuge and Conservation Area?

Response: Based on our most current research, we believe that the current financial estimate to acquire 150,000 acres (a combination of fee and conservation easements) for inclusion within the

Everglades Headwaters National Wildlife Refuge and Conservation Area will be $398,000,000. This figure is lower than the original $625,000,000 noted in the draft Land Protection Plan.

We believe that ranchland values for fee acquisitions in the proposed Everglades Headwaters NWR will be valued at no more than $4,000 per acre (for an estimated total of $200,000,000), and conservation easements that remove the development rights will be valued at approximately 50 percent of the fee value, or $2,000 per acre (for an estimated total of $200,000,000). We also anticipate receiving approximately 500 acres in fee donations, lowering the refuge acquisition total by an estimated $2,000,000 to $198,000,000.

Our draft Land Protection Plan is available online at:
http://www.fws.gov/southeast/evergladesheadwaters/
The plan will be revised with the more current information in the final Land Protection Plan.

(5). What is the current role of the Congress in authority the expenditures of what you have testify are in excess of $1 billion dollars?

Response: We understand that it is the role of Congress to authorize expenditures for implementation of the Administration's programs and to appropriate funds. Congress has provided a general authorization for all Land and Water Conservation Fund expenditures, and must appropriate amounts for acquisition at individual refuges. We assume the reference to $1 billion is regarding projected costs for acquiring fee simple and easement interests for the Flint Hills and Everglades Headwaters projects. As discussed above, updated estimates of the projected costs are substantially less than earlier estimates. Cost estimates are for the life of the acquisition project, which may take decades. Other conservation partners (states and conservation organizations) often protect segments of the area under their management, or assist in refuge acquisitions with donations, exchanges, or other cost sharing methods that further reduce federal costs.

(6). It is my understanding that the Service intends to acquire up to 1 million acres of private property in the Flint Hills Region of Kansas through the use of conservation easements? Does the Service intend to negotiate and sign these easements prior to the money being appropriated by the Congress?

Response: No. The Service will identify priority properties and appraise them as appropriated dollars become available for acquisition. Because of the time necessary to negotiate the terms of the easement and to complete appraisals, the Service typically begins preliminary discussions with a small number of landowners (1-4) if we anticipate receiving funding in the next fiscal year. This enables us to respond quickly and obligate funds in a timely manner after receiving the appropriation.

(7). If that is the case, what happens to those easements if the Congress decides to never appropriate any money for the Flint Hills Conservation Area?

Response: Once a landowner agrees to convey an easement, the Service typically has 12 months to accept that agreement. If funding does not become available within that time frame, the agreement expires without the Service obtaining an easement interest, and the landowner retains their full interest in the property. Neither party has any continued obligation to the other.

(8). What are the normal stipulations that are attached to a conservation easement? For instance, once the property owner dies and leaves his or her estate to their heirs are those heirs able to sell that property for condominium development, a hospital or a local elementary school?

Response: Conservation easements are perpetual easements; they preserve habitat by prohibiting development. Perpetual easements continue with the land. They do not prohibit sale or inheritance of the land, but they do restrict uses. Therefore the portion of the property with a conservation easement cannot be sold for development such as condominiums, hospitals or schools. Property owners receive compensation at fair market value when the right to develop the property is sold under a conservation easement. The Service policy and examples on conservation easements can be found at:

http://www.fws.gov/policy/341fw6.html

H. R. 3117: Permanent Electronic Duck Stamp Act

(1). The Electronic Duck Stamp Act of 2006 stated that the Secretary of Interior shall conduct a 3-year Pilot Program for the issuance of electronic federal duck stamps. What have been the results of this program in terms of duck stamp sales online?

Response: Internet sales of the Federal Duck Stamp are only a part of the full E-Stamp program. The states that participate have toll-free numbers, electronic licensing point-of-sale sites in retail and state program centers as well as internet sales on their web pages. Sales of Federal Duck Stamps through these state systems have remained steady throughout the pilot and subsequent sales periods. In 2010 there were 364,714 stamps sold through the State electronic systems, a 3.65% increase over the 2009 sales period. Preliminary reports for the 2011 season estimate the E-Stamp sales at 500,000.

(2). In August of this year, the Service printed its Electronic Duck Stamp Pilot Program Report as required by Section 9 of P. L 109-266. What were the results of the study in terms of being a cost-effective and convenient way for issuing duck stamps, increasing stamp availability and maintaining the actual stamp as a viable conservation tool?

Response: The program to sell electronic Duck Stamps has proven its value in making Duck Stamps available in a quick and convenient manner. The acceptance of the E-Stamp is clearly demonstrated by the growth in E-Stamp sales from 58,000 in the pilot's first year (2007) to more than 350,000 in 2010. However, the most current sales data collected does not indicate that E

Stamp sales have resulted in a net overall increase in total Federal Duck Stamp sales for the period of the pilot program.

There is increasing need to find new outlets to service the public and as a result, there is increasing need to utilize new technologies and supply chains. The first partner in this program, the U.S. Postal Service, is exploring the need to close many physical post offices across the country. As this happens, the Federal Duck Stamp office must move forward to find more efficient and effective way of meeting the need of customers. The E-stamp program is one element proven effective in meeting that customer demand.

(3). Where there any reservations raised in this report indicating that waterfowl hunters should not be able to obtain their future federal duck stamps online?

Response: No reservations were expressed in the report.

(4). Are you aware of additional states that would like to offer electronic federal duck stamp sales in the future?

Response: Yes, we have had inquiries from five additional states requesting the application and the ability to participate in the program. Currently there are only two states of the 50 that do not offer some type of electronic licensing program.

(5). Prior to the enactment of the 3-year Pilot Program, there had been a great deal of concern raised about the impact of electronic sales on the printed stamp which has existed for more than 75 years. Were those fears unfounded?

Response: The law requires that every E-Stamp customer receives a physical Duck Stamp, preserving 78 years of tradition. The public does not object to receiving the actual stamp and only a handful of people have suggested that we discontinue printing the stamp.

(6). Of the eight participating states, only the Colorado Division of Wildlife does not assess a service charge for purchasing these stamps. What do you believe is a fair amount to charge customers?

Response: The original law states that a reasonable handling fee can be charged. There are several variables that the states use in assessing their handling charge. The memorandum of agreement with Colorado states that they will pay $1.00 to the Fish and Wildlife Service's contracted distribution service and assess reasonable charges. The variables include agent fees, bank charges, transaction charges, software charges, and update and verification charges. These are just a few of the potential expenses a state can anticipate. Colorado is the only state not charging a fee at this time. Judging by the number of stamps sold in this manner and the few customer inquiries (less than 20) over the past year, it is safe to conclude that there is little market resistance to the handling charge. The current range is $0 to 3.50.

(7). How much does the United States Postal Service charge the Fish and Wildlife Service to sell Federal duck stamps? Is there any likelihood that this amount could increase in the near future?

Response: In 2010, the U.S. Postal Service (USPS) increased the transaction fee it charges the Fish and Wildlife Service from $.34 to $.74 per Duck Stamp. There are also additional charges for printing and destruction. It is expected that the proposed USPS revised business practices will continue to increase the transaction fee and printing costs. In 2005, the USPS sold 744,544 stamps of the 1.5 million stamps sold. In 2010 they sold less than 500,000. Incrementally, there is an increase in sales reported by Amplex offsetting the USPS decrease.

We note that in his FY 2011 Budget Proposal, the President included a legislative proposal to amend the *Migratory Bird and Hunting Conservation Stamp Act* (16 U.S.C. 718b), to increase the sales price for the Federal Migratory Bird Hunting and Conservation Stamp, commonly known as the Federal Duck Stamp, from $15 to $25, beginning in 2012. The cost of the Duck Stamp has remained the same since 1991. Based on the Consumer Price Index, the stamp would need to cost more than $24 today to have the same buying power that $15 had in 1991. The additional receipts that would be generated from the proposed price increase would defray future increases in transaction fees and printing costs.

The Service would be pleased to work with the Committee on legislative language to increase the price of the Duck Stamp as proposed in the President's FY 2011 Budget Request. We would also be happy to work with the Committee on other legislative approaches. We look forward to working with Congress to restore the purchasing power of the Duck Stamp.

(8). Have there been any law enforcement challenges as a result of federal duck stamps being available electronically and valid for a 45-day time frame?

Response: The Service is unaware of any law enforcement challenges resulting from federal duck stamps being available electronically and valid for a 45-day time frame.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 12 2012

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

Dear Mr. Chairman:

Enclosed are responses prepared by the United States Fish and Wildlife Service to questions submitted following the Subcommittee's November 3, 2011, oversight hearing on *"Florida Everglades Restoration: What are the Priorities?"*

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 Minority Member

QUESTIONS FOR THE RECORD
FOR RACHEL JACOBSON
ACTING ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS
DEPARTMENT OF THE INTERIOR

Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
Oversight Hearing titled "*Florida Everglades Restoration: What are the Priorities?*"
November 3, 2011

Submitted by Chairman John Fleming, M.D. from Louisiana

(1) What are the federal costs on a per acre basis to negotiate conservation easements covering up to 100,000 acres in the Everglades Headwaters Conservation Area?

Response: Based on the U.S. Fish and Wildlife Service's (Service) knowledge of current market values and its proposal to acquire only development rights, the median price is estimated at $2,000 per acre. The cost of acquiring permanent conservation easements from willing landowners covering up to 100,000 acres is therefore expected to be roughly $200 million, based on current market values. Acquiring easements for entire proposed conservation area is expected to take many years, but may never be entirely completed.

(2) What are the terms of these conservation easements? Please provide the Subcommittee with an unsigned version of one of these easements?

Response: The primary purpose of the conservation easements is to conserve, in perpetuity, habitat for fish and wildlife, including wetland, riparian and upland plant communities, but the properties are retained by private landowners. The general terms of the proposed easements would include conserving the character of the property and prohibiting specific development activities. Working together, the Service, through the refuge manager and the landowner, would determine the final terms of any conservation easement. The draft template conservation easement, which will be based on the State of Florida's conservation easement model, and will take into account the model used in the Service's Mountain-Prairie Region, is currently undergoing internal review. We will provide the Subcommittee a copy once it is finalized.

(3) Who owns the property in Ridge Central and Prairie South which has been designated on your map as "areas not considered"? What was the rationale for their exclusion?

Response: The areas not considered lie adjacent to the Ridge Central and the Prairie South units. These areas are comprised of small lots of one to five acres that are owned by multiple landowners. The area adjacent to Ridge Central is known as River Ranch and is managed by a property owner association (POA). River Ranch owners expressed concern with the proposed project area during the planning process. The Service determined that the River Ranch properties should no longer be included within the boundary of the proposed project area because River Ranch owners expressed concern over their inclusion, and the POA already has an active role in managing and maintaining the area. Similar areas adjacent to Prairie South, as well as other areas further north in the project area, were also removed for similar reasons.

(4). The Secretary of the Interior has been touting a new public-private conservation model and using Kansas Flint Hills and Dakota Grasslands Conservation Area as a model where private land owners retain ownership. Why is the model not being used for all land acquisitions in Central Florida?

Response: Conservation easements provide the Service with the opportunity to work with willing landowners to maintain a working landscape while also protecting wildlife habitat. At least two-thirds of the proposed project headwaters in Central Florida will follow this model. However, increasing development pressures in Florida have many landowners considering the outright sale of property for housing or commercial uses rather than maintaining their land as a working landscape. With the opportunity to acquire up to 50,000 acres in fee title, the Service will be able to protect, manage and in some cases, restore these high quality habitats. Another consideration is that conservation easements usually do not allow for public access onto private lands. With the purchase of fee title lands, the Service will be able to increase opportunities for wildlife-oriented outdoor recreation including hunting and fishing; provide local communities with opportunities for environmental education; and encourage ecotourism activities.

(5) What is the cost of acquiring 50,000 acres of property to be incorporated within the Everglades Headwaters National Wildlife Refuge?

Response: The process of acquiring 50,000 acres of fee simple lands would continue for many years after a final Land Protection Plan (LPP) is approved, and the full 50,000 acres may never be completely acquired. The Service anticipates that any fee simple lands acquired would primarily be ranchland. Based on our knowledge of current acreage values, a median price of $4,000 per acre is estimated. The cost of acquiring all 50,000 acres in fee is currently estimated to be $200 million, subject to available funding. Properties donated or transferred would lower this cost. The final LPP will outline approximately 508.5 acres expected to be donated or transferred, lowering the total cost by an estimated $2,036,000, and reducing the estimated cost for fee title acquisitions for the refuge to just under $198 million as funding becomes available.

(6) Has the Service calculated what will be the costs of operating and maintaining this new 50,000 acre refuge? Please break down those costs?

Response: The Service has estimated the costs of operating and maintaining the proposed refuge and conservation area; they are summarized below in Tables 4 and 5 from the draft Land Protection Plan (LPP) and Environmental Assessment (EA). The Service projected it would initially need up to $450,000 in the first year once the refuge is formally established. This initial funding would be used for three staff positions, habitat restoration, limited prescribed fire activities, initial inventory and monitoring activities, and invasive species control. In the years after its establishment, the Service estimated in the draft LPP that annual expenses associated with operations and maintenance would be $690,000 as noted in Table 5. Also in the draft LPP, the Service identified a series of one-time operating costs in Table 4 estimated at $4.5 million. Since the LPP is still in draft form, these figures should be considered estimates.

Table 4. One-time costs associated with operating and maintaining refuge lands outlined in this LPP

Estimated One-Time Operations Costs	Costs in Dollars
Post boundary signs ($875 per mile @ 80 miles)	$70,000
Survey boundary ($5,000 per mile @ 80 miles)	$400,000
Demolition of houses/small buildings ($25,000 per structure @ 3)	$75,000
Demolition of barns ($10,000 per structure @ 3)	$30,000
Construction of public use sites (boardwalk trails) ($1.4m per mile)*	$1,404,480
Construction/improvement of parking areas ($16,000 ea per 6 lots)*	$96,000
New kiosks/exhibits ($12,000 each @ 5)*	$60,000
Office and visitor center ($443 per SF @ 5,000 SF)*	$2,215,000
Heavy equipment needs	$200,000
Total Estimated One-Time Operations Cost	$4,450,480

**Note: These facilities are associated with encouraging public visitation and recreation at the refuge as part of a long-term vision subject to available funding.*

Table 5. Annual costs associated with operating and maintaining refuge lands outlined in this LPP

Estimated Annual Operation & Maintenance Costs	Costs in Dollars
Habitat inventories ($5,000 each @ 5)	$25,000
General maintenance of public use facilities	$200,000
Mowing ($5 per acre @ 1,000 acres annually)	$5,000
Prescribed fire program ($15 per acre @ 20,000 acres annually)	$300,000
Fencing ($5 per linear foot @ 10,000 linear feet)	$50,000
Invasive species ($10 per acre @ 1,000 acres annually)	$10,000
Building maintenance and utilities	$100,000
Total Estimated Annual Operations & Maintenance Cost	$690,000

(7). After reviewing your LAPS List for the past two years, I found seven refuges including three of the top ten in the State of Florida where the acquisition of additional property or inholdings is a priority. What is the cost of those acquisitions?

Response: The Land Acquisition Priority System (LAPS) is a ranking "tool" based on Service trust resources objectives and priorities. We use LAPS to establish biologically based ranking for land acquisition. Specific acquisitions, i.e., acreage amounts and costs of property that may be acquired from willing sellers, are not identified in LAPS. Rather, LAPS prioritizes potential land acquisitions within national wildlife refuges (NWRs). Proposed specific acquisitions, in NWRs that rank highest in LAPS, are detailed in the President's budget request.

Each year, the amount requested for land acquisition in the budget request is not sufficient to acquire parcels at every NWR listed in LAPs. In addition, proposed acquisitions in the budget request rarely address an entire NWR acquisition boundary (i.e., the area of land that the Service is authorized to acquire, subject to available funds and willing sellers). For the Florida refuges referenced in the question, at this time we are not seeking to acquire all land within the boundaries, just certain tracts.

In FY 2012, the Service nationally ranked five NWRs in the State of Florida in LAPS. These five are St. Marks NWR; St. Vincent NWR; Lower Suwannee NWR; Pelican Island NWR; and Crystal River NWR. Funding was requested for three of the projects in the FY 2012 President's Budget Request for Land and Water Conservation Fund (LWCF) programs:

- St. Marks NWR – $4 million requested to acquire 2,350 acres of habitat from one willing seller within the historic longleaf pine habitat range.
- St. Vincent NWR – $1.35 million requested to acquire permanent deep water access on four acres from The Trust for Public Land.
- Lower Suwannee NWR – $1 million requested to acquire 667 acres of habitat from one willing seller.

In FY 2011 the Service nationally ranked 2 NWRs in the State of Florida in LAPS. These two are National Key Deer NWR and St. Marks NWR. Funding was requested for one of these in the FY 2011 LWCF President's Budget Request:

- St. Marks NWR – $1 million received to acquire a portion of the Sam Shine property.

The acquisitions requested for these NWRs address relatively small portions of the remaining acres in the refuges' authorized acquisition boundaries. The table below details the remaining acres that have not been acquired at each of the Florida refuges identified in LAPS in FY 2011 and FY 2012. Similar to these Florida refuges, the full acreage of the proposed Everglades Headwaters National Wildlife Refuge and Conservation Area would not be acquired swiftly. Like the NWRs below, land and easements would be acquired from willing sellers over many years, subject to the availability of funds and the Service's LAPS.

To provide an estimate of the total cost of the full remaining acreage within the authorized acquisition boundary (ABB) is difficult because the appraised value depends on when the tract is appraised and current market values, which fluctuate. These estimated costs assume the presence of willing sellers and acquisition of all remaining acres within the AAB.

2011 LAPS	AAB	Remaining Acres	Estimated Cost
*National Key Deer Refuge (ranked 2- nationally)	138,073	1,000	$ 2,500,000
St. Marks NWR (ranked 3)	114,520	43,133	$86,000,000

2012 LAPS	AAB	Remaining Acres	Estimated Cost
St. Marks NWR (ranked 4 nationally)	114,520	42,724	$85,450,000

Lower Suwannee (ranked 7)	84,018	32,153	$25,000,000
**St. Vincent NWR (ranked 37)	13,528	Ø	Ø
Pelican Island NWR (ranked 39)	5,949	524	$25,000,000
Crystal River NWR (ranked 55)	8,393	8,306	$ 4,000,000
Lake Wales Ridge NWR (ranked 58)	17,531	15,891	$ 5,000,000

*Over 130,000 acres within the AAB are State sovereignty owned submerged lands that the refuge does not seek to acquire.

**St. Vincent: If 2012 funding is approved the Service would purchase this parcel which will enable the Service to obtain permanent, deep water boat and barge access from the mainland to St Vincent Island, the centerpiece of the St. Vincent NWR. At the current time, the refuge is faced with losing its leased access. If this parcel is not acquired the refuge will have no way to get to and from the island for management purposes since there are no other viable access options available. This would complete the acquisition for this refuge.

(8) In the Fish and Wildlife Service's FY'12 budget submission, there was a request for additional land acquisition at the St. Marks, Lower Suwannee and St. Vincent National Wildlife Refuges. According to Service estimates, it will cost $126 million to complete the acquisition of all necessary lands for these three refuges. What is a higher priority, these lands or the new 150,000 identified in the Everglades Headwaters Plan?

Response: The Service requested a total of $6,350,000 for land acquisition at Florida refuges in the FY 2012 Federal Land acquisition projects list within the President's Budget Request for St. Marks, St. Vincent, and Lower Suwannee National Wildlife Refuges in Florida. The Everglades Headwaters National Wildlife Refuge and Conservation Area is the Service's highest priority in the Southeast Region; however, it could not compete for FY2012 funding until it had an approved acquisition boundary. The process of acquiring land and easements within approved acquisition boundaries of national wildlife refuges often takes place over many years. In determining its priorities, the Service considers factors such as national LAPS ranking, availability of willing sellers, funding sources available, and biological evaluations. LAPS projects are reviewed annually.

(9). In September, Secretary Salazar stated that "The establishment of this refuge promotes one of our key Everglades restoration goals, which is to restore habitat and protect species". How many of the 68 projects identified in the Comprehensive Everglades Management Plan are completed by the Secretary's action?

Response: The 68 Comprehensive Everglades Restoration Plan (CERP) projects and the establishment of the Everglades Headwaters National Wildlife Refuge are distinct, but complementary, activities supporting the restoration of the Everglades ecosystem. By protecting, restoring, and conserving the headwaters, groundwater recharge, and watershed of the Kissimmee Chain of Lakes, Kissimmee River, and Lake Okeechobee region, the refuge would help improve water quantity and quality in the Everglades watershed, working towards the goals CERP is trying to accomplish. For example, restoring wetlands would assist in meeting the CERP's broad goal of capturing fresh water and using it for environmental restoration, reviving

the Everglades, and providing additional freshwater resources for southern Florida's human population.

(10) Do you agree with the assessment of the National Research Council in its 2010 Progress Report on Everglades Restoration that: "The first eight years after CERP authorization did not come close to expectations." How will the refuge and conservation area accelerate that recovery process?

Response: The National Research Council's 2010 report, entitled *Progress Toward Restoring the Everglades, the Third Biennial Review* which is prepared pursuant to a requirement of the Water Resources Development Act of 2000 does note that the natural system restoration progress from the CERP, or Comprehensive Everglades Restoration Plan, is slower than anticipated. However, the National Research Council also notes that there have been some noteworthy improvements in the pace of its implementation as well as in the relationship between the federal and state partners, increased federal funding and that the science program continues to provide a sound basis for decision-making. Additionally, since that time the federal and state restoration partners have broken ground on key CERP projects and more are now in the planning phase to address some of the key concerns of the National Research Council.

The proposed refuge and conservation area is an important addition to ongoing Everglades restoration efforts. The Service and many of its partners such as DOD, NRCS, and others believe that that by restoring temporary and seasonal wetlands throughout the Kissimmee basin, the water quality and distribution downstream for existing CERP projects will be improved. Wetlands by nature remove nutrients and store excess water, thereby slowing the release of excess rainfall and mitigating the impacts of flood and drought. Thus, the efficiency of CERP projects will be improved because they will be receiving improved water quality conditions and reduced peak flood events.

(11) In 2009, 600 Florida voters were asked their opinion on the Comprehensive Everglades Restoration Plan. The Everglades Foundation reported that 82 percent of respondents "strongly" or "somewhat strongly" supported the Restoration. Has the Department conducted an opinion poll on your proposed refuge and conservation area?

Response: In the development of the draft Land Protection Plan and the draft Environmental Assessment for the proposed refuge and conservation area, the Service conducted internal and public scoping meetings which included other federal agencies, Native American Tribes, State and local governments, local businesses, non-governmental organizations, landowners, ranchers and farmers, and the general public. Within the constraints of applicable policies, mandates, regulations, and responsibilities, the Service then used this information to help develop and analyze alternatives in the draft Environmental Assessment. The vast majority of the comments expressed support for the proposal.

(12) Has the Department of the Interior discussed the possibility of acquiring the 153,000 acres currently owned by the U. S. Sugar Corporation, which many experts believe offers the maximum restoration opportunities for the South Florida ecosystem?

Response: Although the State purchased a portion of the U.S. Sugar Corporation holdings, the Department understands that the State holds additional purchase options on the remaining property for a period of several years. The future acquisition of the U.S. Sugar Corporation's remaining agricultural lands, however, does not address the same resource values as proposed by the establishment of the Everglades Headwaters National Wildlife Refuge and Conservation Area. In contrast to addressing water storage and water quality treatment, the refuge proposal additionally offers a significant opportunity to conserve habitat to benefit numerous species, which also is an important Everglades restoration goal. The refuge is designed to create and conserve large functional landscapes for wildlife protection, ecosystem services protection, and historic and cultural resource protection. It is also designed to provide the American public with outstanding recreational opportunities by:

(1) Creating a large core of contiguous protected areas;
(2) Protecting the headwaters of the iconic Everglades ecosystem;
(3) Protecting wildlife corridors to allow wildlife to thrive and adapt to a changing climate in Florida;
(4) Developing partnerships on private lands to restore wetlands and exemplary plant communities, and conserve wildlife species;
(5) Conserving a rural ranching and agricultural community, as well as the rural character of central Florida; and
(6) Creating opportunities for world-class wildlife-dependent recreation.

(13) If you are truly interested in restoring the Florida Everglades, why not create a new refuge from these U. S. Sugar Corporation lands? According to the National Research Council: "These lands offer the opportunity for additional water storage and treatment at a scale not previously envisioned in the CERP for the benefit of the Everglades Ecosystem".

Response: The Department continues to support restoration of the Florida Everglades by working closely with the U.S. Army Corps of Engineers and the State of Florida on CERP. The U.S. Sugar lands offer benefits for additional water storage and treatment critical to achieving the goals of Everglades restoration. However, the U.S. Sugar lands do not necessarily provide the same level of natural resource values for wildlife purposes as other lands. The lands identified within the proposed refuge were chosen because of their outstanding resource values and the opportunity to preserve ranching on working landscapes. The refuge will help to protect and restore one of the great grassland and savanna landscapes remaining in eastern North America.

(14) Does the Obama Administration support the waiver of the National Environmental Policy Act in the Modified Water Deliveries Tamiami Trail Bridge Project in Florida?

Response: Multiple analyses under the National Environmental Protection Act (NEPA) have been completed for both the Modified Water Deliveries and Tamiami Trail Bridge Projects and Congress included language in the FY 2009 Omnibus Appropriations Act directing the immediate implementation of the Tamiami Trail one-mile bridge project. The Department will continue fulfilling its legal responsibilities under federal law to carry out these projects so as to restore the Everglades.

National Wildlife Refuge Fund

(1) How much did the Obama Administration request that the Congress appropriate for refuge revenue sharing in FY'12?

Response: The Administration did not request appropriated funds for refuge revenue sharing payments for FY 2012. However, the Service will continue to make payments to the counties with the revenue received from activities on refuges including timber harvesting, grazing, or right-of-way permits.

<u>Stormwater Treatment Areas (STA's)</u>

(1) Does the Fish and Wildlife Service intend to construct any Stormwater Treatment Areas (STAs) within the proposed Everglades Headwaters National Wildlife Refuge and Conservation Area?

Response: The Service does not intend to construct any Stormwater Treatment Areas (STAs). Instead, it proposes to adopt a more cost effective and more ecologically based approach of restoring the natural water storage function of degraded wetlands throughout the project area. Once restored to historic profile and conditions, the ecosystem service function of water storage capabilities from wetlands are virtually cost-free and require none of the intensive management and maintenance costs associated with managing STAs.

(2) When the Service indicates that the Everglades Headwaters National Wildlife Refuge and Conservation Area will help in the restoration of the Everglades what they are really talking about is stopping the sixty development projects that would result in new homes, new businesses, new shopping centers and thousands of new jobs that they would create. Isn't that correct?

Response: The Service recognizes the potential loss of important wildlife habitat to development within the project area if the project does not move forward; however, the purpose of the project is not to halt development. Rather, the Service is hoping to work with local communities to plan development that minimizes adverse impacts on fish and wildlife (e.g., siting development away from high priority wildlife habitats and core ranching areas, and within areas defined by those local communities as areas suitable for development). The Service would use a combination of refuge lands and easements to connect existing conservation lands. In particular, the goals of this Refuge are to work with others to create wildlife corridors, protect rare species, restore wetlands, protect the headwaters of the Everglades ecosystem, and provide outdoor recreation, while supporting working ranches and community development. As an example, the Service has been working closely with Osceola County to ensure that the Everglades Headwaters project area does not include properties within its urban growth boundary. Instead the refuge would provide green space and outdoor recreational opportunities close to areas of urban development.

Furthermore, the establishment of a new National Wildlife Refuge would contribute to the local economies both through the expenditures of federal dollars associated with the management and operation of the refuge, as well as the expenditures of visitors. Last year there were over 44

million visits to National Wildlife Refuges. Out of this total, nearly 3.7 million visits were to refuges in the State of Florida. The Department of the Interior estimated that the expenditures related with these visits contributed to a total economic output of $266 million and led to the creation of 2,647 jobs in the State.[1] Specifically, the Department estimates that within the State of Florida, the average per day trip-related expenditure was nearly $50.[2]

In addition to contributing directly to the economic output of local communities, National Wildlife Refuges also provide benefits to communities through their provision and restoration of critical ecosystem services. The Service is currently in the midst of a study to value the ecosystem goods and services provided by National Wildlife Refuges.[3] The study aims to measure the following ecosystem functions, goods, and services:

- Recreational fishing and hunting;
- Wildlife observation;
- Commercial fishing
- Carbon sequestration;
- Nutrient cycling (waste assimilation, water quality); and
- Storm and sea-level rise protection.

Although the results of the study have yet to be released, ancillary studies conducted by the Service estimated that DOI managed wetlands in the Mississippi Alluvial Valley were estimated to generate over $450 million ($2008) in similar ecosystem service values, and that Service management of Wildlife Protection Areas in the Prairie Potholes were estimated to generate $8.4 million in value.[4] Everglades Headwaters will provide similar, currently unmeasured, benefits to its surrounding and state-wide communities.

(3) Have you developed a model of how much phosphorus this development would cause and ultimately end up in Lake Okeechobee?

Response: The Service has not developed a model to predict the amount of phosphorus an additional 60 developments would add to the phosphorous load entering Lake Okeechobee. However, the Service has identified approximately 23,065 acres of non-functioning wetlands which could potentially be restored to provide the ecosystem service function of reducing levels of phosphorus going into Lake Okeechobee, regardless of whether these developments occur. The Service is in discussions with partner agencies to quantify the specific amounts of phosphorous which the Everglades Headwaters project could potentially remove.

Submitted by Congressman Dennis Ross of Florida

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[1] Table A3-3 State Level Employment and Output Impacts for Recreation Visits. The Department of Interior's Economic Contributions. June 21, 2011. p. 95.

[2] Ibid. p. 121.

[3] Ibid., p. 49

[4] Ibid. p 35.

(1) Various federal agencies have overlapping missions. What role does the U.S. Fish and Wildlife Service (FWS) see for the Army Corps of Engineers (ACE) in the new Everglades Headwaters National Wildlife Refuge (NWR) and the surrounding area?

Response: The U.S. Army Corps of Engineers (Corps) would not have any direct role in managing the refuge once it is established; however, the Corps is an important partner and a key Federal agency in Everglades restoration.

(2) The Endangered Species Act has been used by environmental groups as the foundation for eliminating reasonable uses of resources. Given that the new areas of conservation include species such as the black bear, panther, and others, how will FWS balance the needs of the community and those of the new Everglades Headwaters NWR?

Response: The Service uses a variety of flexible tools to conserve ESA listed and non-listed species. Those tools make species conservation compatible with a variety of other resource uses. For example, bear and panther conservation have proven compatible with ranching, agriculture, and commercial forestry operations. The flexibility provided by the Endangered Species Act has enabled the Service to develop partnerships that allow economic products and conservation benefits to be derived from the same landscape. Similarly, tools such as Habitat Conservation Plans (HCPs) and Candidate Conservation Agreements with Assurances (CCAAs) are being used to guide urban and economic development in ways that allow species to be conserved. The Service is committed to using all of these tools among others to balance conservation and other community needs in the Everglades Headwaters area.

(3) Phosphorus is extremely vital to the nation's agricultural production and our ability to feed our citizens as well as those across the world. Florida is the second largest source of phosphate in the U.S. and crop nutrient production has been an important contributor to Florida's economy. What will be the economic impact of the Everglades Headwaters NWR refuge and surrounding conservation area on the mining sector? Have the agencies considered any measures to ensure that mining will remain a viable sector of Florida's economy as you encourage the expansion of conservation areas?

Response: The majority of known phosphate deposits in central Florida are located within the Central Florida Phosphate District. This area is outside the proposed Everglades Headwaters National Wildlife Refuge and Conservation Area; therefore, it is unlikely the proposed project would affect proposed phosphate mining projects.

(4) The FWS and the National Marine Fisheries Service have actively advocated for the closure of mining operations in North Carolina and other states, citing the need to protect native species and local fisheries. Will FWS advocate for similar limitations on mining in central Florida or will you commit to balancing all uses of natural resources in the region?

Response: In general, the Service works to balance uses of natural resources while ensuring full compliance with federal laws, regulations, and responsibilities. Each project is reviewed for its discrete impacts to the resources the Service is entrusted to conserve for the American public.

For projects that require Clean Water Act permit authorization, the Service works closely with the Environmental Protection Agency, U.S. Army Corps of Engineers, and state agencies on reviewing project plans and alternatives to identify ways to avoid and minimize adverse impacts to trust resources, and identify measures to mitigate for unavoidable adverse impacts. Recent actions involving phosphate mines in North Carolina focused on air quality, estuarine habitat, and fisheries impacts. The Service has a responsibility for natural resources under its jurisdiction, and the focus of its involvement was to ensure the impacts were minimized, and the unavoidable impacts were mitigated in a biologically sound manner.

(5) The FWS has been criticized for prohibiting or severely restricting certain activities in conservation areas such as hunting, ATV/OHV, watersports and other recreational activities. The FWS cites environmental concerns when defending its position. What are the current environmental concerns the FWS has and what limitations on uses of the proposed conservation areas are under consideration? Can you give your commitment that limitations on public uses will not increase?

Response: All lands that the Service is considering acquiring in the Everglades Headwaters project area are currently in private ownership and therefore currently closed to public use. Acquisitions for the proposed national wildlife refuge would therefore result in an increase in public access.

The National Wildlife Refuge System Administration Act requires that any activity occurring on a national wildlife refuge be compatible with the purpose of that individual refuge as well as the overall mission of the Refuge System. The purposes for establishing the proposed Everglades Headwaters National Wildlife Refuge are to protect the headwaters of the Everglades; conserve one of eastern North America's last grassland and longleaf pine savanna landscapes; protect threatened and endangered species by creating wildlife corridors and restoring wetlands; protect up to 289 at-risk species that occur across the Kissimmee River Valley; and help protect the Everglades watershed. The Service recognizes hunting as a priority public use activity on national wildlife refuges and is working closely with the Florida Fish and Wildlife Conservation Commission to ensure that hunting opportunities will occur on refuge lands as part of the State's Wildlife Management Area (WMA) program. ATV/OHV use that supports compatible wildlife-dependent recreation, such as hunting, will be allowed on designated trails and roads. Other recreational activities the Service anticipates supporting include fishing, environmental education and interpretation, wildlife observation and photography, and hiking.

(6) The FWS has criticized the State of Florida for passing legislation that creates flexibility in meeting phosphorus reduction levels. Does FWS support finding flexible means to protect natural resources?

Response: The Service adheres to its mission of "working with others, to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people." Our ability to accomplish our mission is enhanced greatly by our continuing efforts to understand and respect the perspectives of all stakeholders; by forming partnerships and "working with others"; and by being flexible in finding solutions. Examples include our development of flexible programs to conserve at-risk species, such as Candidate Conservation

Agreements with Assurances. We believe that the Everglades Headwaters National Wildlife Refuge and Conservation Area proposal represents a similar innovative approach to addressing high priority natural resources conservation. The proposal seeks to connect and protect habitat corridors by using a combination of conservation easements and fee title acquisitions acquired from willing sellers to complement areas already protected by the State, the Department of Defense, and other entities. The easements will help conserve natural resources while allowing ranchers to continue their traditional way of life. Fee title acquisitions will conserve natural resources, while enhancing the local economy by expanding recreational opportunities for hunters, anglers, and others who want to experience the outdoors.

In regards to phosphorus reduction levels and Everglades restoration, the Service follows water quality requirements mandated by law.

(7) The FWS has stated numerous times that the funding to create and expand the Everglades Headwaters NWR is derived from mineral leasing, timber sales, and oil and gas revenues. Does the FWS understand that maintaining a balance among uses of our natural resources is critical to the continuing protection of the same resources? What specific examples from 2010 or 2011, can you cite that demonstrate the FWS takes such a balanced approach?

Response: The Service plans to acquire lands and interests in lands for the Everglades Headwaters NWR and Conservation Area through the Land and Water Conservation Fund (LWCF). The LWCF derives the majority of its receipts from a portion of federal revenue from off shore oil and gas drilling. The annual authorization ceiling for LWCF is $900 million.

The Service keenly recognizes that there are multiple uses for natural resources and seeks a balanced approach to natural resources conservation as appropriate under applicable laws. The Service focuses on implementing the Federal laws under our jurisdiction, such as the National Wildlife Refuge System Administration Act.

The Service's mission is "working with others, to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people." Part of working with others is to strike a balance between competing uses of natural resources and conservation of those same resources. One example is the many units of the National Wildlife Refuge System that support wildlife dependent uses of refuges, such as hunting and fishing. Most of the 555 units of the Refuge System, each of which was established for specific conservation purposes, are open to a variety of public uses that are important elements of local economies. For example, fishing opportunities are supported at 18 of the 28 refuges in Florida. Those refuges supported 811,411 fishing visits in 2010.

On the Delta and Breton National Wildlife Refuges, oil and gas operations began in 1942 and continue today, yet these refuges provide unparalleled habitat for marsh and coastal species, and maintain coastal protection through barrier islands for the states along the central Gulf of Mexico coast. On the Lower Rio Grande Valley refuge all subsurface mineral rights are privately held and exploration and production activities are ongoing, while the Refuge also provides habitat for numerous coastal, wetland, and upland species. Much of the land purchased by the Refuge has

been, and continues to be, actively cultivated. The Refuge has developed an extensive cooperative farming and revegetation program that restores between 750 and 1000 acres of farmland per year to native habitat. The earliest restoration efforts have matured to produce habitats that are harboring native species of plants and animals that cannot be seen elsewhere in the United States.

Other examples in the Refuge System of a balanced approach are the establishment of Conservation Areas that allow traditional uses of natural resources – such as grazing – to be maintained, while ensuring permanent protection of key habitat for fish and wildlife. The Flint Hills Legacy Conservation Area provides landscape-scale conservation using conservation easements. Conservation easements are voluntary legal agreements between landowners and government agencies or qualified conservation organizations. Easements typically limit commercial or subdivision development, but allow for compatible traditional uses such as livestock grazing and haying. Unlike fee-title acquisitions, the land ownership and property rights remains with the participating landowner. In the case of Flint Hills, about 90 Tall-grass prairie species, several birds of conservation concern and a diverse assemblage of freshwater fish and mussels benefit from this program. The establishment of the proposed Everglades Headwaters National Wildlife Refuge on Conservation Area would follow a similar balanced approach that allows grazing to continue while conserving habitat for wildlife.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 13 2012

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

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Management to questions for the record submitted following the Friday, May 13, 2011, oversight hearing on: *"American Energy Initiative: Identifying Roadblocks to Wind and Solar Energy on Public Lands and Waters."*

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 Edward J. Markey, Ranking Member
Committee on Natural Resources

House Natural Resources Committee
May 13, 2011
Committee Hearing on American Energy Initiative:
Identifying Roadblocks to Wind and Solar Energy on Public Lands and Waters,
Part I – Department of Interior Officials

Questions for the Record for BLM Director Robert Abbey

1. Mr. Abbey - There is at least one project that we know of that was encouraged by BLM to hasten development in order to be placed on the "fast-track" list and take advantage of Treasury grants. We also know this project suddenly had to stop construction due to a last-minute issue surrounding the golden eagle - despite the fact that there had been extensive research done showing the project did not endanger golden eagles - so much so that a local BLM agent decided the project had met all requirements, only to have this decision overturned by another BLM official. In the meantime, the project lost out on approximately $45 million dollars in federal stimulus funding. Can you elaborate on this? Does this happen often in the BLM process - that a project is suddenly forced to halt construction due to a seemingly last-minute change of plans by BLM? Why would BLM encourage companies to speed up development to pursue the fast-track process only to have their permit not approved and their project suddenly stopped?

Answer: The Bureau of Land Management's (BLM) review of renewable energy projects, including "fast track" projects, reflects a policy approach that focuses on environmentally-responsible development of renewable energy resources on the public lands with a fair return to the American people for the use of their resources. Although the "fast track" projects were identified as those projects that were far enough along in the permit review process to potentially be approved in 2010, these projects still were subject to full and comprehensive environmental review and subject to compliance with all laws and regulations.

The U.S. Fish and Wildlife Service (FWS) is a close partner with the BLM in the processing of renewable energy applications and plays an integral role in ensuring that projects comply with the Endangered Species Act, the Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act. The BLM is working closely with the FWS to keep projects on schedule, while ensuring that we comply with the requirements of these laws and incorporate appropriate mitigation measures in any approvals of these projects.

2. In 2011, BLM created a "priority list" of nineteen projects that are eligible for expedited permit approval by the end of the year - as of July, BLM had approved one geothermal project. It seems to me that despite the existence of the "fast track" program, it has not resulted in the increased development of renewable energy resources on BLM land. What does BLM plan to do in the remaining months of the year to ensure the permitting of the remaining 18 projects on the list?

Answer: The Department of the Interior and the BLM have made the development of renewable energy on the public lands a high priority. The BLM has made significant progress in the approval of solar, wind, and geothermal projects in 2010 and continuing into this year. The BLM will continue to ensure environmentally-responsible development of renewable energy resources on the public lands and require full and comprehensive environmental review of projects and compliance with all laws and regulations.

In 2010, the BLM approved the first nine large-scale solar energy projects on the public lands in California and Nevada, the first wind energy project on public lands in Nevada, and a geothermal project in Nevada. These projects are permitted at over 4,000 megawatts of electricity, enough to power close to 1 million homes and create thousands of jobs. So far this year the BLM has approved four additional solar projects in California, another wind project in Oregon, and two geothermal projects in Nevada that are on the "priority" projects list for this year. These projects represent another 1,440 megawatts of capacity. The other projects on the BLM "priority" projects list for this year are currently on schedule.

3. In creating these fast track and priority lists, I have to assume that since BLM considers these "priority" projects, they dedicate a significant amount of resources to the approval of these permits and may have limited resources to handle the other numerous permits that are waiting for approval from BLM. If a project is not on the 2009 "fast track" list or on the 2011 "priority" list - does that project fall by the wayside because BLM lacks sufficient resources? Or do they essentially have to "wait in line" behind the priority projects before its application is considered for approval?

Answer: The BLM is continuing to work on other projects that are not on the "fast track" or "priority" project lists. The "fast track" and the "priority" projects represent those projects that are far enough along in the permit review process to potentially be able to be approved in a more timely manner. It is important to note that not all renewable energy project applications are equal - they represent different technologies, different areas, and are at different stages in the application process. The BLM receives applications for development at various stages of completeness and works with the applicants through a pre-screening and review process to improve their applications. The BLM is also working in cooperation and consultation with partner agencies in the reviews of these projects before proceeding with the processing of applications. Many projects that are not included on the 2011 priority list have begun the environmental review process and may not be completed until 2012.

4. One of the biggest problems with NEPA is the duplication of responsibility among resource agencies, such as the conflict between the BLM Sensitive Species List and the Fish and Wildlife Service Candidate, Threatened and Endangered Species List. This fragmentation and duplication adds greatly to the problem of coordination of NEPA with other laws and with conflicting agency missions. Under most current practices, a project often proceeds under NEPA in a "best public fit scenario," only to be substantially delayed by staff-level biases, one-sided interpretation of policy memorandums and guidance documents, and exceptionally broad interpretations of permitting and analysis

requirements. How does the BLM plan to use the RECO offices and staff to effectively minimize this type of duplication?

Answer: The objective of RECO offices is to facilitate the expeditious processing of applications for renewable energy projects on the public lands. However, the close collaboration with other agencies does not mean the BLM can abdicate its responsibility to comply with federal laws and regulations, even if those laws may be viewed by some duplicative of other agencies' laws and mandates. We will continue, however, to minimize and streamline our procedures with other agencies to the greatest extent possible.

5. The BLM manages 120 million acres of land, and I often hear that our country has some of the best solar resources in the entire world. Of this 120 million acres, only 22 million acres would be available for right of way applications for solar development. In your testimony you state that 677,400 acres of BLM land have been identified as solar energy zones - which would streamline solar energy production. Can you explain to me why, if we have such extensive solar resources, BLM considers less than 1 % of its land viable for streamlined solar energy development?

Answer: Utility-scale solar energy development requires large tracts of land, intensively developed, for a single commercial use. The BLM has to date approved thirteen solar projects on the public lands which range in size from 421 acres to over 7,000 acres (roughly 11 square miles). These are very large projects. Through project specific environmental reviews and the ongoing Solar Programmatic Environmental Impact Statement (EIS) effort, we have confirmed that these large projects can have significant environmental impacts on unique resources on the public lands managed by the BLM. The BLM's long term goal is to streamline solar energy development in places that are well-suited for that type of development and that have relatively few resource conflicts.

The BLM manages approximately 245 million acres of public lands. Of these lands, the 677,400 acres that are currently being studied as potential solar energy zones are believed to have the best potential to meet those objectives based on initial screening of resource conflicts. It is estimated that this acreage within the solar energy zones alone has the potential for some 60,000 megawatts of capacity, or 2 1/2 times the reasonable foreseeable development demand identified in the Solar Programmatic EIS over the next 20 years. Other BLM public lands may also be well-suited to development, but proposed projects on these lands are likely to present more uncertainty and require more rigorous environmental reviews. By identifying areas with the least conflicts and highest resources potential, and providing analysis of these lands that will help developers make their investment decision, the BLM's "smart from the start" approach takes much of the guesswork out of siting sensible, responsible renewable energy development projects.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 13 2012

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

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Ocean Energy Management to questions for the record submitted following the Friday, May 13, 2011, oversight hearing on: *"American Energy Initiative: Identifying Roadblocks to Wind and Solar Energy on Public Lands and Waters."*

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 Edward J. Markey, Ranking Member
Committee on Natural Resources

Questions for the Record

May 13: Renewables – Administration

1. **Under the Smart from the Start program, the Department of the Interior plans to identify priority wind energy areas for potential development and improve coordination with local, state, and federal partners in order to accelerate the leasing process. However, after identifying these areas, even if no significant impacts are identified, comprehensive site-specific NEPA will still need to be conducted for the construction of any individual wind power facility. As we both know, the NEPA process can be a years long approval process, costing significant capital, and as we've seen onshore, even if construction on a project does begin, it can be stopped at any time due to sudden environmental concerns. How to you plan to ensure offshore wind development will not be plagued with the same NEPA problems that have in numerous cases stopped projects mid-development for an indefinite amount of time?**

   Secretary Salazar issued Secretarial Order 3285 in March 2009, making the production, development, and delivery of renewable energy top priorities for the Department. Under *Smart from the Start* initiated in November 2010 for offshore wind energy, the Department has assigned a high priority to identifying Wind Energy Areas (WEAs) where wind energy resource values are high and environmental values and use conflicts are low. The WEAs are developed in close consultation with federal, state, local, and tribal governments and other stakeholders, such as commercial fishing and other maritime industries, to identify the most suitable areas for offshore wind leasing and development in an up-front planning process. We believe that this approach will go a long way in eliminating or minimizing environmental concerns and use conflicts that otherwise could arise through the NEPA process. The *Smart from the Start* approach allows us to reduce controversy and delay in completing the appropriate environmental reviews and approvals relating to commercial wind leases, as well as transmission rights-of-way to link offshore wind installations to facilitate delivery of renewable energy generation to consumers.

2. **The offshore wind industry has certainly had its share of challenges over the past decade- the one project we have to use as a reference point took ten years simply to permit, not to mention the time it will take to actually be constructed and go online. Obviously a ten year approval process is not a good precedent to advancing offshore wind energy in this country. What lessons has BOEMRE learned from the Cape Wind project and how will your experiences with Cape Wind impact BOEMRE's permitting process as offshore wind continues to be developed and as the industry begins to grow.**

The Cape Wind project is extraordinary and unique in that when it was proposed, it was the first project of its kind in the U.S. and it was proposed in the absence of clearly defined federal permitting authority and processes. Cape Wind Associates (CWA) filed its application with the Army Corps of Engineers (USACE) in November 2001, pursuant to that agency's jurisdiction over obstructions in navigable waters. It was not until passage of the *Energy Policy Act of 2005* (EPAct) that jurisdiction over Outer Continental Shelf (OCS) renewable energy activity, including this project, was clearly defined and delegated to BOEMRE. Although USACE had prepared and issued a draft environmental impact statement (EIS), BOEMRE had to restart the environmental review to address the new requirements of the EPAct and to reflect BOEMRE's broader scope of authority. BOEMRE prepared draft and final EISs and related NEPA documents, provided for public participation, and completed required consultations.

The most obvious lesson from the Cape Wind experience is that clearly defined permitting authorities and process requirements, such as those set forth in the EPAct, are necessary to implement OCS renewable energy projects. A related lesson is that thorough up-front planning and analysis to identify WEAs should lay the foundation for smoother, expedited reviews and approvals of future projects. These and other lessons learned from the Cape Wind experience—for example, how to proceed better with consultations and analyses required by other applicable laws—are being applied in our efforts to make the OCS wind review process as efficient as possible. As we have proceeded under EPAct, the implementing regulatory framework, and *Smart from the Start* to identify WEAs, we also have consulted with stakeholders on how best to manage a more efficient leasing process. We believe we have made great strides in this regard.

3. **Director Bromwich, the Administration has stated that developing renewable energy is a priority to this Administration, however, as we saw with the Cape Wind project, which took ten years to permit, obtaining necessary permits and licenses for an offshore wind farm that spans multiple agencies creates major stumbling blocks and is often subject to delays. The average permitting process is estimated to take 7 years. What is BOEMRE doing to facilitate a smooth and timely permitting process for offshore wind development?**

Secretary Salazar's *Smart from the Start* initiative will identify Wind Energy Areas (WEAs) which are areas of the OCS that have high wind energy resource potential and relatively low environmental impact and potential use conflicts. BOEMRE will in most cases conduct an environmental assessment (EA) to analyze potential impacts associated with issuing leases and conducting site characterization and assessment activities. If the EA leads to a finding of no significant impact, we will be able to issue leases and will not have to prepare an environmental impact statement (EIS). This will allow developers to acquire

leases on an expedited basis and enable them to acquire necessary financing of their projects. BOEMRE will conduct a full EIS when the lessee submits a construction and operations plan for review.

Smart from the Start also calls for enhanced coordination on offshore wind within the federal government. The Department of the Interior has led the formation of the Atlantic Offshore Wind Interagency Working Group—which includes executive level officials from agencies in an important decision-making role in Federal offshore wind, including DOE, the Coast Guard, Commerce, Defense, the Environmental Protection Agency, the Council on Environmental Quality and other federal agencies—to facilitate the sharing of relevant data and awareness of the leasing process in different areas. BOEMRE is making useful information available, incorporating much of it in the Multi-purpose Marine Cadastre established pursuant to the EPAct's mandate for establishment of a coordinated mapping initiative.

BOEMRE also is issuing guidance documents to help OCS renewable energy developers comply with our regulatory requirements. For example, guidelines for providing information relating to geological and geophysical issues, hazards, and archaeological information for construction and operations plans were recently published. We continue to work closely with other agencies including the National Marine Fisheries Service and the U.S. Fish and Wildlife Service to develop survey guidelines for marine fauna, benthic habitat and avian resources. For all these reasons, we believe the permitting process has improved and will continue to become more efficient and timely.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 13 2012

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 Bureau of Land Management to questions for the record submitted following the Thursday, June 23, 2011, hearing on: "**H.R. 2170**-Streamlining Federal review to facilitate renewable energy projects; **H.R. 2171**-To promote timely exploration for geothermal resources under existing geothermal leases, and for other purposes; **H.R. 2172**-To facilitate the development of wind energy resources on Federal **lands; H.R. 2173**-To facilitate the development of offshore wind energy resources; and **H.R. 2176**-To dedicate a portion of the rental fees from wind and solar energy projects on Federal land under the jurisdiction of the Bureau of Land Management for the administrative costs of processing applications for new wind and solar projects, 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 Rush D. Holt, Ranking Member
Subcommittee on Energy and Natural Resources
Committee on Natural Resources

House Natural Resource Committee,
Subcommittee on Energy and Mineral Resources
Questions for the Record - Renewables Legislative Hearing

June 23, 2011
Panel 1

Questions for Deputy Director Mike Pool

1. In 2011, BLM created a "priority list" of 19 projects that are eligible for expedited permit approval by the end of the year - and so far, more than halfway through 2011, BLM has approved one permit for a single geothermal project. It seems to me that despite the existence of the "fast track" program, it has not resulted in the increased development of renewable energy resources on BLM land. At the rate of one approval every 6 months, BLM will have permitted two renewable energy "priority" projects. Does BLM plan to continue permitting at this rate or are there plans within BLM to expedite the approval process?

Answer: The Department of the Interior and the Bureau of Land Management (BLM) have made the development of renewable energy on the public lands a high priority. The BLM has made significant progress in the approval of solar, wind and geothermal projects in 2010 and continuing into this year. The BLM will continue to ensure environmentally-responsible development of renewable energy resources on the public lands and require full and comprehensive environmental review of projects and compliance with all laws and regulations.

In 2010, the BLM approved the first nine large-scale solar energy projects on the public lands in California and Nevada, the first wind energy project on public lands in Nevada, and a geothermal project in Nevada. These projects have a total capacity of over 4,000 megawatts of electricity, enough to power close to 1 million homes and create thousands of jobs. So far this year, the BLM has approved four additional solar projects in California, another wind project in Oregon, and two geothermal projects in Nevada that are on the "priority" projects list for this year. These projects represent another 1,440 megawatts of capacity. The other projects on the BLM priority projects list for this year are currently on schedule.

2. In your testimony you say that addressing a range of alternatives in projects reduces the likelihood of litigation. If this is the case, can you explain to us why projects seem to be constantly tied up in lawsuits, have been delayed due to pending lawsuits, and some projects have been plagued by multiple lawsuits?

Answer: The National Environmental Policy Act of 1970 (NEPA) requires that a range of alternatives be rigorously explored and objectively evaluated when considering proposed projects (40 CFR 1502.14(e) and 1505.1(e)). Considering a range of alternatives improves the Federal government's ability to accurately assess the likely impacts of a Federal action and to employ the consideration of alternative means to avoid, minimize and/or mitigate the types of

adverse impacts that, if not considered, often become the bases of lawsuits. Where lawsuits are filed, full consideration of a range of alternatives increases the defensibility of permits and the BLM's likelihood of prevailing in court.

BLM project decisions are very often litigated on the basis of other laws besides NEPA. For instance, one renewable energy project was recently delayed due to questions regarding the sufficiency of BLM's consultation with a local tribe, an issue unrelated to NEPA adequacy. Lawsuits have also been filed on other renewable energy projects regarding impacts to other resources, including biological resources. The courts have not granted any of the requests for Temporary Restraining Orders or Preliminary Injunctions on any of these other projects and all other priority projects are proceeding ahead and construction is underway on most projects. The BLM stands behind the adequacy of the environmental reviews for these projects and the decisions made to approve these projects.

3. One major solar project recently began construction again after being stopped as a result of faulty environmental work. Does the Administration have a plan in place to prevent this from happening in the future?

Answer: The solar project referenced in the question is the Ivanpah solar project, located in southern California. This 370 megawatt solar power tower project was approved in October 2010. Construction on a portion of the project was temporarily suspended at BLM's request in early 2011 while the U.S. Fish and Wildlife Service prepared an updated biological opinion to revisit methodologies used to estimate the numbers of desert tortoises potentially on the site. The temporary suspension was to allow for preparation of an updated biological opinion and not a result of faulty environmental work.

On June 10, 2011, the U.S. Fish and Wildlife Service issued a new biological opinion for the project and determined that the project is not likely to jeopardize the continued existence of the desert tortoise. The prompt evaluation of new information is an example of how the Department is adaptive and responsive to changing conditions on-the-ground.

4. Mr. Pool, during the hearing your testimony left the impression that the geothermal bill would allow drilling in National Parks and could harm significant national thermal features, such as "Old Faithful." Under what authority would the BLM lease National Park land for geothermal or other energy development?

Answer: The BLM has not issued any geothermal leases on National Park system lands and has no authority to issue such leases. All National Park system lands are closed to geothermal leasing. If a geothermal lease parcel is nominated for leasing near a National Park, the BLM in consultation and coordination with the National Park Service must determine if any leasing and subsequent development would likely impact a "significant thermal feature" within a unit of the National Park system. There are no provisions in H.R. 2171 that would change these restrictions on geothermal leasing on or adjacent to National Park system lands.

5. Doesn't the 1988 amendments to the Geothermal Leasing Act require the Department of the Interior to identify significant geothermal features in National Parks and prohibit the leasing of federal land adjacent to National Parks with these features if development of the geothermal resources outside of the Park would adversely impact the geothermal features within the Park?

Answer: Yes, the 1988 amendments to the Geothermal Steam Act require the Department of the Interior to identify significant geothermal features in National Parks and prohibit the leasing of federal lands adjacent to National Parks with these features if development of the geothermal resources outside the Park would adversely impact the geothermal features within the Park.

6. Can you tell the Committee how many leases BLM has issued that would impact these significant geothermal features in the National Parks (include in the response an analysis of the distance to the closest BLM lease of all significant geothermal features in National Parks [on federal lands?] (as identified in the Geothermal Steam Act (30 USC CHAPTER 23 § 1026 (a)(1))?

Answer: The BLM has issued no leases that impact significant geothermal features in any National Park. The BLM has reviewed its leasing data and finds that no geothermal leases have been issued within approximately 45 miles of any of the National Parks identified in the Geothermal Steam Act (30 USC Chapter 23 § 1026(a)(1)).

7. It is the Committee's position that the bill as drafted would have no impact on BLM Leasing decisions for geothermal resources. Can you explain how the bill would impact BLM leasing decisions, including how your response to Mr. Markey's statement/question that the bill would impact significant geothermal resources in National Parks like Yellowstone, could be accurate?

Answer: There are no provisions in H.R. 2171 that would change the existing statutory restrictions on geothermal leasing on or adjacent to National Park system lands. The bill as drafted would have no effect on the BLM lease review process and would not impact significant thermal features in any National Park, including Yellowstone National Park.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 13 2012

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

Dear Mr. Chairman:

Enclosed are responses prepared by the United States Fish and Wildlife Service to questions submitted following the Subcommittee's October 18, 2011, oversight hearing on *"Questionable Fish Science and Environmental Lawsuits: Jobs and Water Supplies at Risk in the Inland Empire."*

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

U.S. Fish and Wildlife Service
Follow-up Questions for the Record
Field Hearing entitled, *"Questionable fish Science and Environmental Lawsuits: Jobs and Water Supplies At Risk in The Inland Empire"*

October 18, 2011

Questions from Congresswoman Grace Napolitano:

The committee received testimony from the hearing where witnesses stated that there is no new science to justify the 2010 final rule and that the same science has been used for both the 2005 and 2010 ruling.

Question 1: What science was used for the preliminary and final rule for designation of critical habitat in 2005? What science was used in 2010?

Response: Critical habitat designations are made on the basis of the best available scientific and commercial information at the time of designation. The science used in the 2005 and 2010 critical habitat designations are explained in each of the final rules (70 FR 426: January 4, 2005 and 75 FR 77962: December 14, 2010). The 2010 rule incorporates information used in the 2005 rule and includes information and data generated since 2005. The criteria and methods used to identify and delineate the areas designated as critical habitat include:

(1) Mapping historical and current digital occurrence data for Santa Ana sucker;

(2) Delineating the width of occupied areas to include areas that provide sufficient riverine and associated floodplain area for breeding, feeding, and sheltering of adult and juvenile Santa Ana suckers and for the habitat needs of larval stage fish and connectivity within and between populations;

(3) Delineating the upstream and downstream extents of the areas to either the point of a natural or manmade barrier or to the point where the instream gradient exceeds a 7 degree slope;

(4) Evaluating stream reaches to determine if additional occupied or unoccupied areas are essential for the conservation of this species and should be included;

(5) Adjusting the width to included areas containing: (a) wide floodplains; (b) complex channels (such as alluvial fans and braided channels); and (c) a mosaic of loose sand, gravel, cobble, and boulder substrates in a series of riffles, runs, pools, and shallow sandy stream margins needed to provide stream and storm waters necessary to transport sediments to maintain preferred substrate conditions in the downstream occupied portions of the Santa Ana River and Big Tujunga Creek, respectively; and

(6) Delineating the upstream limits of some river reaches by identifying the upstream origin of sediment transport in these tributaries to provide stream and storm waters necessary to transport sediments to maintain preferred substrate conditions in the

downstream occupied portions of the Santa Ana River and Big Tujunga Creek, respectively

See the **Criteria Used To Identify Critical Habitat** section of the final rule for a detailed discussion (70 FR 426: January 4, 2005 and 75 FR 77962: December 14, 2010). FWS also included the literature cited in attached files, which are part of decisional records for each rule and contain all the literature used in our rulemaking process. Additionally, in accordance with our peer review policy published on July 1, 1994 (59 FR 34270), FWS solicited review of our rule by knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles pertinent to the species. FWS reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for Santa Ana sucker. The peer reviewers generally concurred with FWS methods and conclusions and provided additional information, clarifications, and suggestions that were incorporated into the revised final 2010 rule.

Question 2: What did the science indicate in 2005?

Response: The decisional record and the SUMMARY of the 2005 revised final rule (70 FR 426: January 4, 2005) identified 23,719 acres of habitat essential to the conservation of the species.

Question 3: Why was there a change in the designation between 2005 and 2010?

Response: The 2010 final revised rule updates our 2005 final critical habitat designation for Santa Ana sucker with the best available data. For some areas that were analyzed in 2005, new information led us to either add or remove an area from the proposed revised critical habitat designation and subsequently from this final rule. A summary of the changes between the 2005 and 2010 designation include:

(1) Refining the primary constituent elements (PCEs) to more accurately define the physical and biological features that are essential to the conservation of Santa Ana sucker;

(2) Revising criteria to more accurately identify critical habitat;

(3) Improving the mapping methodology to more accurately define critical habitat boundaries and better represent areas that contain PCEs;

(4) Reevaluating areas considered for exclusion from critical habitat designation under section 4(b)(2) of the Act; and

(5) Adding to, subtracting from, and revising those areas previously identified as essential to the conservation of Santa Ana sucker to accurately portray lands that meet the definition of critical habitat based on the best scientific data available. One example of a change from 2005 to 2010 is the inclusion as critical habitat of stream reaches which provide coarse sediments to downstream occupied areas. These coarse

sediments provide habitat features required for spawning and foraging for the species in the occupied downstream areas.

For a detailed explanation, please see the **Summary of Changes From Previously Designated Critical Habitat** and **Summary of Changes From the 2005 Final Critical Habitat to This Final Critical Habitat Designation** sections and Table 1 of the final rule (75 FR 77962; December 14, 2010).

Question 4: Was the 2005 final rule influenced or affected in anyway by political interference?

Response: Under section 4(b)(2) of the Endangered Species Act (Act), the Secretary may exercise his discretion to exclude a specific area from critical habitat designation if the determination is made that the benefits of excluding the area outweigh the benefits of inclusion. The rationale for any exclusion is usually included in our final rulemakings.

The 2005 revised final rule (70 FR 426; January 4, 2005) signed by the former Assistant Secretary for Fish and Wildlife and Parks identified 23,719 acres of essential habitat for the Santa Ana sucker. However, only 8,305 acres of essential habitat was included in the final designation.

Neither the 2005 rule nor its record explain the discrepancy between the 23,719 acres of essential habitat identified in the SUMMARY of the final rule as essential to the conservation of the species and the 15,414 acres of essential habitat that were excluded from designation.

Question 5: Why was the 2005 rule challenged? What caused the FWS to reevaluate and revisit the 2005 rule?

Response: On November 15, 2007, several environmental groups filed suit against U.S. Fish and Wildlife Service (FWS) alleging the 2005 final designation of critical habitat violated provisions of the ESA and the Administrative Procedure Act [(*California Trout, Inc., et al.,* v. *United States Fish and Wildlife, et al.,* Case No. 07–CV–05798 (N.D. Cal.) *transferred* Case No CV 08-4811 (C.D. Cal.)]. The plaintiffs alleged that our January 4, 2005, final revised critical habitat designation for the Santa Ana sucker was insufficient for various reasons, including scientific interference, and that FWS improperly excluded areas in the Santa Ana River as critical habitat. Subsequently, FWS entered into a settlement agreement to reconsider critical habitat for the Santa Ana sucker, and to submit a proposed revision to the *Federal Register* on or before December 1, 2009. The proposed rule to revise critical habitat for the Santa Ana sucker was published in the *Federal Register* on December 9, 2009 (74 FR 65056).

Status of the Species:

Question 1: Testimony received from witnesses indicated that the species has not been in a decline since its listing. What is the status of the species now? Has there been a decline of the species since its initial listing?

Response: FWS is required by section 4(c)(2) of the ESA to conduct a status review of each listed species at least once every 5 years. The purpose of a 5-year review is to evaluate whether or not the species' status has changed since it was listed. In a 5-year review, FWS considers the best available scientific and commercial data on the species, and focuses on new information available since the species was listed or last reviewed. On March, 10, 2011, FWS completed a 5-year review for the Santa Ana sucker. Based on the information that the threats still affecting the species and its habitat persist, FWS recommended no change in the threatened status of the species.

The following text is an excerpt from the synthesis section of our March 10, 2011, 5-year review for this species:

> *"At listing, Santa Ana suckers occurred at six extant occurrences among three watersheds (two in the Santa Ana River, three in the San Gabriel River, and one in the Los Angeles River). These occurrences were threatened by habitat destruction, natural and human-induced changes in stream flows, urban development and land-use practices, intensive recreation, introduction of nonnative predators, and risks associated with small population size. Santa Ana suckers have persisted at the same six occurrences, but are confined within a smaller portion of their historical range. The number of individuals within these areas has also declined and their remaining habitat is highly fragmented and degraded. Since listing, threats have continued to increase in magnitude and impacts to the habitat have been amplified rangewide, increasing the potential extirpation of the species in two of the three watersheds (Santa Ana River and Los Angeles River)."*

The full 5-year review has been attached and provided.

Questions from Congressman Ken Calvert:

Question 1: In 2005, the U.S. Fish and Wildlife Service designated critical habitat to protect the Santa Ana Sucker. What new scientific evidence has been found that lead the service to conclude that a new critical habitat designation was necessary?

Response: At the time of listing in 2000 (65 FR 19686; April 12, 2000), Santa Ana suckers occurred at six extant areas among three watersheds (two in the Santa Ana River, three in the San Gabriel River, and one in the Los Angeles River). These occurrences were threatened by habitat destruction, natural and human-induced changes in stream flows, urban development and land-use practices, intensive recreation, introduction of nonnative predators, and risks associated with small population size. Santa Ana suckers have persisted at the same six occurrences, but are confined within a smaller portion of their historical range. The number of individuals within these areas has also declined and their remaining habitat is highly fragmented and degraded. Based on information gathered since listing, threats to the species have continued to increase in magnitude and impacts to the habitat have been amplified rangewide, increasing the potential extirpation of the species in two of the three watersheds (Santa Ana River and Los Angeles River).

A summary of the changes between the 2005 and 2010 designation include:

(1) Refining the primary constituent elements (PCEs) to more accurately define the physical and biological features that are essential to the conservation of Santa Ana sucker;

(2) Revising criteria to more accurately identify critical habitat;

(3) Improving the mapping methodology to more accurately define critical habitat boundaries and better represent areas that contain PCEs;

(4) Reevaluating areas considered for exclusion from critical habitat designation under section 4(b)(2) of the Act; and

(5) Adding to, subtracting from, and revising those areas previously identified as essential to the conservation of Santa Ana sucker to accurately portray lands that meet the definition of critical habitat based on the best scientific data available. One example of a change from 2005 to 2010 is the inclusion as critical habitat of stream reaches which provide coarse sediments to downstream occupied areas. These coarse sediments provide habitat features required for spawning and foraging for the species in the occupied downstream areas.

For a detailed explanation, please see the **Summary of Changes From Previously Designated Critical Habitat** and **Summary of Changes From the 2005 Final Critical Habitat to This Final Critical Habitat Designation** sections and Table 1 of the final rule (75 FR 77962; December 14, 2010).

Question 2: Areas of dry riverbed have been included in the revised Critical Habitat for the Santa Ana Sucker. How many Santa Ana Suckers live in dry riverbed? Why was dry riverbed included in a Critical Habitat designation for the Santa Ana Sucker? Is there any precedent for such an action?

Response: While there may be extended periods of time where portions of riverbeds associated with the critical habitat designation for Santa Ana sucker are dry, these areas are essential because they provide for coarse sediment delivery to areas downstream that are occupied by the species during seasonal flows or high water events. These coarse sediments provide habitat features required for spawning and foraging for the species. Our previous rulemakings identified unoccupied portions of the Santa Ana Wash as essential for the conservation of the species.

In the 2004 final rule (69 FR 8839; February 26, 2004) designating critical habitat for the Santa Ana sucker, issued simultaneously with the 2004 proposed critical habitat designation, unoccupied portions of the Santa Ana Wash were identified as essential for the conservation of the species because they provide and transport sediment necessary to maintain the preferred substrates utilized by this fish (Dr. Thomas Haglund, pers. comm. 2004; Dr. Jonathan Baskin, Professor Emeritus, California State Polytechnic University, Pomona, pers. comm. 2004; NOAA 2003); convey stream flows and flood waters necessary to maintain habitat conditions for the Santa Ana sucker; and support riparian habitats that protect water quality in the downstream portions of the Santa Ana River occupied by the sucker (69 FR 8845).

In the 2010 revised final critical habitat designation for the Santa Ana sucker, FWS reaffirmed that spawning and feeding substrates (gravel and cobble), which are replenished by upstream sources, are essential to the reproductive ability and development of Santa Ana suckers in the downstream occupied reaches (Kondolf 1997, pp. 533–535, 536–537). The sections of the Santa Ana River above Tippecanoe Avenue in San Bernardino, City Creek, and Mill Creek (although not currently occupied) are essential for the conservation of the species since the Seven Oaks Dam has reduced the transport of coarse sediment and altered the natural flow in the downstream, occupied areas of the Santa Ana River. These sections are the primary sources of coarse sediment in the upper Santa Ana River watershed and additionally are part of the Santa Ana River hydrologic system (PCE1), and assist in maintaining water quality and temperature to occupied reaches of the Santa Ana River; therefore, these areas are essential for the conservation of Santa Ana sucker (75 FR 77978).

Question 3: In December of 2010, your agency revised the Critical Habitat Designation for the Santa Ana Sucker. Several Members of this Congress, including myself, contacted you in advance of your action requesting that the U.S. Fish and Wildlife Service take into account critically important economic and infrastructure concerns that were raised by a group of local stakeholders before that Critical Habitat Designation was made. Can you explain to us why your agency disregarded these concerns in issuing the revised habitat?

Response: All comments from Members of Congress and stakeholders were taken into consideration when making the revised final designation of critical habitat for the Santa Ana sucker. A draft of the economic analysis was made available for public review and comment. The final economic analysis quantified the economic impacts of all potential conservation efforts for Santa Ana sucker.

The economic impact of the proposed revised critical habitat designation was analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections that are already in place for the species (such as protections under the Act and other Federal, State, and local regulations). The baseline, therefore, represents costs incurred regardless of whether critical habitat is designated.

The "with critical habitat" scenario describes incremental costs attributable solely to the designation of critical habitat above and beyond the baseline costs. The Draft Economic Analysis qualitatively discusses the potential incremental economic benefits associated with the designation of critical habitat.

The analysis forecasts both baseline and incremental impacts likely to occur if FWS finalized the proposed revised critical habitat designation. The final analysis determined incremental impacts associated specifically with the designation of critical habitat could range from $14.3 to $450 million over the next 20 years in present value terms using a 7 percent discount. After consideration of the economic impacts, the Secretary did not exercise his delegated discretion under section 4(b)(2) of the Act to exclude any areas from the final critical habitat designation based on the economic impacts.

FWS also reviewed the "Husing" economic report and adjusted the potential economic impacts in the Final Economic Analysis for the designation. For example, the Husing report assumes that all water projects in Unit 1 (Santa Ana River/Plunge Creek) will no longer have access to water sources in critical habitat areas following critical habitat designation for sucker. Some of these projects are existing, ongoing projects, while others are planned future projects. The Husing reports estimate that the total annual volume of water needing replacement, beginning in 2010, is 125,800 acre-feet and then applies the current cost of State Water Project Water (Metropolitan Water District) Tier 2 rate of $594 ($811 less $217 treatment surcharge), raised at a rate of 2.97 percent over inflation over a 26 year period, to estimate the longer term costs of this loss. Husing does not discount his estimates, arriving at an undiscounted total value of $2.87 billion over 26 years.

Following receipt of public comments on this issue, FWS provided estimates of the likelihood of critical habitat impacts on projects identified in the Husing report. These are included in the Final Economic Analysis (Exhibit 3-3). In the Final Economic Analysis, FWS qualitatively provided its rationale as to why it concluded that the costs identified in the report were an overestimate and did not accurately reflect the incremental costs of the critical habitat designation (Industrial Economics 2010). FWS believes costs identified in the Husing report are overestimates because any projects with a Federal nexus that would impact the Santa Ana sucker would still require section 7 consultation with FWS. Therefore, many of the costs are actually not associated with the designation of critical habitat. Rather, they are baseline costs that would be incurred regardless of critical habitat designation. Also, FWS considers the assumption that all water diversions will be curtailed as was asserted in some of the comments received on the proposed rule to be speculative and not factually supported.

Significant economic and infrastructure concerns were expressed by stakeholders regarding the proposed designation of critical habitat in Plunge Creek above Seven Oaks Dam that is not known to be occupied by the species. In the final revised rule, FWS removed this area from designation.

Question 4: The Santa Ana Sucker was protected under an existing Habitat Conservation Plan and a Critical Habitat Designation, both of which had been in place for many years. Local agencies were working in partnership with your agency to study the fish and protect its future. Why was a revised Habitat Designation necessary and why was it necessary to designate new lands within the habitat conservation plan?

Response: Since the Santa Ana sucker was listed over a decade ago, FWS has worked with multiple jurisdictions, including 22 participating permittees, through the Western Riverside County Multiple Species Habitat Conservation Plan (Plan). FWS also have worked cooperatively with other Federal, State, and local agencies on the Santa Ana Sucker Conservation Program (Program).

In the 2010 revised final rule, FWS analyzed the benefits of including lands covered by the Plan and the Program in the final designation and the benefits of excluding those lands from the designation. Although both the Plan and Program have established valuable partnerships that are intended to implement conservation actions for Santa Ana sucker, potential future activities, not

addressed by either the Plan or Program but with a Federal nexus, could affect the sucker or its habitat and would be subject to the interagency consultation provisions of section 7 of the Act. In conducting the evaluation under section 4(b)(2) of the ESA, FWS determined the benefits of inclusion outweighed the benefits of excluding these areas because the designation will assist in achieving additional conservation not currently provided under the Plan or Program areas. The analysis and rationale are explained in in the final rule.

Furthermore, activities that were already permitted under the Western Riverside County Multiple Species Habitat Conservation Plan are not affected by the designation of critical habitat. FWS analyzed the potential loss or degradation of up to 376 acres of Santa Ana sucker critical habitat resulting from covered activities under the Plan and completed an amendment to the Biological Opinion for the Plan. Our Biological Opinion concluded that offsetting land conservation and adaptive management prescriptions provided by the Plan are sufficient such that the ecological function and value of the primary constituent elements for the Santa Ana sucker will not be appreciably diminished.

Question 5: Why did the USFWS decline to participate in the development of the Seven Oaks Dam Project? Since Santa Ana Sucker Habitat was being discussed, wouldn't it have been appropriate and prudent for the Service to participate?

Response: Congressional authorization enabled construction of Seven Oaks Dam. FWS consulted on effects of the project in 1989. A second consultation on operations of Seven Oaks Dam for flood control purposes was completed in 2002.

Recent hearings before the California State Water Resources Control Board took place to grant water rights for the purpose of appropriating water by direct diversion and storage to groundwater basins for beneficial use. The water rights decision outlined in the STATE OF CALIFORNIA STATE WATER RESOURCES CONTROL BOARD DECISION 1649 contains several orders including:

> *Order: 14. Nothing in this permit shall be construed as authorizing any diversions contrary to the provisions of the December 19, 2002 Biological Opinion issued by United States Fish and Wildlife Service for operation of Seven Oaks Dam, as may be revised in the future, including flow releases for downstream over-bank inundation to preserve State and federally listed threatened and endangered species and their habitat.*

Due to the Carlsbad Fish and Wildlife Office having an overwhelming consultation and litigation workload, driven in large part by deadlines that force the FWS to set priorities, the Service was unable to participate in the state water rights hearings.

Furthermore, because the operation of Seven Oaks Dam, in coordination with Prado Dam downstream, is currently permitted for flood control operations only (operations that regulate flows throughout the year in an effort to prevent catastrophic flow events downstream), and not for water storage purposes, the flow of water through the dam currently provides water necessary for reaches of the Santa Ana River downstream that are occupied by the Santa Ana sucker.

Notwithstanding the recent decision by the California State Water Resources Control Board to allow, under certain circumstances, up to 200,000 acre-feet to be diverted from the Seven Oaks Dam reservoir, storing water for the purpose of water conservation is not currently permitted?? by the U.S. Army Corps of Engineers for Seven Oaks Dam. Should the Corps of Engineers propose a reoperation of Seven Oaks Dam so water can be diverted for water conservation purposes, such action would constitute a project requiring consultation under section 7 of the ESA.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 25 2012

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

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Indian Affairs to the questions for the record submitted following the Tuesday, March 8, 2011, hearing on: "The effectiveness of federal spending on Native American programs, and on the President's FY 2012 budget request for the Bureau of Indian Affairs and the Office of the Special Trustee for American Indians."

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 Dan Boren, Ranking Member
Committee on Natural Resources
Subcommittee on Indian and Alaska Native Affairs

Questions by Subcommittee Chairman Don Young

1. In the Department's budget proposal, the Bureau of Indian Affairs (BIA) has identified five program realignments. Does the BIA plan to realign additional programs in the future? If so, could you enlighten us as to some of additional changes in store and how much you expect this would save taxpayers?

RESPONSE: At this time, there are no additional program realignments planned for the BIA. Should circumstances require a realignment of programs, the Department will advise the Subcommittee of the change, its purpose and any related savings.

2. The Department's most recently quarterly report to the Court in the *Cobell* case describes the Department's progress on implementing the Fiduciary Trust Model (FTM). One of the objectives for the land and natural resources component of the FTM is that "NEPA requirements are completed on a wide-area basis and result in less time needed for development projects." What steps is the Department taking to implement this component of the FTM?

RESPONSE: Presently there are select locations that are piloting environmental templates that are designed to address the common components of all National Environmental Policy Act (NEPA) studies and then adding in the needed project-specific components with the intent of reducing the over-all processing time. Our preliminary observation is that in cases that do not require an Environmental Impact Statement (EIS) we are seeing significant success and Environmental Specialists across the country are sharing their successes.

3. Why has the President not yet nominated a Special Trustee for American Indians? When will a nomination be made?

RESPONSE: The *American Indian Trust Fund Management Reform Act of 1994* specifies particular qualifications for a Special Trustee nominee: "demonstrated ability in general management of large governmental or business entities and particular knowledge of trust fund management, management of financial institutions, and the investment of large sums of money." Finding the appropriate person for the job who meets all those criteria is challenging. The Department continues its search for a nominee and will notify Congress as soon as nominee has been selected.

4. For several years, Indian tribes and tribal organizations have discussed transitioning functions of the Office of the Special Trustee to the Bureau of Indian Affairs. Is the Department of the Interior currently developing plans for such a transition? If so, will Indian country be consulted before any transition is implemented?

RESPONSE: At the same time that the *Cobell* settlement was announced, Secretary Salazar issued Secretarial Order 3292, directing the Department to establish the Secretarial Commission on Indian Trust Administration and Reform ("Commission") immediately upon final approval of the Settlement Agreement.

After consultation with trust beneficiaries and tribal leaders, the Secretary on November 30, 2011 announced the appointment of a Commission Chair and four members who have expertise in trust management, financial management, natural resource management and Federal agency operations.

The duties of the Commission will include:

- Conducting a comprehensive evaluation of the Department's Indian trust management.
- Reviewing the Department's provision of services to trust beneficiaries.
- Receiving input from the all interested parties, which should include conducting regional listening sessions.
- Evaluating the nature and scope of required audits of the Department's trust administration system.
- Recommending options to the Secretary to improve the Department's Indian trust management, including whether any legislative or regulatory changes are needed to implement such improvements.

Also, the Commission will consider the provisions of the *American Indian Trust Fund Management Reform Act of 1994* providing for the termination of the Office of the Special Trustee for American Indians (OST), and make recommendations to the Secretary regarding the future of OST. The Commission is to complete its work within 24 months from the date of its establishment.

5. Undertaking the Trust Land Consolidation Fund is a huge challenge: the Department estimates there are 4.1 million fractionated interests of Indian land on nearly 100,000 fractionated tracts. With no funds requested in the President's Budget Request for Fiscal Year 2012, what is your vision for how the Indian Land Consolidation Program will be implemented and when will that begin?

RESPONSE: The Department will be ready to implement the *Cobell* settlement when we receive final approval from the courts. On July 27, 2011, the D.C. district court issued an order granting approval to the settlement, and on August 4, 2011, the Clerk of the Court entered final judgment. Five appeals of this final judgment have, however, been filed and those appeals are now pending in the U.S. Court of Appeals for the D.C. Circuit. The settlement will not be finally approved until all appeals are resolved. The district court did, however, modify a long-standing court order that restricted communications between Department officials and class members, so that the Department was able to conduct six public government-to-government consultations with tribes and tribal members to address how we will move forward with utilizing the Trust Land Consolidation Fund. Our planning process will continue during the appellate court review.

6. What new structures does the Department believe are needed to successfully implement the trust land consolidation fund?

RESPONSE: The process of acquiring land for the purpose of consolidating fractionated Indian tracts is complex and involves a number of different functions and departmental offices. A partial listing of such functions includes title clearing, probate, location of "whereabouts unknown" account holders, cadastral survey, environmental assessment, real estate appraisal, timber valuations, minerals evaluations and real estate purchasing.

The Department already possesses the necessary structures and expertise, as is demonstrated by the work of the Indian Land Consolidation Office, but we have not yet determined if we have sufficient capacity to handle the increased volume of land purchases commensurate with a $1.9 billion land consolidation fund.

7. What has the Department's experience been in the ongoing land consolidation efforts?

RESPONSE: The Indian Land Consolidation Program (ILCP) has been in existence since 1999 and includes consolidation efforts within 20 reservations across 7 BIA Regions. The ILCP has acquired over 427,000 fractionated interests; 642,000 acres; acquired 100 percent of all interests from 7,765 individuals (thereby potentially eliminating an IIM account or need to probate); and achieved 100 percent tribal ownership on 444 tracts. Five reservations have tribal majority ownership of all allotted tracts with one reservation at 97 percent. Experience confirms that there are willing sellers.

8. Are there regional or state-wide differences in progress made thus far in consolidating Indian land that is fractionated?

RESPONSE: There has been no difference in the amount of willing sellers encountered across states, regions or even reservations.

Questions by Representative Jeff Denham

1. The Budget shows a decline in the funding for economic development of about 20%, while it continues to fund fish and wildlife protections. The purpose of BIA is to help Tribes facilitate self-sufficiency and develop their economies, is it not?

RESPONSE: The overall funding level for the Community and Economic Development budget activity in the FY 2012 President's Budget is $10.0 million below the FY 2010 Enacted/2011 CR level. This is primarily due to the transfer of the Road Maintenance and Minerals and Mining programs. Road Maintenance was transferred from the Community and Economic Development budget activity to the Tribal Government budget activity, and Minerals and Mining was transferred from the Trust – Natural Resources Management activity to the Community and Economic Development activity. The net funding change in Community and Economic Development resulting from these transfers is -$7.6 million. Of The remaining $2.4 million reduction, $1.4 million relates to streamlining central oversight functions, which leaves a net reduction to program dollars of $1.0 million, or approximately 2 percent in the Community and Economic Development budget activity.

2. With a BIA's reputation of being, for the most part, over-bureaucratic, will all of the cuts in the administrative budget slow down and further hinder Tribes from acquiring the permits and approval (lease approval, oil and gas permits, etc.) they require to sustain their communities?

RESPONSE: No, it is not expected that the overall administrative reductions proposed in the FY 2012 budget request will negatively impact programs. The outlook for development of tribal lands is on the upswing.

The potential for additional energy production from Indian lands is substantial for both fossil energy and renewable energy. Millions of acres of Indian lands have been only lightly explored.

There are substantial opportunities for economic development on Indian lands through energy development. Moreover, energy related employment and training opportunities provide a mechanism for positive economic development in Indian Country. Development of these resources will strengthen tribal sovereignty and help relieve the chronic joblessness and underemployment that plague Indian Country because access to affordable energy is an indispensable precursor to economic growth.

The Mineral Industries are looking more at Indian Country for energy and mineral development. In particular the Oil and Gas Industry is experiencing a large increase in exploratory development due to increase in oil price and successful implementation of new horizontal drilling and improved fracture completion technology. Indian Country is under explored and Industry is looking at these lands for development. Billions of barrels of oil are currently being discovered in the Bakken Formation (Fort Berthold, Fort Peck, and Blackfeet Reservations). Large natural gas reserves were recently discovered on the

Uintah and Ouray Reservation. New fracture completion technology has opened up oil reserves in tight fractured shales (Jicarilla, Ute Mountain, and Navajo Reservations).

Stream-lining of the regulatory process was achieved on the Fort Berthold Reservation as shown by the success of the Office of Indian Energy and Economic Development (IEED) in working with the various regulatory agencies and reducing the permitting time to a level that has allowed for the timely development of the Bakken Formation.

There are substantial opportunities for economic development on Indian lands through energy development. Moreover, energy related employment and training opportunities provide a mechanism for positive economic development in Indian Country.

For renewable energy the example would be the Fond du Lac Woody Biomass project. Beginning in 2006, IEED has been assisting the Fond du Lac Band of Chippewa Indians with exploring opportunities for economic development on the reservation. The gaming industry is currently the main source of income and jobs for the tribe, and they are concerned that with the changing economy the benefits of the industry will quickly fade. Utilizing local biomass resources is one opportunity the tribe has found that will help build a sustainable economic environment on the reservation. Through funding assistance from Division of Energy and Mineral Development the tribe has begun pre-development work for a 2.5 megawatt (MW) cogeneration power plant in conjunction with a 100,000 ton/year pellet manufacturing plant. This project has the potential to create 75 full time jobs on the reservation which consist of 40 logging and trucking, 23 for pellet manufacturing, and 12 in pellet and stove/furnace retail, installation, and maintenance.

In traditional energy, IEED has been working with the Three Affiliated Tribes of the Fort Berthold Reservation since 2000. As a result of these efforts, with increased interest in the Bakken Formation in the Williston Basin, this has brought about an oil and gas leasing boom on Fort Berthold. Currently Fort Berthold is on track to top $80 million in oil and gas revenue for 2011. The Fort Berthold oil boom is creating a second boom for retail and other services necessary for the thousands of oil-related personnel who will be living, eating, and buying products on the reservation. The Bakken Boom has created a demand for restaurants and other eating facilities, hotels and motels, laundromats, grocery and staples stores, gas stations, auto repair facilities, and many other retail services. Unless tribal members are encouraged and trained to be entrepreneurs, these retail services will inevitably be owned and operated by persons coming from outside the reservation, creating an absentee retail class that will drain dollars off the reservation. IEED is therefore committed to providing members of the Three of Affiliated Tribes with technical assistance in entrepreneurship, CEO and management training, financial literacy, and other skills that will equip them to take advantage of the groundswell of business start-up opportunities on the reservation. IEED has contracted with Dr. Jeff Stamp of North Dakota University to present entrepreneurship training at the reservation on June 15 and has retained the world-famous Tuck School of Business at Dartmouth College to provide management training to Ft. Berthold business men and women on June 27-30. It is also developing a tripartite MOU between AS-IA, Tuck, and the Ft.

Berthold tribal community college to provide tribal members with high-level continuing education and skills training in business and entrepreneurial subjects. Finally, it has submitted to BIA contracting authorities a proposal to provide business formation training at Ft. Berthold.

3. The funding increases in the education sector of your budget seem to be for administrative costs and infrastructure repairs. Does this mean that the quality of education for children in Tribal schools is better than could have been expected, because it doesn't seem as if the funds are reaching the students and addressing their learning needs?

RESPONSE: The FY 2012 budget request includes the continuation of significant funding levels for reading enhancement programs, math enhancement programs, and the FOCUS program. The FOCUS program has been renamed the "FOCUS on Student Achievement Project". Core elements of the program are reflected in the FOCUS acronym:

Formulate a Plan - Planning for implementation and Data Disaggregation;
Optimize Time - Prepare and follow timeline – Curriculum Mapping;
Concentrate and Collaborate - Explicit instruction of benchmark skills and regular team meetings to discuss data and teaching strategies;
Utilize Assessments - Short frequent assessments of the benchmark skills and regular team meetings to discuss data and teaching strategies and instructional modifications;
Sustain Learning - Explicit instruction for all students and acceleration and enrichment for targeted students as well as planned mastery review.

These programs provide additional financial support to schools and are designed to enable BIE-funded schools to achieve Adequate Yearly Progress (AYP) under Title I of the Elementary and Secondary Education Act.

Secretary Duncan estimates that increases in the Annual Measurable Objectives (AMOs) for states will cause 82% of schools to be declared as not making AYP for data year 2010-11. The number of schools making AYP in the Bureau of Indian Education dropped to 50 (30%) in SY2009-10, similar to the trend in states. Although AYP has been shown to be inconsistent and incomplete in determining educational quality, one aspect emerging from the AYP process in the Bureau is that schools are starting to organize around their AYP data, using it to shape their curricula and address instructional weaknesses. Due to variance in the accountability regime across the Bureau (using 23 different accountability systems, reflecting the states in which BIE-funded schools reside), it is difficult to discern academic progress at a student level when categorical determinations are made at the school level. AYP also does not reflect strides the BIE has made in its identification of schools for grants, technical assistance, and organizational tools to help schools structure and measure the effectiveness of intervention strategies to improve student achievement. The fruits of this organizational change in focus over the last year and a half may not be apparent until after SY2010-11 academic performance data are evaluated.

The administrative cost increases are to address the shortfalls within Tribal Grant funding and their ability to administer their education programs. The infrastructure repairs saw no increase in the 2012 budget request.

In addressing your concern of increases in the quality of education program, many schools face security and student safety issues and have received no remediation funding to address these issues. The $3.9 million requested for Safe and Secure Schools will be used to implement security systems and behavioral intervention programs necessary to address the safety risks students and staff are exposed to through contact with individuals from within and outside of the school facilities. The funds will be used to improve external and internal physical security measures, provide staff advanced security training and implement behavioral intervention programs.

4. Why is it that the Budget reads as a list of priorities that put Tribal independence, education, and economic development lower than fish and wildlife projects, environmental studies, and mandated renewable energy projects? Especially when Tribes don't want their ancestral land to be taken and used for renewable projects – there is a lawsuit in Southern California right now to stop this type of action. Shouldn't a sovereign entity do what is best for them on their lands in terms of energy production and creation, with some assistance from the federal government?

RESPONSE: The FY 2012 Budget Request is presented in the format for budget line items based on the activities in Indian Affairs and is not listed in a format for priorities. The policy of Indian Affairs is to not interfere with tribal sovereign decisions on its internal operations. Indian Affairs does provide assistance through the programs it operates through direct services, contract or compact to tribes. The tribes provide the Scope of Work for use of the funds as negotiated with Indian Affairs. Indian Affairs does not mandate that a specific project must be completed on any Indian lands unless it is required to do so by Federal law. There are no imminent domain actions by Indian Affairs in this area.

Further, Indian Affairs consulted with Tribal Leaders in the development of the budget request. The budget focuses on priority areas in Indian Country and honors the Federal Government's obligations to Tribal Nations in a focused manner. Despite an overall reduction of $118.9 million, due mainly to the elimination of a one-time increase in 2010 to forward fund tribal colleges, completion of public safety and justice construction projects, and non-recurring funding for completed water rights settlements, the FY 2012 budget includes increases totaling $41.4 million, or five percent, to the Tribal Priority Allocations budget category (TPA), which includes a $29.5 million increase for Contract Support Costs, and $3 million to help small and needy tribes run viable governments. The TPA programs support self-determination by providing Tribes the flexibility to align resources to best meet the unique needs of their communities. Increased funding for TPA programs has consistently been identified as a top priority during tribal consultation on the Indian Affairs budget request.

Also of note, Indian Affairs is working to modify its regulations governing leasing on Indian lands, including for energy development and commercial purposes. These regulatory changes are intended to provide tribes with greater control over their lands, and streamline the process for leasing Indian lands for renewable energy development. The requested budget increase of $2 million for renewable energy projects does not include mandates. Instead, it allows Indian Affairs to support tribal development of tribal renewable energy resources on tribal lands where it is requested.

5. I've heard that a Tribe spent 7 years trying to get a housing development title recorded as Mutual Help Homes so that the Housing Authority could convey those titles to the tribal homeowners. A sovereign Indian Nation should not have that much trouble dealing with a bureaucratic agency when they are trying to become more independent. Are there steps in place to remove unnecessary burdens and bureaucratic blockages while promoting Indian sovereignty?

RESPONSE: Without having the specifics of the incident referred to in the question, Indian Affairs can only provide information on incidences which may affect its responsiveness to such a situation. Difficulties in processing title for Indian tribal housing developments can occur as the result of not recording housing or subdivision plats, trust deeds, leases of land, and other necessary title documents with the Bureau of Indian Affairs Land Titles and Records Office (LTRO) which services the tribe. Unless the plats and other title documents are recorded at the LTRO and in the Federal land title system-of-record for Indian trust and restricted lands, the Trust Asset and Accounting Management System (TAAMS), the LTRO will be unable to issue certified Title Status Reports (TSRs) stating the official Federal title ownership and encumbrance for land within a tribal housing development. In cases where a housing or subdivision plat or map, trust deed, land lease, or other title document, has not been recorded at the LTRO and in TAAMS, the tribe should submit or re-submit the title document for recording and entry into TAAMS. Then title can be issued on lands with the subdivision or housing development.

If a housing or subdivision plat or map, trust deed, land lease, or other title document was submitted for recording at a LTRO but was not recorded due to a title defect, non-conformance with law or regulation or other substantive deficiency making the title document not recordable, then the tribe should work with its servicing BIA Agency Office to resolve the matter. Title can then be issued on the land within the housing subdivision or development project once the issue is resolved.

The BIA has improved and will continue to improve the processing, approval, and recording of mortgages for Indian housing and of lending for tribal housing projects. The BIA has a good working relationship with the U.S. Department of Housing and Urban Development (HUD), Office of Native American Programs (ONAP), and works in partnership with HUD-ONAP to improve mortgage and lending concerning Indian lands. BIA and HUD-ONAP will work together to resolve problems and issues encountered by a tribe in its housing subdivision or development project.

6. In order for tribes to complete the development of housing, schools, hospitals and community centers they must have the basic infrastructure: such as roads, water-lines, power-lines and sanitation systems. In order to provide this infrastructure they often need the Department and the BIA to process and grant various rights-of-way requests from tribes. Often the Bureau is slow to grant requests, throwing projects off construction schedules, and wasting valuable time and expense.

Tribes are waiting to build the basic infrastructure so they can develop housing, schools and hospitals. This development should not be stalled because the Bureau is slow to grant rights-of-way requests. What is being done to ensure that the Bureau is processing rights-of-way requests in a timely manner?

RESPONSE: There are many and varied reasons why basic infrastructure (such as roads, water-lines, power-lines, and sanitations systems) are often delayed to complete the development of housing schools, hospitals, community centers, etc. The following are a few examples:

Land owner consent- Whenever allotments are involved, it is very time consuming to gather landowner consents due to the fractional undivided interests. The Secretary may grant permission to survey and rights-of-way over and across individually owned land without the consent of some individual Indian owners when the Secretary finds that such grant will cause no substantial injury to the land or the owner and there is majority consent. Thereafter, the Secretary may sign on behalf of the following persons: minors, non compos mentis, whereabouts unknown, and deceased owners. And finally, the Secretary may grant a right-of-way when the owners of interests in the land are so numerous that the Secretary finds it would be impracticable to obtain their consents. owners of interests in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent, and also finds that the grant will cause no substantial injury to the land or any owner thereof. Tribal lands may be easier to develop because it is one entity authorized to handle matters pertaining to the land.

- Surveys- Surveys need to be completed by an engineer or licensed surveyor to exactly define the boundaries of the infrastructure and/or development. The applicant will do (pay for) the surveys and will provide a legal description and a map of definite location.

- Appraisal- The appraisal can be secured by the applicant; but it must be reviewed and certified by a DOI appraiser. In the alternative, a request can be made to have a DOI appraiser complete the appraisal; which can be very time consuming, depending on the backlog. Most of the above requirements can be provided by the applicant. Some applicants provide this material expeditiously; others do not; again these all are factors in how long it take to secure the approval for a right-of-way or other actions.

If an Applicant has a clear understanding of the requirements established in Title 25 CFR Part 169, Rights-of-Way Over Indian Trust Lands, to perfect a right-of-way easement, the process can flow in a reasonably timely manner.

7. Requested Information During the Hearing

As mentioned and discussed in the hearing, I would like the information and statistics regarding the amount of permits that are processed and the timeline that shows how long it takes to process each type of permit. Also, for that statistic, I would like to have a breakdown on a state-by-state basis, especially if there are differences from state-to-state.

RESPONSE: See attached table for an outline of the permit/contract encumbrance timeline approved by the BIA from October 1, 2010 through March 18, 2011.

Representative Permit/Encumbrance Processing Times

Permit/Encumbrance	Total Elapse Time
Lease & R/W (tribal)*	3 – 6 months
Revocable Permits (allotted)*	2 – 4 weeks
Business Leases (allotted)*	6 – 12 months
Rights of Way (allotted)*	6 - 18 months
Grazing/Ag (tribal)	3 – 4 weeks
Grazing/Ag (allotted)	6 months
Residential leases (tribal)	3 – 4 weeks
Residential leases (allotted)	3 – 6 months
Mutual lease terminations	30 – 60 days
Business leases	6 – 9 months
Oil & Gas leases	6 months
R/W's (tribal)	3 – 4 months
R/W's (allotted)	4 – 6 months

*Higher volume locations

8. I would also like to see the information and statistics surrounding the completion of California Environmental Quality Act (CEQA) and National Environmental Protection Act (NEPA); specifically regarding the length of time to complete the requirements under these acts and the costs that Tribes are burden with when they are trying develop their land, whether it be a home, community center, or any other project that requires CEQA and NEPA.

RESPONSE: The California Environmental Quality Act (CEQA) applies to actions on state and public lands in California; it does not apply to Indian trust lands. The BIA is mandated to comply only with the National Environmental Policy Act (NEPA). Most tribal projects do not require compliance with both CEQA and NEPA, and only two development projects (controversial fee-to-trust land acquisitions for gaming) in the last five years involved a joint CEQA/NEPA process. This was because off-reservation impacts involved mitigation in the jurisdiction of the state or a local agency. The BIA

completes the NEPA process and approves projects independently from CEQA. BIA does not collect nor retain information on CEQA.

The length of time BIA takes to comply with NEPA depends on the nature of the proposed activity and the type of environmental review – Categorical Exclusion (CE), Environmental Assessment (EA) or environmental impact statement (EIS). The majority of activities fall under CE reviews or EAs. In 2010, the Pacific Region completed 55 CE reviews and 17 EAs. The CE reviews are completed for a variety of routine activities and are generally completed in less than a week. Small development projects, such as house and community center construction, usually require an EA and these may take three to six months to complete. In addition to these, the Pacific Region also has 14 EISs in process. These are for larger and often controversial projects and can take two or more years to complete.

The costs for completing these reviews also depend on the nature of the action. The CE reviews are prepared by the BIA at no cost to the tribes for land held in trust. The EAs are completed jointly by both the BIA and tribally supported environmental consultants and can cost as little as $5,000, but may exceed several hundred thousand dollars if the development is controversial and costs vary from project to project depending upon which substantive environmental requirements such as water permits, wetland fill permits, cultural or historic preservation or endangered species consultations are involved and rise with the number of resources impacted and when the development is controversial. The EISs are the most expensive and generally exceed $1 million due to appeals and legal challenges.

Questions by Representative Paul Gosar

(1) Do you agree there is frustration among the tribes in how the BIA administers funds? At what point are we neglecting our fiduciary duty to the tribes, under government to government trust obligation?

RESPONSE: In recent budget consultation meetings with the Tribal Interior Budget Council (Council), tribal representatives have acknowledged a growing transparency in the administration of Indian Affairs funding. For example, at the December 2010 meeting in Washington, DC, tribal representatives were provided tables identifying the distribution of all FY 2010 budget increases at a level of detail not previously shared with tribal members of the Council. The FY 2012 budget request also has its Comprehensive Funding Table available on the Indian Affairs website; it has been years since this detailed table was made available to the public.

In addition, the percentage of Indian Affairs program funding executed by Indian tribes through contract or compact agreements has grown steadily from 58 percent in FY 2007 to 63 percent in FY 2009, which indicates a clear trend toward greater self-determination and in effect, greater tribal involvement in the administration of Indian Affairs funding.

(2) On July 29, 2010, President Obama signed the Tribal Law and Order Act ("the Act" or TLOA) into law. The Act places a number of new obligations on the part of the Bureau of Indian Affairs' Office of Justice Services (BIA-OJS). One requirement is that the BIA-OJS provides an annual summary of the unmet needs for "tribal police and courts facilities". What progress has your office made in compiling that listing of unmet police and courts facility needs, and are those needs addressed in the Budget?

RESPONSE: The Bureau of Indian Affairs (BIA) is preparing for an audit of the unmet needs of all BIA and tribal law enforcement, correction and court programs that receive funding through the Indian Affairs budget. The identification of unmet needs will be derived through a multi-pronged approach involving on-site assessments, program inspections and consultation with program and tribal leaders. Once the assessment of unmet needs is completed, the information will be compiled in a comprehensive annual summary which can be utilized for future budget requests.

(3) I ask about unmet public safety and justice facility needs because several tribes in my District face violent crime rates that are multiple times the national average. The poor condition of police facilities owned by the Federal Government on these Reservations prevents tribal officers from doing their job to protect the public. In particular, BIA's Building 86, located on the San Carlos Apache Reservation, is in extremely poor condition. In fact, the health and safety threats to police and court employees in this Building were so serious that the BIA published a notice to condemn the Building in April of 2009. However, the BIA had no replacement plan in place, and chose not to condemn the structure. Instead, within the year, the BIA removed its criminal investigators from Building 86, and

found space in a nearby federal facility, renovated that space, and placed the BIA investigators in the newly renovated facility. However, more than 50 San Carlos Apache police and court personnel remain working in the hazardous conditions in the BIA-owned Building 86. The lack of action poses a significant disincentive for tribal governments to take over law enforcement and other essential government services from the BIA, and poses a threat to the policy of Indian self-governance and self-determination. If the BIA can manage to take such quick action to protect the health and safety of its own employees, I am confident that similar action can be taken to protect tribal police and court personnel. What action will your office take to provide a safer working environment for the San Carlos Apache police and court personnel?

RESPONSE: Building No. 86 is a bureau-owned building scheduled for demolition whenever acceptable operating space is found and the occupants are relocated from this former justice center which housed the detention program, parts of the law enforcement operations and tribal courts. When the new detention facility was funded and completed under a Department of Justice (DOJ) grant, the detention program moved into the new facility. Building No. 86 is severely deteriorated and in poor condition. Indian Affairs has funded a number of major repair projects in order to provide suitable space pending a better solution.

The DOJ provides funding to support the renovation and construction of correctional facilities and multi-purpose justice centers to include laws enforcement and courts. The DOJ manages a competitive grant program that in recent years provided significant funding to various tribes to construct or renovate new justice facilities. For FY 2009 and FY 2010, Indian Affairs received a total of $65 million for the construction of justice facilities through earmarks. The President's budget request for FY 2011 does not include funds for Indian Affairs to continue the new construction program.

Building No. 86 remains occupied by approximately 54 tribal law enforcement staff and 18 court employees. The facility is 33 years old and has numerous deficiencies. Indian Affairs has determined that the building should be vacated and demolished.

In late October / early November, Indian Affairs offered five portable buildings to the San Carlos Tribe. These buildings would be donated to the Tribe for ownership once they are transported and set up in the general vicinity of Building No 86. The transportation, utilities, walkways, handicap accessibility and necessary refurbishing of interior and exterior areas would be funded by Indian Affairs. Each building is approximately 2,000 square feet providing 10,000 square feet of office and court space to accommodate 50 of the 72 individuals currently using Building No 86. The balances of personnel are police officers who work patrol shifts and only require occasional office space. An additional portable building can be provided for evidence storage if determined necessary.

Initially, the Tribe agreed to accept the building, however it is now the understanding that the Tribe is concerned that if they take the five modular buildings, its likelihood of

receiving DOJ funding for a new permanent building would be diminished. Indian Affairs is currently awaiting a decision from the Tribe on its willingness to accept the five portable buildings.

(4) During the March 8th hearing, we briefly discussed the desolation caused by governmental neglect of the Bennett Freeze area. Are you willing to arrange a trip out to the area, facilitated by the Navajo Nation?

RESPONSE: The Assistant Secretary – Indian Affairs is certainly receptive to visiting the Navajo Nation should schedules allow. He has visited the Nation's reservation many times since he has come into the position and always welcomes an opportunity to return. The Assistant Secretary's office will work with the Nation on a mutually agreeable schedule.

(5) I am concerned about the response time for emergency call outs on the Navajo Nation. This reservation is large, and contains many remote parcels. When someone gets hurt, or a crime is committed in a remote part of the nation, a rapid response is still necessary to save lives. But I have been informed by the sheriff's department, that they do not have the ability to implement a rapid response in the manner they would like or that the people deserve and that they do not have a helicopter at their disposal for rapid response. What efforts have undertaken to work with the sheriff's office to help law enforcement and rapid response?

RESPONSE: As on many reservations across Indian Country, Indian Affairs understands the remote areas across large land base tribes encompass numerous miles of rural areas where officers may have to respond to calls for service. Since there are numerous counties in three different states that have concurrent jurisdiction on the Navajo Reservation, the BIA's Office of Justice Services (OJS) District IV Office in Albuquerque has been engaged with interested Sheriffs' Offices regarding the BIA Special Law Enforcement Commissions (SLEC). The issuance of SLEC cards to local law enforcement agencies would act as a force multiplier in improving Rapid Response to the Navajo Nation. In FY 2010, OJS received a funding increase to hire additional police officers throughout Indian Country. Based upon the OJS funding methodology, Navajo Nation received additional base funding dollars to hire more Tribal Police Officers to help protect its people.

The BIA OJS does not have funding for aviation programs to support the use of helicopters and other equipment that would improve response time to rural areas in Indian Country, nor do we have the ability to provide funding to the State/County for such equipment. BIA OJS can provide technical assistance by facilitating collaboration between the Tribe and the State to ensure proper agreements can be made to allow access for better emergency response through MOU's and Deputations Agreements. BIA OJS also supports Tribes and the County grant requests to DOJ for equipment funds that will improve response time to emergencies that occur in rural areas.

Questions by Representative Ben Lujan

Jicarilla Question (3 min question):

1) On the Jicarilla Lease problem

Assistant Secretary and Trustee Deputy Joseph -

Over ninety percent (90%) of the Jicarilla Apache Nation's government operations is funded with revenues from production of their oil and gas resources. Most of the oil and gas leasing activity on the Jicarilla's Reservation is conducted in accordance with the Indian Mineral Leasing Act of 1938 ("IMLA").

The IMLA sets forth responsibilities on the federal government, specifically on the Secretary of the Interior, to manage and regulate mineral leasing so as to ensure maximum benefit to tribes.

Despite the fact that there are at least three separate agencies within the Department of Interior with jurisdiction over Indian leasing: the Bureau of Indian Affairs ("BIA"), the Bureau of Land Management ("BLM"), and the Minerals Management Service ("MMS"), the Jicarilla Apache Nation has suffered tremendous losses because they have not been informed of non-compliance by operators and lessees until months or years after non-compliance has occurred.

If non-compliance is not addressed, lessees go into bankruptcy and use tribal leases as leverage. Tribes then have to spend valuable and sparse resources to battle lessees in bankruptcy court. I want to elevate this issue to your level because these are federal leases and the Department has a trust responsibility to tribes.

This affects the Nation's ability to collect due revenues, royalties and taxes - which directly impacts the Jicarilla Nation's ability to provide essential government services to tribal members and Reservation residents.

In the budget I notice that there are program reductions for Real Estate Services and Minerals and Mining Projects, My questions are –

A.) Will these budget reductions prevent BIA from adequately addressing the notification of non-compliance issue, and

RESPONSE: First, the BIA is responsible to address lease operational violations by lessees, however it is not responsible for the collection of royalties. That responsibility rests with the Office of Natural Resource Revenue (ONRR), formerly MMS who would notify the Nation when enforcement actions are taken with respect to non-compliance issues that arise regarding royalty reporting and payments. Since the Nation has a delegation to perform royalty audits on behalf of ONRR, and the Secretary is committed

to renewing that agreement when it expires later this year, the Nation should be aware of any noncompliance issues for which it would like enforcement action taken, and, has indeed, been working with ONRR's Office of Enforcement regarding such matters. Second, the Jicarilla Agency's budget in the programs that deal with O&G leasing were essentially left intact; the overall budget reductions proposed in the FY 2012 budget request should have very little impact on BIA's ability to administer O&G leases at Jicarilla. The budget changes also will not impact ONRR's enforcement of royalty reporting and payment violations. With respect to lessees filing for bankruptcy, neither ONRR nor BIA can control a lessees' financial stability, especially their decision to file bankruptcy. Thus, even when the Department has addressed noncompliance, if enforcement actions are pending when a lessee files for bankruptcy, those issues still become part of the bankruptcy action. In addition, lessees must cure all lease violations if they wish to assume those leases as part of the bankruptcy action, thus assuring that the Nation is protected. Finally, BIA will investigate the lease bonding program at Jicarilla and address whether insufficient lessee bonding contributes to the problem. By doing this, BIA will work hand in hand with the Jicarilla Tribe to determine what the best course of action is to address its needs.

B.) What is the Agency doing to address the issue of non-compliance and will you be willing to work with the Jicarilla Apache Nation to address this issue?

RESPONSE: The Department is committed to working with the Jicarilla nation on their oil and gas program. As stated previously, the BIA is responsible to address lease operational violations by lessees, however it is not responsible for the collection of royalties. As also stated above, ONRR's Office of Enforcement is working with the Nation to address its noncompliance concerns regarding royalty reporting and payment obligations and ONRR fully supports the Nations Tribal audit program. In addition, BIA will work with the tribe and will investigate the lease bonding program at Jicarilla and address whether insufficient lessee bonding contributes to the problem.

<u>Navajo Nation Question (3.5 min question):</u>

2) On the Navajo Indian Irrigation Project,

Assistant Secretary and Trustee Deputy Joseph –

I noticed that this particular Project is cut by 9 million dollars in the 2012 budget.

As you know, after years of intense negotiations between the United States and the Navajo Nation, in 1962, the Congress enacted the Navajo Indian Irrigation Project to fulfill, in part, the U.S. treaty obligations with regard to water supplies and a farming operation for the Navajo Nation.

The 1962 Act obligated the U.S. to build out an 110,000 acre farm for the benefit of the Navajo people...It was originally estimated that the Project would be completed in 7 years.

Forty-nine years later, only part of the project has been complete and the physical infrastructure has begun to fall into serious disrepair.

Of increasing concern, the Budget Request includes language in the "Green Book" that suggests that the full build-out of the project will not take place despite treaty and statutory obligations to do so.

My questions are –

A.) What is the justification for reducing the funding for the build out of NIIP,

RESPONSE: Any decision to reduce funding is extremely difficult as Indian Affairs has many high priority programs. In 2010, at the request of the Navajo Nation, the Assistant Secretary set up a NIIP policy team consisting of representatives of the Navajo Nation and Indian Affairs. The team will be expanded to include representatives of the Bureau of Reclamation. In light of this budget decision, Indian Affairs plans to move forward with a meeting of the NIIP Policy Team to discuss possible options for completion of the project or acceptable alternatives which could include an equitable settlement in lieu of completion of the project. This discussion will include realistic options to continue the investment in NIIP in light of foreseeable budget constraints.

B.) What is the Department's estimate for completing the NIIP project in the next three fiscal years? And;

RESPONSE: Over $600 million has been spent on NIIP to date. The current estimate for completing NIIP is an additional $500 million for construction funds for the BIA project management office and environmental compliance. To complete NIIP in the next three fiscal years would require approximately $170 million per year.

C.) In light of the legal obligations still in place, what "equitable resolution" does the Department have in mind to finish the build out of the Navajo Irrigation project?

RESPONSE: In the NIIP authorizing legislation, the Congress did not include any mandatory language requiring the Secretary to complete the Navajo Indian Irrigation Project, nor did it include any specific time frames or detailed prescriptions for achieving the stated purposes of the legislation. The authorized legislation requires the Secretary to construct, operate, and maintain NIIP but does not proscribe details to the completion or transferring the operation and maintenance of completed sections of NIIP to the Navajo Nation. The Secretary's discretionary authority to build and operate NIIP is, of course, subject to appropriations from the Congress.

Based on the Department's interpretation of the NIIP Act, Indian Affairs plans to meet with the Navajo Nation to discuss various options. These options could include rehabilitation of older blocks of the irrigation project, turnover of completed blocks, whether to charge operations and maintenance fees as allowed under the Act, investment/rehabilitation of on-farm infrastructure (which is not a Department

responsibility under the Act), environmental compliance issue funding, and/or partial or total completion of NIIP.

Bureau of Indian Education (BIE):

3) General inquiry on BIE School (3 minutes)

Assistant Secretary and Trustee Deputy Joseph -

BIE schools are a critical component to the education of Native American children and in New Mexico we have a significant number of children who rely on funding from the Department of Interior to get their first years of education. I have had many concerned tribal leaders, tribal members, and teachers visit my office because of the dire condition of BIE schools. Many times these schools don't meet normal inhabiting conditions and get condemned, leaving children with no place to go to school – In addition, my Native American constituents have brought to my attention that the process for obtaining support and funding for improvements for BIE schools is virtually impossible. Many times schools are approved to receive funding and it takes years - even decades to get the funds, meanwhile putting students and teachers out on the streets. I also noticed that the 2012 budget request cuts funding for New Construction.

Can you tell me what the Department and BIA are doing to make certain BIE schools are maintained and/or constructed in a timely manner? And is there a particular part in the process for maintaining BIE schools that the Department has identified as a problem so that it can be fixed?

RESPONSE: Since 2000, there have been 45 schools completely replaced or are in the process of being replaced and 57 schools have had major improvement and repair work to bring the schools to acceptable condition. Once all the projects are completed, 64 percent of the 183 BIE schools will be in acceptable condition. The typical amount of time needed for planning, design and construction of a large school construction project is four years. During a few of the older replacement school projects the time frame was exceeded due to the additional time needed for acquiring site approvals, environmental issues, or projects that were managed by the tribe and/or Tribal School Board and were returned to Indian Affairs due to problems with the projects. The re-start of these projects caused major delays in their final completion.

There have been many improvements made to the process to ensure projects are completed on a more timely basis. In January 2004, Indian Affairs implemented a new enrollment projection policy. This methodology uses a Sum of Least Squares Linear Regression Analysis to calculate more realistic assessments of the future enrollment capacity and square footage requirements. Using this policy, Indian Affairs has denied space expansion requests when they were not justified.

In 2005, in a joint effort with BIE, Indian Affairs developed a revised Education Space Criteria Handbook to clarify education space allowed for Indian Affairs-funded schools. Consequently, Indian Affairs eliminated a flaw in the program's efficiency and schools are now appropriately sized to accommodate projected student population using a consistent policy.

Beginning in FY 2005, appropriations language has been enacted that allows the Secretary of the Interior to assume control of a project and all funds related to the project if construction does not start within 18 months of the appropriation. This language allows Indian Affairs to negotiate shorter project development time frames, thus adding to the time efficiency of a project.

In May 2006, Indian Affairs implemented a new policy, "Special conditions, restrictions and denial for high risk grantees applying for a Pub. L. 100-297 Construction Grants in excess of $100,000." If a grantee fails an Organizational Capacity Review (OCR), Indian Affairs will not enter into a grant with the grantee. Depending on the grantee's OCR score, different special conditions are imposed on the grantee.

In addition, 25 U.S.C. § 2503(b)(4)(B)(i) states: "With respect to a grant to a tribally controlled school for new construction or facilities improvement and repair in excess of $100,000, such grant shall be subject to the administrative and audit requirements and cost principles for assistance programs contained in part 12 of 43 Code of Federal Regulations." In FY 2007, Indian Affairs published the first architectural and engineering standards for design and construction that established common design elements for each school feature such as classrooms, cafeterias, gymnasiums, heating and cooling systems, and other operating systems. In addition, Indian Affairs adopted the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) goals for energy-efficient design. Overall, these improvements in the program have had a large impact in eliminating delays on major construction projects and since implementation, the time for construction has been reduced to less than two years, even in locations of severe winter weather.

4) Indian School Construction and Safety (3 min question)

Assistant Secretary and Trustee Deputy Joseph -

As you know, our Nation's Indian tribes ceded or had taken hundreds of millions of acres of their homelands, which were used to help build our Nation. In return, the United States promised to provide for the education, health, and general welfare of the remaining Reservation residents. One of the largest obligations of your agency is to provide for the education of Indian children. Now - I understand that only 10% of American Indian children attend Bureau of Indian Education schools. However, the FY 2012 Budget proposes zeroing out funding for BIE school construction, and proposes a significant cut for school improvement and repairs.

While I realize that only 10% of American Indian children attend BIE schools, These cuts mean that many of these children will forced to continue to attend crumbling schools that pose serious health and safety hazards to students, teachers, and anyone visiting these schools. One example is the list of more than 20 "Critical Health and Safety Issues" at the Tesuque Day School (a Pueblo in my district). This list was compiled by the BIA at a walk through on July 30, 2010 before the current school year. The list includes: no fire alarm, no working fire extinguishers, no working smoke alarms, outdated electrical wiring, among others. It took a call from the New Mexico delegation in February of 2011, just to push the BIA to start the process to contract for the installation of a new fire alarm.

So my question is –

A. What is your plan to address these and the many other critical health and safety issues that remain in BIE schools? And; Can you provide my office with a listing of priority projects so that we can ensure BIE schools are updated in for critical health and safety hazards in a timely manner?

RESPONSE: Regarding the Tesuque Day School, the annual Safety Inspection was conducted by the Regional Safety Officer on April 13, 2010; eight deficiencies were cited in the inspection report. The majority of the deficiencies were: exit light not illuminated; panic hardware release exceeds 15 lbs; and portable fire extinguishers not on hooks or not inspected. This work has been completed. The work is also in process on the replacement of the out-dated and non-functional fire alarm system. The project is at 25 percent completed and on schedule.

Other priority projects for New Mexico North schools include:

- Update the Asbestos Management Plan for San Ildefonso Day School, Tesuque Day School and Taos Day School. A contract to update the plans is currently being developed.
- Fire alarm replacement funds have been issued for Santa Clara Day School and the contract for the work is being issued.
- Funding for the fire alarm replacement at San Ildefonso and Taos Day schools has also been identified, funds will be allocated by June 1, 2011, and work will start within 90 days after receipt of funds.
- T'siya Day School (Zia) Pueblo roof replacement is scheduled for the summer of 2011.
- Funds will also be provided for the Tesuque Pub. L. 100-297(Grant) school to address: (1) carpet replacement in the classroom for Building 964 and; (2) ramp repair/replacement in Building 960 school kitchen.

In response to Indian Affairs addressing high-priority critical life safety items, Indian Affairs prioritizes funding that targets the schools with the greatest need and that are in the worst condition. All schools in poor condition are targeted for improvement and repair projects. These schools are considered the "worst schools" with the "worst

deficiencies." This process is a collaborative effort between the Bureau of Indian Education and the Indian Affairs Office of Facilities Management and Construction and will follow established criteria in utilizing risk assessment to justify choices for deferred maintenance repairs. This is a fully documented process to identify and justify viable improvement and repair priorities with emphasis on stakeholder participation. The process will be to identify and prioritize deferred maintenance work that will correct major building systems and components. Indian Affairs is also targeting any urgent critical system failures (i.e., roofs, HVAC, fire alarms, electrical systems) which have the potential to close down the education program.

Tribal Law and Order:

5) General Tribal Law and Order Question (1.5 min question)

Assistant Secretary and Trustee Deputy Joseph -

I want to thank you for requesting an increase in funds in the 2012 budget for Tribal law enforcement. Many times our tribes don't have the means to ensure the level of public safety optimal for rural areas - this is something we see in New Mexico – where response times by BIA police are often several hours to emergencies on the reservation. I want to ask you to make sure that these budget increase dollars are going to go to "on the ground" public safety as opposed to administrative costs – my question is; how do you envision these dollars being spent to ensure many of our tribal communities have the level of public safety they need, especially cutting down response time to emergencies, and increasing the number of BIA officers on the ground?

RESPONSE: Increases in base funding will be distributed to add to the number of law enforcement officers on the street. In doing so, Indian Affairs intends to close the staffing gap to better reflect the national (rural) average of officers per 1,000 residents. Indian Affairs is confident that if it can support tribes with an adequate number of uniformed police officers, there will be a significant impact in reducing crime and providing quicker response times during calls for service. This has been evident at the four pilot sites in which Indian Affairs focused more manpower and resources to the high crime areas. Having an adequate number of officers on each shift will also allow law enforcement to be proactive rather than reactive to crime on Indian reservations. In addition, the funding will be used to improve the infrastructure of internal resources within the police departments to improve law enforcement services, such as replacing outdated equipment, improving information technology, and training for continuous education and development of law enforcement personnel. Indian Affairs supports entering into deputation agreements between tribal and local law enforcement programs to help bridge jurisdictional gaps, and provide Federal authority to address violations of Federal law by non-Indian and Indian offenders.

6) Tribal Law and Order Act Implementation (2 min question)

On July 29, 2010, President Obama signed the Tribal Law and Order Act ("the Act" or TLOA) into law. The Act places a number of new obligations on the part of the Bureau of Indian Affairs' Office of Justice Services (BIA-OJS). One obligation requires BIA-OJS to provide training to tribal police officers so that they can qualify for and obtain Special Law Enforcement Commissions (SLEC), and streamline the SLEC process. I have heard from some of the Tribes in my district that no trainings have been scheduled, and that the process remains too cumbersome.

A.) Has OJS scheduled regional trainings for tribal officers to qualify for SLECs?

Response: Yes, from January 10, 2011 to May 12, 2011, a total of 9 regional Criminal Justice in Indian Country (CJIC) training courses were held:

January 10-12, 2011	Oklahoma
January 20-21, 2011	Michigan
February 2-3, 2011	Oklahoma,
February 8-10, 2011	Colorado,
February 16-18, 2011	Arizona
February 23-24, 2011	Michigan
February 28 – March 1	Oklahoma
March 3-4, 2011	Navajo Nation DPS
March 22-23, 2011	Colorado
April 27-29, 2011	Alabama
May 3-5, 2011	Oregon
May 10-12, 2011	Arizona

In addition, Indian Affairs has encouraged tribes interested in hosting a CJIC training locally to contact the BIA Indian Police Academy.

B.) What has OJS done to expedite the MOU process, to streamline the grant of SLECs to qualified tribal police officers?

RESPONSE: Through consultation with tribes in an effort to streamline the process, Indian Affairs has developed a model deputation agreement wherein tribes and the BIA can more quickly complete the initial step necessary for Indian Affairs to issue SLEC cards to qualified tribal, Federal, state and local law enforcement officers. Indian Affairs has developed an Interim SLEC Protocol which outlines the steps the (BIA) District Special Agent in Charge (SAC) will follow when determining whether SLECs should be issued to a tribal, Federal, state or local law enforcement agency. In addition, Indian Affairs has also developed a five step SLEC Application Checklist that when followed, will ensure that all required documentation to receive an SLEC has been provided to the BIA.

C.) Can you please provide my office with a copy of the model SLEC form, the model tribal-BIA Memo Of Understanding for SLEC, and the number of tribes that have been granted SLECs, including the timing of their request and time of the grant or denial of their request?

RESPONSE: Included in the response is a copy of the Model Deputation Agreement, the SLEC Interim Policy, and the SLEC Protocol. Indian Affairs will provide under separate cover the number of tribes that have been granted SLEC with the timeline.

Questions by Edward Markey

Mr. Echo Hawk,

1. The Mashpee Wampanoag Tribe of Massachusetts has informed me that they receive Bureau of Indian Affairs (BIA) funding from Aid to Tribal Governments/Tribal Priority Allocation contracting that is on average 73% less than the per capita amounts received by all other Eastern federally recognized Tribes. The tribe would like to reach an "average" level of service funding from the BIA. Could you please provide an analysis to the committee of the specific federal funding received since the tribe's re-acknowledgement by Interior, how this compares to other Eastern federally recognized Tribes and possible solutions for increasing the Mashpee Wampanoag Tribe's funding to comparable per capita levels to other Eastern Tribes?

RESPONSE: In FY 2010, the tribe received a total of $515,395 from BIA appropriations. Of this total, the following amounts were provided from their respective program line item: $311,000, New Tribes Program; $149,395, Contract Support Fund; $25,000, Community Development; and $30,000, Water Management, Planning and Pre-Development.

The amount for the New Tribes Program funding was determined based on the Tribe's membership at the time of its Federal acknowledgement. Funding determinations for newly federally recognized tribes are based on the established tribal population. For tribes with a population of 1,700 members or less, a TPA funding level of $160,000 would be recommended; tribes with populations of 1,701 to 3,000 members, a TPA funding level of $320,000 would be recommended. For newly recognized tribes with more than 3,000 members, the funding level would be determined on a case-by-case basis. Another example is the Jena Choctaw Tribe that was a participant in the New Tribes program in the Bureau's Eastern Region prior to Mashpee; it received an annual funding level of $160,000 based on the tribe's population. In FY 2011, the Mashpee's New Tribe funding was base transferred to the Aid to Tribal Government program line item.

The amount for Contract Support Fund is based on national policy which has a recurring funding level of $149,395. Based on the policy, Indian Affairs cannot reduce a contractor's contract support from the amount received the prior year, unless there is action by the Congress. For example, if the Congress provides Indian Affairs with an increase over and above the recurring funding amount, the Mashpee may be eligible for an increase based on a formula that provides additional contract support to those that are in most need. The formula determines each contractor that is furthest from reaching 100 percent of their contract support need being met.

The one-time funds received for Community Development were based on a request submitted by the tribe; allocation of the Community Development funds was distributed on a first come/first serve basis by the program office (Office of Indian Energy and Economic Development) until the funds were exhausted for the fiscal year.

The one-time funds received in the Water Management, Planning and Pre-Development line item were received from reprogrammed funds at the Regional Office level (Eastern Region).

For FY 2011, to date, under the Continuing Resolution(s), the Tribe has received the following fund allocations:

Consolidated Tribal Government Program	$132,103*
Contract Support Fund	$64,107
Road Maintenance	$10,000

**The Tribe elected to reprogram New Tribes funding into this program*

The FY 2012 President's Budget Request includes $315,000 for the Tribe's base funds under the New Tribes Program (as transferred to the Consolidated Tribal Government Program) and $149,395 from the Contract Support Fund, based on the previous explanation described above. Final determinations of actual funding levels to be allocated in FY 2012 are dependent on Congressional action.

Denoted below is a summary of Indian Affairs funding allocated to the Mashpee Wampanoag Tribe since 2007.

Program	**FY 2007**	**FY 2008**	**FY 2009**	**FY 2010**	**FY 2011 As of 3-31-11**
Community Development Central Oversight				25,000	
Water Management, Planning and Pre-Development		40,000	54,000	30,000	
Natural Resources			3,880		
Water Resources Program			120		
Litigation Support		35,000	25,000		
Other Aid to Tribal Government	5,818	26,718	50,000		
Consolidated Tribal Government Program					132,103
Contract Support		149,395	149,395	149,395	64,107
Indian Self-Determination Fund		323,255			
New Tribes	316,000	311,070	311,000	311,000	
Road Maintenance					10,000
Total	**321,818**	**885,438**	**593,395**	**515,395**	**206,210**

Denoted below is a summary of the TPA base funding levels (beginning with FY 2007) for Indian tribes serviced by the Eastern Region. There is no "average funding" level established in Indian Affairs for Federally recognized Tribes nor is there a standard "per capita" payment.

TPA BASE FUNDING - EASTERN REGION TRIBES

(Dollars in thousands)

	FY 2007	FY 2008	FY 2009	FY 2010
AROOSTOOK MICMAC	568	577	581	587
CATAWBA	1,458	1,435	1,451	1,467
CAYUGA	198	204	207	209
CHITIMACHA	693	708	721	735
COUSHATTA	322	329	332	335
EASTERN BAND OF CHEROKEE INDIANS	695	704	720	736
INDIAN TOWNSHIP	712	740	750	760
JENA CHOCTAW	227	230	233	237
MALISEET	405	417	422	429
MASHPEE WAMPANOAG TRIBE	**316**	**311**	**311**	**311**
MICCOSUKEE	1,132	1,157	1,175	1,195
MISSISSIPPI CHOCTAW TRIBE	1,898	1,920	1,949	1,980
MOHEGAN	505	508	519	531
NARRAGANSETT	1,005	1,020	1,030	1,041
ONEIDA NATION	1,281	1,283	1,295	1,308
ONONDAGA	211	208	208	208
PENOBSCOT	1,580	1,607	1,631	1,657
PEQUOT	441	453	459	467
PLEASANT POINT	942	958	972	986
POARCH CREEK	1,080	1,109	1,117	1,128
SEMINOLE TRIBE of FL	2,033	2,055	2,083	2,114
SENECA	736	607	615	626
ST REGIS MOHAWK	587	617	625	636
TONAWANDA	243	239	239	239
TUNICA BILOXI	249	259	262	266
TUSCARORA	219	216	216	216

INTERIM

Deputation Agreement

Whereas, pursuant to the Indian Law Enforcement Reform Act, 25 U.S.C. § 2801 *et seq.*, the Secretary of the Interior, acting through the Bureau of Indian Affairs (BIA), is responsible for providing, or assisting in providing law enforcement in Indian Country; and

Whereas, the Secretary has delegated this authority to the Assistant Secretary – Indian Affairs and the Assistant Secretary – Indian Affairs has redelegated this authority to the Director of the BIA, who has redelegated it to the Deputy Bureau Director, Office of Justice Services (OJS); and

Whereas, the Assistant Secretary – Indian Affairs is committed to working with tribal governments and tribal law enforcement to strengthen law enforcement in Indian country; and

Whereas, on February 10, 2004, the Assistant Secretary – Indian Affairs articulated policy guidance to the BIA --as published at 69 Fed. Reg. 6,321 --to govern the implementation of Deputation Agreements;

Therefore, the BIA, Office of Justice Services (OJS) and the [KEYBOARD NAME OF TRIBE/LAW ENFORCEMENT AGENCY] enter into this Deputation Agreement (Agreement) to govern BIA OJS's issuance of Special Law Enforcement Commissions (SLECs).

This Agreement is entered into this [KEYBOARD DATE] day of [KEYBOARD MONTH], [KEYBOARD YEAR], by and between the [KEYBOARD NAME OF TRIBE (TRIBE), a federally recognized Indian tribe, /LAW ENFORCEMENT AGENCY (AGENCY)] and the BIA- OJS, Department of the Interior, pursuant to the authority of the Indian Law Enforcement Reform Act, 25 U.S.C § 2801 *et seq.*, and related [KEYBOARD NAME OF TRIBE] tribal ordinances, which provide for cooperative agreements to promote better law enforcement services. The [KEYBOARD NAME OF TRIBE] has enacted [KEYBOARD TRIBAL RESOLUTION NUMBER], which authorizes the [KEYBOARD AUTHORIZED ENTITY/INDIVIDUAL to enter into this Agreement on the Tribe's behalf and also authorizes the] [KEYBOARD NAME OF TRIBE/LAW ENFORCEMENT AGENCY] law enforcement officers, under a BIA SLEC issued through the BIA-OJS, to enforce Federal laws in Indian country.

The intent of this Agreement is to provide for the deputation of law enforcement officers employed by the [KEYBOARD NAME OF TRIBE/LAW ENFORCEMENT AGENCY] (hereinafter referred to as the [KEYBOARD TRIBE/AGENCY]), which is a party to this Agreement, so that the [KEYBOARD TRIBE'S/AGENCY'S] law enforcement officers will be authorized to assist the BIA in its duties to provide law enforcement services and to make lawful arrests in Indian country within the jurisdiction of the Tribe or as described in section 5. It is the express desire and intent of both parties to this Agreement to allow law enforcement officers to react immediately to observed violations of the law and other emergency situations.

Both parties to this Agreement recognize that when law enforcement officers arrest a criminal suspect, the officers may not know whether the suspect or the victim is an Indian or non-Indian,

or whether the arrest or the suspected crime has occurred in Indian country, as defined by 18 U.S.C. § 1151, and that therefore there is great difficulty in determining immediately the proper jurisdiction for the filing of charges. It is further recognized that the official jurisdictional determination will be made by a prosecutor or court from one of the various jurisdictions, not by arresting officers.

The parties further expressly recognize the manifest intent of the Indian Law Enforcement Reform Act to eliminate the uncertainties that previously resulted in the reluctance of various law enforcement agencies to provide services in Indian country for fear of being subjected to tort and civil rights suits as a consequence of the enforcement or carrying out in Indian country of certain federal law. To eliminate such concerns, pursuant to the authority granted by 25 U.S.C. § 2804(a) and (f), a Tribal Law Enforcement Officer who is deputized by an SLEC will be deemed an employee of the Department of the Interior for purposes of the Federal Tort Claims Act while enforcing or carrying out laws of the United States covered by this Agreement, to the extent outlined in this Agreement. Both parties to this Agreement (BIA-OJS and the Tribe) therefore agree as follows:

1. Purpose

The purpose of this Agreement is to provide for efficient, effective, and cooperative law enforcement efforts in Indian country in the State of [**KEYBOARD NAME OF STATE**], and its terms should be interpreted in that spirit. Accordingly, both parties to this Agreement shall cooperate with each other to provide comprehensive and thorough law enforcement protection, including but not limited to effecting arrests, responding to calls for assistance from all citizens and also from other law enforcement officers, performing investigations, providing technical and other assistance, dispatching, and detention.

This Agreement is not entered into pursuant to the Indian Self Determination Act and Education Assistance Act, P.L. 93-638, as amended. The Secretary's revocation or termination of this Agreement is subject to the appeal and review procedure provided below.

2. SLECs

A. BIA-OJS, as a party to this Agreement may, in its discretion, issue SLECs to law enforcement officers of the [**KEYBOARD TRIBE/AGENCY**]), upon the application of such officers. Such SLECs shall grant the officers the same law enforcement authority as that of officers of BIA-OJS (unless specifically limited by the terms of the SLEC), as more specifically described in Section 3 of this Agreement. When BIA-OJS issues such an SLEC, it shall provide notice of that SLEC, including the name of the officer receiving the SLEC, to any other agencies that are parties to this Agreement or that should be aware of this Agreement. The BIA has the authority to evaluate the effectiveness of the SLEC and to investigate any allegations of misuse of authority. 25 C.F.R. § 12.21. Pursuant to such evaluation the BIA may revoke an individual officer's SLEC subject to the appeal and review procedures provided below.

B. An SLEC shall not be granted unless the applicant has complied with all the prerequisites

for appointment as a police officer as set forth in 25 C.F.R. Part 12. Those prerequisites must include the following:

1. United States citizenship;
2. A high school diploma or equivalent;
3. No conviction for a felony, a misdemeanor which restricts the ability to carry firearms, or other crime involving moral turpitude (including any convictions expunged from an individual's record);
4. Documentation of semi-annual weapons qualifications; and
5. A finding that the applicant is free of any physical, emotional, or mental condition that might adversely affect his or her performance as a police officer.

Further, an officer seeking an SLEC must not have been found guilty of, or entered a plea of *nolo contendere* or its equivalent (such as an *Alford* plea) to, any felonious offense, or any of certain misdemeanor offenses under Federal, State, or tribal law involving crimes of violence, sexual assault, molestation, exploitation, or prostitution, or crimes against persons, or offenses committed against children

C. BIA-OJS may impose any other requirements, including, but not limited to, an orientation course on Federal, tribal, or state criminal procedures.

D. If requested by BIA-OJS, the applicant's agency shall provide a Federal Bureau of Investigation criminal history background check on the applicant.

E. If BIA-OJS denies an officer an SLEC, it shall disclose the grounds for such denial in writing to the agency which employs the applicant.

F. Both parties to this Agreement may, at any time, suspend or revoke an officer's SLEC for reasons solely within their discretion. The parties shall notify each other in writing of the suspension or revocation and the reasons for it and the officer's right to appeal as set forth below. Within ten days after such notification, the SLEC officer's employing agency shall return the SLEC card and any other evidence of the SLEC to BIA-OJS.

G. If the SLEC officer's agency possesses any information on the officer which provides grounds for suspension or revocation of the SLEC, the agency shall immediately notify BIA-OJS.

H. An SLEC issued by BIA-OJS under this Agreement shall not be used to invoke any State of **[KEYBOARD NAME OF STATE]** authority. Officers holding SLECs who are responding to a call, conducting an investigation, or otherwise exercising their authority shall, in their discretion and in the exercise of sound police judgment. address any potential violations of Federal or Tribal law.

3. Scope of Powers Granted

A. **[KEYBOARD NAME OF TRIBE/LAW ENFORCEMENT AGENCY]** law enforcement officers carrying SLECs issued by BIA-OJS pursuant to this Agreement are given the power to enforce:

> All Federal laws applicable within Indian country, and specifically the **[KEYBOARD NAME OF TRIBE]**'s Indian country, including the General Crimes Act, 18 U.S.C. § 1152, and the Major Crimes Act, 18 U.S.C. § 1153, consistent with the authority conveyed pursuant to Federal law through the issuance of SLECs or other delegations of authority. See Appendix A, which includes an **illustrative** list of Federal statutes that officers may be called upon to enforce; this list is **not exhaustive**.

B. Both parties to this Agreement note that the applicability of Federal and tribal laws in Indian country may depend on whether the suspect or the victim is Indian, and the parties agree that nothing in this Agreement makes any law applicable to a certain person or certain conduct where it would not otherwise be applicable. (A qualified immunity defense may still be available in appropriate circumstances notwithstanding this limitation.) Accordingly, the purpose of this Agreement is to provide **[KEYBOARD NAME OF TRIBE/LAW ENFORCEMENT AGENCY]** SLEC officers the authority to enforce applicable laws. This includes statutes set forth in the local U.S. Attorney Guidelines as well as all laws and statutes applicable in Indian country as described in Section 3.A and Appendix A.

C. Nothing in this Agreement limits, alters or conveys any judicial jurisdiction, including the authority to issue warrants for arrest or search and seizure, or to issue service of process. Similarly, nothing in this Agreement is intended to impair, limit, or affect the status of any agency or the sovereignty of any government.

D. This Agreement does not create any rights in third parties. Issuance and revocation of SLECs pursuant to this agreement are at the sole discretion of BIA-OJS. Nothing in this Agreement is intended to create or does create an enforceable legal right or private right of action by a law enforcement officer or any other person.

4. Uniform, Vehicles and Weapons

A. BIA policy requires that BIA law enforcement officers as a rule be in duty-appropriate uniforms, which will conform with the parameters outlined in the BIA Law Enforcement Handbook; carry a weapon where required by their duties; and, when stationed in marked police vehicles, operate such vehicles equipped with light bars. This policy is standard for police forces nationwide, and is necessary for the safety of the officer and to communicate the officer's status and authority to members of the public.

B. SLEC officers who are temporarily off duty during a shift, or whose duty is temporarily interrupted for any reason are expected to remain in duty-appropriate uniforms, in a marked vehicle, if so stationed, and otherwise prepared for duty so that they are available to respond to emergency calls.

C. SLEC officers and their supervisors may make exceptions to these requirements for

undercover operations or otherwise on a case-by-case basis, but deviations from this rule are expected to be infrequent and will usually occur for compelling law-enforcement reasons.

5. Travel Outside of Indian Country

A. The ordinary duty stations of BIA law enforcement officers are located within the boundaries of Indian country. In some situations, however, BIA law enforcement officers will be required to leave Indian country as a part of or incidental to their duties. This may occur, for example, where they are responding to an incident in another area of Indian country; where they are transporting evidence or suspects to or from locations in Indian country or to or from other police, court, or prison facilities; when they reside off-reservation and are traveling to their duty station or responding to an emergency call; or when they must obtain products or services located off-reservation while on duty or in the normal course of their business day.

B. When traveling outside of Indian country, BIA law enforcement officers retain their status as Federal law enforcement officials. They are therefore expected as a rule to be in uniform and to operate marked police vehicles as set forth in paragraph 4. They may also be armed; may transport evidence; and may exercise the authority of law enforcement officers to maintain control of suspects in such situations. They may perform comparable incidental Federal police activities outside of Indian country, but will not as a rule conduct investigations or make arrests outside of Indian country, absent exigent circumstances or: (1) a nexus to a crime committed in Indian country, and (2) when communicating and coordinating with the appropriate local or Federal authorities over procedures and methods.

6. SLEC Officers

A. SLEC Officers are treated as BIA police officers for purposes of enforcing Federal laws. They therefore shall conform to all requirements and limitations set forth in this Agreement and in particular in paragraphs 4 and 5.

B. When an SLEC officer receives a call related to a potential Federal offense, that officer shall as a rule be in uniform and in a vehicle equipped as set forth in paragraph 4. Such an officer may undertake off-reservation travel as set forth in paragraph 5.

C. When an SLEC officer is responding to a call that may involve a Federal offense, or undertaking any other duties that relate to or may potentially relate to their Federal functions, he or she shall conform to this Agreement, and in particular the provisions in paragraph 5. The officer shall function as a BIA law enforcement officer as set forth in paragraph 5, irrespective of the boundaries of the Tribe's reservation or the location of Indian country.

D. When an SLEC officer receives an emergency call in circumstances where a Federal offense may exist, he or she shall respond in emergency mode and shall travel to the site of the call as rapidly as it is possible to do without compromising safety, irrespective of the boundaries of Indian country or his or her present location. He or she shall observe the restrictions on the activation of emergency mode and the precautions for the safety of bystanders required in the

BIA, OJS Law Enforcement Handbook and otherwise respond as appropriate and prudent. In instances where the State has criminal jurisdiction in Indian country, and where there is no significant reason to anticipate that a Federal offense may exist with respect to a particular emergency call, SLEC officers shall respond in accordance with policies and practices set forth under State and local law but may, in certain circumstances, retain their Federal status.

E. When located outside of Indian country, SLEC officers may respond to Observed violations of Federal law in a public safety emergency as appropriate and prudent. Irrespective of their location, SLEC officers may respond to violations of exclusively State law only to the extent consistent with that State's law. SLEC officers may respond to concurrent violations of State and Tribal or Federal laws to the extent consistent with Tribal or Federal law.

7. Disposition and Custody

A. Any person arrested by an SLEC officer shall immediately be brought to the attention of a responsible official of the apparent prosecuting jurisdiction. In order to ascertain the proper prosecuting jurisdiction, the SLEC officer shall attempt to determine, where practicable, whether the arrestee is Indian or non-Indian. The official determination of proper jurisdiction, however, will be made by a prosecutor or court, not an SLEC officer.

B. The agency with whom the SLEC arresting officer is employed shall ensure the arrestee appears before a judge of the appropriate jurisdiction for initial appearance and bond setting within the time guidelines of the tribal, State, or Federal law, as appropriate.

C. When an Indian detainee or prisoner under the jurisdiction of the Tribe requires medical treatment, the law enforcement agency with custody may transport the detainee or prisoner to the nearest Indian Health Service or the appropriate Tribal health care facility. In such event, tribal or BIA law enforcement officers shall be notified so that necessary protective services may be provided while the detainee or prisoner is admitted at such health facility.

8. Liabilities and Immunities

A. It is understood and agreed that neither party to this Agreement, nor its agents, employees or insurers, by virtue of this Agreement, assumes any responsibility or liability for the actions of SLEC officers which are outside the scope of their duties.

B. Notwithstanding subsection A, an [**KEYBOARD NAME OF TRIBE/LAW ENFORCEMENT AGENCY**] SLEC officer will be deemed an employee of the Department of the Interior for purposes of the Federal Tort Claims Act while carrying out those laws applicable in Indian country as described in Section 3.A and Appendix A. Therefore, such officer will not be deemed a Federal employee under 25 U.S.C. § 2804(f)(1), or for purposes of the Federal Tort Claims Act, with respect to the enforcement of any other law except those applicable in Indian country as described in Section 3.A and Appendix A.

C. Nothing in this Agreement shall be read as waiving or limiting any defenses to claims of

liability otherwise available to law enforcement officers, such as the defense of qualified immunity.

D. Nothing in this Agreement shall be construed as a waiver of any government's sovereign immunity, not otherwise expressly waived by legislative act.

E. The Tribe specifically agrees to hold the United States harmless under this Agreement for any civil claim brought against an SLEC officer arising out of law enforcement activity, except for actions within the scope of authority delegated by this Agreement, provided, however, that this hold-harmless provision shall not be applicable to any obligation of the United States arising out of a relationship between the United States and the Tribe not created under this Agreement.

F. The Tribe agrees that the United States has no obligation under this Agreement to provide legal representation for any constitutional claim for an SLEC officer except as provided by 28 C.F.R. 50.15(a), such that (1) providing representation would otherwise be in the interest of the United States, and (2) the event from which the claim arises is within the scope of authority delegated by this Agreement.

9. Appeal Procedure

Appeals of termination or revocation of this Agreement, or suspension or revocation of an SLEC issued pursuant to it, shall be made within 10 business days of the termination, revocation, or suspension to the Associate Director of Operations, BIA-OJS. The Associate Director's decision shall be the final agency action under the Administrative Procedure Act, 5 U.S.C. § 551. At the **[KEYBOARD TRIBE/AGENCY]**'s option, appeal may be taken to the Interior Board of Indian Appeals (IBIA) to the extent it has jurisdiction.

Signatures:

_____ _____

[KEYBOARD NAME OF DISTRICT SPECIAL AGENT IN CHARGE] Date

_____ _____

[KEYBOARD OJS DISTRICT]-Office of Justice Services, Bureau of Indian Affairs Date

_____ _____

[KEYBOARD NAME OF TRIBAL CHAIRPERSON] Date

_____ _____

[KEYBOARD NAME OF TRIBE] Date

INTERIM

Appendix A

All Federal criminal laws applicable to Indian country, including the General Crimes Act, 18 U.S.C. § 1152, and the Major Crimes Act, 18 U.S.C. § 1153.

All Federal statutes applicable within **[KEYBOARD NAME OF TRIBE]** (Tribe's) Indian country in **[KEYBOARD NAME OF STATE], which may include, but are not limited to**:

1. The Indian country liquor laws, where applicable (18 U.S.C. §§ 1154, 1155, 1156, and 1161),
2. Counterfeiting Indian Arts and Crafts Board Trade-mark (18 U.S.C. § 1158),
3. Misrepresentation of Indian produced goods and products (18 U.S.C. § 1159),
4. Property damaged in committing offense (18 U.S.C. § 1160),
5. Embezzlement and theft from Indian tribal organizations (18 U.S.C § 1163),
6. Destroying boundary and warning signs (18 U.S.C § 1164),
7. Hunting, trapping or fishing on Indian land (18 U.S.C. § 1165),
8. Theft from gaming establishments on Indian land (18 U.S.C § 1167),
9. Theft by officers or employees of gaming establishments on Indian land (18 U.S.C. § 1168),
10. Reporting of child abuse (18 U.S.C. § 1169),
11. Felon in possession of a firearm (18 U.S.C. § 922(g)),
12. Youth Handgun Safety Act (18 U.S.C § 922(x)(2)),
13. Possession of a firearm while subject to protective order (18 U.S.C. § 922(g)(8)),
14. Interstate domestic violence – Crossing a state, foreign, or Indian country border (18 U.S.C. § 2261(a)(1)),
15. Interstate domestic violence – Causing the crossing of a state, foreign, or Indian country border (18 U.S.C. § 2261(a)(2)),
16. Interstate violation of protective order – Crossing a state, foreign, or Indian country border (18 U.S.C. § 2262),
17. Illegal trafficking in Native American human remains and cultural items (18 U.S.C. § 1170),
18. Lacey Act violations (16 U.S.C. § 3371, *et seq.*),
19. Archaeological Resource Protection Act violations (16 U.S.C. § 470ee),
20. Controlled substances – Distribution or possession (21 U.S.C. §§ 841(a)(1), 844),
21. Unauthorized taking of trees (18 U.S.C. § 1853),
22. Unauthorized setting of fire (18 U.S.C. 1855),
23. Assault of a Federal officer (18 U.S.C. § 111),
24. Bribery of tribal official (18 U.S.C. § 666(a)(2))),

This list is not exhaustive.

4-04 SPECIAL LAW ENFORCEMENT COMMISSIONS

POLICY

The Bureau of Indian Affairs (BIA), Office of Justice Services (OJS) issues Special Law Enforcement Commissions (SLECs) to Tribal, Federal, state, and local full-time certified law enforcement officers who will serve without compensation from the Federal government. This process allows BIA to obtain active assistance in the enforcement of Federal criminal statutes and Federal hunting and fishing regulations in Indian country.

RULES AND PROCEDURES

4-04-01 AUTHORITY TO ISSUE, RENEW, AND REVOKE DEPUTATION AGREEMENTS AND SLECs

A. Authority to enter into Deputation Agreements and SLECs is based on Title 25, United States Code, Section 2804 (Pub. L. 101-379), 25 C.F.R. Part 12, and the Tribal Law and Order Act of 2010 (Pub.L. 111-211).

B. Line Authority to Enter into Deputation Agreements and Issue SLECs

Authority to enter into Deputation Agreements and issue is delegated in 3 Indian Affairs Manual 2.8 to the Deputy Bureau Director, OJS. The Deputy Bureau Director has delegated to the District Special Agents in Charge (District SACs) the authority to enter into OJS- and Solicitor's Office-approved Deputation Agreements and the authority to sign SLEC cards granted pursuant to Deputation Agreements.

C. Issuance of SLECs Exclusively for Legitimate Law Enforcement Need

SLECs are to be issued or renewed at BIA-OJS discretion and only when legitimate law enforcement need requires issuance. SLECs are not to be issued solely for the furtherance of inter-agency or public relations. Such decisions by the BIA-OJS are non-appealable.

D. Deputation Agreements

1. The District SAC may enter into a Deputation Agreement with tribal, Federal, state, or other government law enforcement agencies to aid in the enforcement or carrying out of Federal laws in Indian country. Deputation Agreements with tribal law enforcement agencies require authorizing resolutions from the tribes.

2. Any Deputation Agreement that differs in any respect from the Model Deputation Agreement must be explicitly approved by the Deputy Bureau Director, OJS and by the Solicitor's Office before it can be executed.

3. Before executing a Deputation Agreement, the District SAC shall:
   - make a written determination that the applicant law enforcement agency has written law enforcement policies and procedures in place that are at least as stringent as those of BIA-OJS, and
   - obtain the Deputy Bureau Director's concurrence with the decision to issue the Deputation Agreement.

4. BIA-OJS shall continuously evaluate the effectiveness of the SLECs, in accordance with 25 C.F.R. § 12.21(a).

5. BIA-OJS may revoke an SLEC, pursuant to 25 C.F.R. § 12.21(a), if BIA-OJS finds that the officer holding the SLEC has misused his or her authority or that the SLEC is not effective in meeting its purpose. BIA-OJS may suspend an SLEC while investigating allegations of the officer's misuse of authority.

6. The BIA-OJS Central Office East (COE) shall ensure that all signed Deputation Agreements and tribal resolutions are converted to an electronic format and posted to the SLEC Tracking System.

E. Deputation Agreements with Tribal, State, and Local Law Enforcement Agencies

1. Before BIA-OJS enters into a Deputation Agreement with a state or local law enforcement agency to provide law enforcement within a tribe's jurisdiction, BIA-OJS shall have an authorizing resolution from the appropriate tribal government, supporting the Deputation Agreement with the state or local law enforcement agency.

2. Agreements for one tribe to provide officers within another tribe's jurisdiction, for the purpose of enforcing Federal law, must include authorizing resolutions from both the tribe providing officers and the recipient tribe. If BIA-OJS determines that there is an emergency situation, this requirement may be temporarily waived, at the discretion of BIA-OJS, until the emergency situation is under control.

3. An SLEC officer acting under the authority granted by a Deputation Agreement, and within the scope of his or her duties, shall be considered an employee of the U.S. Department of the Interior for purposes of:

   a. 5 U.S.C. § 3374(c)(2) (coverage under the FTCA)
   b. 18 U.S.C. §§ 111 and 1114 (assault and protection of officers)
   c. 5 U.S.C. §§ 8191- 8193 (compensation for work injuries)

F. Standards for Issuance of SLECs

INTERIM

Applicants for an SLEC must meet the following minimum requirements:

1. The applicant must be a United States citizen;
2. The applicant must have a high school diploma or equivalent;
3. The applicant must be at least 21 years of age;
4. The applicant must possess a valid driver's license;
5. The applicant must be a full-time certified law enforcement officer of a Federal, state, local or tribal law enforcement agency. Such certification shall meet the Peace Officer Standards of Training (POST) requirements for any state certification and shall be consistent with standards accepted by the Federal Law Enforcement Training Accreditation (FLETA). SLEC applicants who work for a federal law enforcement agency must provide evidence of Federal certification that shall be consistent with standards accepted by FLETA.
6. The applicant must have passed his or her law enforcement agency's firearms qualification course; must have been certified within six months preceding the issuance of the SLEC; and must continue to be certified every six months within the period immediately preceding the issuance of, and during the term of the SLEC. Verification of firearms qualification shall be submitted every six months to the District SAC and shall be maintained with the District's SLEC records;
7. The applicant must never have been convicted of a felony offense;
8. The applicant must not have been convicted of a misdemeanor offense within the one-year period preceding the issuance of the SLEC, with the exception of minor traffic offenses, excluding misdemeanor DUI/DWI convictions;
9. The applicant must never have been convicted of a misdemeanor crime involving moral turpitude (including any convictions expunged from the applicant's record);
10. The applicant must never have been convicted of a misdemeanor crime of domestic abuse that prevents the applicant from possessing a firearm or ammunition pursuant to Section 658 of Public Law 104-208 (the 1996 amendment to the Gun Control Act of 1968), 18 U.S.C. § 922(g)(9);
11. The applicant must sign a "Domestic Violence Waiver" certifying that the applicant has never been convicted of a domestic violence offense, including convictions in a tribal court;
12. The applicant must have successfully passed the Criminal Jurisdiction in Indian Country (CJIC) examination with a score of 70 % or higher;
13. If the applicant is a graduate of the Indian Police Academy's Basic Police Officer Training Program, the applicant is considered to have met the mandated training requirements, so long as the SLEC application is made within three years of the applicant's graduation; and
14. Pursuant to 25 U.S.C. § 3207(b), an applicant seeking an SLEC must not have been found guilty of, or entered a plea of *nolo contendere* or its equivalent (such as an Alford plea), to any felonious offense, or any two or more misdemeanor offenses, under Federal, state, or tribal law

involving crimes of violence, sexual assault, molestation, exploitation, prostitution, crimes against persons, or offenses committed against children.

G. SLECs do not authorize access to "classified" information.

H. Required Information on SLEC Cards

Each SLEC card shall display the following data:

1. Name and recent photograph of the SLEC holder;
2. Date of issuance, date of expiration, title or position of the SLEC holder, the SLEC holder's agency/department, and control number;
3. Signature of the Authorizing Official; and
4. Signature of the SLEC holder.

I. Maintenance of SLEC Records

1. The District SAC shall keep a record of all outstanding SLECs, which is subject to review. The record will include, but is not limited to, the name and department of each SLEC holder, the date of issuance of the SLEC, and a copy of the signed Deputation Agreement.

2. Each District SAC shall be responsible for ensuring that all SLECs issued or revoked in the District are recorded in the SLEC Tracking System.

J. Orientation Includes Authority Conferred by SLEC

The Indian Police Academy (IPA) shall sponsor or host regional training sessions in Indian Country, not less frequently than every six months, to educate and certify candidates for the SLEC. These training sessions will provide a minimum course of instruction, focusing particularly on Federal jurisdiction, Federal law, and the authority that the SLEC confers. This course must be successfully completed before the District SAC issues the SLEC.

K. Federal Liability for SLEC Holders

The SLEC grants the holder specific Federal authority and responsibility, and, as a result, places a high level of liability risk on the U.S. Government. To reduce liability risks for the Government, the District SAC is responsible for ensuring that all requirements are satisfied before issuing the SLEC.

L. Renewal of SLECs

An SLEC holder shall apply for renewal of the SLEC 90 days before the

SLEC expires.

M. Expiration of SLECs

SLECs expire five years from the date of issuance.

N. Revocation of SLECs

SLECs may be revoked for cause. Cause for revocation includes, but is not limited to, the following:

1. Resignation/termination from law enforcement;
2. Providing false information on an SLEC application;
3. A sustained allegation of serious misconduct;
4. Giglio-Henthorne issues affecting the officer's ability to perform duties;
5. Sustained allegations of misuse of SLEC authority as described in 25 C.F.R. §12.21(a); or
6. Termination of the Deputation Agreement.

O. Suspension of SLECs

SLECs may be suspended for cause. The chief law enforcement officer of the law enforcement agency employing the SLEC holder shall ensure that the SLEC is confiscated and held until a determination is made regarding the cause for suspension. If applicable, the chief law enforcement officer shall notify the District SAC of a decision regarding the suspended SLEC. Cause for suspension includes, but is not limited to, the following:

1. An active criminal investigation involving the SLEC holder;
2. An active internal affairs investigation involving the SLEC holder.
3. An active investigation of misuse of SLEC authority.

4-04-02 SLEC APPLICATIONS

A. After a Deputation Agreement has been executed, SLEC applicants shall submit their completed Application for SLECs (Application) to the District SAC.

B. The completed Application shall include:

1. A Domestic Violence Waiver signed by the applicant;
2. Verification of training at a state POST academy or IPA;
3. Current firearms qualifications (at least 80 %);
4. Certification from the Indian Police Academy that the applicant passed the Criminal Jurisdiction in Indian Country course examination with a score of 70% or higher;
5. Written acknowledgement that the applicant has reviewed and agrees to comply with the BIA-OJS Code of Conduct;

6. A Standard Form SF-87 fingerprint chart; and
7. An official high school diploma or GED certificate.

4-04-03 CLEARANCE AND ISSUANCE OF SLECs

A. The District SAC shall verify that a thorough background investigation has been conducted on the applicant. If a thorough background investigation has not been completed and adjudicated, the applicant shall not be issued the SLEC.

B. A thorough background investigation shall consist of the following:

1. Verification that the applicant is a U.S. citizen;
2. Verification that the applicant is at least 21 years of age;
3. Verification that the applicant has a high school diploma or GED;
4. A criminal history check of tribal, municipal, county, state and federal records where the applicant has resided for the past ten years, to include any misdemeanor or felony offense;
5. A credit history check for the past seven years;
6. Interviews with listed and developed references, including previous employers for the last seven years;
7. A driver's license check;
8. A fingerprint card cleared through the Federal Bureau of Investigation (FBI) to determine criminal record; and
9. Written identification of any disqualifying factors, which include:
   a. misconduct or negligence in prior employment which would have a bearing on effective service or interfere with or prevent effective performance;
   b. criminal or dishonest conduct related to the duties to be assigned;
   c. intentional false statement or deception or fraud in examination or appointment;
   d. alcohol abuse of a nature and duration which suggests the applicant would be prevented from performing the duties of the position in question or would constitute a direct threat to the property or safety of others;
   e. illegal use of narcotics, drugs, or other controlled substances;
   f. knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force; or
   g. any statutory bar which prevents the lawful employment of the person involved in the position in question.

C. Applicants who are employed by a law enforcement agency that requires, as a pre-employment condition, that they be fingerprinted and undergo a background investigation no less stringent than that required of a BIA-OJS officer may provide documentation of such background clearance. The employing chief law enforcement officer shall attest and certify in writing, on department letterhead, that the applicant has met all requirements for the SLEC, including a full background investigation that has been

adjudicated by trained and qualified security professionals, and an FBI criminal history check.

D. The Application must be fully completed and attested to by the chief law enforcement officer of the law enforcement agency for which the applicant is a full-time officer.

E. The District SAC shall issue an SLEC within 60 days after determining that all requirements are met.

4-04-04 RENEWAL OF SLECs

A. The District SAC shall certify in writing that a continuing need exists for commissioning officers of the renewal applicant's employing agency.

B. The renewal applicant shall submit a Renewal Application, which shall consist of the following:

1. An up-to-date Application;

2. A letter of verification from the chief law enforcement officer of the renewal applicant's employing agency that an updated background investigation was completed and adjudicated within one year of the Renewal Application:

3. Evidence from the Indian Police Academy that the renewal applicant passed the Criminal Jurisdiction in Indian country Update online examination, with a score of 70% or higher, within six months before submitting the Renewal Application.

C. The chief law enforcement officer of the applicant's employing agency shall attest and certify in writing, on department letterhead, that all information on an applicant's Renewal Application is accurate.

D. The District SAC shall issue an SLEC within 60 days after determining that all requirements are met.

4-04-05 RETURN OF SLECs

The chief law enforcement officer of the applicant's employing agency shall agree, in writing, to assume responsibility for returning the SLEC card to the District SAC when one of the following conditions occurs:

1. The SLEC has expired.
2. The SLEC holder terminates employment as a full-time peace officer for any reason.
3. The SLEC holder is transferred to another area of jurisdiction.

4. The SLEC holder is suspended by the employing agency for any reason.
5. The SLEC holder is under indictment or has been charged with a serious crime or any other disqualifying factor as specified in the Deputation Agreement.
6. The SLEC is revoked by BIA-OJS for cause.
7. The tribe having jurisdiction has adopted a resolution objecting to the use of SLEC personnel of a non-Federal agency within the tribe's jurisdiction.

4-04-06 SLEC TRACKING SYSTEM

The District SAC or designee shall, immediately upon receiving an Application, enter the following data into the SLEC Tracking System:

1. Applicant's Last Name
2. Applicant's First Name
3. Applicant's Date of Birth
4. Applicant's Middle Initial (if applicable)
5. Date SLEC Issued to Applicant
6. SLEC Control Number
7. Applicant's Agency/Department
8. Applicant's Social Security Number
9. Comments (Optional)
10. SLEC Status
    a. Undetermined
    b. Issued
    c. Denied
    d. Suspended
    e. Revoked
    f. Expired
11. Reason for SLEC Status
    If the applicant's SLEC is expired, suspended, or revoked, a reason or cause must be noted in the comments (e.g., applicant under investigation, resigned, or was terminated).

4-04-07 APPEAL PROCEDURE

Appeals of termination or revocation of a Deputation Agreement or suspension or revocation of an SLEC shall be made within 15 days of termination, revocation, or suspension to the BIA-OJS Associate Director of Operations, whose decision shall be the final agency action under the Administrative Procedure Act, 5 U.S.C. § 551.

Effective: Revised:

The following Special Law Enforcement Commission (SLEC) protocol outlines the steps the District Special Agent in Charge (SAC) will follow when determining whether SLECs should be issued to a tribal, Federal, state, county, or local law enforcement agency.

1. A tribal, Federal, state, county, or local law enforcement agency requests a Deputation Agreement from the District SAC, or the District SAC identifies a need to use a particular law enforcement agency to aid in the enforcement of Federal law in Indian Country.

2. The District SAC notifies the BIA-OJS Deputy Bureau Director of the intent to enter into a Deputation Agreement with the tribal, federal, state, county, or local law enforcement agency and of the following:

    a. the geographical location and size of the reservation or other Indian Country to benefit from the Deputation Agreement and SLECs;
    b. the number of BIA Officers currently providing law enforcement services to the reservation or other Indian Country;
    c. the population (Indian and non-Indian) of the reservation or other Indian Country;
    d. the specific need to be addressed by the Deputation Agreement and the SLECs, e.g., need for backup; additional coverage during special events; particular crime trends such as gang-related activity, drug manufacturing or sales, theft from gaming establishments, or federal misdemeanors and use of the Central Violations Bureau.

3. The BIA-OJS Deputy Bureau Director promptly notifies the District SAC whether he or she is authorized to enter into a Deputation Agreement.

4. If the BIA-OJS Deputy Bureau Director authorizes the District SAC to enter into a Deputation Agreement with a tribe, the tribe submits an authorizing tribal resolution.

5. If one tribe requests another tribe to provide law enforcement officers within its jurisdiction, both tribes submit authorizing tribal resolutions to the District SAC, approving the use of one tribe's law enforcement officers within the other tribe's jurisdiction.

6. Executing the Deputation Agreement:

    a. the District SAC prepares a Deputation Agreement;
    b. the tribe, Federal, state or local entity signs the Deputation Agreement;
    c. the District SAC submits the Deputation Agreement to Central Office East (COE) for review;
    d. after review, COE submits the Deputation Agreement to the BIA-OJS Deputy Bureau Director for signature;
    e. COE files the original Deputation Agreement and the tribal resolution(s) and sends copies to the District SAC and the appropriate law enforcement agency;
    f. officers from the law enforcement agency submit applications for SLECs *(see BIA-OJS SLEC Policy, Rules and Procedures 4-04-02).*

7. The District SAC reviews the SLEC applications and ensures that standards for issuance of the SLECs are satisfied in accordance with the BIA SLEC Policy, Rules and Procedures *(see BIA-OJS SLEC Policy, Rules and Procedures 4-04-01 F & 4-04-03 E).*

8. The District SAC verifies that a thorough background investigation has been conducted on the applicant (*see BIA-OJS SLEC Policy, Rules and Procedures 4-04-03*). An applicant employed by a law enforcement agency that requires the applicant, as a pre-employment condition, to be fingerprinted and undergo a background investigation no less stringent than that required of a BIA-OJS Officer, is exempt from this process upon providing documentation of such background clearance. The employing chief law enforcement officer attests and certifies in writing, on department letterhead, that the applicant has met all requirements for the SLEC, including a full background investigation that has been adjudicated by trained and qualified security professionals and a FBI criminal history check. If a thorough background investigation has not been completed and adjudicated, the applicant is not issued the SLEC.

9. The District SAC issues an SLEC within 60 days after determining that the applicant has met all requirements.

10. The District SAC keeps a current record of all outstanding SLECs (*See BIA-OJS SLEC Policy, Rules and Procedures 4-04-01 I*). Until the national SLEC database is developed, each District SAC is responsible for maintaining systematic records of all SLECs issued in the District, including:

    a. a copy of the Deputation Agreement and the tribal resolution;
    b. the SLEC applications;
    c. documentation that a thorough background investigation was completed and adjudicated on each applicant;
    d. documentation that all standards for receipt of the SLEC have been satisfied;
    e. requisite information that is found on SLEC cards (*See BIA-OJS SLEC Policy, Rules and Procedures 4-04-01 H*);
    f. current firearms qualification;
    g. any applicant denials with an explanation for the denial;
    h. revocations of SLECs with an explanation; and
    i. SLEC renewals.

11. The District SAC ensures that each new SLEC holder is given a thorough orientation as to the SLEC holder's exact authority (*See BIA-OJS SLEC Policy, Rules and Procedures 4-04-01 J*).

12. SLECs are renewed in accordance with *BIA-OJS SLEC Policy, Rules and Procedures 4-04-01 L and 4-04-04*.

13. The checklist provided to each District SAC from COE is used to document that all requirements have been satisfied (*see attached SLEC Application Checklist*).

Effective: Revised:

SLEC Application Checklist

1. ☐ Tribal resolution(s)

2. ☐ Deputation agreement signed by the parties

3. SLEC application packet:

   - ☐ completed official *Application for Special Law Enforcement Commission*
   - ☐ fingerprint chart
   - ☐ signed Domestic Violence Waiver
   - ☐ verification of training at POST or IPA
   - ☐ firearms qualifications (at least 80%)
   - ☐ official transcript of high school graduation or GED certificate
   - ☐ successful completion of *Criminal Jurisdiction in Indian Country* (CJIC) course
   - ☐ written acknowledgement that applicant has reviewed and agrees to comply with the BIA-OJS Code of Conduct

4. Verification that a thorough background investigation has been conducted and adjudicated. Verification is satisfied by the District SAC's acceptance of a Letter of Attestation, on department letterhead, from the chief law enforcement officer of the applicant's employing agency, in accordance with the *BIA-OJS SLEC Policy, Rules and Procedures*, that a thorough background investigation has been conducted and adjudicated, and that the following requirements have been satisfied:

   - ☐ verification of citizenship;
   - ☐ applicant is at least 21 years old;
   - ☐ verification of education: high school diploma or GED;
   - ☐ criminal history check: tribal, municipal, county, state and federal;
   - ☐ credit history check:
   - ☐ interviews of listed and developed references;
   - ☐ driver's license check;
   - ☐ fingerprint chart cleared through FBI;
   - ☐ identification of any disqualifying factors
   - ☐ application is fully completed and attested to by chief law enforcement officer of the employing law enforcement agency
   - ☐ previous employers have been interviewed

5. ☐ All required documentation has been filed or entered into the SLEC database once the database is operational.

Below is a list of tribes that have been granted SLECs and the number of SLECs granted to each tribe. OJS has 60 days to ensure that the SLEC agreements are processed when submitted by a tribe and OJS is meeting this requirement.

District I Aberdeen South Dakota

Bay Mills	10
Gun Lake Tribe DPS	1
Huron Potawatomi	6
Keweenaw Bay Tribal PD	10
Lac Vieux Desert Tribal PD	1
Little River Band Tribal PD	18
Little Travers Bay	14
Omaha Nation	2
Oglala Sioux Tribe	18
Pokagon Tribal PD	16
Saginaw Chippewa TPD	27
Sault Ste. Marie Tribal PD	19
Standing Rock Fish and Game	3
Three Affiliated Tribes	8
White Earth Dept of Public Safety	1

District II Muskogee Oklahoma

Cherokee Marshal Services	27
Chickasaw Lighthorse	24
Choctaw Nation Police	13
Citizen Potawatomi Nation	12
Comanche Nation Police	13
Eastern Shawnee Tribal Police	5
Ft. Oakland Police Department	1
Iowa Tribal Police	3
Miami Tribe of Oklahoma Police	1
Muscogee Creek Nation Lighthorse	2
Osage Nation Tribal Police	2
Prairie Bank Potawatomi Police	0
Quapaw Tribal Marshal Service	8
Sac & Fox Nation Police	0
Seminole Nation Police	0
Wyandotte Nation Tribal Police	6

District III Phoenix Office

Cocopah	5
Duckwater	2
Ely	2
Florence	6
Fort McDowell	20
Gila River	20
Goshute	2
Hopland	9
Hualapai	19
Las Vegas	2
Los Coyotes	1
Pascua Yaqui	15
Pauma	7
Quechan	9
Robinson Rancheria	2
Salt River	27
Sycan	12
Tule River	8
Washoe	6
Yavapai-Prescott	5

District IV Office Albuquerque NM

Pueblo of Laguna Tribal Police	10
Pueblo of Zuni Tribal Police	2
Ramah-Navajo	6
Southern Ute Tribe	33
Jicarilla Apache Nation	4
Navajo Nation	57
Ute Mountain Ute Tribe	2

District V Office Billings Montana

Coeur d' Arlene	3
Fort Hall	19
Columbia River Inter	
Tribal Fish	3
Stillaguamish	2
Warm Springs	12

District VI Nashville Office:

Cherokee – 3
Chitimacha – 6
Choctaw – 30
Mashantucket Pequot – 7
Mohegan – 13
Oneida – 25
Poarch Creek – 20
Seminole – 32
St. Regis – 7

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 3 0 2012

The Honorable Paul Broun
Chairman
Subcommittee on Investigations and Oversight
Committee on Science, Space, and Technology
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the United States Fish and Wildlife Service to questions submitted following the Subcommittee's October 13, 2011, oversight hearing on *"The Endangered Species Act: Reviewing the Nexus of Science and Policy."*

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 Donna Edwards
Ranking Member

SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
HOUSE COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

Questions for the Record

"The Endangered Species Act: Reviewing the Nexus of Science and Policy"

Thursday, October 13, 2011
10:00 a.m. - 12:00 p.m.
2318 Rayburn House Office Building

Questions for Mr. Gary Frazer,
Assistant Director, Endangered Species, U.S. Fish and Wildlife Service

Questions submitted by Dr. Paul Broun, Chairman

1. **How often is the precautionary principle the basis of a listing decision? If two competing scientific views exist, does the U.S. Fish and Wildlife Service (USFWS) determine that the "best available science" is the one that allows for greater protection?**

   Response: We never use the precautionary principle as the basis of a listing decision unless ordered to do so by a court. In our view, the precautionary principle has no applicability on the preliminary question as to whether a species is in fact threatened or endangered.

   Instead, as the Act requires, we make listing determinations according to the statutory definitions of "threatened species" and "endangered species," considering the factors and standards found in section 4(a)(1) and (b)(1). Likewise, we also do not use section 4(b)(1)'s requirement that listing determinations be based solely on the best scientific and commercial data available as a justification for picking whichever of competing view allows for greater protection. There is often limited or conflicting data available when we make decisions. We use our professional judgment and expertise to review the data to come to what we conclude is the most accurate, not necessarily the most protective, outcome.

2. **USFWS's testimony alludes that when the Service makes a "warranted, but precluded" finding to a listing petition, it is based on a prioritization of resources. What scientific information is used to make these prioritizations? How do you determine that one species deserves protection now, but another is precluded from protection?**

Response: In determining whether a proposal will be developed for a species that warrants listing under the ESA or if the development of that proposal is precluded by other higher priority listing actions, the Service considers primarily two factors: (1) the listing priority of the species based on the Service's 1983 "Endangered and Threatened Species Listing and Recovery Priority Guidelines" (LPN guidelines) and (2) budgetary and staff resources available to work on the action. The LPN guidelines established a priority ranking system from 1 to 12 that takes into consideration scientific information related to the taxonomic classification of a species, the magnitude of threats to the species, and the immediacy of threats to the species. Species most at risk (LPN of 1) are considered by the Service to be the top priority species for which a proposal to list will be developed once budgetary and staff resources are available. Species for which a warranted-but-precluded determination has been made are considered "Candidate Species." The statuses of Candidate Species are reviewed on an annual basis and their priority rankings are updated as appropriate.

3. **What science was used in the Service's settlement agreement for the 6-year work plan? Is it feasible to make an informed, scientific decision about the protection status of 250 species in 6 years?**

Response: The scientific information used in developing the work plan was related to the status of each of the Candidate Species and their priority ranking per the LPN guidelines (discussed in response to question 2) when the species were initially determined to be candidates and as part of the annual review of Candidate Species. The Service carefully considered the workload associated with making informed, science-based decisions about the species outlined in the workplan, ensuring that robust peer review and public comment will take place before any decision is made. We are confident that we can complete the workplan, assuming that we are able to maintain the level of funding and staffing we have had available in recent years.

4. **What does the term "best available science" mean to USFWS? Does the Service ensure that all science used is peer-reviewed? Can the Service use "gray" data, or unconfirmed information, as "best available science" if nothing else exists?**

Response: The phrase "best available science" means a consideration of all relevant known scientific and commercial information available when making a determination. The Service considers a wide range of information in its decision-making process including peer-reviewed published literature, "gray" data, traditional ecological knowledge, empirical information, and other types of information. It is the responsibility of the Service to consider all of this information, assess its scientific reliability, and use it appropriately and transparently in making its decision. The weight we give information

in making listing determinations takes into account indications of reliability, such as peer review.

5. **In your opinion, what percentage of listings is initiated from Federal scientists and what percentage of listings are initiated due to petitions? What is the difference in the quality of the science generated by Federal scientists versus outside groups?**

Response: Over the last 10 years the Endangered Species Listing Program has been driven, in a large part, by litigation and petitions. Greater than 90 percent of listing determinations during that timeframe were initiated through the public petition process. The quality of petitions varies greatly—some are wholly inadequate, while some are every bit as impressive as the work conducted by our own biologists. However, the same data standards and rigorous process of evaluating the best scientific information available are used when determining whether a species warrants listing regardless of whether the action was initiated through a petition or by Service scientists.

6. **Would the Service support reforming the petition process to prohibit the mass listing petitions that have become commonplace in recent years? Has the Service evaluated the quality of science used in those listing determinations?**

Response: The Service does not have a position on reforming the petition process to prohibit mass listing petitions. The Service evaluates the science provided in large listing petitions, such as the one related to 404 aquatic species in the Southeastern United States, as it would any other petition. In addition, the Service reviews the information in its files about the petitioned species to complete its 90-day finding. Ultimately, the Service makes individual findings for each species as it would with individually-petitioned species.

The same data standards and rigorous process of evaluating the best scientific information available, conducting peer review, and soliciting public comment are used when determining whether a species warrants listing regardless of whether the action was initiated through a petition or by Service scientists.

In the recent multi-district litigation, the Service and two of the most frequent plaintiff groups (WildEarth Guardians and the Center for Biological Diversity) entered into two separate but complementary settlement agreements. One settlement agreement limits the number of species that can be petitioned by the Guardians during the 6-year workplan. The other settlement agreement provides for various consequences that will be triggered if the Center exceeds a specified number of deadline-related lawsuits in any given year. Together, these two plaintiffs have submitted the majority of petitions in recent years. As a result, we expect the number of petitions will decrease notably. Furthermore, in accordance with the President's Executive Order to review and evaluate government regulations and to provide for a more balanced listing program that still allows for public participation, the Service is considering a variety of ideas for increasing the effectiveness and efficiency of many programs, including the petition process.

7. **What percentage of the Service's Endangered Species Act listing budget is expected to be used on completing the work required by the settlement agreements? Will this preclude the Service from working on other species that might have a higher priority?**

   Response: The multi-district settlement agreements allow some flexibility in our rulemaking commitments. The percentage of our budget that is expected to be used on completing work required by the settlement agreements is contingent on our appropriation level. While our highest priority is to fulfill our commitments under these settlement agreements, which will comprise the majority of our work, these commitments will not preclude us from addressing emergency listing actions that may arise during that time. In addition, if we determine that compliance for the settlements would prevent us from working on crucial, high-priority listing actions, we could seek modification of the settlement, either with the agreement of the plaintiffs or from the court.

8. **What is the Service planning to do with any new listing petitions filed during the process of complying with the settlement agreements? Would they be placed on the candidate species list until the settlement work is completed?**

   Response: Because the multi-district litigation settlement agreements limit the number of species that can be petitioned by or incentivizes restraint on the part of the plaintiffs during the 6-year workplan, as these plaintiffs represent a large contingent of all our listing requests we expect the number of petitions will decrease notably. We intend to complete 90-day findings for those petitions that we receive over the course of the 6-year workplan. However, the degree to which we are able to make additional 12- month findings on new petitions will depend on our progress in implementing our workplan and funding and staffing available. To the extent that we identify additional species that warrant listing during the 6-year workplan, but are not emergency listing actions, we anticipate that in most cases they would be added to the candidate list at least until completion of the workplan.

9. **USFWS's testimony highlights that the Endangered Species Act requires decisions to be made "solely on the basis of the best scientific and commercial data available" under deadlines imposed by the Endangered Species Act. However, these deadlines are policy choices, not scientific ones. How would science be impacted if your agency was given more time to review available data? What if it had six months to make an initial determination instead of only 90 days?**

   Response: No matter the time frame allotted for an initial determination for a petition finding, there is always the potential for workload to overwhelm the resources available. If resources were kept consistent with funding and staffing in recent years, we have forecasted an ability to handle our existing workload (as outlined by the 6-year workplan) within the existing statutory 90-days for initial determination on petitions and 12-months for a species status review in a thorough and scientifically defensible manner.

10. **USFWS's testimony notes that the reason for the deferral of action related to "warranted but precluded" listings was "because of the need to allocate resources for other work." To what other work is the testimony referring? Did species protection suffer as a result of this diversion of resources?**

Response: The other work to which the testimony is referring is work that was court-ordered or related to other settlement agreements, in addition to work on other higher priority candidate species with lower LPNs. These activities are not a result of a diversion of resources, but rather a direction of limited resources to the highest priority activities. Furthermore, the high volume of deadline-related litigation required the Service to work on initial 90-day and 12-month petition findings to the exclusion of listing determinations for existing candidate species. These factors were a motivation behind the multi-district litigation settlement agreements, which outline a plan for making listing decisions on the current list of candidates, and will also reduce new deadline litigation cases and the number of new petitions. These factors were also the motivation for the petition subcap language the Administration requested and the Congress included in the Interior appropriations bill.

11. **How much in legal fees does the U.S. government expect to pay in the two recent settlements with WildEarth Guardians and the Center for Biological Diversity? How is this amount determined?**

Response: The amount of any fees awards is subject to ongoing and confidential settlement negotiations between the Department of Justice (DOJ) and both plaintiffs. The two settlement agreements resolved thirteen separate lawsuits that were consolidated in these MDL proceedings, and the parties are currently attempting to settle the fees-related claims for all of these lawsuits. Because the parties' fees-related negotiations are complex and ongoing, it is not possible to estimate the amount of any fees awarded at this time. If the parties are unable to agree on the amount of any fees awards, the court will determine the appropriate amount. As you are aware, in such cases, the prevailing party is entitled to recover its additional costs for litigating the amount of the award, should the parties be unable to reach agreement.

12. **The USFWS has a practice of denying ESA "enhancement of survival permits" for the importation of endangered species trophies, regardless of the fact that the Service has admitted that hunting of certain foreign species and importation by U.S. hunters of the trophies of those species enhances the survival of those species.** ***[68 Fed.Reg. 49512 (Aug. 18, 2003)]***
    - **How does the Service scientifically justify the denial of such permits, and how does the Service reconcile the denial with its statutory obligation to encourage foreign governments to conserve their species?** ***[Endangered Species Act, 16 U.S.C. Section 1537]***

Response: The Service believes that a properly managed, scientifically based hunting program can provide benefits to certain species in the wild. The Service is supportive of

hunting programs that stimulate stronger conservation for both game and non-game species. Consequently, we issue hundreds of import permits every year for trophies of species that are listed as *threatened*. However, not all hunting programs are identical, nor do they all provide a benefit to the hunted species, particularly endangered species.

All applications received by the Service are reviewed on a case-by-case basis using the best available scientific and commercial information. Requests to import endangered species, whether a hunting trophy or scientific specimen, are evaluated based on the issuance criteria established in our regulations (50 CFR 17.22(a)(2)) to determine whether the importation of the specimen would enhance the propagation or survival of the species. For hunting trophies, we are particularly interested in determining if the species is being managed according to sound scientific principles and professionally accepted management practices, including whether legal hunting is effectively controlled at sustainable levels and illegal hunting is being effectively controlled or eliminated, and whether the hunting program provides a benefit to the species. Benefits can be direct—by generating funds that support the management program—as well as indirect, such as by providing economic benefits to local communities so that they support the protection and maintenance of the species.

To date, with the exception of bontebok, which are successfully managed on South African ranches and game reserves, we have not been able to find that the killing of an animal listed as an *endangered* species through sport hunting provides sufficient enhancement to overcome the loss of the animal from a population that, by definition, is currently in danger of extinction. However, species with a listing status of *threatened* would not have so high a threshold for enhancement, thus increasing the likelihood we could allow the import of trophies obtained through well-managed sport hunting program.

The Service's statutory obligation to encourage foreign governments to conserve their species is accomplished through various measures and is not limited to authorizing the import of hunting trophies. For example, the Service may provide grants that support the development of management programs for species, including anti-poaching measures, which may eventually lead to the improvement of the status of the species and the possibility that we could then allow the import of trophies. Permit denials often result in consultations between the Service and the foreign government to provide them guidance on where improvements are needed to allow trophies to be imported into the United States. This generally means achieving a consistent level of protection and management across countries and across species, often within the same geographic region (e.g., southern Africa).

13. Listing Decisions and Recovery Plans are required to undergo peer review. Are Consultations and Biological Opinions also required to undergo peer review?

- **If they are not required to undergo peer review, should assessments and BiOps that have such a significant impact on land-use be required to undergo peer review?**

- **If they are required to undergo peer review, *is* that peer review conducted by an external body, or by other agency staff?**
- **If they sometimes undergo peer review, how does the agency determine when to seek peer review, and how does the agency determine whether the peer review will be internal or external?**

Response: The Service generally does not incorporate independent peer review in section 7 activities, including biological opinions. All Service biological opinions undergo internal management review before they are distributed to the action agency. The extent of internal review varies and depends largely on the degree of complexity or controversy of the proposed Federal action as well as the extent of any scientific uncertainty. Biological opinions that conclude the proposed action is likely to jeopardize the continued existence of any listed species must be reviewed and approved by a Regional Director. Biological opinions that conclude the proposed action is not likely to jeopardize the continued existence of any listed species must be reviewed and approved by Field Office supervisors.

The statute and our implementing regulations focus our efforts on providing timely consultation and biological opinions to Federal action agencies to help them satisfy their obligations under the ESA without unnecessarily delaying their decisions. The statute specifies that consultation is to be concluded within 90 days of initiation, and that the Federal agencies (the action agency and the Service) may extend this timeline by mutual agreement. However, the statute further specifies that when an applicant is involved, the Federal agencies may not extend the consultation for more than 60 days without the consent of the applicant. The implementing regulations further specify that the Service is to deliver its biological opinion within 45 days of the conclusion of consultation, which means that consultations are expected to be completed in 135 days, unless extended. Such a timeline does not lend itself to conducting external peer reviews.

In unusual situations, the Service and the Federal action agency may choose to conduct a peer review of a biological opinion. The decision to undertake such a review is generally based on the complexity and level of controversy as well as the extent of any scientific uncertainty regarding the effects of the action and is only implemented with the mutual agreement of the Service and the Federal action agency. The decision to undertake such a review requires the Federal action agency to accommodate the additional time commitment and to handle the expense and logistics of the peer review.

14. **What efforts will you and your agency undertake to investigate the actions of USFWS employee Jennifer Norris, accused of providing false or misleading testimony before Judge Wanger? How long is this investigation expected to take? Will outside individuals be brought in to undertake this investigation or will it only be conducted by agency personnel? If so, please list the individuals that will be involved in the investigation along with their affiliations and titles. Will the investigation results be made public?**

Response: We firmly believe that wise decisions about the future of the Bay Delta must be guided by the best available science. The Service stands behind the consistent and

thorough work that our scientists have done on the Bay Delta over many years. Their expertise and professionalism remain vital to the success of our efforts to meet the co-equal goals of improving water reliability and restoring the health of the Bay Delta.

We also believe that, when questions arise regarding the integrity of scientific work, it is important to resolve them swiftly, independently, and decisively. The Service has taken the comments by Judge Wanger very seriously and treated as allegations of scientific misconduct under the Department of the Interior Manual 305 DM 3 Integrity of Scientific and Scholarly Activities. The Service retained a contractor, Atkins North America, to engage a panel of independent reviewers who are external to both the Service and Bureau of Reclamation to evaluate the testimony and declarations made to the court by Dr. Norris. The panel was asked to determine whether the testimony and declarations made to the court were appropriately based upon the extensive scientific record on this issue. The panel produced a report which has been evaluated by the Service's Scientific Integrity Officer. The panel found that, although certain of the judge's questions could have been answered more clearly, Dr. Norris committed no wrongdoing or misconduct, and her testimony fell within the well-established norms and standards of acceptable scientific conduct. The Service's Scientific Integrity Officer, therefore, found that there is no indication that Dr. Norris violated the Department's Scientific and Scholarly Integrity Policy. The same is true with respect to a Bureau of Reclamation scientist, Frederick Feyrer, who was also criticized by Judge Wanger.

Questions submitted by Rep. Sandy Adams

1. **The two recent ESA Settlements with WildEarth Guardians and Center for Biological Diversity commit the USFWS to various deadlines over the next 6 years for the 251 species currently on the candidate species list and other species. For each of these species, the Service has agreed either to (1) decide a listing is not warranted or (2) propose a rule to list the species. [CBD Settlement, para. B.3; WEG Settlement, para. 2] The settlement agreements therefore prohibit the Service from making "warranted but precluded" findings for any of the existing candidate species and other species subject to the settlements.**
   - **How can the Service deprive itself of the authority Congress gave it to make a "warranted but precluded" finding, including for the 251 species currently on the candidate species list?**
   - **How can the Service know now, scientifically speaking, that at the time it reaches each of the settlement-imposed deadlines, it will not be faced with species with higher listing priorities that would necessitate a continued "warranted but precluded" finding for the species that are the subject of the settlement agreements?**

Response: The Service has already determined that the 251 species on the candidate list, many of which have been candidates for a decade or more, warrant a listing proposal under the ESA. However, until such time as we propose listing each of these species, we will be re-certifying our "warranted but precluded" finding for each relevant species each year in the Candidate Notice of Review. The 6-year work plan and the negotiated

settlement agreements will reduce the amount of deadline litigation and the number of petitions filed. This will allow the Service to reclaim a greater measure of control over our listing activities, to resolve our backlog of listing actions in a timely and cost-effective manner, and to focus our limited resources on the species most in need of ESA protection. With relatively few exceptions, the settlement agreements allow the Service to use our biologically based listing priorities to schedule our work, so that the highest priority species will proceed to listing determinations first. We also purposely reserved the discretion and capability to handle emergency listing needs during the course of this workplan.

Questions submitted by Rep. Randy Neugebauer

1. **What percentage of the dunes sagebrush lizard's potential habitat has the USFWS studied in the process of analyzing Federal protection status of the species? How can you be sure of the science behind the lizard's status without studying the entire land area that will be affected by the regulation?**

Response: The best available scientific information at the time of our listing proposal indicated that the lizard is found only in the shinnery oak sand dunes in southeastern New Mexico and west Texas. While a majority of the lizard's habitat has been surveyed, portions of suitable habitat on private lands have not been surveyed due to access issues. Note that the best-available-science standard of the ESA requires us to make determinations in the absence of perfect information. The best available science indicates that the shinnery oak sand dunes habitat has suffered significant losses over recent years, which contributed to our decision to propose the lizard for listing.

On December 5, 2011, the Service published in the Federal Register a 6-month extension of the final determination of whether to provide protection under the ESA for the lizard. The Service is taking this action in order to solicit additional scientific information and public comment before making any final listing determinations regarding the agency's proposal. Publication of this announcement will reopen the comment period on the proposed rule to list the species (published on December 14, 2010) for 45 days. In addition to the original comment period associated with the publication of the proposed rule, we held two public meetings in April 2011 and reopened the comment period to accept additional public comments. That comment period closed on May 9, 2011.

Public comments received since the publication of the proposed rule have expressed concerns regarding the sufficiency and accuracy of the data related to the lizard's status and trends in New Mexico and Texas. The Service has received new survey information for the lizard in New Mexico and Texas and an unsolicited peer review study on our proposed rule. During the 45-day comment period, the Service is soliciting input from concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule in light of the concerns raised to date and the additional information the Service has received.

2. **Do you have baseline population estimates for the dunes sagebrush lizard? Just because a lizard is no longer found at a specific site where it once lived, does that mean that that particular lizard has died, or could it have migrated to a different location? What does the USFWS consider to be a viable population number for the lizard, and how do you come to that conclusion?**

   Response: Populations of lizards vary over time due to a number of factors such as the abundance of invertebrates (prey), drought, or the availability of mates. It is true that the absence of lizards does not mean that lizards have died, but it does mean that they are no longer found at a given site, or are at such low numbers that they are undetected. The Sias and Snell study, which determined that lizards were less abundant adjacent to oil and gas development, was completed in areas where lizards were still present. Areas within oil fields where lizards were not present were excluded from the study. It is reasonable to expect that lizards will be found in areas where habitat remains, and not be found in areas where suitable habitat no longer exists. The proposed rule does not define a viable population for the lizard, but makes a direct connection to the availability of habitat and the lizard's persistence.

   As previously noted, comments received since the publication of the proposed rule have expressed concerns regarding the sufficiency and accuracy of the data related to the lizard's status and trends in New Mexico and Texas. Therefore, in consideration of the disagreements surrounding the lizard's status, the Service is extending the final determination for 6 months in order to solicit scientific information that will help to clarify these issues. The Service has also opened another 45-day comment period on the proposed rule that began on December 5, 2011. The Service welcomes any scientific information available that is relevant to the question.

3. **The petition filed by the Center for Biological Diversity and the Chihuahuan Desert Conservation Alliance in May 2002 to list the sand dune lizard as threatened or endangered relied upon studies performed by the University of New Mexico's Department of Biology in the mid-1990's. That petition clearly ignored parts of the studies that conflict with the petition's goals. For example, the population of the lizard in areas where oil wells were present was found to have increased by a factor of 2.4 from 1996 to 1997, compared to an increase by a factor of 1.6 where wells were absent. The reports also conceded that the lizard continues to live in areas where there have been oil fields in existence for over 40 years. If we are talking about threats to the lizard, how can you justify moving forward with this listing in the face of scientific evidence that contradicts the popular view that human activity such as oil drilling is responsible for killing off the species? Do you have a response to the data and studies referenced above?**

   Response: As mentioned previously, populations of lizards vary over time due to a number of factors such as the abundance of invertebrates (prey), drought, or the availability of mates. For this reason, the authors (Sias and Snell) compared surveys each year independently. There were periods during the study where lizards were more abundant at a developed site, but throughout the five year study, the researchers found

statistically significant differences between the developed and undeveloped sites. The statistical evidence allowed the authors to conclude the relationship between the abundance of lizards at developed and undeveloped sites could not be explained by chance.

As previously noted, comments received since the publication of the proposed rule have expressed concerns regarding the sufficiency and accuracy of the data related to the lizard's status and trends in New Mexico and Texas. Therefore, in consideration of the disagreements surrounding the lizard's status, the Service is extending the final determination for 6 months in order to solicit scientific information that will help to clarify these issues. The Service has also opened another 45-day comment period on the proposed rule that began on December 5, 2011. The Service welcomes any scientific information available that is relevant to the question.

4. **Do you have baseline population estimates for the lesser prairie chicken? What percentage of the lesser prairie chicken's potential habitat has USFWS studied?**

Response: Scientifically sound historical baseline population estimates are not available. Instead the Service has relied on the best scientific knowledge of species experts as reported in the scientific literature. From these accounts we can determine, with some confidence, the historically occupied range and estimated abundance of lesser prairie-chickens. Knowledgeable sources considered the lesser prairie-chicken to be abundant to common in the late 1800's. One source estimated that as many as two million lesser prairie-chickens may have existed in Texas alone at that time. By the 1930s, the species had begun to disappear from areas where it had been considered abundant – populations were nearly extirpated from Colorado, Kansas, and New Mexico, and were markedly reduced in Oklahoma and Texas. In the mid-1960's, the total rangewide population was estimated to be between 36,000 to 43,000 individuals.

The fish and game agencies in each of the five States where the lesser prairie-chicken occurs conduct surveys for the lesser prairie-chicken. In all five States, survey routes are established throughout much if not all of the known range of the lesser prairie-chicken. While the actual amount of known range sampled by each route is small, the surveys provide an index of the status of the lesser prairie-chicken, by State, over the entire range. The methodology is useful in documenting long-term trends but is limited in its ability to reliably estimate population numbers. Recently, the States received funding to implement aerial surveys for lesser prairie-chickens, which may provide more reliable indicators of population status, but these surveys have not yet been completed rangewide.

5. **How effective have volunteer conservation agreements with private land owners and industries been in protecting the habitats of the dunes sagebrush lizard and the lesser prairie chicken? Does USFWS take these options into account when conducting scientific studies of mitigation strategies?**

Response: Conservation agreements are in place in three of the five lesser prairie-chicken States. In Texas, there are currently 17 enrolled ranches in a Candidate

Conservation Agreement with Assurances (CCAA), representing 199,781 acres in 8 counties. In New Mexico, there are currently 34 oil-gas companies enrolled in the Candidate Conservation Agreements (CCA) for a total of 574,763 mineral acres enrolled. In addition, 34 New Mexico ranchers have enrolled in the CCA and CCAA, representing 1,353,924 enrolled acres. An approved CCAA has been developed with a single landowner in the State of Kansas. Oklahoma, under the leadership of the Oklahoma Department of Wildlife Conservation, is currently developing a CCAA. As in all species, the Service does consider the agreements when conducting research, or implementing conservation measures for the lesser prairie-chicken or dunes sagebrush lizard.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 14 2012

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

Dear Mr. Chairman:

Enclosed are responses prepared in a joint effort between the Bureau of Reclamation and the United States Geological Survey to additional questions for the record submitted from the Committee on Natural Resources following the December 13, 2011, hearing on H.R. 3479, Natural Hazards Risk Reduction Act of 2011.

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 Edward J. Markey
Ranking Member, Committee on Natural Resources

Questions for the Record from Rep. Edward J. Markey

following Dec. 13, 2011, hearing on HR 3479

1.) Dr. Applegate, concerns have surfaced that recent seismic activity in Arkansas and Texas could be related to natural gas drilling operations, specifically to the use of injection wells for the disposal of waste water following hydraulic fracturing. Has the USGS done work to examine the possible link between fracking activities and earthquakes?

The USGS has a long history of looking at induced/triggered earthquakes, dating back to the 1960's when deep injection of waste from the Rocky Mountain Arsenal triggered earthquakes that were strongly felt in Denver. In 1968 a team that included two USGS scientists concluded that the then-active Rocky Mountain Arsenal deep injection well had triggered several Denver-area earthquakes during the mid-1960s, including three magnitude 5+ quakes in 1967 (published in *Science*, v. 161, pp. 1301-1310, 1968).

In an experiment in earthquake control at Rangely, Colorado (about 300 miles west of Denver), USGS scientists demonstrated that, by adjusting the pumping pressure of fluids into a well within the oilfield reservoir, earthquakes associated with the injection could be controlled. The experiment confirmed our concept of how pumping fluids underground can increase pore pressure (water between rock grains) along a fault, thus reducing the effect of the forces confining fault movement and allowing earthquakes to occur (published in *Science*, v. 191, pp. 1230-1237, 1976). In 1990 the USGS, in cooperation with the Environmental Protection Agency (EPA), published a report entitled "Earthquake Hazard Associated With Deep Well Injection - A Report To The U.S. Environmental Protection Agency" (U.S. Geological Survey Bulletin 1951, Craig Nicholson and Robert L. Wesson).

More recently, in response to injection-associated earthquakes in Arkansas, Texas and Colorado, the USGS is working under an interagency agreement with EPA on the physics of induced earthquakes and the likelihood of being able to estimate buried stress fields from surface measurements or borehole data. This study will include an assessment of whether or not the recorded earthquakes were due to waste water injection or natural causes. A report on this work is expected later this year.

The USGS continues to collect seismic data, through existing monitoring networks and temporary deployments of seismic stations, from ongoing episodes of possible induced earthquakes in Colorado, Oklahoma, Arkansas, Ohio, and California. We are working with our regional seismic network partners and state geological surveys to interpret these data in the context of nearby earthquake activity.

2.) Dr. Applegate, would the authorization level outlined in H. R. 3479 prevent the USGS from conducting any research on the hydraulic fracturing and earthquakes?

The authorization level in H. R. 3479 of $57,700,000 would represent a $2,700,000 decrease relative to the fiscal year 2012 appropriated level for the USGS Earthquake Hazards and Global Seismographic Network programs, which are authorized under the legislation. To the extent possible, we would continue our existing seismic monitoring efforts and our research on the physics of earthquake sources. Both of these activities have relevance to the induced earthquake issue, but they are not directly focused on it. This authorization level would not allow us to increase our research effort on hydraulic fracturing and earthquakes.

In a related development, the President's budget for FY 2013 supports a collaborative interagency research and development effort by the USGS, Department of Energy, and EPA to address the highest priority challenges associated with the safety and prudent development of unconventional oil and gas resources. The goal of this effort is to understand and minimize potential environmental, health, and safety impacts of energy development through hydraulic fracturing. Within this effort there is a requested increase for the USGS of $1.1 million to advance studies of seismicity apparently associated with injection of wastewater from hydraulic fracturing and other activities.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 2 9 2012

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

Dear Mr. Chairman:

Enclosed are responses prepared by the United States Fish and Wildlife Service to questions submitted following the Subcommittee's December 15, 2011, oversight hearing titled "Harris Neck National Wildlife Refuge and How the Federal Government Obtained Title to This Land and Promises Made to the Original Landowners?"

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 Minority Member
Subcommittee on Fisheries, Wildlife, Oceans
and Insular Affairs

QUESTIONS FOR THE RECORD
FOR CYNTHIA DOHNER
REGIONAL DIRECTOR FOR THE SOUTHEAST REGION
U.S. FISH AND WILDLIFE SERVICE

Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
Oversight Hearing titled "*Harris Neck National Wildlife Refuge and How the Federal Government Obtained Title to This Land and Promises Made to the Original Landowners?*"
December 15, 2011

Submitted by Chairman John Fleming, M.D. from Louisiana

(1) Which federal agency used its condemnation authority to obtain the 2,688 acres of Harris Neck in 1942? Has the Service done any analysis to determine whether these property owners were fairly compensated for their land?

Response: The Department of War obtained this land on behalf of the U.S. Army Air Corps in order to establish Harris Neck Army Airfield during World War II. Compensation was determined in the District Court for the Southern District of Georgia following the filing of nine Declarations of Taking and deposits of "estimated" just compensation filed with the Court from January 14 - July 19, 1943. Final judgments awarding specific sums of just compensation to individual landowners were issued by the District Court in January and February, 1948.

Between 1979 and 1982, the District Court for the Southern District of Georgia and the Eleventh Circuit Court of Appeals issued three separate opinions confirming the federal government owned the Harris Neck property; the original owners had no legal right to re-occupy the land; and the land could not be returned to the original owners without Congressional authority. The 1980 opinion was upheld by the United States Court of Appeals for the Eleventh Circuit. At the request of U.S. Sen. Mack Mattingly, U.S. Sen. Sam Nunn, and U.S. Rep. Lindsay Thomas, the General Accounting Office (GAO) issued a report in 1985 that found the actions of the federal government were legal and appropriate under rules established for condemnation of property, fair compensation, and subsequent land conveyances.

In 1962, the Service was given the former U.S. Army Air Corps' airfield pursuant to the Federal Property and Administrative Service Act of 1949 (Public Law 81-152). Harris Neck refers to a larger area of land that runs from the South Newport River south to the Julienton River and Sapelo Sound. The Harris Neck National Wildlife Refuge is located on the northernmost portion of the Neck.

As part of the Service's historic preservation efforts under the ***National Historic Preservation Act*** and the ***Archaeological Resources Protection Act***, it researched the records of taking on file at the refuge to: reconstruct the 1940s title chain; map the early 20th century land ownership and use patterns; and, identify potential land tracts associated with the African American and EuroAmerican communities (referenced in Attachments 1-5)[1].

[1] Attachment 1 is provided on the enclosed CD

The GAO report references an average compensation of $37.31 per acre received by the former white landowners of Harris Neck. This includes the $24,764 paid to Lilly A. Livingston for her 55-acre tract (referenced as Tract 143 in attachment 1). This particular tract, located on a high bluff overlooking the South Newport River, had a large plantation house with a pool and ornamental gardens. It also had a dock and pier with deepwater access making it more valuable. The amount Mrs. Livingston received accounts for 43 percent of the total amount of compensation paid to former white Harris Neck landowners. This skews the average compensation of $37.31 referenced in the GAO report. If this tract is removed from the equation, the average compensation/acre received by former white Harris Neck landowners is reduced to $21.94, an amount less than the $26.90 per acre received by former African American landowners.

Compensation was dependent upon location, type of terrain [upland or marsh], land use, and improvements. Regardless of ethnicity, landowners whose tracts consisted largely of marsh received the lowest compensation. Tracts with improvements, such as houses and/or outbuildings, tended to be small lots or parcels. Average compensation per acre for these tracts ranged from $47.24 to $5,000 per acre (Attachment 1, Tract 36 (Estate of Peter Baisden) and Tract 33 (Marie Timmons), respectively).

Two tracts, Gould Cemetery and Friendship Baptist Church, holding cultural and religious significance to the Harris Neck community, were not acquired by the Department of War and are not part of the Harris Neck National Wildlife Refuge.

(2) Were the 84 landowners on Harris Neck compensated for their homes, crops, barns and other improvements?

Response: The GAO report affirmed that former property owners were compensated. However, it was unable to definitively determine if compensation included homes, crops, barns, and other improvements due to several factors, including a fire that destroyed McIntosh County's land and tax assessment records covering the period between 1920 and 1979. GAO's calculation was based on the average per acre payment broken down by ethnicity as indicated in Table 1 below. However, GAO did not take into account that approximately 1,100 of the 2,688 acres were salt marsh which is valued at a lower price. In addition, the amount paid to Mrs. Lilly A. Livingston for her 55-acre tract, which accounted for 43 percent of the total compensation paid to white landowners, was not noted. As previously mentioned, this was a more valuable tract located on a high bluff overlooking the South Newport River. The $24,764 Mrs. Livingston received skews the average amount of compensation.

Table 1. Compensation Paid to Harris Neck Land Owners

Owner's Race	Number of Owners	Tracts/Acres	Total Payment	Dollar Range Paid Per Acre	Average Per-Acre Payment
Black	59	89/1,102	$29,653	$2.44 – $5,921	$26.90
White	19	66/1,532	$57,153	$2.09 – $1,260	$37.31
Racially Unidentified	6	14/53	$2,743	$11.54 – $325	$52.08
Total	84	169/2,687	$89,549	$2.09 – $5,921	$33.32

To determine the fairness of the government's average $33.32 per acre compensation to the Harris Neck landowners, the GAO examined the land acquisition records for Fort Stewart Army Base. The base was considered comparable to the Harris Neck area due to its similar marsh-type terrain. The 280,376-acre military base was acquired by the government between 1941 and 1950 through condemnation and direct purchase. The government paid $2,352,164 for 140,669 acres acquired by condemnation and $2,355,195 for 139,707 acres acquired through direct purchase. Average compensation per acre paid to the former landowners of Fort Stewart was $16.72 and $16.86 respectively. The GAO stated that the average $33.32 per acre compensation received by Harris Neck landowners was greater than that received by the former Fort Stewart landowners, many of whom were descendants of former slaves.

(3) The Fish and Wildlife Service has consistently testified that it only obtains private property from "willing sellers" and does not use its condemnation authority. What is the rationale for this decision?

Response: Like many federal agencies, the Fish and Wildlife Service has the power of eminent domain. This power is granted in the United States Constitution and in the General Condemnation Act of 1888,[1] and can be used to acquire lands and interests in lands for the public good.

The Service recognizes that the condemnation process can be controversial and unpopular among landowners and impacted communities. Therefore, the Service has adopted a policy premised on the belief that it gains more support for its mission and for the National Wildlife Refuge System mission when it commits to the landowners and the community in the planning process that it will buy land or interests in land only from willing sellers.

(4) When did the Service adopt this philosophy? Isn't it true that the Service has received thousands of acres of property that some other federal agency obtained through condemnation?

Response: The Service formally adopted its willing seller policy when it published 342 FW 6, Condemnation, in 1995 (available online). Section 6.3 (A) states that "It is the policy of the Service to acquire areas under general authorities . . . on a willing seller basis." This policy was formally reiterated in 1996.[2]

We do not know how many acres we have acquired from other federal agencies that may have acquired those acres through condemnation because the transfers of those lands do not include information about how they were originally acquired.

(5) In its 1985 report, the General Accounting Office noted that the Service had received 43,934 acres of land originally acquired through condemnation by the U.S. Military as of October, 1984. Other than Harris Neck, was any of this land previously owned by former slaves?

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[1] 40 USC 3113.

[2] 341 FW 1, Policy and Authorities, Section 1.3 (A) (3) (b).

Response: We do not know if any of this land was previously owned by former slaves.

(6) In the past, when the Service did use its condemnation authority, how were property owners compensated? Did you pay just for the land? What does the "Uniform Appraisal Standards for Federal Land Acquisition" require?

Response:
How Property Owners Were Compensated – The Service paid just compensation, as determined in district court, as required by the Fifth Amendment to the United States Constitution. Where applicable, the Service also paid relocation costs, which is above and beyond the just compensation paid for the property condemned, as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.[3]

Uniform Appraisal Standards for Federal Land Acquisition Requirements – The Uniform Appraisal Standards for Federal Land Acquisitions guide the appraisal process for all federal land acquisitions whether from willing sellers or via condemnation, and is uniformly included in all land acquisition projects funded by Congress. The Standards state that it is the United States' policy to impartially protect the interests of all concerned and that the United States bases its land acquisitions on market value appraisals, in order to pay just compensation to the landowner.[4]

The Standards require that, if the parcel being appraised includes water rights, minerals or suspected mineral values, fixture values, growing crops, or timber values, treatment of their contributory value should be discussed in the written appraisal.[5] Beneficial and detrimental factors, such as accessibility, views, and vegetation must be considered.[6] Improvements[7] and zoning and other land use regulations must also be considered,[8] as well as highest and best use.[9] The appraiser must consider all of these things, as well as others, in arriving at a determination of fair market value, in order for the government to pay just compensation, not only when the government takes property by eminent domain, but also when it buys property from willing sellers.

(7) Can the Service administratively remove land from a refuge? Isn't it true that since Congress changed the National Wildlife Administration Act in 1976, there are specific limitations? Could you please describe them?

Response:

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[3] 42 USC 4601.
[4] Uniform Appraisal Standards for Federal Land Acquisition (2000), Policy, p.15.
[5] Uniform Appraisal Standards, Section A-10.
[6] Uniform Appraisal Standards, Section A-13a.
[7] Uniform Appraisal Standards, Section A-13b.
[8] Uniform Appraisal Standards, Section A-13h.
[9] Uniform Appraisal Standards, Section A-15.

Administrative Removal of Land from a Refuge – The National Wildlife Refuge System is administered by the Secretary of the Interior through the Service,[10] and the National Wildlife Refuge System Administration Act of 1966, as amended,[11] governs the Service's authority to remove land administratively from a national wildlife refuge or unit of the National Wildlife Refuge System.

Limitations on the Service's Authority to Administratively Remove Land -- The "Game Range Act" of 1976[12] limits the Service's authority to dispose of national wildlife refuge lands without Congressional direction (except by exchange as described below and except for areas of the System administered pursuant to cooperative agreements) unless:

1. The Secretary determines, with the approval of the Migratory Bird Conservation Commission, that the lands are no longer needed for the purposes for which the System was established, and
2. The lands are transferred or otherwise disposed of for an amount not less than:
   a) The acquisition costs of the lands, for lands purchased with Migratory Bird Conservation Fund monies, or fair market value, whichever is greater, or
   b) The fair market value of the lands (as determined by the Secretary, as of the date of transfer or disposal) if the lands were donated.[13]

Exchanges – The Secretary may acquire lands or interests in lands by exchange:

1. For acquired lands or public lands, or for interests therein, under his jurisdiction which he finds suitable for disposition, or
2. For the right to remove, in accordance with such terms and conditions as he may prescribe, products for the acquired or public lands within the System.

The values of the properties exchanged must be approximately equal, or if not approximately equal, the values must be equalized by the payment of cash to the grantor or to the Secretary, as circumstances require.[14]

Service policy is that exchanges must be of benefit to the United States;[15] land can be exchanged for land having greater potential for achieving habitat protection objectives.[16]

Regional Directors may approve proposed exchanges valued below $500,000, but Director's approval is required for exchanges valued at $500,000 or more.[17] If the value of a land exchange exceeds $1 million, the Service is required to provide the Committees on Appropriations a 30-day period in which to examine the proposed exchange.[18]

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[10] 16 USC 668dd (a) (1).
[11] 16 USC 668dd.
[12] Public Law 94-223; 90 Stat. 190.
[13] 16 USC 668dd (A) (5).
[14] 16 USC 668dd (b).
[15] 342 FW 5, Non-Purchase Acquisition, Section 5.7 (A), Exchange, Definition.
[16] 341 FW 2, Land Acquisition Planning, Section 2.2 (D), Exchange.
[17] 342 FW 5, Non-Purchase Acquisition, Section 5.7 (D), Exchange Approval Thresholds.
[18] House Report 111-316, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010.

Section 1302 of the Alaska National Interest Lands Conservation Act provides exchange authority for Alaska on the basis of equal value (with equalization payments), except, when the Secretary determines it would be in the public interest, such exchanges may be made for other than equal value.[19]

(8) Please provide for the Subcommittee specific examples of where the Service has transferred or disposed of refuge land with the approval of the Migratory Bird Conservation Commission.

Response: We could find no records of transfers or disposals made with the approval of the Migratory Bird Conservation Commission.

(9) What happens if the value of a land exchange exceeds $2 million? Is it, therefore, correct to conclude that the Service can administratively create any new refuge it wants, expand the boundaries of an existing refuge, but is limited on how it can remove property from the National Wildlife Refuge System?

Response:
Land Exchanges Valued at More than $1 Million – If the value of a land exchange exceeds $1 million, the Service is required to provide the Committees on Appropriations a 30-day period in which to examine the proposed exchange.[20]

Administrative Creation of New National Wildlife Refuges – When the Service administratively creates a new national wildlife refuge, it follows an extensive planning process that begins with identifying a need to meet resource objectives that requires a real property base,[21] and describing the need in a Preliminary Project Proposal. The Preliminary Project Proposal is a conceptual land protection proposal that shows how certain Service objectives would be met, and is based on Service concept plans (e.g., North American Waterfowl Management Plan, endangered species recovery plans) or Congressional direction; it serves as the basis for the Director's approval early in the planning process.[22]

Service policy is to acquire lands and waters consistent with legislation or other Congressional guidelines and Executive Orders for the conservation of fish and wildlife and related habitat, and to provide wildlife-oriented public use for educational and recreational purposes.[23] The Director determines Service land acquisition policies and priorities.[24] If the Director approves the Preliminary Project Proposal, then a Regional Office may begin work on a Land Protection Plan, which is a separate document intended to inform landowners and the local interested public of the land protection project and how and when it may affect them.[25]

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[19] 342 FW 5, Non-Purchase Acquisition, Section 5.7 (A), Exchange, Definition.
[20] House Report 111-316, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010.
[21] 341 FW 1, Policy and Responsibilities, Section 1.2, Scope.
[22] 341 FW 1, Policy and Responsibilities, Section 1.6 (I).
[23] 341 FW 1, Policy and Responsibilities, Section 1.3 (A), Land Acquisition Policy.
[24] 341 FW 1, Policy and Responsibilities, Section 1.7 (A) (1).
[25] 341 FW 1, Policy and Responsibilities, Section 1.6 (H).

One of the goals of the planning process is to "ensure opportunities to participate in the refuge planning process are available to our other programs; Federal, State, and local agencies; tribal governments; conservation organizations; adjacent landowners; and the public."[26] The Land Protection Plan must be developed with appropriate public participation.[27]

The Land Protection Plan is a component of a Decision Document[28] that identifies the approved refuge boundary, refuge purpose(s), goals, and general management direction.[29] The Decision Document also includes documents demonstrating compliance with applicable laws, executive orders, regulations, and policies, such as a National Environmental Policy Act document (EA or EIS). The Decision Document also may include a Realty Feasibility Report, Engineering Assessment (if warranted), and Compliance Certificate. After establishment of the refuge, the Service must develop a Comprehensive Conservation Plan (CCP) that describes the desired future conditions of a refuge or planning unit and provides long-range guidance and management direction to achieve the purposes of the refuge.[30]

Development of the CCP also requires public involvement in refuge management decisions, by providing a process for effective coordination, interaction, and cooperation with affected parties, including Federal agencies, State conservation agencies, tribal governments, local governments, conservation organizations, adjacent landowners, and interested members of the public.[31] Part of the CCP process is preparation of a Public Involvement/Outreach Plan indicating how and when the Service will invite the affected public to participate in CCP development. The public involvement/outreach plan includes creation of a mailing list and identification of appropriate materials and opportunities for public involvement. The Service integrates public involvement and outreach into each step of the planning process.[32]

In addition to the planning requirements described above, the Service has other limitations on its ability to administratively create new national wildlife refuges:

1. Funds for land acquisitions must be appropriated by Congress or approved by the Migratory Bird Conservation Commission;
2. Congress may direct the Service to spend land acquisition funds at particular existing or new refuges; and
3. The Service may only acquire lands and interests in lands within approved acquisition boundaries except for minor boundary expansions as described below.

Boundary Expansions – Regional Directors may approve boundary expansions of 16.19 hectares (40 acres), to a cumulative total of 10 percent of the approved acquisition boundary acreage or 40 acres, whichever is greater. Such boundary expansions must be contiguous or adjacent to the

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[26] 602 FW 1, Refuge Planning Overview, Section 1.5.
[27] 341 FW 1, Policy and Responsibilities, Section 1.3 (A), Land Acquisition Policy.
[28] 341 FW 1, Policy and Responsibilities, Section 1.6 (A).
[29] 602 FW 1, Refuge Planning Overview, Section 1.7 (C), Land Acquisition Planning.
[30] 16 USC 668dd (e) (1) (A) (1) and 602 FW 1, Refuge Planning Overview, Section 1.7 (D).
[31] 602 FW 3, Comprehensive Conservation Planning Process, Section 3.3 (H).
[32] 602 FW 3, Comprehensive Conservation Planning Process, Section 3.4 (C).

established unit and clearly beneficial for its management. In addition, all appropriate Service planning and compliance requirements must be completed.[33]

Limitations on Removal of Property from the National Wildlife Refuge System – Limitations on removal of property from the National Wildlife Refuge System are described in the answer to question 7 above.

(10) Have the limitations contained in the 1976 Game Range Act made it more difficult for the Service to operate the National Wildlife Refuge System in an effective manner? Has the Service ever sought to repeal those limitations?

Response: The limitations on the Service's authority to transfer or dispose of National Wildlife Refuge System lands have not made it more difficult to operate the System in an effective manner. Therefore the Service has not sought to have the Game Range Act limitations repealed.

(11) If you were to agree with the Harris Neck Land Trust that the 84 landowners were not treated fairly in the 1940's, would the Service support legislation to return some or all of the 2,688 acres to the descendants of the original landowners?

Response: As discussed above, the Fish and Wildlife Service is unaware of any unfair treatment or unlawful activity relating to the condemnation of this property. Therefore, the Service does not believe that legislation to return some or all of the subject property to the descendents of the original landowners is warranted or appropriate.

It is important to understand that this issue has been reviewed over the years by both the U.S. District Court in Georgia and the U.S. Court of Appeals Eleventh Circuit, as described in the response to Question #1. Also, the GAO confirmed in its report that the actions of the federal government had been legal and appropriate under rules established for condemnation of property, the payment of just compensation, and subsequent land conveyances.

(12) Has the Service or the federal government ever made a compensation offer to the Harris Neck Land Trust or prior to its establishment, those representing the original families who lived on this property for over 70 years? If yes, what were the details?

Response: The Service has not offered compensation to the Harris Neck Land Trust (HNLT) or to past landowners and /or their descendants prior to the establishment of the HNLT in 2006. The Harris Neck National Wildlife Refuge is part of the Harris Neck community. It is a good neighbor and partner supporting the local tourism economy.

In the 1980s, the Refuge constructed a deep water dock on Barbour River for the exclusive use by the Barbour River Waterman's Association to ensure that the shellfishing-dependent livelihood of the community would not be jeopardized by the existence of the Refuge. In order to use the dock, an individual must be a commercial shellfisherman and be a descendant of the community that lived on the Refuge prior to the Army airfield establishment. In 2011, the

[33] Delegation of Authority from the Director to Regional Directors by memorandum dated June 27, 1996.

refurbishment of the Crabber's Dock was funded through the American Recovery and Reinvestment Act at a cost of approximately $300,000.

In addition, the Refuge ensures that HNLT members are provided access to Gould Cemetery, an inholding in the Refuge. The Refuge has initiated the placement of a fence around the cemetery as well as documented and mapped the cemetery.

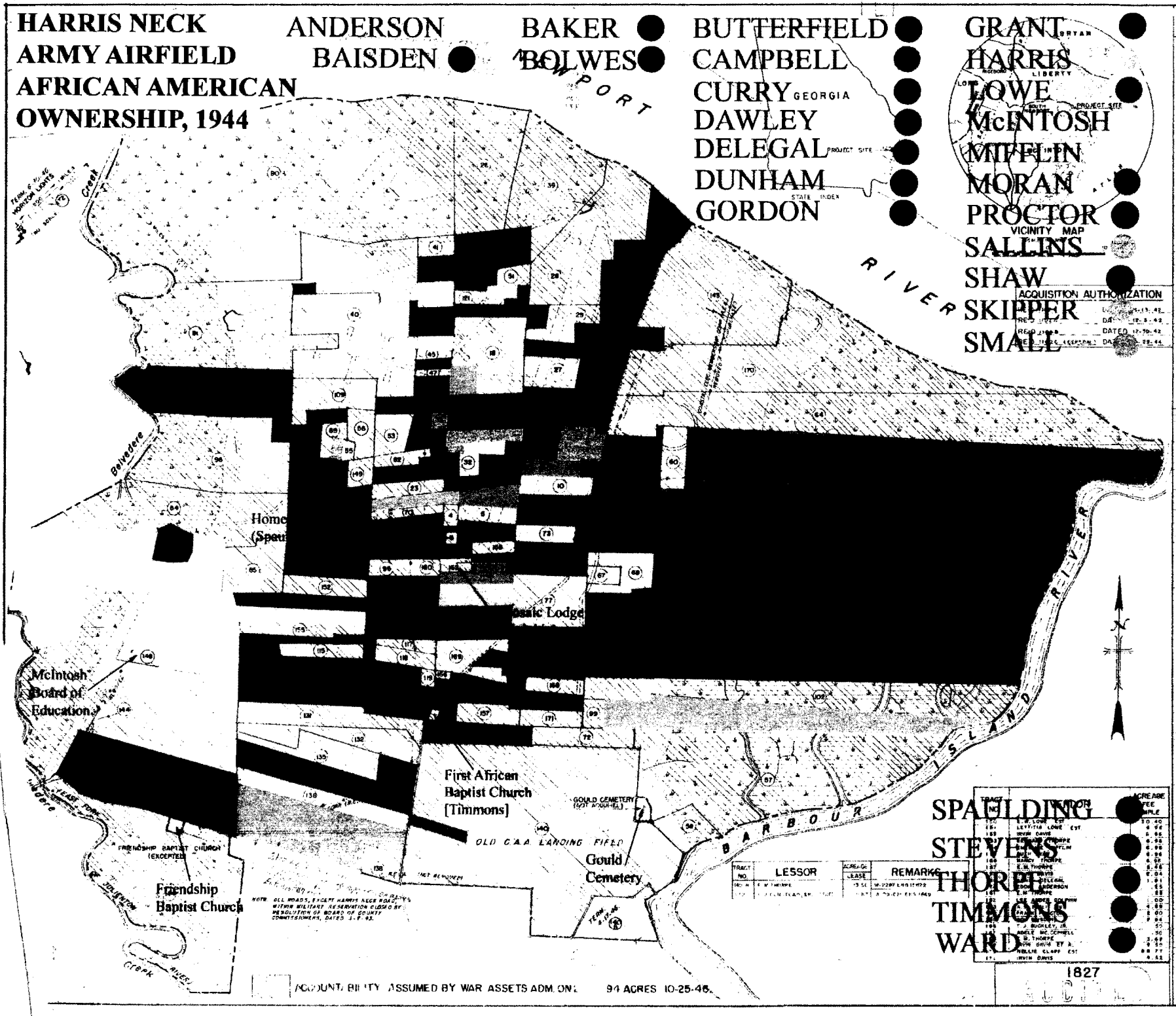
(13) In the 1940's, the federal government spent $89,549 to acquire 2,687 acres of Harris Neck through their condemnation authority. What is the value of this property today?

Response: Currently, the Refuge is 2,752.11 acres owned in fee. Of this, roughly 1,368 acres are uplands. Historically, the value of the refuge is based exclusively on this upland habitat. In 2009, an appraisal valued the entire refuge at roughly $30,100,000, which equates to approximately $22,000 per upland acre. This value takes into account timber values.

(14) How much money has the federal government spent in improvements to Harris Neck since the Service acquired this land in 1962?

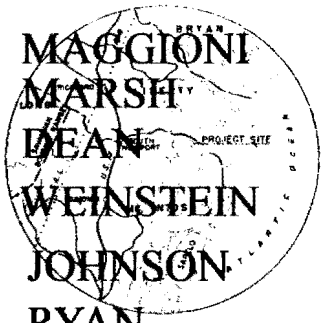
Response: Since 1962, the Service has made substantial improvements to the Refuge in the form of real property (roads, levees, buildings, wells, docks, trails, interpretive kiosks, etc.). While it is difficult to provide the exact amount of funding spent over the last 50 years on real property assets, a good estimate to use is the current replacement value (CRV) of all assets currently located on the Refuge. The total CRV for all real property assets at Harris Neck NWR is more than $25 million. In addition to Refuge assets, the Service constructed the Georgia Ecological Services Field Office on Harris Neck NWR for $700,000 in 2009.

HARRIS NECK ARMY AIRFIELD AFRICAN AMERICAN OWNERSHIP, 1944



HARRIS NECK ARMY AIRFIELD
EUROAMERICN OWNERSHIP, 1944

- LIVINGSTON
- CLAPP
- THORPE
- DAVIS
- WESSELS, SR.
- MAGGIONI
- MARSH
- DEAN
- WEINSTEIN
- JOHNSON
- RYAN
- BUCKLEY
- COUNTY BOARD OF EDUCATION



NEWPORT RIVER

Belvedere Creek

Gould Cemetery (Not Acquired)

BARBOUR ISLAND RIVER

Friendship Baptist Church (Excepted)

NOTE: ALL ROADS, EXCEPT HARRIS NECK ROAD, WITHIN MILITARY RESERVATION CLOSED BY RESOLUTION OF BOARD OF COUNTY COMMISSIONERS, DATED 3-2-43.

ACQUISITION AUTHORIZATION

TRACT NO.	LESSOR	ACRE AGE	REMARKS

LESSOR

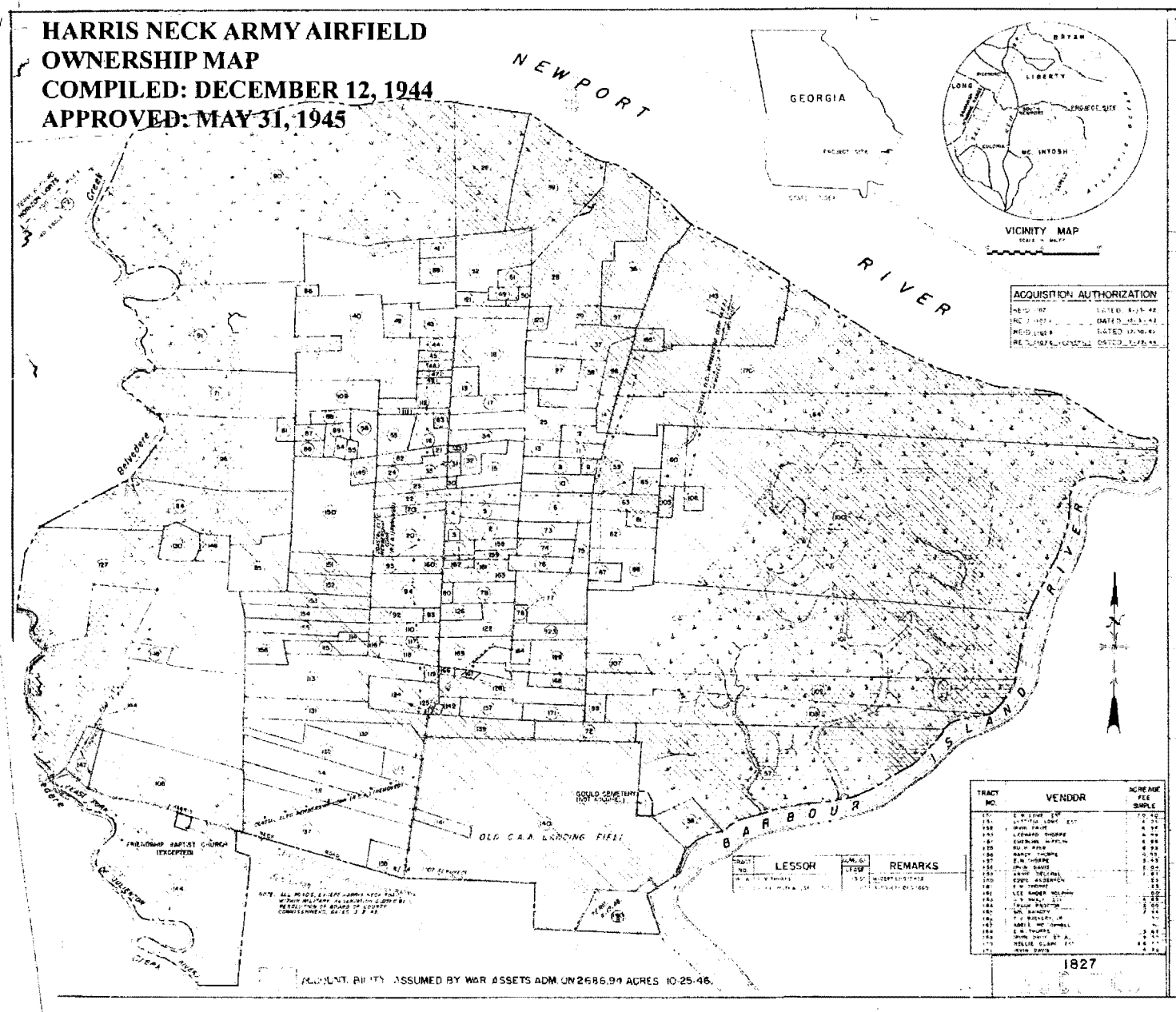
- THORPE
- OLMSTEAD

TRACT NO.	VENDOR	ACREAGE FEE SIMPLE
150	E. W. LOWE EST	50.40
151	LETITIA LOWE EST	6.96
152	IRVIN DAVIS	6.98
153	LEONARD THORPE	6.98
154	CAMELINE MIFFLIN	6.98
155	RUTH RYAN	6.86
156	HARRY THORPE	6.95
157	E.W. THORPE	5.49
158	IRVIN DAVIS	2.04
159	ANNIE DELESSE	1.61
160	EDDIE ANDERSON	.85
161	E.W. THORPE	.85
162	LEE ARMEN GOLDMAN	1.00
163	S.S. SMALL EST	6.98
164	FRANK PROCTOR	2.00
165	SOL BARKER	7.94
166	T.M. BUCKLEY, JR	.50
167	ADELE MC CONNELL	.50
168	E.W. THORPE	3.62
169	IRVIN DAVIS ET AL	9.34
170	NELLIE CLAPP EST	68.77
171	IRVIN DAVIS	4.62

1827

ACCOUNTABILITY ASSUMED BY WAR ASSETS ADMIN. 34 ACRES 10-25-48.

HARRIS NECK ARMY AIRFIELD
OWNERSHIP MAP
COMPILED: DECEMBER 12, 1944
APPROVED: MAY 31, 1945



RESPONSIBILITY ASSUMED BY WAR ASSETS ADM ON 2686.94 ACRES 10-25-46.

FINAL PROJECT OWNERSHIP MAP

STATE GEORGIA
COUNTY MCINTOSH
DIVISION SOUTH ATLANTIC
THIRD ARMY AREA

30 MILES S. OF SAVANNAH
10 MILES S.E. OF RICEBORO

TRANSPORTATION FACILITIES

12 MILES EAST OF S.A.L. RAILROAD
STATE ROAD
6 MILES EAST OF U.S.17 FEDERAL ROAD
AIRLINE

ACQUISITION

TOTAL ACRES IN PROJECT	2,701.27
ACRES OWNED IN FEE	2,686.94
ACRES LEASED TO W.D.	14.33
ACRES LEASED FROM W.D.	
ACRES TRANSFERRED TO W.D.	
ACRES DONATED TO W.D.	
ACRES AVIGATION EASEMENTS TO W.D.	

DISPOSALS

TOTAL ACRES DISPOSED OF	2,701.27
ACRES TO W.A.A. (FEE)	2,686.94
ACRES EXCHANGED	
ACRES LEASES TERMINATED	14.33

LEGEND

RESERVATION LINE
STATE OR PROVINCE LINE
COUNTY LINE
CIVIL DISTRICT PRECINCT
LAND GRANT LINE
CITY, VILLAGE OR BOROUGH
CEMETERY, SMALL PARK, ETC.
TOWNSHIP LINE
SECTION LINE
AVIGATION EASEMENT
FEE SIMPLE

SCALE IN FEET

WAR DEPARTMENT O.C.E.
CONSTRUCTION DIVISION

REAL ESTATE
HARRIS NECK ARMY AIR FIELD

MILITARY RESERVATION

RECOMMENDED _____ DATE _____
APPROVED _____ DATE _____

COMPILED _____ TRACED _____ CHECKED _____
DATE _____ BY _____ REVISIONS _____ APPROVED _____

SHEETS _____ OF _____ DRAWING NO. 5269-1

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 13 2012

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 Bureau of Ocean Energy Management to questions for the record submitted following the Thursday, September 15, 2011 oversight hearing on: *"To establish in the Department of the Interior an Under Secretary for Energy, Lands, and Minerals and a Bureau of Ocean Energy, an Ocean Energy Safety Service, and an Office of Natural Resources Revenue, and for other purposes."*

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 D. Holt, Ranking Member
Subcommittee on Energy and Mineral Resources

DRAFT
QUESTIONS FOR THE RECORD
From the Majority for Director Bromwich

H.R.___(Hastings of WA), *To establish in the Department of the Interior an Under Secretary for Energy, Lands, and Minerals and a Bureau of Ocean Energy, an Ocean Energy Safety Service, and an Office of Natural Resources Revenue, and for other purposes.*

1. Director Bromwich, in your testimony you specifically mentioned the efforts your agency is making to make the permitting process more transparent. Naturally, transparency is an important virtue of government operations and I would appreciate your compliance in providing the Committee with the following information.

    a. Could you please provide for the Committee in writing some detailed information about the last 10 approved exploration plans and Applications for Permit to Drill for new wells?

Response: Attached to this response is information retrieved from the BOEM and BSEE websites on November 8, 2011. Attachment 1 describes the details of the last 10 drilling exploration plans (EP) approved by BOEM, showing the log of the dates of initial submission and resubmissions, and when the plan was deemed submitted. Attachment 2 describes the details of the last 10 Applications for Permits to Drill (APD) approved by BSEE.

    b. In this could you include a log of the timelines for major milestones in the approval process for each of these plans and APDs including: every email sent, received or any communication unofficial or otherwise between BOEMRE staff and each respective applicant? This must include the first instance an applicant attempted to submit the plan or application for approval, and the interactions BOEMRE had with the applicant if the application was returned requesting further information before being deemed submitted? The intention of the Committee is to use existing information and data from APDs and Exploratory Plans that have already been approved by your agency – and to fully track their progress through the approval process at BOEMRE, including data through emails that determines how long each of these EPs and APDs took to be deemed submitted.

Response: Dates of initial submissions and major milestones for these plans and permits are reflected in Attachments 1 and 2. Additional detail on the specific communications between BOEM or BSEE and the operators is not readily available, may contain privileged or proprietary information, and, because limited staff resources would need to be diverted from pending matters to obtain such information, cannot be provided without creating significant delays in the plan review and approval process for other pending applications.

c. Could you also please clearly distinguish how many of the permits and plans are for brand-new wells and how many are projects for work on continuing/known projects?

Response: Per the inquiry in 1.a. above, all ten APDs are for new wells. Four of the EPs are for new projects; the remaining six are supplemental or revised EPs for existing projects.

d. In this can you include the relevant steps of the exploration and development approval process? In this data, can you make sure this information includes but is not limited to all relevant dates regarding CZM reviews, APD dates, comment periods, and days when drilling/production occurs?

Response: Attached to this response are flowcharts that show the various steps during the exploration phase (Attachment 3) and the development phase (Attachment 4) of a lease which require review and approval by either BOEM or BSEE, as well as Coastal Zone Management (CZM) review by the states. Each exploration and development plan or APD is unique and the bureaus work with operators to address the individual submissions. Additional details on the specific steps for these plans and APDs are not readily available, may contain privileged or proprietary information and, because limited staff resources would need to be diverted from pending matters to obtain such information, cannot be provided without creating significant delays in the plan review and approval process for other pending applications.

e. Currently, the eWell system does not seem to provide any easily accessible data on the average number of days it takes for an EP or APD to be "deemed submitted." Could you provide the Committee with data that indicates the average number of days it takes between an operator's first attempt to submit a plan or permit and that same submission being considered to be "deemed submitted"? It would be helpful if you are able to compile and provide this information over the past year – from September 2010 through September 2011.

Response: BOEM has used an outside consultant to analyze how much time it takes, on average, for a plan to move from the first submission to the "deemed submitted" stage. On October 14, we provided Committee staff with a copy of preliminary results provided by the consultant, showing that the average time to get a plan to be deemed submitted has gone down considerably over the past year. Those preliminary results are attached here as Attachment 5.

f. Is BOEMRE currently conducting any internal tracking of the permitting process that has not been shared publically? If so, could you please provide the resulting data to the Committee.

Response: BOEM and BSEE have committed to provide quarterly reports to the House and Senate Appropriations Committees detailing the status of EPs, Development and Operation Coordination Documents (DOCD), and APDs in both shallow water and deepwater, with data on how many were received, returned, withdrawn, deemed submitted (for EPs and DOCDs), pending, and approved. The data will be broken down on a week-by-week basis, and will also distinguish between those APDs requiring subsea containment and those that do not. In order to

ensure that the Committee has the most up-to-date data available, and to minimize the diversion of our permitting and planning staff resources, the bureaus will provide the Committee with this data at the same time it is provided to the Appropriations Committees.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 13 2012

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 Bureau of Land Management to questions for the record submitted following the Tuesday, December 13, 2011 hearing on: "**H.R. 2512**, To provide for the conveyance of certain Federal land in Clark County, Nevada, for the environmental remediation and reclamation of the Three Kids Mine Project Site, and for other purposes, and **H.R. 3479**, To reauthorize Federal natural hazards reduction programs, and for other purposes."

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 D. Holt, Ranking Member
Subcommittee on Energy and Natural Resources

Questions for the Record from Rep. Edward J. Markey
Committee on Natural Resources Subcommittee on Energy and Mineral Resources
Legislative Hearing 1324 Longworth House Office Building
Tuesday, December 13, 2011 10:00 a.m.

Questions for Deputy Director Mike Pool

1.) **Mr. Pool, your agency estimated the cost of cleaning up the Three Kids Mine will cost between $300 million to $1.3 billion. What is the source of those cleanup cost estimates and is there any chance that costs could exceed that range?**

The costs of $300 million to $1.3 billion for remediation and reclamation were estimated by Lakemoor Canyon LLC, a proponent of the transaction. Following the appraisal process outlined in the legislation, including the preparation of a Phase II Environmental Site Assessment, the Secretary would determine a "reasonable approximate estimation of the costs to assess, remediate, and reclaim the Three Kids Mine Project Site."

2.) **A recent L.A. Times article cited data from the Santa Ana, California-based mortgage tracking firm CoreLogic showing that 58% of Nevada homeowners owe more money on their mortgages than their home is actually worth. Among those featured in the article was a Henderson homeowner who estimated his home value had lost two-thirds of its value since being purchased in 2007, and "expressed skepticism" that any end to declining values were in sight.**

Such declines are reflected in the city's assessed valuation, roughly 75% of which is made up by residential property. The assessed valuation of all residential homes in Henderson shrunk 47% or $5.5 billion since the 2008-2009 fiscal year, including an 8% drop between the 2011-2012 and 2012-2013 fiscal years, according to the Clark County Assessor's office.

The city of Henderson has estimated that $600 million to $700 million is expected to be collected over 30 years through tax increment financing. Is it possible that less revenue could be generated as a result of the weak housing market?

It is possible that less tax revenue could be generated than the amount estimated by the City of Henderson, in light of the current housing market weakness in Nevada and the difficulty of predicting market trends over a 30-year period.

3.) **If there are not sufficient funds to complete the cleanup or if it is abandoned for any other reason, is it possible that this site could once again become an orphan mine that would become the responsibility of the federal government?**

In order to address this concern, the BLM recommended in its testimony amending H.R. 2512 to clarify that the Federal land in the Project Area be conveyed to the Henderson Redevelopment Agency after the Secretary appraises the Federal land and the cost of remediating and reclaiming the site and before the remediation and reclamation activities begin.

H.R. 2512 also contains provisions for the State to hold financial assurances covering the

cleanup costs. The legislation provides for work at the site to begin after the Secretary of the Interior receives from the State of Nevada a Mine Remediation and Reclamation Agreement. The legislation states that the agreement "shall be an enforceable consent order or agreement administered by the State that—

(A) obligates a party to perform the remediation and reclamation work at the Three Kids Mine Project Site necessary to complete a permanent and appropriately protective remedy to existing environmental contamination and hazardous conditions; and

(B) contains provisions necessary by the State, including financial assurance provisions to ensure the completion of such remedy."

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAY 23 2012

The Honorable Doc Hastings
Chairman,
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 written questions submitted following the November 16, 2011, oversight hearing on *The Future of U.S. Oil and Natural Gas Development on Federal Lands and Waters*.

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 Edward J. Markey
Ranking Member

Questions for Secretary Salazar
House Natural Resources
Hearing on the Future of U.S. Oil and Natural Gas Development

Questions from Chairman Hastings:

1. As the Department of the Interior proceeds with creating and implementing federal regulations on hydrofracking on federal land, can you explain what the process will be for creating and implementing these regulations and who will be consulted in the process? Additionally, what specific job creation and employment information does the Department take into consideration when creating and implementing energy development regulations?

Response: As the President has made clear, this administration's all-of-the-above energy strategy includes strong efforts to safely and responsibly increase production of our abundant domestic oil and gas resources. As we continue to expand domestic natural gas production, in large part made possible by improvements in technologies like hydraulic fracturing, it is critical that the appropriate safety and environmental protections are in place.

The proposed rule was published in the Federal Register on May 11, 2012, and is available here: http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&pageid=293916. An accompanying economic analysis is available here: http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&pageid=293917. During development of the proposed rule, BLM sought feedback from a wide range of sources, including tribal representatives, industry, members of the public and other interested stakeholders. Public comment on the proposal ends July 10, 2012, and comments received will be used to further refine the proposal.

The proposed well stimulation rule was developed to provide common-sense measures that will enhance public confidence in natural gas development on public lands while also encouraging continued safe and responsible exploration and production. In November 2010, Secretary Salazar hosted a forum, including major stakeholders, on hydraulic fracturing on public lands to examine best practices to ensure that natural gas on public lands is developed in a safe and environmentally sustainable manner. Subsequently, in April 2011, the BLM hosted a series of regional public meetings in North Dakota, Arkansas, and Colorado – states that have experienced significant increases in oil and natural gas development on Federal and Indian lands – to discuss the use of hydraulic fracturing on the Nation's public lands.

During these events, members of the public expressed a strong interest in obtaining more information about hydraulic fracturing operations being conducted on public and Indian lands.

The BLM has also been involved in active tribal consultation efforts on this topic, including four regional meetings in January 2012 to which Tribal leaders from all Tribes that are currently receiving oil and gas royalties and all Tribes that may have had ancestral surface use were

invited. These meetings were held in Tulsa, Oklahoma; Billings, Montana; Salt Lake City, Utah; and Farmington, New Mexico. BLM has been and will continue to be proactive about tribal consultation under the Department's recently implemented Tribal Consultation Policy, which emphasizes trust, respect and shared responsibility in providing tribal governments an expanded role in informing federal policy that impacts Indian tribes, including their lands. The agency will continue to consult with Tribal leaders throughout the rulemaking process.

2. In multiple meetings and hearings both here and the House we have heard from very knowledgeable state officials that state regulations are doing a sufficient job in regulating hydrofracking while balancing the needs and concerns of the community and environment while still allowing for the development of shale gas and oil and job creation. What deficiencies your department has found in state regulations that warrant the federal government stepping in and creating their own, sometimes duplicative, regulations?

a. How would these federal regulations work in conjunction with state regulations that have already been successfully established?

Response: As stewards of the public lands, and as the Secretary's regulator for oil and gas leases on Indian lands, the BLM has evaluated the increased use of well stimulation practices over the last decade and determined that the existing rules for well stimulation needed to be updated to reflect significant technological advances in hydraulic fracturing in recent years and the tremendous increase in its use.

The BLM recognizes that some, but not all, states have recently taken action to address hydraulic fracturing in their own regulations. The BLM's proposed rulemaking is designed to complement ongoing state efforts by providing a consistent standard across all public and tribal lands and ensuring consistent protection of the important federal and Indian resource values that may be affected by the use of hydraulic fracturing. The BLM is also actively working to minimize duplication between reporting required by state regulations and reporting required for this rule. The BLM has a long history of working cooperatively with state regulators and is applying the same approach to this effort.

In keeping with longstanding practice and consistent with relevant statutory authorities, it is the intention of the BLM to implement on public lands whichever rules, state or federal, are most protective of federal lands and resources and the environment. And regardless of any action taken by the BLM, operators still would need to comply with any state-specific hydraulic fracturing requirements in the states where they operate.

3. Recently, the U.S. Forest Service proposed a total ban on horizontal drilling for the George Washington National Forest in Virginia, which sits atop significant Marcellus Shale gas reserves. Has BLM or DOI consulted with the USFS or the Department of Agriculture on addressing the concerns of the Forest Service through regulation rather than through

another moratorium on drilling on public lands, which costs jobs and government revenue?

Response: The President's energy strategy, *Blueprint for a Secure Energy Future*, includes an all-of-the-above approach, including the responsible development of both conventional and renewable energy sources on our public lands. Contrary to the statements made in this question, the draft Management Plan released in May 2011 makes almost one million acres of the forest available for gas leasing and would also allow for consideration of wind energy development in some areas.

As noted at the hearing, the BLM serves as a cooperating agency to the ongoing analysis being undertaken by the USFS on the potential impacts of oil and gas leasing within George Washington National Forest. The process for determining the final oil and gas leasing management plan for the George Washington National Forest is still ongoing and we are working to ensure that the most current, and technically accurate information is considered. While the draft version of the plan would prohibit horizontal drilling in the forest, in general federal land managers, including the BLM and the U.S. Forest Service, recognize the importance of horizontal drilling as one tool for development of oil and gas resources on public lands. A copy of the BLM's written comment to the George Washington National Forest draft Forest Plan is available at: http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5366331.pdf.

4. In 2007, six 160 acre tracts of land were leased to three companies for oil shale projects. These leases have the potential to be expanded to as much as 5,120 acres. In 2009, BLM solicited a second round of oil shale RD&D leases, however, the terms were much less favorable to oil shale development and the potential for lease expansion was decreased to only 480 acres. The result was a lack of interest in the second round of leases as many firms believed a commercial project could not be established on that small amount of acreage. What new information did the BLM have and what went into the decision making process that led to the Department making such drastic changes to the lease terms and how does the Department believe this will favorably advance oil shale development?

Response: The November 2009 Federal Register notice announcing the call for nominations that led to the three nominations (74 Fed. Reg. 56867; http://frwebgate1.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=iuIewL/0/2/0&WAISaction=retrieve) contains information responsive to the question. While specifics are detailed in the text of that notice, in general it states that the administration wanted to review and reconsider aspects of the previous solicitation, published in mid-January 2009, including lease acreage and the rules that would govern conversion of an RD&D lease to a commercial lease, particularly those related to royalty rates, and to solicit comments on terms and conditions for any future leases. The notice also states the intent of the second round of RD&D leases was to focus on the technology needed to

develop the resources into marketable liquid fuels to inform future decisions on whether and when to move forward with commercial scale development.

Questions from Rep. Rivera:

1. Recently, my staff contacted BOEM and BLM to try to get a list of all incorporated-foreign-government owned companies that have leases in the U.S. They were surprised to learn that the Department doesn't keep a database of what companies are foreign-government owned. The incorporated foreign-owned company is just mixed in with the regular, private-owned companies. I believe it would be extremely useful to at least be able to track those companies and what government owns them. Therefore, I would like to request from the Department a list of all incorporated foreign-government-owned energy companies that currently have onshore and offshore leases on U.S. Federal lands and in U.S. waters. For example, one that I am aware of is Statoil, a Norwegian-State owned oil company operating in Alaska, the Gulf of Mexico, the Marcellus Shale and other areas of the United States.

Along with the names of those companies, I would also like to know which governments have an ownership-stake in those companies. Furthermore, if it is possible to identify the scope of their leases, production from their holdings, and in which state or off what coast they are located, I believe that would be helpful as well.

Response: Following the request for similar information made at this hearing, both BLM and BOEM reviewed the laws applicable to their leasing programs and again determined that the information kept by Departmental bureaus would only reflect that corporate leaseholders are appropriately incorporated within the United States. Under U.S. law, corporations must be organized under the laws of the United States, the States, the District of Columbia, or U.S. territories in order to hold mineral leases, and both BOEM and BLM regulations require that corporations bidding on federal leases qualify prior to bidding. See bureau regulations at 30 CFR 556.35 and 556.46 (http://frwebgate1.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=RnK8G5/1/2/0&WAISaction=retrieve (for offshore leases) and 43 CFR 3102.1 and 3102.5-1 (http://www.gpo.gov/fdsys/pkg/CFR-2010-title43-vol2/pdf/CFR-2010-title43-vol2-sec3102-1.pdf (for onshore leases). For these reasons, the specific information sought in this question is not kept or maintained by the Department.

2. You've mentioned how you have reached out to Repsol regarding their operations in Cuba since you have some influence over them due to their U.S. holdings. Statoil, which also has U.S. holdings, is also working with the Cuban regime to develop their energy resources as well as giving them technical assistance. I would also point out that Statoil has dealings with another State-Sponsor of Terrorism, Iran. Is this Administration using their influence on them as well? If so, how? If not, why not?

Response: The Department's role in the development of oil and gas resources in Cuban waters is to ensure that our national interests, particularly environmental interests in Florida and along the U.S. coastline, are protected from any potential impacts of oil and gas drilling operations there.

Activities of the nature addressed by this question fall under the jurisdiction of the State Department, which recently has used new authorities, such as that provided in the Comprehensive Iran Sanctions, Accountability, and Divestment Act, signed into law on July 1, 2010, to persuade major multinational energy companies to pledge to end their investments in Iran and provide assurances not to undertake new energy-related activity there that may be sanctionable.

Questions from Rep. Coffman:

1. Mr. Secretary, what plans, and the analysis used for those plans, if any, does your Department have to supplement the loss of production, jobs, revenues and safety this delay of Keystone XL will cause? I would like for you, Mr. Secretary, to develop and send back to me and this Committee a written response directly addressing these questions. My colleagues and I look forward to your response and your plan to replace the losses the Keystone XL delay will cause.

Response: The process related to the approval of a permit for the Keystone XL pipeline falls under the jurisdiction of the State Department. From the first days of this administration the President has been focused on job creation and economic growth. And we at the Department of the Interior have too, not only with regard to conventional and renewable energy development, which the Department estimate produced on Interior lands and waters results in about $230 billion in economic benefits each year, but we are also contributing to the economy through other programs in the Department. According to a 2010 Department study, departmental programs and activities directly supported over 2 million jobs and approximately $363 billion in economic activity, and our parks, refuges, and monuments generate over $24 billion in economic activity from recreation and tourism. The American outdoor industry has estimated that 6.5 million jobs are created every year from outdoor activities. Interior is at the forefront of the Administration's comprehensive effort to spur job creation by making the United States the world's top travel and tourism destination. And hunting, fishing, and outdoor recreation contribute an estimated $730 billion to the U.S. economy each year.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 01 2012

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 Bureau of Safety and Environmental Enforcement to the questions for the record submitted following the Thursday, March 8, 2012, oversight hearing on: the "*Effect of the President's FY 2013 Budget and Legislative Proposals for the Bureau of Ocean Energy Management (BOEM) and Bureau of Safety and Environmental Enforcement (BSEE) on Private Sector Job Creation, Domestic Energy Production, Safety and Deficit Reduction.*"

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 D. Holt, Ranking Member
Subcommittee on Energy and Mineral Resources

QUESTIONS FOR THE RECORD

Subcommittee Chairman Doug Lamborn

Subcommittee on Energy and Mineral Resources
Oversight Hearing on the *"Effect of the President's FY 2013 Budget and Legislative Proposals for the Bureau of Ocean Energy Management (BOEM) and Bureau of Safety and Environmental Enforcement (BSEE) on Private Sector Job Creation, Domestic Energy Production, Safety and Deficit Reduction."*

March 8, 2012

Mr. James Watson
Director
Bureau of Safety and Environmental Enforcement

1. In the hearing you stated that most of your new hires will not be inspectors, rather they will be support staff. In the past, BSEE has emphasized that much of the reason for a slower permitting process has been lack of funding to hire more inspectors. Can you tell us exactly how many of the new FTEs will be acting as inspectors and why most of the new hires proposed in your FY13 are not going to be inspectors? Does this mean that BSEE has the inspectors it needs to process permits efficiently?

Response: I appreciate the opportunity to clarify for the record the roles and responsibilities of personnel involved in the permitting and inspection processes. Permits, including Applications for Permits to Drill (APD), are reviewed and approved primarily by engineers. Inspectors do not process or approve permits to drill; inspectors are responsible for ensuring that operations conducted pursuant to approved permits are being conducted in a safe manner. The pace of permitting was recently impacted primarily due to two reasons: establishment of significant new safeguards designed to reduce the chances of a loss of well control, including a requirement for operators to have capping and containment capabilities in the event that one occurs, and an insufficient number of engineers and support staff associated with the permitting process. BSEE has worked hard to help industry better understand the new safety requirements and improve the efficiency of the permit application process, including conducting permitting workshops and publishing an APD completeness checklist. As a result of these steps, and the industry's increasing familiarity with the process, permit review times have decreased significantly in the past year. We plan to continuously monitor and improve our permitting processes, while staying focused on our primary objective of ensuring that all safety and environmental requirements are met.

In FY 2011, BSEE focused on increasing our number of inspectors to ensure operational compliance with the more stringent safety requirements instituted post-*Deepwater Horizon*. BSEE increased the number of inspectors by 50% over FY 2010 levels.

While the Administration's FY2013 budget request supports hiring additional inspectors, emphasis is placed on the hiring and training of engineers, scientists, and other personnel required to further enhance BSEE's permitting process and improve safe and responsible operations on the Outer Continental Shelf and provide effective environmental safeguards. BSEE has identified approximately 40 additional engineer and inspector positions for FY2013, but our staffing plan will continue to evolve as new issues arise, our technological capabilities improve, and we identify new ways to make the most effective use of our resources.

2. Can you further explain to the Committee the purpose and powers of the Environmental Enforcement Division and how the mission of this division is not duplicative to the mission of the Operations, Safety and Enforcement Division? The Committee would like further clarification as to why a new and separate division is necessary, instead of including it under the Operations, Safety and Enforcement Division, especially in such a time of fiscal duress when taxpayer dollars must be spent wisely.

Response: The Environmental Enforcement Division (EED) provides sustained **environmental regulatory** oversight and is responsible for developing new approaches to environmental inspection and enforcement. The EED ensures operator compliance with lease stipulations and relevant environmental laws and regulations, including the Clean Air Act, Clean Water Act, and the Marine Mammal Protection Act. The division also evaluates the effectiveness of environmental monitoring programs and mitigation measures.

The Office of Offshore Regulatory Programs (OORP), which includes the Inspection and Enforcement and Operational Safety branches, focuses on **operational** oversight on the Outer Continental Shelf. OORP is responsible for establishing consistent policies, procedures and regulations including those applicable to drilling permits, including Applications for Permit to Drill (APD), implementation of enhanced safety requirements, and inspections of drilling rigs and production platforms using multi-person, multi-discipline inspection teams.

The reorganization of the former Minerals Management Service/Bureau of Ocean Energy Management, Regulation and Enforcement provided the opportunity to separate the roles and responsibilities for ensuring environmental compliance from those focused on operational oversight. This separation provides the ability to give equal priority and attention to improving the safety of offshore drilling, as well as to enhance protection of the ocean and coastal environments. The functions of the EED are not duplicative of functions within OORP; consolidation within a single division would not reduce the costs of carrying out these responsibilities.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 0 8 2012

The Honorable Doc Hastings
Chairman,
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 written questions submitted following the February 15, 2012, oversight hearing on the Department's Fiscal Year 2013 Budget Proposal.

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 Edward J. Markey
Ranking Member

DEPARTMENT OF THE INTERIOR
FY2013 BUDGET HEARING
HOUSE NATURAL RESOURCES COMMITTEE
FEBRUARY 15, 2012

Chairman Hastings

1. Has the Department of Interior expended any federal resources in connection with the removal of Condit Dam on the White Salmon River in southwest Washington? If so, please identify any and all sources, including any grants that the Department of Interior has awarded to non-governmental entities in connection with this matter.

The U.S. Fish and Wildlife Service (FWS) has expended federal resources in connection with the removal of Condit Dam on the White Salmon River in southwest Washington. The FWS used resource management funds to assist in the Federal Energy Regulatory Commission (FERC) relicensing and negotiation of the Settlement Agreement for Condit Dam, and provided technical assistance, outreach and education, and conducted Section 7 consultations to evaluate impacts of dam removal on bull trout, a species listed as threatened under the Endangered Species Act.

2. Has the Department of Interior studied, or does the Deparment plan to study in the future the impact of the silt from the removal of Condit Dam on endangered species, including salmon spawning grounds below the dam on the White Salmon River? Has the Department communicated with PacifiCorp regarding plans to repair or mitigate the impact to the spawning grounds?

Response: Bull trout is the only federally listed species under the jurisdiction of the FWS that could be affected by removal of the Condit Dam. The FWS prepared a biological opinion evaluating expected impacts of dam removal on bull trout and their critical habitat and concluded that long term benefits of dam removal outweighed short term impacts from release of sediments. No bull trout spawning grounds exist below the dam. Consequently, the FWS has not communicated with PacifiCorp regarding repair or mitigation plans related to salmon spawning grounds.

3. Has your office or the Bureau of Indian Affairs received any proposals or requests from federally-recognized Indian tribes in Washington State for the Department to hold land in trust on their behalf? If so, please identify the details of all such proposals, including the tribe requesting, the location of such property and under what authority such proposals or requests are being made or considered.

Response: Attached is a list, as of March 15, 2012, of land into trust applications pending in the Bureau of Indian Affairs from federally-recognized Indian tribes in Washington State. The list sets forth the tribe applying to have land placed in trust, the name of the property,

the number of acres of the property, what the land will generally be used for, and the statutory authority for the proposed trust acquisition.

4. On February 16, 2012, you held a town hall event in Anacortes, Washington regarding the San Juan Islands. In 2010, the San Juan Islands was included amongst 13 other locations in documents as a potential national monument. Has the President communicated with you about plans to include the San Juan Islands for designation under the Antiquities Act? Is the Administration considering any other federal designations there?

Response: The local support for a conservation designation of the Bureau of Land Management (BLM) managed lands within the San Juan Islands is strong. Legislation to designate the San Juan Islands in Washington State as a National Conservation Area has been introduced in both the Senate by Senator Maria Cantwell and Senator Patty Murray and in the House by Representative Rick Larsen. On March 22, 2012 the Department of the Interior testified in support of S. 1559, the San Juan Islands National Conservation Area Act, before the Senate Energy and Natural Resources Committee.

5. On January 13, 2012, the President announced the merger of several agencies, including a proposal to move the National Oceanic and Atmospheric Administration into the Department of Interior. However, in the FY 2013 Interior budget proposal just released, it is unclear how this proposal is factored. Please provide a full summary of all activities in the FY 2013 budget request, including FTEs, associated with the President's proposal relating to NOAA and the Department of Interior.

Response: The 2013 budget request does not propose any funding or FTEs relating to a consolidation of the National Oceanic and Atmospheric Administration and the Department of the Interior. The President has requested that Congress reinstate the reorganization authority afforded to Presidents for almost 50 years. The authority would allow the President to present, for expedited review by Congress, proposals to reorganize and consolidate Executive Branch agencies to streamline the government and improve operations. A planning effort will begin once Congress provides authority to the President to reorganize.

6. On September 21, 2011, you announced the "*Partners in Conservation Awards*" to 17 recipients, including one featuring federal and state entities that worked with the National Wildlife Federation, a frequent plaintiff against the Department and other federal agencies, to develop a guidebook titled, "Scanning the Conservation Horizon." The Award notice states the guidebook is being used by Department of Interior bureaus and Landscape Conservation Cooperatives "to guide standardized vulnerability assessment of the resources it manages" and "allow comparison of risk across DOI bureaus for a common understanding of the impacts of climate change." Please provide a summary of each Department of Interior bureau's total expenditure of federal resources, including FTEs, used directly or indirectly to support the National Wildlife Federation in publishing this guidebook.

Response: In FY2010, through a cooperative agreement with the National Wildlife Federation (NWF), the FWS, National Park Service and U.S. Geological Survey each provided $50,000 to support the development of the *Scanning the Conservation Horizon* guidebook and associated training for natural resource specialists and managers. Additionally, the Department contributed an estimated 0.5 FTE, estimated at a total of $72,800, for the FWS, NPS and USGS staff who participated in the technical review of the document during its development. A breakdown of the estimated FTE and associated expenditures by bureau follows:

Bureau	Est. FTE	Est. Expenditure
USGS	0.2	$30,000
FWS	0.2	$29,000
NPS	0.1	$13,800

Rep. Fleming

1. Could you please provide the acreage, maps and the revenues received from natural gas production on federal lands within the following:

a) The state of Louisiana?

b) The 4th Congressional District?

c) The boundaries of Barksdale Air Force Base and if applicable, Ft. Polk?

d) Kistatchie National Forest?

Response: In Fiscal Year 2011, there were 198,960 under lease within the State of Louisiana, and total production revenues were approximately $21 million. The electronic systems used to manage lease acreage and revenue data cannot readily report data for the 4th Congressional District of Louisiana, the Barksdale Air Force Base or Ft. Polk, or the Kitsatchie National Forest. The Bureau of Land Management (BLM) is conducting a manual records review in order to generate responses to the remainder of this question. BLM anticipates completing the manual review by June 15, 2012. The additional data will be provided separately.

Rep. Bordallo

1. The OIA budget requests $3 million for the continuation of brown tree snake (BTS) control. The interdiction program on Guam is staffed by personnel from the Department of Agriculture's Animal and Plant Health Inspection Service (APHIS), however is primarily funded through DOI and the DOD. As you may recall, toward the end of FY11, there was some uncertainty at the USDA as to whether it would continue the BTS program in FY 12. Ultimately an interagency agreement was reached and the USDA decided not to continue this important program into FY12 and review it for efficiencies. I am hoping you could offer more details as to the agreement that was reached, and whether there is any uncertainty regarding the future of the program in FY13.

Response: After working closely with the U.S. Department of Agriculture (USDA) last summer to ensure the continuation of the USDA operated Guam BTS Interdiction Program beyond FY 2011, the Department of the Interior and the Department of Defense (DOD), in close cooperation with the USDA, conducted a first quarter FY 2012 review of the Program to identify potential cost-saving efficiencies that would enable the Program to be fully operational moving forward. The review was completed in February 2012 and a funding agreement was reached between the USDA, the DOD and the DOI to ensure the continuation of this important Program through the end of the fiscal year. While it is unclear how Congress may decide to prioritize funding available for BTS control and management efforts beyond FY 2012, the continuation of the Guam BTS Interdiction Program, from the perspective of DOI, will remain a high priority.

Rep. Grijalva

I would like to get some more information about an ongoing dynamic between your department and the State of Utah. Please provide the Committee with answers to following questions:

1. The state of Utah has been largely unsuccessful to date in its quest for thousands of R.S. 2477 claims, yet it has recently filed a notice of intent to sue the department to gain title to over 18,000 rights of way, and this leads me to look with skepticism on their claims, thousands of which have never been constructed or maintained, just created by random travelers, off-road vehicle users, long-forgotten prospectors and infrequent livestock herders. I hope that you and the department vigorously defend against this attack on federal public lands in Utah. What will you do to ensure that federal public lands are fully protected from this threat?

Response: The Department of the Interior, through the Department of Justice, does plan a vigorous defense of United States' interests and, as the July 29, 2010, Secretarial Memorandum on R.S. 2477 makes clear, the Department must be able to make all appropriate arguments under the law to defend these interests. The Department itself does not adjudicate or specifically reserve R.S. 2477 rights. These legal determinations must ultimately be made by the courts. In this instance, we understand that plaintiffs believe themselves obligated to file so as to avoid a potential statute of limitations issue, and all parties recognize that adjudication of the lawsuits, if an alternative resolution cannot be found, will demand a significant amount of time and resources. The Department has also been working with the State of Utah in an attempt to build a constructive, inclusive solution to the issue of RS 2477 rights-of-way. The Department has joined with State and county officials and other stakeholders in a pilot negotiation project in Iron County, Utah, to try to resolve non-controversial claims through consensus building. This approach to addressing the issue, with openness on all sides, may help us establish a model for consensus-based problem solving that we can carry into the future.

2. How will Interior determine how these R.S. 2477 claims would impact existing and proposed conservation designations? How would they affect your conservation goals and achievements?

Response: The Department is still in the early stages of this matter, and we are beginning to gather the kind of information that will inform questions such as this. In general, once a suit to quiet title on an R.S. 2477 claim is filed the Department will, among other things, carry out an analysis of the resources that could potentially be impacted by designation of such a right-of-way. If an alternative resolution cannot be found, all parties agree that adjudication of these lawsuits will be time consuming and costly. Depending on the nature and scope of the right-of-way and the designation or resources at issue, if a county successfully proves R.S. 2477 claims in or near existing and proposed conservation designations, historic sites, or other areas managed by the Department to protect sensitive resources, the Department's ability to implement protective management could be impacted.

3. How would the recognition of these claims affect DOI's ability to manage federal public lands. Would it affect the effectiveness of law enforcement and ORV monitoring? How about the effectiveness of archaeological site protection efforts?

Response: The Department will take any RS 2477 claims traversing the federal lands that are recognized by a court of competent jurisdiction into account when it manages the federal lands. The Department retains the power to reasonably regulate such rights-of-way. The Bureau of Land Management reviews travel impacts to archeological resources on a case-by-case basis. As appropriate, the Department protects archeological resources from damage by exercising its statutory and legal authorities, and by entering into agreements with neighboring land managers.

4. Some of the state's claims lie in BLM wilderness areas designated in the Cedar Mountains Wilderness Act and the Washington County Wilderness Act. Frankly, this casts doubt in my mind as to the state and counties' good faith and seriousness when it comes to enacting federal public lands designations. How will you manage designated wilderness areas, places Congress itself has determined to be essentially roadless in the face of R.S. 2477 claims?

Response: The Department will comply with Wilderness Act and Congressional direction regarding the management of designated Wilderness Areas. The Department ability to manage areas to preserve wilderness character could be impacted if the county and State are successful in proving R.S. 2477 claims in wilderness. Validity of an R.S. 2477 claim is ultimately left to the determination of a court of competent jurisdiction. Holders of valid R.S. 2477 rights-of-way are not entitled to make improvements or engage in new road construction without consulting the Department and adhering to the federal permitting requirements such as under the Federal Land Policy and Management Act. The Department will not issue such a permit in a Wilderness Area.

Rep. Lamborn

1. States with disclosure requirements – including two with some of the more stringent requirements, Wyoming and Colorado – provide detailed approaches to protection of trade secrets relating to the fracture stimulation fluid formulations. The states do so in a way that achieves a balance between the public interest in information about what has been discharged into subsurface strata, and the valid interest of business entities in a process or formulation that presents them with a legitimate competitive advantage. The draft BLM regulations do not provide equivalent assurances to suppliers that have a commercial interest in formulations that is of the sort given protection in the Uniform Trade Secrets Act that has been ratified by 46 states. Please describe how BLM would plan to recognize the property interest in trade secrets that has been acknowledged by the states that are regulating hydraulic fracturing.

Response: In addition to the water and sand that are the major constituents of fracturing fluids, chemical additives are also frequently used. These chemicals can serve many functions, including limiting the growth of bacteria and preventing corrosion of the well casing. The exact formulation of the chemicals used in fracturing fluid varies depending on the rock formations, the well, and the requirements of the operator.

In order to protect proprietary formulations, the proposed rule would require oil and gas operators using hydraulic fracturing techniques to identify the chemicals used in fracturing fluids by trade name, purpose, Chemical Abstracts Service Registry Number, and the percent mass of each ingredient used. The information would be required in a format that does not link additives to the chemical composition of fluids, which will allow operators to provide information to the public while still protecting information that may be considered proprietary. This design of the disclosure mechanism in the proposed rule will inhibit reverse-engineering of specific additives. The information is needed in order for the Bureau of Land Management (BLM) to maintain a record of the stimulation operation as performed. The proposed rule, would allow an operator to identify specific information that it believes is protected from disclosure by federal law, and to substantiate those claims of exemption. This approach is similar to the one that the State of Colorado adopted in 2011 (Colorado Oil and Gas Conservation Commission Rule 205.A.b2.ix-xii).

2. In looking at the BLM draft regulations – it seems that in general they go significantly above and beyond what any state has in place right now. Why did BLM make such drastic changes when the states have been doing a sufficient job of regulating fracking for years?

Response: The BLM recognizes that some, but not all, states have recently taken action to address hydraulic fracturing in their own regulations. The BLM's proposed rulemaking is designed to complement ongoing state efforts by providing a consistent standard across all public and tribal lands and ensuring consistent protection of the important federal and Indian resource values that may be affected by the use of hydraulic fracturing. Moreover,

BLM's regulations are now 30 years old and need to be updated to keep pace with the many changes in technology and current best management practices.

The BLM is also actively working to minimize duplication between reporting required by state regulations and reporting required for this rule. The BLM has a long history of working cooperatively with state regulators and is applying the same approach to this effort.

3. In your testimony you stated to the Committee that you have often heard industry say that they would rather have one blanket set of regulations to comply with, rather than a state by state "patchwork" of differing regulations. The Natural Resources Committee received a letter signed by multiple associations representing the natural gas industry stating that their companies support the current state process for regulation of hydraulic fracturing. Please explain the instances when you have been told by the natural gas industry that they do specifically support federal regulations for hydraulic fracturing?

Response: At the President's direction, we are taking steps – in coordination with our federal partners and informed by the input of industry experts – to ensure that we continue to develop this abundant domestic resource on public lands safely and responsibly. Based on preliminary input we have received from industry, the public, and stakeholders, the Secretary has clearly outlined three common-sense measures. Those measures are straightforward:

- **Requiring public disclosure of chemicals used in fracking, with appropriate protections for trade secrets;**
- **Improving assurances on well-bore integrity so we know fluids going into the well aren't escaping into the usable aquifer; and**
- **Making sure companies have a water management plan in place for fluids that flow back to the surface.**

4. In your testimony you told the Committee that the regulations were crafted with input from the natural gas industry. Aside from their support of Frac Focus, please tell us what other specific provisions in the regulations were either suggested by the natural gas industry or crafted with input from the natural gas industry?

Response: In developing the proposed rule, the BLM sought feedback from a wide range of sources, including tribal representatives, industry, members of the public and other interested stakeholders. The BLM developed the proposed well stimulation rule to provide common-sense measures that will enhance public confidence in hydraulic fracturing on public lands, while also encouraging continued safe and responsible exploration and production. The BLM's proposed rule is consistent with the American Petroleum Institute's (API) guidelines for well construction and well integrity (see API Guidance

Document HF 1, Hydraulic Fracturing Operations—Well Construction and Integrity Guidelines, First Edition, October 2009).

In November 2010, Secretary Salazar hosted a forum, including major stakeholders, on hydraulic fracturing on public and Indian lands to examine best practices to ensure that natural gas on public and Indian lands is developed in a safe and environmentally sustainable manner. Subsequently, in April 2011, the BLM hosted a series of regional public meetings in North Dakota, Arkansas, and Colorado – states that have experienced significant increases in oil and natural gas development on federal and Indian lands – to discuss the use of hydraulic fracturing on the Nation's public lands.

During the Secretary's forum and the BLM's public meetings, members of the public expressed a strong interest in obtaining more information about hydraulic fracturing operations being conducted on public and Indian lands.

5. In the BLM regulations there are a variety of pre-disclosure requirements. Oil and gas development is a constantly evolving process and many engineering decisions are made on a day to day basis. To what extent has BLM discussed with industry as to whether or not these 30 day disclosure requirements are even possible? And what assurance does industry have that BLM will approve their submissions in a timely fashion that will not completely stop the drilling operation while they wait for BLM to approve their plans?

Response: The proposed rule requires public disclosure of chemicals used during hydraulic fracturing after fracturing operations have been completed. The BLM understands the time sensitive nature of oil and gas drilling and well completion activities and does not anticipate that the submittal of well stimulation-related information will impact the timing of the approval of drilling permits.

6. The proposed BLM regulations will greatly impact the states that already regulated hydraulic fracturing. It will impact the state's economies, and their ability to create jobs and foster energy development in within their states. There will also have to be significant coordination between state and federal regulations. When in the process have you met with the states to make them aware of your plans?

Response: The BLM recognizes that in recent years, with the increase in well stimulation activities, some, but not all, states have taken action to address hydraulic fracturing in their own regulations. The BLM's proposed rulemaking ensures consistent protection of the important federal and Indian resource values that may be affected by the use of hydraulic fracturing.

The proposed rule is designed to complement ongoing state efforts to regulate fracturing activities by providing a consistent standard across all public and tribal lands. The BLM is

actively working to minimize duplication between reporting required by state regulations and reporting required for this rule.

In keeping with longstanding practice and consistent with relevant statutory authorities, it is the intention of the BLM to implement on public lands whichever rules, state or federal, are most protective of federal lands and resources and the environment. And regardless of any action taken by the BLM, operators still would need to comply with any state-specific hydraulic fracturing requirements on private lands in the states where they operate.

7. Please describe the process by which you have taken to consult with the Tribes on these draft regulations? Please describe the number of meetings held, the Tribes in attendance at these meetings, the number of representatives from each Tribe and any comments or supporting documents you may have received from the Tribes during these discussions.

Response: Tribal consultation is a critical part of this effort, and Secretary Salazar is committed to making sure tribal leaders play a significant role as we work together to develop resources on public and Indian lands in safe and responsible way. The BLM has been involved in active tribal consultation efforts on this topic, and is continuing to consult with tribes on the proposed rule. As part of the consultation process, the BLM conducted outreach to tribal representatives through four regional meetings in January 2012. Nearly 180 tribal representatives from all tribes that are currently receiving oil and gas royalties and all tribes that may have had ancestral surface use were invited. Eighty-four tribal members representing 24 tribes attended the meetings. These meetings were held in Tulsa, Oklahoma; Billings, Montana; Salt Lake City, Utah; and Farmington, New Mexico.

In these sessions, tribal representatives were given a discussion draft of the hydraulic fracturing rule to serve as a basis for substantive dialogue about the hydraulic fracturing rulemaking process. The BLM asked the tribal representatives for their views on how a hydraulic fracturing rule proposal might affect Indian activities, practices, or beliefs if it were to be applied to particular locations on Indian and public lands. A variety of issues were discussed, including applicability of tribal laws, validating water sources, inspection and enforcement, wellbore integrity, and water management, among others. Additional individual meetings with tribal representatives have taken place since that time.

BLM has activity engaged tribes and will proactively continue tribal consultation under the Department's recently implemented Tribal Consultation Policy, which emphasizes trust, respect and shared responsibility in providing tribal governments an expanded role in informing federal policy that impacts Indian tribes, including their lands.

The agency will continue to consult with tribal leaders throughout the rulemaking process. Responses from tribal representatives will inform the agency's actions in defining the scope of acceptable hydraulic fracturing rule options.

8. Unlike the more stringent state disclosure requirements, the draft BLM regulations require pre-approval of fracture stimulation formulations. What is the technical basis on which such approval will be given or withheld by the agency? What is the staff expertise that will be required to make such determinations, and does BLM currently have the staff resources to administer this pre-approval

Response: The proposed rule requires public disclosure of chemicals used during hydraulic fracturing after fracturing operations have been completed.

9. Please describe the Department's or BLM's familiarity with the operational practice in the drilling industry of making adjustments to well stimulation fluid formulations on a relatively continuous manner during the process of drilling and completing a well – including making adjustments to such formulations while hydraulic fracturing operations are underway as a result of many factors including the pH levels of the water used and the temperature of the air during the job? Please describe how BLM would expect to administer these regulations if adopted in light of that practice, given the 30 day pre-approval submittal requirement?

Response: The proposed rule requires public disclosure of chemicals used during hydraulic fracturing after fracturing operations have been completed.

10. The states with the most stringent disclosure requirements for hydraulic fracturing fluid formulations require that operators provide disclosure of the chemicals used via the FracFocus website. The draft BLM regulations make no reference to FracFocus. Do the draft regulations as worded indicate that BLM intends to set up an entirely new data base of fracture stimulation chemicals? How would this data base be administered if BLM should establish it?

Response: The BLM is working closely with the Ground Water Protection Council and the Interstate Oil and Gas Commission in an effort to determine whether the disclosure called for in the proposed rule can be integrated into the existing website known as FracFocus.

FracFocus is a voluntary hydraulic fracturing chemical registry website that is a joint project of the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission. The site was created to provide public access to reported information on the chemicals used in hydraulic fracturing activities.

11. What economic factors do you intend to take into consideration when issuing the final regulations?

Response: The hydraulic fracturing rulemaking process includes an estimate of economic benefits and costs that considers a number of factors, including employment impacts, discounted present value, uncertainty, and a number of rule alternatives.

Rep. Denham

Fish and Wildlife Service

1. Your testimony states that the Administration proposes to increase duck stamp fees to $25.00 per stamp per year, beginning in 2013; and this is due to the cost to purchase land increasing. Does the government need to buy more land? How many acres was Interior able to purchase through this fund over the past 3 years? Has there been any effort to reduce the amount of hunting and use of guns on federal lands under this administration? If so, it would seem that this tax on hunters is simply for a land grab policy and not to further their commitment to the environment and their sport.

Response: This Administration is committed to promoting outdoor recreational activities on public lands. The Migratory Bird Hunting and Conservation Stamp (Duck Stamp) is one source of funds for the Migratory Bird Conservation Fund (Fund). The Fund provides the Department of the Interior with financing for the acquisition of migratory bird habitat. These protected lands are critically important for sustaining waterfowl and other species population levels. Such opportunities to acquire and conserve land through Duck Stamp dollars provide Americans with opportunities to enjoy the outdoors by engaging in activities such as hunting, fishing, hiking and wildlife watching, key components of the Administration's America's Great Outdoors Initiative. The following charts show the total acreage the Department of the Interior has purchased in 2009, 2010 and 2011:

Fee acres purchased with MBCF	
2011	16,747
2010	6,409
2009	16,923
Total	40,079

Total acres protected with MBCF (includes fee and easement)	
2011	39,918
2010	31,939
2009	44,499
Total	116,356

Bureau of Land Management

2. Counties with national forest lands and with certain Bureau of Land Management lands have historically received a percentage of agency revenues, primarily from timber sales. With the declining revenue from timber sales, mostly due to restrictive Administration policies, do you have a plan to revive these timber sales so that local communities can continue to support the education of their children that reside in rural areas and needed emergency personnel? Is it an option to loosen up environmental regulations to allow the timber industry to begin to produce higher receipts; even if the industry is mainly allowed to harvest annual yield to maintain the current acreage of forests?

Response: Although timber purchases as well as harvest levels are driven by market forces, the Bureau of Land Management (BLM) continues to offer a predictable, sustainable supply of timber sales in western Oregon of approximately 200 million board feet (MMBF) per year. In recent years the BLM's timber volumes offered for sale have ranged from highs of 236 MMBF in 2008 and 233 MMBF in 2010, to 198 MMBF in 2007.

The BLM offered 198 million board feet of timber for sale in FY2011, and in addition, re-offered 12 million board feet from previous contracts that had been mutually cancelled. In FY 2012, the BLM plans to offer the program target volume of 193 MMBF of timber for sale. The BLM also plans to reoffer additional volume from eight more contracts that were mutually cancelled. For FY 2013, the BLM budget proposal also includes an increase of $1.5 million in the O&C Forest Management program to increase the volume of timber offered for sale.

Bureau of Reclamation

3. Secretary Salazar, you have previously stated that you could waive the Endangered Species Act when it came to unemployment caused by the delta smelt regulation but indicated that by doing so, it would be "admitting failure." You did not wave the Endangered Species Act when it contributed to 40% unemployment in 2009. I want to ensure that people in my district are able to work. Will you wave the Endangered Species Act if it puts people out of work this year? Will you wave it if it puts people out of work next year? *(Salazar will not directly answer this question, he will say that the California water situation is complex and numerous factors need to be considered.)*

Response: Addressing the dual challenges of providing more reliable water supplies for California and protecting, restoring, and enhancing the overall quality of the Bay-Delta environment requires action to address a myriad of issues. California depends upon a highly-engineered system built generations ago, a system which was

designed to serve a state population less than half of what it is today. The system remains vulnerable to catastrophic failure in the event of an earthquake, levee breeches, or natural disaster. The withdrawal of large quantities of freshwater from the Delta, increased discharges of pollutants from human activities, increases in non-native species, and numerous other factors have all threaten the reliability of California's water system and the Bay-Delta's biologically diverse ecosystem.

Section 7(g) of the Endangered Species Act sets forth the process by which an Endangered Species Act exemption can be obtained. The Endangered Species Act does not authorize the Secretary of the Interior to unilaterally waive the Act's application. Rather, the exemption process involves convening a cabinet-level Endangered Species Committee. There have only been six instances to date in which the exemption process was initiated. Of these six, one was granted, one was partially granted, one was denied, and three were dropped. This rarely used process, which could lead to the extinction of one or more species, is costly and time-consuming. In passing Section 7(a), Congress intended the exemption process to serve as a last resort measure and expressed particular concern that it not undermine the Section 7 consultation process, which Congress believed could resolve most problems. A waiver of the Endangered Species Act would override protections on California's watersheds, on which 25 million people depend for clean drinking water, and circumvent the locally-driven, solution-oriented, collaborative approach that is reflected in the Bay Delta Conservation Plan (BDCP). Exempting the Central Valley Project from the Endangered Species Act is not an appropriate mechanism for solving California's water crisis.

For the past three years, the Department has committed a vast amount of energy to advancing a collaborative planning process that will provide for the conservation of threatened and endangered species while improving water system reliability. The BDCP is intended to address the three major components of the Endangered Species Act as it relates to State Water Project and Central Valley Project operations: the Section 7 requirement that federal agencies ensure, in consultation with the federal fish and wildlife agencies, that their actions are not likely to jeopardize the continued existence of species or result in modification or destruction of critical habitat; the Section 9 prohibition against the "taking" of listed species; and the Section 10 provisions that provide for the permitting of non-federal entities for the incidental take of listed species.

As further evidence of the Department of the Interior's commitment to addressing California's water supply issues, the Bureau of Reclamation's 2013 budget allocates well over $250 million for California water issues. This amount includes funding for the BDCP, science and monitoring activities to improve existing biological opinions governing Central Valley Project operations, fisheries and restoration actions, water

deliveries to refuges, and continued maintenance of CVP water delivery and power generation facilities.

Follow up:

4. How high does unemployment have to be before you wave the Endangered Species Act? *(He will not directly answer and say that a number of factors must be considered.)*

Response: Section 7(g) of the Endangered Species Act sets forth the process by which an Endangered Species Act exemption can be obtained. The Endangered Species Act does not authorize the Secretary of the Interior to unilaterally waive the Act's application. Rather, the exemption process involves convening a cabinet-level Endangered Species Committee. There have only been six instances to date in which the exemption process was initiated. Of these six, one was granted, one was partially granted, one was denied, and three were dropped. This rarely used process, which could lead to the extinction of one or more species, is costly and time-consuming. In passing Section 7(a), Congress intended the exemption process to serve as a last resort measure and expressed particular concern that it not undermine the Section 7 consultation process, which Congress believed could resolve most problems. A waiver of the Endangered Species Act would override protections on California's watersheds, on which 25 million people depend for clean drinking water, and circumvent the locally-driven, solution-oriented, collaborative approach that is reflected in the BDCP. Exempting the Central Valley Project from the Endangered Species Act is not an appropriate mechanism for solving California's water crisis.

5. A part of the SJRRP calls for Reclamation to reintroduce salmon back into the San Joaquin River system above Mendota pool by utilizing eggs from other Central Valley salmon runs that are listed as threaten or endangered under the Federal Endangered Species Act. How much will this program cost in fiscal year 2013 and every year thereafter? Not the amount requested (12 million), but the actual projected costs.

Response: Funding needs for San Joaquin River Restoration Program (Restoration Program) fisheries reintroduction activities for FY 2013 are estimated at $3,270, 000. Future reintroduction activities are estimated to range from $4,900,000 to $5,700,000 annually through FY 2018, depending on the specific activities planned for the year.

- Given the harmful impacts of the interim flows from Friant, has the Bureau of Reclamation already built the necessary infrastructure to mitigate any further seepage and ensured that the river is absolutely ready for sustained increased flows?

Response: The FY 2013 budget request for the Bureau of Reclamation includes funding to continue seepage monitoring and management efforts, including the evaluation and construction of seepage management projects. These projects include the construction or installation of interceptor lines, drainage ditches, shallow groundwater pumping, and channel conveyance improvements. Funding will also be directed toward non-physical actions such as property acquisitions. Reclamation will continue to hold interim flows to levels that do not cause material adverse seepage impacts until the seepage management projects have been completed.

Public Law 111-11 and the Stipulation of Settlement entered in NRDC et al. v. Rodgers et al. ("Settlement") provide for the release of interim flows in order to collect relevant data concerning flows, temperatures, fish needs, seepage losses, recirculation, recapture, and reuse. As Reclamation has obtained data regarding seepage, and consistent with Public Law 111-11, Reclamation has held interim flows to levels that avoid potential material adverse seepage impacts. Reclamation completed updates to the Restoration Program's Seepage Management Plan and posted an updated plan on the Program's web site in March 2011. The plan has been developed with input from landowners and district managers to address landowner concerns related to potential changes in groundwater elevations that may be a result of the Restoration Program. The approaches to monitor and set groundwater thresholds, as well as responses to address seepage before it impacts adjacent lands, are described in the plan. Reclamation installed and monitors more than 160 groundwater monitoring wells, many on private property in locations chosen or agreed to by landowners.

In coordination with the Seepage and Conveyance Technical Feedback Group, Reclamation established thresholds for all monitoring wells and uses data from the wells to inform interim flow releases such that potential material adverse seepage impacts are avoided. As a result of the Seepage Management Plan and groundwater thresholds, Reclamation has limited flows below Sack Dam. Reclamation also established a Seepage Hotline for landowners to call if they see or anticipate seepage on their property.

Reclamation is preparing a Seepage Projects Handbook, which is being developed in coordination with local irrigation districts and landowners through the public Seepage and Conveyance Technical Feedback Group. The handbook sets expectations, timelines and processes for implementing seepage projects. Reclamation recently held meetings with Reach 3, 4A, and 4B landowners and specifically invited landowners whose properties are the highest priority for seepage

management actions. As a result of this meeting, six different landowners are beginning to work with Reclamation to evaluate their properties for seepage projects. Reclamation will limit interim flows to levels that do not cause material adverse seepage impacts until these projects are in place.

- All Central Valley salmon runs are struggling to regain their historic numbers. Why would Reclamation propose to fill one river with salmon from another and purposely reduce the numbers of available salmon in other streams to plant them into the San Joaquin system and further threaten and/or endangered current runs?

Response: Public Law 111-11 and the Settlement direct the Secretary of the Interior to reintroduce California Central Valley spring and fall run Chinook salmon into the San Joaquin River, with priority given to restoring self-sustaining populations of wild spring run. Historically, spring run Chinook salmon were abundant in the San Joaquin River system. Extirpation of these and other runs has led to the threatened status of this species. Since spring run Chinook salmon have been extirpated from the San Joaquin, reintroduction will require the use of eggs and fish from other streams. To ensure the collection of spring run eggs and fish from other streams will not jeopardize populations in those streams, all collections will be conducted under an Endangered Species Act permit issued by the National Marine Fisheries Service. In addition, the planned construction of a conservation hatchery will allow a broodstock to be developed and managed to provide a source of fish for the San Joaquin River without needing significant numbers of salmon from other streams. Reintroducing spring run Chinook salmon to the San Joaquin River will result in the establishment of a new, additional population, which will be an overall benefit to Central Valley salmon runs.

- Has Reclamation determined when it would stop reintroducing salmon into the San Joaquin river system if these efforts fail? In other words, has the Administration set a goal that everyone is working to achieve for success in the San Joaquin River Restoration Program?

Response: Reclamation will stop reintroducing salmon into the San Joaquin River once the population has been determined to be naturally reproducing and self sustaining. Public Law 111-11 requires the Secretary of Commerce to report to Congress, no later than December 31, 2024, on the progress made on reintroducing spring run Chinook salmon and future reintroduction plans. We anticipate continuing reintroducing salmon into the river until 2024, and including reintroduction plans beyond 2024 in the report to Congress.

6. What has Reclamation done to date to replace the water supply lost due to the implementation of the SJRRP?

Response: Reclamation is pursuing several actions to reduce or avoid adverse water supply impacts to all of the Friant Division long-term contractors. The actions include the following: continued development of operational guidelines for releasing interim and restoration flows and the framework for a Recovered Water Account; allocation of 680,000 acre-feet of Recovered Water Account water to Friant Division long-term contractors to take advantage of wet year water supplies and the delivery of 356,203 acre-feet of this amount based on the contractors request; recaptured flows at Mendota Pool and recirculated 66,000 acre-feet to the Friant Division long-term contractors to date; continued planning on downstream recapture and long-term recirculation with other water users; drafted guidelines for financial assistance for local groundwater banking projects; released a Draft Environmental Assessment and Feasibility Report for the Friant-Kern Canal Capacity Restoration Project and continued progress on the project to achieve a late 2012 construction start date; continued progress on the Madera Canal Capacity Restoration Feasibility Study and the Friant-Kern Canal Pump-back Feasibility Study; and negotiated and executed 27 repayment contracts with Friant Division and Hidden and Buchannan Units contractors.

7. How will Reclamation deal with seepage impacts to private landowners from increased flows down the San Joaquin River? Please provide the details of this program.

Response: Reclamation will not increase flows above thresholds described in the next paragraph until seepage management projects are in place to protect private landowners from seepage impacts. Consistent with Public Law 111-11, Reclamation will hold interim flows to levels that avoid potential material adverse seepage impacts. Reclamation completed updates to the Restoration Program's Seepage Management Plan and posted an updated plan on the Program's web site in March 2011. The plan has been developed with input from landowners and district managers to address landowner concerns related to potential changes in groundwater elevations that may be a result of the Restoration Program. The approaches to monitor and set groundwater thresholds, as well as responses to address seepage before it impacts adjacent lands, are described in the plan. Reclamation installed and monitors more than 160 groundwater monitoring wells, many on private property in locations chosen or agreed to by landowners.

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seepage impacts are avoided. As a result of the Seepage Management Plan and groundwater thresholds, Reclamation has limited flows below Sack Dam. In addition to monitoring and establishing thresholds, Reclamation has also established a Seepage Hotline for landowners to call if they see or anticipate seepage on their property.

Reclamation is preparing a Seepage Projects Handbook, which is being developed in coordination with local irrigation districts and landowners through the public Seepage and Conveyance Technical Feedback Group. The handbook sets expectations, timelines and processes for implementing seepage projects. Reclamation recently held meetings with Reach 3, 4A, and 4B landowners and specifically invited landowners whose properties are the highest priority for seepage management actions. As a result of this meeting, six different landowners are beginning to work with Reclamation to evaluate their properties for seepage projects. Reclamation will limit interim flows to levels that do not cause material adverse seepage impacts until these projects are in place.

Reclamation is committed to managing flows in a way that does not exceed groundwater thresholds. Implementation of focused projects and actions to address seepage will allow Reclamation to incrementally increase flows as improvements are made. Data gathered from eight key monitoring wells is being reported in real-time to the California Data Exchange Center website. Data from 19 wells are reported weekly to the Program's website (http://www.restoresjr.net/flows/Groundwater/index.html). Data from all of the wells are reported every few months in the Program's Well Atlas available online (http://www.restoresjr.net/flows/Groundwater/index.html).

8. What regulatory impediments does Reclamation identify as inhibiting its ability to provide 100% of South-of-Delta contractor's allocation of contract supplies?

Response: As noted above, the CVP is operated to meet multiple purposes under a variety of statutory and regulatory requirements and constraints that affect operation of the CVP pumps, and therefore the South-of-Delta allocation. Operating criteria and restrictions included in the California State Water Resources Control Board's Water Right Decision 1641, the 2008 Fish and Wildlife Service Smelt Biological Opinion, and the 2009 National Marine Fisheries Service Salmon Biological Opinion can reduce the amount of water exports allowed at Jones Pumping Plant and therefore limit the amount of water that can be moved south. This year the South-of-Delta allocation is being primarily driven by dry hydrological conditions caused in part by low precipitation and snowpack in the Sierra Nevada.

Rep. Hanabusa

1. Mr. Secretary, Following the 2009 Supreme Court decision in Carcieri v. Salazar, little to no legislative action has been taken to remedy the uncertainty among tribes and the BIA regarding our country's trust obligations. Can you provide any details on possible administrative actions that the DOI is taking in order to resolve this uncertainty?

Response: Generally, since the *Carcieri* decision, the Department must examine whether each tribe seeking to have land acquired in trust under the Indian Reorganization Act was "under federal jurisdiction" in 1934. Under the authority delegated to the Assistant Secretary for Indian Affairs, the Bureau of Indian Affairs (BIA) makes the determination as to whether to acquire land in trust on behalf of an applicant tribe in most instances. BIA staff work closely with the Solicitor's Office to ensure that all legal criteria are satisfied prior to the approval of a fee-to-trust acquisition. The Department's attorneys, in turn, work closely with the Assistant Secretary's Office to undertake the analysis, which involves mixed questions of law and fact, as to whether an applicant tribe was under federal jurisdiction on June 18, 1934 and provide legal counsel to the Assistant Secretary and BIA staff.

Whether a tribe was under federal jurisdiction on that date requires a fact-intensive analysis of the history of interactions between that tribe and the United States. This analysis ordinarily requires the Department to examine: (1) whether there was an action or series of actions before 1934 that established or reflected federal obligations, duties, or authority over the tribe; and, (2) whether the tribe's jurisdictional status remained intact in 1934. The analysis is done on a tribe-by-tribe basis; it is time-consuming and costly for tribes, even for those tribes whose jurisdictional status is unquestioned. It requires extensive legal and historical research and analysis and has engendered new litigation about tribal status and Secretarial authority. Overall, it has made the Department's consideration of fee-to-trust applications more complex.

The Department continues to believe that legislation is the best means to address the issues arising from the *Carcieri* decision, and to reaffirm the Secretary's authority to secure tribal homelands for all federally recognized tribes under the Indian Reorganization Act. A clear congressional reaffirmation will prevent costly litigation and lengthy delays for both the Department and the tribes to which the United States owes a trust responsibility.

Rep. Noem

1. What are your plans to ensure funding for water projects, like Lewis & Clark, is realized in a timely way?

Response: Faced with limited funding and multiple worthy projects, the Bureau of Reclamation has had to set priorities and make tough choices, with the goal of making meaningful progress on the projects receiving funding. The capability of the rural water project sponsors to accomplish construction projects far exceeds the available funding. Reclamation allocated funding in a manner that would allow construction to continue with the goal of accomplishing discrete phases of projects that will provide water to project beneficiaries upon completion of that phase of the project. Our funding request will enable multiple projects to achieve this goal in the next fiscal year.

2. Lewis & Clark has already been underway for more than 20 years. What are your plans to Lewis & Clark is completed in a timely way?

Response: The Bureau of Reclamation has been working diligently to advance the completion of all of its authorized rural water projects consistent with current fiscal and resource constraints with the goal of delivering potable water to tribal and non-tribal residents within the rural water project areas. Completion of the Lewis & Clark project is a priority project for the Department of the Interior. Recently, $5.487 million was awarded to the Lewis and Clark project pursuant to the Consolidated Appropriations Act of 2012 and the FY 2013 President's budget request includes an additional $4.5 million in funding. The Bureau of Reclamation has been conducting studies to modify the existing criteria and develop more comprehensive criteria for ranking the authorized rural water projects so that Reclamation can assign its limited construction dollars in the most effective manner. As part of the process of developing final revised criteria, Reclamation will work closely with members of Congress, project partners, and stakeholders to develop a set of measures to rank authorized rural water projects for allocating rural water construction funds in the future.

3. Could you provide and explain to me the criteria and methodology Department of Interior use in determining how to prioritize the water projects within the Water and Related Resources account? Is weight given to criteria – such as population served, local commitment as determined by prepayment of the local members, and potential for economic impact? How do these criteria fare in relation to whether there is a tribal component? Are there other criteria considered? How much weight is given to additional criteria?

Response: The Bureau of Reclamation administers the Water and Related Resources account, which provides funding for five major program areas – Water and Energy Management and Development, Land Management and Development, Fish and Wildlife Management and Development, Facility Operations, and Facility Maintenance and Rehabilitation. The criteria and methodology that is used to determine water project priorities varies depending on the program. As it relates specifically to rural water projects authorized by Congress, the Bureau of Reclamation is evaluating new criteria for allocating rural water project funding. The Bureau of Reclamation developed and used revised interim criteria to allocate additional funding provided in the Consolidated Appropriations Act of 2012. Reclamation also used the revised interim criteria in fiscal year 2013 to prioritize funding for the authorized rural water project construction funding. The revised interim criteria give consideration to the time and financial resources already committed by project beneficiaries, the urgent and compelling need for water, the financial need and regional impacts, the regional and watershed benefits, the water and energy benefits and service to Native American Tribes.

4. How does the Bureau reallocate funding in the Water & Related Resources account for projects completed or nearing completion? Will this funding remain in the Water & Related Resources account with respect to future budget requests?

Response: The Bureau of Reclamation administers the Water and Related Resources account, which provides funding for five major program areas – Water and Energy Management and Development, Land Management and Development, Fish and Wildlife Management and Development, Facility Operations, and Facility Maintenance and Rehabilitation. The criteria and methodology that is used to determine water project priorities varies depending on the program. The Bureau of Reclamation does not anticipate the need to reallocate funding in the Water & Related Resources account for projects completed or nearing completion; however, in the event this unforeseen event occurs, Reclamation will take action consistent with Congressional guidance.

Rep. Young

1. In what appears to be an annual occurrence, the President's Budget proposes cutting the Alaska Land Conveyance Program. Last year, the program was halved. As you know, Congress was able to restore most of the funding, but again, this budget proposes a near 50% cut. Today, BLM has only surveyed and patented near 60% of the original 150 million acres owed to the State of Alaska and the Native community. On millions of acres, the conveyance process has not even yet begun. This amounts to little more than 1% more than the BLM had completed last year, and at twice the funding than has been requested this year. At this rate, it would take roughly 41 more years to see a full 100%. In your view, is this an acceptable amount of time for the State and the Native Corporations to wait before the land entitlement is 100% conveyed? It's been over 50 years since Statehood, and 40 years since the passing of ANCSA. How long do we have to wait for this process to be complete?

Why can the Interior Department find all kinds of money to fund Wilderness studies in ANWR and other refuges, America's Great Outdoors, and other nonsense, but cannot find the money to fully fund the Alaska Conveyance Program?

Response: The Department is the steward of 20 percent of the Nation's lands, including national parks, national wildlife refuges, and the public lands. Interior manages public lands onshore and on the Outer Continental Shelf, providing access for and management of renewable and conventional energy development and overseeing the protection and restoration of surface-mined lands. The Department is also the largest supplier and manager of water in the 17 western states and provides hydropower resources used to power much of the country. Interior is responsible for migratory wildlife and endangered species conservation as well as the preservation of the Nation's historic and cultural resources. The Department supports cutting edge research in the earth sciences – geology, hydrology, and biology – to inform resource management decisions at Interior and improve scientific understanding worldwide. The Department also fulfills the Nation's unique trust responsibilities to American Indians and Alaska Natives, and provides financial and technical assistance for the insular areas. In short, these many and varied mission areas required us to make difficult choices; the Department's budget includes significant reductions and savings.

At the same time, however, we are working closely at the local level to determine priorities so that either we can convey by patent (if surveyed) or by interim basis (if unsurveyed) working title to the lands the clients need. The Bureau of Land Management will prioritize survey work on a geographic basis, maximize the use of contract surveyors, and use available technology to ensure this work is done in the most cost efficient manner. And we will continue to evaluate options for additional program reforms and efficiencies to complete final transfers in a timely manner.

2. Early February 2012, Congressman Boren and I wrote you a letter regarding the BLM's draft hydraulic fracturing rules, which would affect lands held in trust for Indian tribes and their members. I have not received a response to the requests in that letter. As a result, what tribes have the Department approached during the current tribal consultation process as it relates to this draft rule? What is your time frame, and how to do you plan to accommodate tribal concerns in this rule?

Response: In its March 29, 2012 reply to your letter, the Department indicated that the BLM places a high priority on tribal consultation and in January 2012 held consultation sessions on the proposed hydraulic fracturing rule in Tulsa, Oklahoma; Billings, Montana; Salt Lake City, Utah; and Farmington, New Mexico. During these sessions, the Department received a clear message from tribal representatives that they would like the BLM to update its regulations on well stimulation and that more information about post-drilling stimulation operations on tribal lands should be provided. The BLM is committed to working closely with the tribes throughout the development of this rule. Tribal governments will have essentially until the rule is final to consult on the effect of the rule.

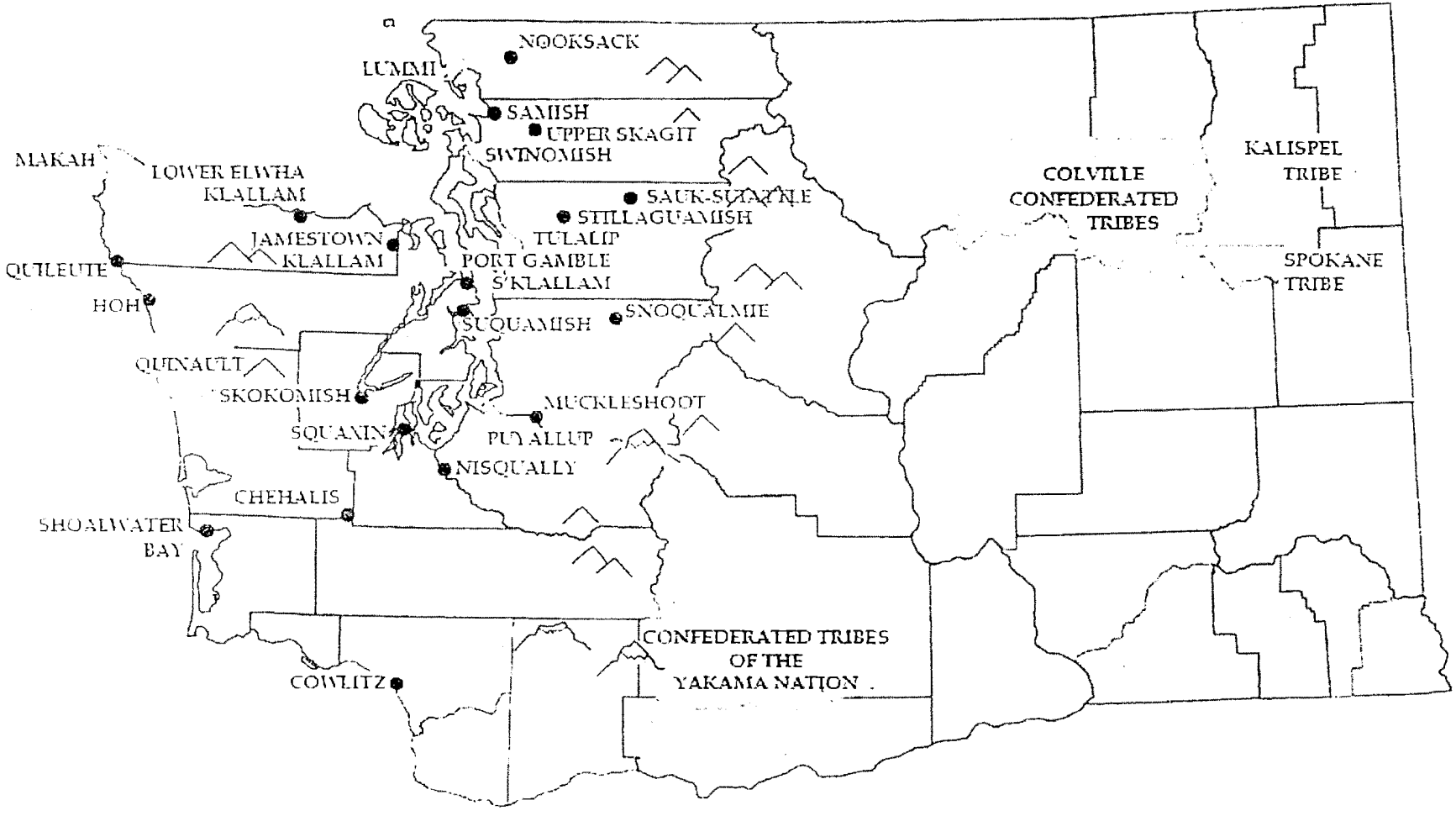
Tribes Name	PropertyName	Agency	Acres	Reservation	Need	Purpose	Authority
CHEHALIS	Washington Business Bank	NWRO	40.80	Chehalis Reservation	SD	Water Protection	25 USC § 465
COLVILLE	Quality Veneer	COLVILLE	0.73	Colville Reservation	ED	Infrastructure	25 USC § 465
COLVILLE	Earl DeCamp	COLVILLE	44.59	Colville Reservation	ED	Infrastructure	25 USC § 465
COLVILLE	Highway Tire Prop.	COLVILLE	0.58	Colville Reservation	ED	Economic Development	25 USC § 465
COLVILLE	Gallaher	COLVILLE	1632.16	Colville Reservation	ED	Agriculture	25 USC § 465
COLVILLE	Fordean Palmanteer	COLVILLE	0.33	Colville Reservation	IH	Housing	25 USC § 465
COLVILLE	Jennifer Simpson	COLVILLE	0.18	Colville Reservation	IH	Housing	25 USC § 465
COLVILLE	Picard	COLVILLE	120.00	Colville Reservation	IH	Infrastructure	25 USC § 465
COLVILLE	James A.C. Smith	COLVILLE	0.29	Colville Reservation	IH	Housing	25 USC § 465
COLVILLE	Town of Coulee Dam	COLVILLE	0.07	Colville Reservation	IH	Housing	25 USC § 465
COLVILLE	Larry Seymour	COLVILLE	0.25	Colville Reservation	IH	Housing	25 USC § 465
COLVILLE	Cates & Erb	COLVILLE	2.13	Colville Reservation	IH	Housing	25 USC § 465
COLVILLE	Robert Turner	COLVILLE	20.97	Colville Reservation	ED	Agriculture	25 USC § 465
COLVILLE	Barnett (S-28 & S-29)	COLVILLE	120.00	Colville Reservation	SD	Infrastructure	25 USC § 465
COLVILLE	Beardslee	COLVILLE	20.00	Colville Reservation	SD	Infrastructure	25 USC § 465
COLVILLE	Gould	COLVILLE	17.46	Colville Reservation	SD	Infrastructure	25 USC § 465
COLVILLE	Dave Finley	COLVILLE	0.26	Colville Reservation	SD	Infrastructure	25 USC § 465
COLVILLE	S-1812	COLVILLE	17.67	Colville Reservation	SD	Infrastructure	25 USC § 465
COLVILLE	S-1813	COLVILLE	51.71	Colville Reservation	SD	Infrastructure	25 USC § 465
COLVILLE	McClung	COLVILLE	20.00	Colville Reservation	IH	Housing	25 USC § 465
COLVILLE	Cheryl Johnson	COLVILLE	13.74	Colville Reservation	IH	Housing	25 USC § 465
COLVILLE	Kendall Brown	COLVILLE	160.00	Colville Reservation	SD	Infrastructure	25 USC § 465
COLVILLE	Phyllis Largent	COLVILLE	1012.06	Colville Reservation	SD	Infrastructure	25 USC § 465
COLVILLE	Hansen	COLVILLE	214.54	Colville Reservation	ED	Agriculture	25 USC § 465
COLVILLE	1999 Tax Sale (T5745)	COLVILLE	40.41	Colville Reservation	SD	Infrastructure	25 USC § 465
COLVILLE	S-2155 (Elmer Lemery)	COLVILLE	100.00	Colville Reservation	SD	Infrastructure	25 USC § 465
COLVILLE	Gilleland	COLVILLE	4.55	Colville Reservation	SD	Infrastructure	25 USC § 465
COLVILLE	1997 Tax Sale/Metro. Corp.	COLVILLE	13.36	Colville Reservation	SD	Infrastructure	25 USC § 465
COLVILLE	Bev Hill/S-967	COLVILLE	50.00	Colville Reservation	SD	Infrastructure	25 USC § 465
COLVILLE	Phyllis Banks	COLVILLE	110.00	Colville Reservation	SD	Infrastructure	25 USC § 465
COLVILLE	Abel/S-1690	COLVILLE	80.00	Colville Reservation	SD	Infrastructure	25 USC § 465
COLVILLE	Malott	NWRO	47.60	Colville Reservation	ED	Agriculture	25 USC § 465
COLVILLE	Travel plaza	COLVILLE	7.00	Colville Reservation	ED	Travel Plaza	25 USC § 465
JAMESTOWN KLALLAM	Gadamus	OLYMPIC PENINSULA	5.00	JAMESTOWN KLALLAM (CLALLAM)	SD	Infrastructure	25 USC § 465
MESTOWN KLALLAM	Sophus Road II	NWRO	19.15	JAMESTOWN KLALLAM (CLALLAM)	SD	Infrastructure	25 USC § 465
JAMESTOWN KLALLAM	Dungeness Golf Course	NWRO	139.36	JAMESTOWN KLALLAM (CLALLAM)	ED	Golf Course development	25 USC § 465
KALISPEL	Carstens	NWRO	85.50	Kalispel Reservation	SD	Infrastructure	25 USC § 465
LOWER ELWHA	Ediz Hook	NWRO	3.76	LOWER ELWHA	SD	Infrastructure	25 USC § 465
LOWER ELWHA	Place Road Addition	NWRO	0.46	LOWER ELWHA	IH	Indian Housing	25 USC § 465
LOWER ELWHA	Log Yard Addition	NWRO	37.68	LOWER ELWHA	SD	Infrastructure	25 USC § 465
LUMMI	Fisherman's Cove	Pudget Sound	9.47	LUMMI	ED	Agriculture	25 USC § 465
MUCKLESHOOT	Davis Housing Project	Pudget Sound	14.97	MUCKLESHOOT	IH	Housing	25 USC § 465
MUCKLESHOOT	Schlag Nelson Goff & Goff	Pudget Sound	26.61	MUCKLESHOOT	IH	Housing	25 USC § 465
NISQUALLY	Walker Property	NWRO	26.38	NISQUALLY	ED	Housing	25 USC § 465
NISQUALLY	Torgerson	Pudget Sound	0.00	NISQUALLY	SD	Infrastructure	25 USC § 465
NISQUALLY	Pease Property	Pudget Sound	55.00	NISQUALLY	SD	Infrastructure	25 USC § 465
NISQUALLY	Fort Lewis Exchange	Pudget Sound	174.00	NISQUALLY	ED	Economic Development	25 USC § 465
NISQUALLY	Nisqually Commercial Park	NWRO	1.13	NISQUALLY	ED	Economic Development	25 USC § 465
PORT GAMBLE S'KLALLAM	DNR	NWRO	390.26	Port Gamble Reservation	SD	Infrastructure	25 USC § 465
PUYALLUP	Justice Centeer	Pudget Sound	30.00	Puyallup Tribe	SD	Infrastructure	25 USC § 465
PUYALLUP	Boyle Property	Pudget Sound	0.00	Puyallup Tribe	ED	Agriculture	25 USC § 465
PUYALLUP	Five Residential	Pudget Sound	0.00	Puyallup Tribe	ED	Agriculture	25 USC § 465
PUYALLUP	Meaker Property	Pudget Sound	4.35	Puyallup Tribe	ED	Agriculture	25 USC § 465
PUYALLUP	Sny Property	Pudget Sound	0.00	Puyallup Tribe	ED	Agriculture	25 USC § 465
PUYALLUP	Online Property	Pudget Sound	0.00	Puyallup Tribe	SD	Infrastructure	25 USC § 465
PUYALLUP	Gethesmane	Pudget Sound	17.00	Puyallup Tribe	SD	Infrastructure	25 USC § 465
PUYALLUP	Yamamoto Property	Pudget Sound	20.77	Puyallup Tribe	ED	Agriculture	25 USC § 465
PUYALLUP	Administrative Building	Pudget Sound	0.00	Puyallup Tribe	SD	Infrastructure	25 USC § 465
PUYALLUP	Fife Casino Parking	NWRO	13.90	Puyallup Tribe	SD	Infrastructure	25 USC § 465
PUYALLUP	Shell Gas Station-Parcel A	Pudget Sound	1.23	Puyallup Tribe	ED	Economic Development	25 USC § 465
PUYALLUP	Shell Gas Station-Norpoint	Pudget Sound	1.55	Puyallup Tribe	ED	Economic Development	25 USC § 465
QUILEUTE	relocation	OLYMPIC PENINSULA	184.00	Quileute	SD	relocation of Res.	P.L. 112-97
QUINAULT	Fishery	Pudget Sound	1.14	QUINAULT	ED	Economic Development	25 USC § 465
SAMISH	Fidalgo Bay RV Park	Pudget Sound	67.00	SAMISH	ED		25 USC § 465
SAMISH	Administration Complex	Pudget Sound	0.39	SAMISH	SD		25 USC § 465
MISH	Kelleher Road	Pudget Sound	0.00	SAMAIH	ED		25 USC § 465
K VALLEY (SAUK SUIATTLE)	Bryson Property	Pudget Sound	0.00	SAUK VALLEY (SAUK SUIATTLE)	SD	Infrastructure	25 USC § 465
SAUK VALLEY (SAUK SUIATTLE)	Howell Property	Pudget Sound	0.00	SAUK VALLEY (SAUK SUIATTLE)	IH	Housing	25 USC § 465
SAUK VALLEY (SAUK SUIATTLE)	Wells Fargo	Pudget Sound	1.64	SAUK VALLEY (SAUK SUIATTLE)	SD	Infrastructure	25 USC § 465

"ATTACHMENT TO HASTINGS 3"

SHOALWATER	Conservation	OLYMPIC PENINSULA	214.13	Shoalwater Reservation	SD	Conservation/Timber	25 USC § 465
SNOQUALMIE	View Acre	Pudget Sound	7.50	SNOQUALMIE	IH		25 USC § 465
SPOKANE	LANTZY WEST PROPERTY	SPOKANE	124.00	Spokane Reservation	SD	Infrastructure	25 USC § 465
SPOKANE	TWO PARSON PROPERTY	SPOKANE	501.30	Spokane Reservation	SD	Infrastructure	25 USC § 465
SPOKANE	SAMPSON	SPOKANE	565.82	Spokane Reservation	SD	Infrastructure	25 USC § 465
SPOKANE	Anderson Property	SPOKANE	21.76	Spokane Reservation	SD	Infrastructure	25 USC § 465
SPOKANE	MCCREA PROPERTY	SPOKANE	99.85	Spokane Reservation	SD	Infrastructure	25 USC § 465
SPOKANE	YEAGER PROPERTY	SPOKANE	10.00	Spokane Reservation	SD	Infrastructure	25 USC § 465
SPOKANE	MAGGIE FERGUSON PROPERT	SPOKANE	40.99	Spokane Reservation	SD	Infrastructure	25 USC § 465
SPOKANE	BEN FERGUSON PROPERTY 10	SPOKANE	80.00	Spokane Reservation	SD	Infrastructure	25 USC § 465
SPOKANE	GEORGE FERGUSON PROPERT	SPOKANE	80.00	Spokane Reservation	SD	Infrastructure	25 USC § 465
SPOKANE	ANDERSON EAST	SPOKANE	39.42	Spokane Reservation	SD	Infrastructure	25 USC § 465
SPOKANE	ANDERSON PROPERTY	SPOKANE	72.67	Spokane Reservation	SD	Infrastructure	25 USC § 465
SPOKANE	GUTIERREZ PROPERTY	SPOKANE	80.00	Spokane Reservation	SD	Infrastructure	25 USC § 465
SPOKANE	YEPA PROPERTY	SPOKANE	37.80	Spokane Reservation	SD	Infrastructure	25 USC § 465
SPOKANE	GRIBNER PROPERTY	SPOKANE	80.00	Spokane Reservation	SD	Infrastructure	25 USC § 465
SPOKANE	LANTZY EAST PROPERTY	SPOKANE	640.82	Spokane Reservation	SD	Infrastructure	25 USC § 465
SQUAXIN ISLAND TRIBE	Hawks	NWRO	0.40	Squaxin Island Tribe	SD	Infrastructure	25 USC § 465
SQUAXIN ISLAND TRIBE	Shaker Church	NWRO	5.29	Squaxin Island Tribe	SD	Infrastructure	25 USC § 465
SQUAXIN ISLAND TRIBE	Wells Fargo	NWRO	0.60	Squaxin Island Tribe	SD	Infrastructure	25 USC § 465
SQUAXIN ISLAND TRIBE	Wood	NWRO	2.68	Squaxin Island Tribe	SD	Infrastructure	25 USC § 465
SQUAXIN ISLAND TRIBE	Under	NWRO	5.69	Squaxin Island Tribe	SD	Economic Development	25 USC § 465
STILLAGUAMISH	Plant Nursery	NWRO	4.20	Stillaguamish Tribe	ED	Economic Development	25 USC § 465
STILLAGUAMISH	McMac Property	NWRO	18.34	Stillaguamish Tribe	IH	Housing	25 USC § 465
STILLAGUAMISH	Anderson	NWRO	15.50	Stillaguamish Tribe	ED	Store gas station	25 USC § 465
SUQUAMISH TRIBE	Kiana Lodge	Pudget Sound	4.80	Port Madison Reservation	ED	Economic Development	25 USC § 465
SUQUAMISH TRIBE	Angeline, Augusta, Chinese Re	NWRO	0.39	Port Madison	ED	Economic Development	25 USC § 465
SWINOMISH	MARINA	Pudget Sound	350.00	SWINOMISH	ED	Marina - development	25 USC § 465
SWINOMISH	Parcel 20819	Pudget Sound	80.00	SWINOMISH	SD	Infrastructure	25 USC § 465
TULALIP	Brown Property	Pudget Sound	0.00	TULALIP	SD	Infrastructure	25 USC § 465
TULALIP	Brennen Property	Pudget Sound	67.33	TULALIP	ED	Economic Development	25 USC § 465
TULALIP	Barala Property	Pudget Sound	79.29	TULALIP	ED	Economic Development	25 USC § 465
TULALIP	Cannon Property	Pudget Sound	42.77	TULALIP	IH	Indian Housing	25 USC § 465
TULALIP	Forester Property	Pudget Sound	80.33	TULALIP	ED	Economic Development	25 USC § 465
TULALIP	Giddens Property	Pudget Sound	23.48	TULALIP	ED	Economic Development	25 USC § 465
TULALIP	J. Lind Property	Pudget Sound	79.63	TULALIP	SD	Economic Development	25 USC § 465
TULALIP	Three Sisters North	Pudget Sound	81.03	TULALIP	SD	Economic Development	25 USC § 465
TULALIP	Loudenberg	Pudget Sound	41.11	TULALIP	IH	Housing	25 USC § 465
UPPER SKAGIT	Bow Hill Resort	Pudget Sound	133.78	Upper Skagit	ED	Economic Development	25 USC § 465
YAKAMA TRIBES	Mission	YAKAMA	73.25	Yakama Reservation	SD		25 USC § 608
YAKAMA TRIBES	Castile Falls	YAKAMA	331.15	Yakama Reservation	SD		25 USC § 608
YAKAMA TRIBES	Zimmerman	YAKAMA	449.97	Yakama Reservation	SD	Infrastructure	25 USC § 608
YAKAMA TRIBES	Raymond	YAKAMA	60.74	Yakama Reservation	SD		25 USC § 608
YAKAMA TRIBES	Olney	YAKAMA	20.00	Yakama Reservation	SD	Agriculture	25 USC § 608
YAKAMA TRIBES	Van Wyk	YAKAMA	72.45	Yakama Reservation	SD		25 USC § 608
YAKAMA TRIBES	Rowe	YAKAMA	36.05	Yakama Reservation	SD		25 USC § 608
YAKAMA TRIBES	Wildlife-Graham	YAKAMA	160.00	Yakama Reservation	SD	Infrastructure	25 USC § 608
YAKAMA TRIBES	Caribou	YAKAMA	116.19	Yakama Reservation	SD		25 USC § 608
YAKAMA TRIBES	124-2263	YAKAMA	80.00	Yakama Reservation	SD		25 USC § 608
YAKAMA TRIBES	Rutledge	YAKAMA	4.27	Yakama Reservation	SD		25 USC § 608
YAKAMA TRIBES	Sunrise Orchards	YAKAMA	29.42	Yakama Reservation	SD		25 USC § 608
YAKAMA TRIBES	Wildlife-YNCE	YAKAMA	120.00	Yakama Reservation	SD	Infrastructure	25 USC § 608
YAKAMA TRIBES	Mullinex	YAKAMA	272.33	Yakama Reservation	SD		25 USC § 608
YAKAMA TRIBES	124-T2922-B	YAKAMA	40.00	Yakama Reservation	SD		25 USC § 608
YAKAMA TRIBES	Wildlife-J Lawrence	YAKAMA	58.14	Yakama Reservation	SD	Infrastructure	25 USC § 608
YAKAMA TRIBES	CPJ-Colt, Ptak, Jones	YAKAMA	560.00	Yakama Reservation	SD		25 USC § 608
YAKAMA TRIBES	GLWCE FTT-42	YAKAMA	80.00	Yakama Reservation	SD	Infrastructure	25 USC § 608
YAKAMA TRIBES	Van Wyk2 FTT 40	YAKAMA	4.71	Yakama Reservation	SD		25 USC § 608
YAKAMA TRIBES	Rentschler FTT-20	YAKAMA	124.08	Yakama Reservation	SD		25 USC § 608
YAKAMA TRIBES	Tribal Fisheries/Wildlife-Hedd	YAKAMA	40.00	Yakama Reservation	SD		25 USC § 608
YAKAMA TRIBES	Wildlife-Clements	YAKAMA	78.78	Yakama Reservation	SD		25 USC § 608
YAKAMA TRIBES	Wildlife-Bailey	YAKAMA	40.00	Yakama Reservation	SD		25 USC § 608
YAKAMA TRIBES	Wildlife-Shinn	YAKAMA	49.60	Yakama Reservation	SD		25 USC § 608
YAKAMA TRIBES	Wildlife-Pheasant Holdings	YAKAMA	79.39	Yakama Reservation	SD		25 USC § 608
YAKAMA TRIBES	R.D. Frank FTT-34	YAKAMA	462.90	Yakama Reservation	SD		25 USC § 608

ED Economic development
SD Self determination
IH Indian housing

FEDERALLY RECOGNIZED TRIBES OF WASHINGTON STATE



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 26 2012

The Honorable John Fleming
Chair
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 March 6, 2012, hearing on "the Spending for the National Oceanic and Atmospheric Administration, the Office of Insular Affairs, the U.S. Fish and Wildlife Service and the President's Fiscal Year 2013 Budget Request for these Agencies".

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
Subcommittee on Fisheries, Wildlife, Oceans and
Insular Affairs

COMMITTEE ON NATURAL RESOURCES

Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs

Questions for the Record
Office of Insular Affairs

Oversight hearing on *"the Spending for the National Oceanic and Atmospheric Administration, the Office of Insular Affairs, the U.S. Fish and Wildlife Service and the President's Fiscal Year 2013 Budget Request for these Agencies."*

Chairman John Fleming, M.D. (LA)

1. Economic self-sufficiency for the insular areas is a goal reiterated throughout the Office of Insular Affairs budget request. How does Office of Insular Affairs track the insular areas progress to achieve this result?

   RESPONSE: OIA's primary indicators of the economic health of the territories are Gross Domestic Product figures generated by the Commerce Department's Bureau of Economic Analysis under a financial agreement with OIA. OIA also references Gross National Product figures for the freely associated states. Additional statistics, such as private sector tax revenues, are gathered from single audits of insular government activities.

2. Public sector or government jobs in the insular areas provide many locals with employment. However, the government sector is not sustainable, as is seen with many of the territories implementing fiscal austerity measures including reduced hours and layoffs. How is OIA working with the insular areas to reduce reliance on government jobs?

   RESPONSE: The government sectors of the insular areas cannot be sustained without economic growth. OIA pursues several tracks to address the need to reduce reliance on government jobs. OIA uses technical assistance funding to promote economic development initiatives in the islands. Examples are the American Samoa Air Transport Market Study, the Guam Regional Workforce project and the Forum on Economic and Labor Development in the CNMI. These efforts help identify and create conditions for growth.

   OIA also promotes efficiencies in governmental financial management and tax administration so that private sector investors may be assured of sound public management.

   However, as the insular areas' economies continue to decline, as demonstrated by Bureau of Economic Analysis statistics, OIA has also assisted insular governments in taking action to reduce the reliance on the public sector. OIA provided assistance to both Chuuk and Kosrae States in the FSM to restructure government and maximize efficiency and effectiveness. These actions stabilized government finances, but have not contributed to

growth. OIA is discussing with CNMI an effort to assess both government finances and organizations to put an end to operational deficits by that government.

3. Each of the territories had to institute a number of austerity measures including reduced staff hours or layoffs of government employees. These actions underscore the need for economic development. Have the austerity measures impacted the overall state of the territories and their ability to attract industries to these island areas?

   RESPONSE: As noted above, austerity measures themselves do not create economic development, nor do they overcome the many obstacles the insular areas face in attracting investment. Data, from the Bureau of Economic Analysis in the Department of Commerce, underscore that in the Pacific region, all of the insular areas are facing economic decline except for Guam, which has seen economic growth led by Department of Defense spending. Continued public investment or government-created incentives for investment are important to attract investors.

4. One of the purposes of the Empowering Insular Communities line item is to create economic opportunities. What activities have been funded under this program, in any of the insular areas, to develop economic opportunities?

   RESPONSE: The Empowering Insular Communities (EIC) program is designed to:

   1) Strengthen the foundations for economic development in the islands by addressing challenges preventing reliable delivery of critical services needed to attract investment.
   2) Pursue economic development initiatives that encourage private sector investment.

   One of the purposes of the EIC program is to address challenges that prevent reliable delivery of critical commodities and services such as power and water. Fiscal year 2011 and 2012 EIC grants are being awarded in support of sustainable energy strategies that are intended to lessen the dependence of the insular areas on oil imports as well as for important public safety purposes.

   FY 2011 EIC Funding:
   - $900,000 – Solar Energy project at University of Guam
   - $500,000 – Geothermal Resource Geophysical Assessment in CNMI
   - $596,000 – Energy efficiency and conservation at American Samoa Power Authority

   FY 2012 EIC Funding:
   - $600,000 – Fire Ladder Truck for the Guam Fire Department
   - $240,000 – Two Rescue Trucks for the Guam Fire Department
   - $280,000 – Rescue Boat & Equipment for the Guam Fire Department

- $1,085,000 – sustainable energy projects to be determined through competitive process

5. The Covenant Capital Improvement Project funds require the insular areas to complete audits. Has the use of audits improved the oversight of the use of these grant funds? What issues, if any, have come up through the use of the audits?

RESPONSE: Pursuant to the Single Audit Act of 1984 (as amended in 1996) and in compliance with OMB Circular A-133, recipients of Federal funding are required to undergo audits annually by an independent certified public accounting firm. The respective governments then publish the audit results in single audit reports each year.

Issues of concern are identified in the single audit reports, along with other financial information and reviews completed by OIA. Others agencies, such as the Office of the Inspector General (OIG) and the U.S. Government Accountability Office (GAO), contribute to this review process. OIA uses the information in discussions with insular government officials and others regarding necessary corrective action, including additional controls and procedures that may need to be implemented. The single audit reports are useful in identifying problem areas, and allocating resources, such as OIA staff time and financial grants, aimed at resolving material issues. Additionally, the reports enable OIA to track improvements, i.e., governmental success at fully resolving an issue of concern.

OIA has procedures in place for oversight of the use of OIA's grant funding. Specific to Capital Improvement Project (CIP) funding, OIA works very closely with grant recipients to help ensure the scope of work for projects are clearly defined, grant recipients comply with reporting requirements for the use of the funding, and projects are completed. However, there have been instances of noncompliance by the governments that are identified in the single audit reports. These instances relate primarily to procurement and contracting activities. OIA is strengthening its oversight procedures to help ensure that insular governments comply with applicable procurement procedures. Additionally, OIA has approved CIP funding for insular governments to hire contracting officers.

6. The Office of Insular Affairs budget request included legislative language to change the use of Covenant Capital Improvement funds, which are annually appropriated no-year funds. The legislative change would allow for redistribution of any unused funds at the end of five years. Will a draft bill be submitted to the Natural Resources Committee?

RESPONSE: The Department submitted language for the Congress's use in the fiscal year 2013 Budget Justification for the Office of Insular Affairs. The language may be found on page 18 under the section on language citations. For the Committee's convenience, the language is as follows:

If the Secretary of the Interior determines that a territory has a substantial backlog of capital improvement program funds at the beginning of a fiscal year, the Secretary may withhold or redistribute that territory's capital improvement funds for the current fiscal year among the other eligible recipient territories. For purposes of this section, a territory with an expenditure rate of less than 50 percent shall be deemed to have a substantial backlog. The expenditure rate will be calculated on the last day of each fiscal year, currently September 30, and will be based on expenditures and receipts over the five most recent fiscal years.

7. Can you provide the Subcommittee budget table showing Covenant Capital Improvement funds issued to each territory showing the use of funds and amounts of funds that have been carried over and the reason for the carry-over or non-use of the funds?

RESPONSE: The $27.72 million in Covenant Capital Improvement funding provided in FY 2011 was fully obligated prior to the end of the fiscal year and no unobligated amounts were carried over into FY 2012. The funds were obligated as follows:

	2011 CIP Awards (in thousands)
CNMI	10,000
American Samoa	10,500
Guam	5,026
Virgin Islands	2,194
Total	**27,720**

CNMI FY 2011 CIP AWARD	CUC Power Generation Improvements	$	1,625,625.00
	CUC Stipulated Order II Projects	$	2,154,000.00
	Infrastructure Maintenance Projects	$	500,000.00
	CIP Administration	$	586,000.00
	Tinian Landfill Construction	$	2,624,375.00
	Geothermal Energy Exploration	$	1,260,000.00
	Rota Landfill Construction	$	1,250,000.00
	TOTAL	**$**	**10,000,000.00**

GUAM FY 2011 CIP AWARD	DPH&SS Laboratory & Office Construction	$	3,000,000.00
	Gregorio D. Perez Marina Renovations	$	440,000.00
	Nieves M. Flores Library Bldg. Renovations	$	1,586,000.00
	TOTAL	**$**	**5,026,000.00**

USVI FY 2011 CIP AWARD	Anguilla Landfill Compliance and Closure	$	1,360,000.00
	Bovoni Landfill Compliance and Closure	$	834,000.00
	TOTAL	**$**	**2,194,000.00**

AS FY 2011 CIP AWARD	Tafuna Healing Center	$	3,200,000.00
	Design & Renovation of Dialysis Unit	$	2,600,000.00
	Electrical System Upgrade	$	500,000.00
	Hyperbaric Chamber	$	600,000.00
	Siliaga Classroom Building	$	800,000.00
	Alataua Lua Classroom Building	$	800,000.00
	Polytech Gymnasium	$	800,000.00
	Airport FAA 5% Match (Partial)	$	295,000.00
	Petesa Happy Valley Village Road	$	380,000.00
	ASG O&M Set-Aside	$	161,842.00
	LBJ O&M Set-Aside	$	363,158.00
	TOTAL	**$**	**10,500,000.00**

As of September 30, 2011, most of the awarded funds remained to be expended by the territorial recipients:

FY 2011 CIP AWARD EXPENDITURES AS OF 9/30/2011

CNMI	**Awarded:**	$ 10,000,000.00
	Balance:	$ 8,486,133.45
	% Spent:	15%

AS	**Awarded:**	$ 10,500,000.00
	Balance:	$ 10,500,000.00
	% Spent:	0%

GUAM	**Awarded:**	$ 5,026,000.00
	Balance:	$ 5,026,000.00
	% Spent:	0%

USVI	**Awarded:**	$ 2,194,000.00
	Balance:	$ 2,194,000.00
	% Spent:	0%

This was the result of several factors that are discussed in our response to the next question (8).

8. Is the Northern Mariana Islands the only territory with a backlog of unused Covenant Capital Improvement funds? What has been the issue with the delay in using the funds?

RESPONSE: Every territorial recipient of Covenant Capital Improvement Project (CIP) grant funding from the Office of Insular Affairs generally carries an unspent balance of awarded grant funds from one fiscal year to the next. This is largely due to the nature of infrastructure projects which generally must undergo environmental reviews, a permit process, and architectural and engineering design before construction. These pre-construction steps can take a substantial amount of time, thus preventing the immediate expenditure of the awarded funds. The Office of Insular Affairs recognizes this and generally awards CIP grants for a five year period to ensure that territories have sufficient time to complete infrastructure projects. It is not unusual for a territory to carry forward an unspent CIP funding. That balance, however, can increase beyond a reasonable amount and become a "backlog" if funded projects are not being implemented as efficiently and effectively as possible.

The U.S. Virgin Islands (USVI) has also struggled to expend its CIP funding in a timely manner. However, the USVIs' unspent balance is less than that of the Northern Mariana Islands because the USVI receives less CIP funding (approximately $2 million annually). The USVI at times has lacked the engineering expertise to effectively design and implement the various projects in a timely manner. The USVI has made some progress and we anticipate that the rate of expenditure will increase over the next year.

9. How successful has the competitive criteria for the Covenant Capital Improvement funds been in providing incentives to the territories to implement better management practices and better efficiencies in the use of federal funds?

RESPONSE: The competitive criteria used by OIA in its competitive allocation system for Covenant Capital Improvement Project (CIP) funds were selected for their wide impact on an insular government's financial management processes and its administration of Federal grant programs. Linking improvements in the specific criteria to CIP funding provides an incentive for governments to establish and implement more effective internal controls and procedures and to maintain levels of improved activities. Insular government concerns for reduction in CIP funding are a common topic of discussion between OIA and recipient insular government officials.

Prior to the establishment of the competitive allocation system and the resulting competitive criteria, the insular governments were in noncompliance with many of OIA's CIP grant requirements related to financial management and grant administration, and those of other Federal grant programs. For example, insular governments were years behind in completing required annual independent audits of their financial statements and testing of Federal award expenditures. Also, applications for CIP grant funds and required financial and project status reports were not submitted to OIA in an accurate and timely manner. Since the implementation of the competitive allocation system for CIP funding, insular governments have markedly improved their compliance with grant and audit criteria, such as completion of annual audits with few material issues and questioned costs. Also, grant applications are completed and submitted in a much more

timely manner, and submission of the required financial and project status reports has substantially improved. Additionally, improved processes of the insular governments have increased accountability and efficiency and have contributed to identifying fraud, waste and abuse of public funds and the successful convictions of the perpetrators.

10. It was reported that the territories will be included in any new tax initiatives proposed by the President. Can you comment on how the territories will be included in any new tax proposals and how the initiatives will assist them in attracting new industries?

    RESPONSE: There is no information yet on the specific provisions in new tax legislation to include the territories.

11. Gas prices range from $4.00 (USVI) to $6.70 (Tinian, NMI) in the territories. Gas prices in the Northern Mariana Islands and American Samoa are, if not level with, higher than minimum wage prices. How are these gas prices affecting the territories and their overall economic development?

    RESPONSE: Gas prices are higher in the territories because of geographic distance from refiners which increase transportation costs. Recent price increases affect consumers in the territories in about the same manner as other places throughout the country as more and more of the individual's and household's budgets must be allocated to gasoline consumption. To the extent that high gas prices force drivers to cut back on transportation or allocate a larger portion of the budget to gasoline, there is the potential for a decrease in aggregate (economy-wide) demand, which tends to have a depressive effect on production, economic growth and jobs. If gas price increases are transitory and prices fall back to the levels they were before, gasoline users everywhere would adjust their budgets accordingly. However, if gas prices keep rising or settle at much higher levels, they would exert downward pressure on aggregate demand which translates into job losses.

12. While American Samoa ended 2011 with $1.6 million surplus, it is running a deficit due to 2010 overruns and outstanding debts. In his State of the Territory Address, the Governor suggested the Fono implement measures that he proposed in 2010 including a $2,000 corporate franchise tax, increase in business license fees, and increases in import taxes for beer, alcohol and tobacco. Can you give an assessment of these measures - will they help increase revenues in the territory?

    RESPONSE: It is uncertain whether it will increase revenues in the territory. Depending on consumer demand, a price increase may or may not increase revenue.

13. The corporate franchise tax and increase in license fees suggested by Governor Tulafono could potentially increase local revenues. However, do you think these measures would

deter industries from looking to start businesses in the territory? How do these rates compare to other areas?

RESPONSE: It is not clear that a corporate franchise tax of $2,000 a year per entity can be considered an impediment to doing business in the territory. Corporate franchise taxes vary. Therefore, it is difficult to compare corporate franchise taxes of differing jurisdictions.

14. What are the overall problems facing American Samoa in attracting new industries?

RESPONSE: Major constraints on growth and development in American Samoa are isolation, a small market and remote location. The economies of American Samoa and other small and isolated territories need to change to alleviate some of the constraints. Grants to educational institutions to nurture occupational and technical skills would also be a method to help the territorial economy.

15. With the proposed troop realignment from Okinawa to Guam, the territory is projected to see at least $241 million in new military construction and economic adjustment aid. However, it is now projected that the realignment will be adjusted and a smaller number of troops sent to Guam. Do you know if any reductions in the troop realignment will impact funding for Guam?

RESPONSE: The original cost of moving 8,000 Marines and 9,000 dependents to Guam was $10.6 billion. The GAO more recently placed the cost at $23 billion. A large part of these funds would have found their way to Guam. With personnel and construction planning in flux, it is expected that funding will also vary accordingly.

16. Will the projected reduction in the realignment adversely affect the territory's ability to attract new businesses?

RESPONSE: There will be an increase in economic activity from 2006 levels, when the Guam military build-up was announced, but less than anticipated with the more expansive plans for the build-up.

17. Tourism is an important component of Guam's economy. How is Office of Insular Affairs assisting the territory to develop new markets? Is tourism the main avenue through which Guam will see increased revenues? If not, please comment on other economic opportunities available to the territory?

RESPONSE: Tourism is a critical pillar of Guam's economy. OIA is working with other Federal agencies and the government of Guam to make it possible to attract tourists from other major markets in the region.

18. In December 2011, there were reports that NMI government was going to reprogram federal funds although the territory had not provided Office of Insular Affairs with a written request to 'redirect funds' or a 'scope of work amendment' outline. There were concerns that funding for coral reefs or brown tree snake initiatives would be affected by the redirection of funds. Was this issue resolved and what was the outcome?

RESPONSE: In February 2012, the Office of Insular Affairs received a request from the CNMI Government to redirect Covenant Capital Improvement Project grant funding to "meet an immediate shortfall in revenues that threatens continued operation of the Commonwealth Public School System and the Commonwealth Healthcare Cooperation." During subsequent discussions, the CNMI Government was informed that Covenant Capital Improvement Project grant funding could not be used for government operations as was proposed.

The Office of Insular Affairs is not aware of any existing or planned reprogramming or redirection of funds that could affect the Coral Reef Initiative or Brown Tree Snake Control funding.

19. Did the Office of Insular Affairs and the NMI government reach an agreement on if federal personnel funded by federal funds would be impacted by austerity measures instituted by the NMI government?

RESPONSE: Assistant Secretary Anthony M. Babauta wrote Governor Benigno R. Fitial on January 25, 2012, to express his concern over the impact that the application of local austerity measures was having on the CNMI's Brown Tree Snake (BTS) Interdiction and Coral Reef Programs. Both programs are funded by the Office of Insular Affairs (OIA). OIA has not received an official response from Governor Fitial. However, the following is information received during the ongoing discussions with Governor Fitial's staff:

- In order to be considered for exemption from austerity measures, government agencies not identified as essential services are required to submit their request and provide justification.

- Heads of local agencies receiving federal funds (which include agencies that administer funds for BTS and Coral Reef Programs) are encouraged to stagger their staff work schedule in order to stay within the 64 hour austerity mandate and meet program requirements.

- Address issues affecting staff morale between employees supported with federal funds and those who are not.

20. The NMI faces a cumulative budget deficit of $370 million, which is more than double its current budget of $102 million. Does this deficit hinder the territory's ability to bring in new investments and businesses?

RESPONSE: Yes, it does. There is a perception that the NMI's economy has been harmed by the loss of the garment industry and a drop in its tourism market. The loss of industry coupled with a deficit may result in uncertainty, which may hinder investment. The road to recovery for the NMI appears to be long, but the NMI's advantages such as its proximity to industrial East Asia and being a U.S. territory will outweigh the disadvantages in the longer term. As we point out in the answer to question 21 below, OIA is working with the NMI government and businesses to help the territory get back on track to economic growth and development.

21. The NMI is relying more on federal funds than local revenues. In 2010, federal government funds were $258 million (including stimulus funds) when local revenues were $130 million. The lowest level of federal funds occurred in 2001, when federal funds were $62 million and local revenues $213 million, due to revenues from the garment industry. These numbers underscore the need for an influx of local revenues through new industries. How can Office of Insular Affairs assist in turning things around in the NMI?

RESPONSE: The NMI has been negatively affected by global economic forces. When China joined the World Trade Organization, it impacted the NMI's garment industry, which went out of business in 2009. Regional and global financial movements in which the United States had no role forced a major Japanese carrier to abandon Saipan as a destination altogether.

OIA is working with the NMI government on several fronts such as providing technical assistance to develop a new tourism development plan, employing an economic advisor to assist the NMI government in establishing a revitalization plan and providing CIP grants to improve local infrastructure. OIA is fully committed to the NMI, as it is to every United States territory, to help it get back on track to prosperity.

22. The USVI was not listed as one of the territories that have consistently received unqualified (clean) opinions from their respective independent auditors on its financial statements. What has prevented the USVI from getting a clean opinion?

RESPONSE: The Government of the USVI (USVI) faces unique challenges. In the past few years a new financial management system was purchased and installed. Much of the historical accounting data needed to complete the audits was not compatible between the two systems and, therefore, had to be manually entered. As a result of installing a new system, a government-wide training program for those who use the system had to be established. Compounding the learning curve, there was an exodus of a number of key government employees, including 16 employees at the Office of Finance,

who accepted the offer of an early-out for retirement. Additionally, there was a change in the audit firm that performs the independent annual audit of the government. However, despite all of its challenges, the USVI has been completing its annual audits which had been in arrears for several years. The Government of the Virgin Islands is expected to submit its completed annual audit of fiscal year 2010 soon, and is on an agreed plan for completing the fiscal year 2011 audit.

Although the USVI has not yet received an unqualified (clean) opinion on its financial statements in total, the past few years of single audit reports have shown an improvement in each subsequent year as the number of material audit qualifications continues to decrease. Also, in comparison with other insular areas, the USVI has a high number of business-like entities and it has been a challenge for the USVI to divide its resources between improving the government's accounting processes and recommending improvements for its various business-type entities. In order to help ensure that the USVI is working diligently to implement improved processes and resolve audit qualifications in order to receive a clean opinion, OIA has requested the USVI to submit an action plan that identifies how each qualification will be removed and when a clean opinion may be expected.

23. In his state of the territory address, Governor de Jongh stated that the territory was past the 'tipping point'. His address came days after the oil refinery, Hoevensa, noticed its intent to close its operations in St. Croix. Hoevensa was a major contributor to the USVI's economy, how will the USVI rebound from such a loss? How will the Office of Insular Affairs assist the territory?

RESPONSE: The USVI will have a difficult time rebounding from the HOVENSA loss. In the Governor's 2011 state of the territory address, over a year ago, he said the government was facing a projected shortfall of $75.1 million for FY 2011 and $131.5 million for FY 2012. The USVI has initiated severe austerity measures, including the laying off and firing of government employees, and raising certain taxes and fees to balance the shortfalls. Unless there are substantial and immediate increases to revenues, the fiscal outlook for USVI is dire. The Governor sees potential in the further development of tourism, manufacturing and knowledge-based industries in the mid- to long-run. He is seeking short-term relief through the support of federal programs, initiatives and waivers. OIA has been facilitating meetings between officials of the Government of the Virgin Islands and federal agencies and will be using its grant authority to assist in augmenting economic development and government revenue collection. OIA is also negotiating with the Governor to possibly provide technical assistance funding to hire persons with expertise in the oil industry to assist the Government of the Virgins Islands in negotiations with HOVENSA.

24. It was reported in February that the USVI fell off Tier 4 federal emergency unemployment benefits after the territory's unemployment fell below 8.5 percent. The tier 4 level offered an additional 6 weeks of benefits. Under tier 4, the USVI had to

borrow $1.7 million in federal funds to pay its share of the costs. With the upcoming closure of the Hovensa refinery, which is said to lay off over 2,000 employees and potentially cost unemployment costs to increase to $3 - $4 million, how do you think the territory can deal with this added level of financial crisis and address the unemployment costs?

RESPONSE: It is projected that the HOVENSA closing could push the Virgin Islands unemployment rate from 8.5% to 12.7% and St. Croix unemployment rate from 9.2% to 19% according to November, 2011 estimates. That would place the Virgin Islands just ahead of Nevada, which has the highest unemployment rate of any state at 12.6%.

The territory has already depleted its own unemployment insurance reserves and it has been borrowing about $1 million per month from the National Unemployment Insurance Trust Fund to pay current unemployment benefits. According to the Virgin Islands Commissioner of Labor, the Government of the Virgin Islands already owes the Fund about $30 million. If the Government of the Virgin Islands has to absorb all displaced HOVENSA workers, the government would have to borrow an additional $3.5 to $4 million per month from the National Unemployment Insurance Trust Fund, which places the Virgin Islands in an untenable position.

25. The USVI has been using 2010 and 2011 Capital Improvement Project grant funding to bring its landfills into compliance with EPA solid waste regulations. Have the solid waste issues been resolved?

RESPONSE: The U.S. Virgin Islands Waste Management Authority is currently building a new transfer station on St. Croix at the Anguilla Landfill. The transfer station is essential for the short term management of the municipal solid waste on St. Croix, where the waste will be sorted, baled, and wrapped for utilization in the construction of the slopes in the landfill closure plans. The facility is an important step for bringing the landfill into compliance with solid waste regulations. The USVI Waste Management Authority is also developing scopes of work for the fiscal year 2010 Convenience Centers and the Bin Site Improvements project as well as the fiscal year 2011 Landfill Compliance and Closure projects. Although the solid waste issues have not been resolved at this time, the USVI has made some progress in this area.

26. Have the solid waste violations hindered the territory from bringing in new industries?

RESPONSE: Solid waste violations have not directly hindered the establishment of new industries in the Virgin Islands. The large investment in resources needed to address the violations, however, has meant that those resources were unavailable to invest in other infrastructure that would encourage businesses to remain in the Virgin Islands or encourage investment of new industries. The cost of electricity, is extremely high, due to the age, inefficiency, and fuel source for the electric utility generators. If the money

spent on solid waste had been channeled to the electric utility for improving efficiency, the cost of energy would have been lower.

27. Hovensa was fined for Clean Air Act violations in January 2011, which resulted in a civil penalty of more than $5.3 million. The refinery noted as part of its decision to close, a budget deficit of $1.3 billion over three years, do you think the violation could have contributed to the closing of the oil refinery?

RESPONSE: The EPA consent decree called for a $5.3 million penalty, but it also required HOVENSA to make an estimated $700 million investment in its plant to bring it into compliance with EPA regulations. HOVENSA has not stated for the record that the monetary cost of the consent decree was a contributing factor to its decision to close.

28. Diageo USVI will start production in its rum distillery in 2012 and it is projected to distill up to 20 million proof gallons of rum per year and generate $130 million in new tax revenues for the USVI. This is a positive development for the territory, but is this enough to help the territory in dealing with the loss of Hovensa?

RESPONSE: The increased revenue from the production of the Diageo distillery is helpful, but it will not offset the loss of HOVENSA. The USVI has already pledged a percentage of the proceeds from the Diageo cover over to pay the debt service on an almost $500 million bond that it issued in 2010 for working capital and other obligations and expenses of the government. A significant percentage of the proceeds from rum are pledged to servicing the debt of outstanding Virgin Islands bonds. Additional amounts attributable to Diageo were spent well before the HOVENSA closing to meet ongoing government obligations.

29. The Administration's FY 2013 budget assumes the enactment of the renegotiated Palau Compact, yet no viable offsets have been proposed by the Administration after repeated requests from Congress. The Administration states that Palau is a strategic partner, yet it cannot recommend a viable offset for the renegotiated Compact. If the Compact is important, why can't the Administration provide an offset Congress can support?

RESPONSE: The Administration has proposed the following offsets to the legislation approving the Agreement with Palau to extend financial assistance under the Compact through 2024: Net Receipt Sharing, which takes into account the costs of managing Federal oil and gas leases before revenues are shared with the States; terminating payments for reclaiming abandoned coal mines to states that are already certified as having cleaned up all of their priority sites; and production incentive fees on non-producing Federal oil and gas leases. The Administration believes that these off-sets should be supported by the Congress on their merits. Nevertheless, OIA has continued to report the Committee's dissatisfaction with the currently proposed off-sets.

30. The fiscal year 2013 budget request states that the Compact funding for each of the Freely Associated States is intended to help provide a base for financial self-sufficiency following the conclusion of direct assistance in 2023. Does the Office of Insular Affairs believe a base for financial self-sufficiency will be there by 2023?

RESPONSE: United States policy under the Compact affirms the United States' interest in promoting "the economic advancement and budgetary self-reliance" of the FAS. It does this through the program of sector grants for health, education, public sector capacity building, environment and private sector development, as well as with investments into critical physical infrastructure. Another element of assistance is annual contributions to a trust fund, which is described in OIA budget documents as "intended to help provide a base for financial self-sufficiency . . . ." The creation of the trust fund was in recognition that economic development in the FAS is a difficult task, and that additional investment into larger markets could be advantageous in creating a revenue stream for the FAS governments. In large measure the adequacy of the "base" will be determined by world financial conditions and world economic growth. The level of sustainable distributions is not guaranteed by the Compact agreement or by the United States. It is estimated that the total United States investment in the FSM trust fund through 2023 will be $528 million; in the RMI trust fund $282 million.

The FSM Trust Fund is currently valued at $248,685,715, and the RMI Trust Fund at $157,775,710.

31. The Federated States of Micronesia receives federal funding from the United States for many programs, using education as an example the Compact and two federal programs make up the entire education budget in the Federated States of Micronesia. When will the transition begin when the Federated States of Micronesia start funding even a part of its education budget? In ten years, Micronesia will presumably solely fund the program, correct?

RESPONSE: The FSM will continue to rely on Compact resources and the Supplemental Education Grant for its primary and secondary education programs until direct funding expires after 2023. After passage of a Joint Economic Management Committee resolution in August 2011, the FSM will reduce its reliance on Compact funds to support post-secondary education at the College of Micronesia. The College was receiving $3.8 million in annual Compact funding. This amount will be reduced in $700,000 increments annually until the College receives no more than $1 million annually. JEMCO took this action to increase local funding participation in education, and to address the annual decreases in Compact operational funding.

After 2023, the FSM will use annual distributions from the Trust Fund and local revenues to fund its education programs.

32. The budget document states that the initial Compact agreements did not include performance standards, measures and monitoring systems allowing for poor practices to take root. The renegotiated Compacts do contain these types of measures. Has OIA seen improvement through the institution of these measures and a correction in the poor practices that were seen under the original Compact?

RESPONSE: There have been improvements in performance under the amended Compacts, although more work is required. Financial management and reporting have improved substantially. The RMI, FSM and FSM state governments provide timely annual audits. RMI, Pohnpei State and Kosrae have provided "unqualified audits", which means the auditor found no exceptions to the presentation of financial information. The State of Chuuk, FSM, which has a history of poor performance, has improved most significantly, with only one exception related to a small component organization. Chuuk also had no questioned costs in 2009 and 2010 related to Federal programs. Improvements are also seen in performance and reporting in the medical fields. Less improvement is seen in performance in education, with significant problems remaining in Chuuk state in the FSM. Nevertheless, the requirements of the Compact have focused attention on the need for performance and performance reporting in all areas.

33. In January, USDA reported its first rounds of cuts which included the Pacific. USDA will be closing its Rural Development offices in Yap, Chuuk, Korsae - all states in the Federated States of Micronesia - and in Hawaii County, Hawaii. Do you know if the local programs will still be funded? If they will be, who will administer the programs?

RESPONSE: USDA has indeed announced closure of its offices in three of the four states in the FSM: Kosrae, Chuuk and Yap. The Pohnpei office, located in the capital of the FSM, will remain open for now. The FSM Government has not yet stated what actions it may take in response to the consolidation of Rural Development activities in the FSM.

Congresswoman Madeleine Bordallo (GU)

1. The OIA budget requests $3 million for the continuation of brown tree snake (BTS) control. The interdiction program on Guam is staffed by personnel from the Department of Agriculture's Animal and Plant Health Inspection Service (APHIS), however is primarily funded through DOI and the DOD. As you may recall, toward the end of FY11, there was some uncertainty at the USDA as to whether it would continue the BTS program in FY 12. Ultimately an interagency agreement was reached and the USDA decided not to continue this important program into FY12 and review it for efficiencies. I am hoping you could offer more details as to the agreement that was reached, and whether there is any uncertainty regarding the future of the program in FY13.

RESPONSE: After working closely with USDA last summer to ensure the continuation of the USDA-operated Guam Brown Tree Snake Interdiction Program beyond fiscal year 2011, the DOI and the DoD, in close cooperation with the USDA, conducted a first quarter fiscal year 2012 review of the program to identify all potential cost-saving efficiencies to ensure the viability of the program in the future. The review was completed in February 2012 and a funding agreement was reached between the USDA, the DoD and the DOI to ensure the continuation of this important program through the end of fiscal year 2012. While it is unclear how Congress may decide to prioritize funding available for brown tree snake control and management efforts beyond fiscal year 2012, the continuation of the Guam Brown Tree Snake Interdiction Program, from the perspective of DOI, will remain a priority.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL 13 2012

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

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Safety and Environmental Enforcement to questions submitted following the Committee's Thursday, October 13, 2011, oversight hearing *on* "BOEMRE/U.S. Coast Guard Joint Investigation Team Report."

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 Edward J. Markey, Ranking Member
Committee on Natural Resources

QUESTIONS FOR THE RECORD
Chairman Doc Hastings

Director Bromwich, please provide to the Committee a written explanation of the Department of the Interior's statutory authority to regulate contractors, subcontractors and leaseholders?

Response:

The Bureau of Safety and Environmental Enforcement (BSEE) has legal authority over contractors who violate the provisions of the Outer Continental Shelf Lands Act (OCSLA), based in part on subsection 24(b)(1), which states in part: "[I]f any person fails to comply with any provision of the Act, or any term of a lease, or permit issued pursuant this Act, or any regulation or order under this Act, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty . . . ." Consistent with the Act, BSEE's implementing regulations also extend responsibility for compliance with OCSLA to co-lessees, operators, and those persons actually performing OCS covered activities. (See 30 C.F.R. §250.146.) BSEE's civil penalty regulation also defines a "violator" as a person responsible for a violation of the Act. (See 30 C.F.R. § 250.1402.) In addition, in subsection 24(c) Congress authorized assessment of criminal penalties against "any person" who "knowingly and willfully" violates OCSLA, regulations issued under the authority of the OCSLA, and leases, licenses, or permits issued pursuant to the OCSLA. Congress's use of the term "any person" in OCSLA provides BSEE with clear statutory authority over non-leaseholders and non-operators.

QUESTIONS FOR THE RECORD
Dr. Fleming (LA-04)

Director Bromwich, please provide to the Committee the proof and information the Department uses to extrapolate that the approval process for permits in the GOM moves from the time a plan is originally submitted until it is 'deemed submitted' being, as you claimed in your testimony, 34 days now in the post-Macondo period.

Response: The time between when an operator first submits a plan and when it is officially "deemed submitted" consists of a necessary back-and-forth between BOEM and the operator to correct deficiencies in the plan. Because exploration plans can be lengthy and technically complicated, this dialogue is often critical to help ensure that industry is submitting plans that are thorough and ready for consideration. Industry has been cooperative in attending plan and permit processing workshops conducted by the bureau, and the quality and thoroughness of submittals have steadily improved. Further, processing times have improved considerably throughout the year. According to an outside consultant's review of our exploration plan data, the average time to deem an exploration plan submitted is now approximately the same as it was before the *Deepwater Horizon* incident. This data demonstrates that industry is adapting to our necessarily more rigorous standards.

QUESTIONS FOR THE RECORD
Representative Landry (LA-03)

Director Bromwich, in the past three years, the Agency's budget has increased nearly 100%. Of that 100% increase in funding, what percentage of these funds has been put toward the increase of oil and gas inspectors?

Response: The funding levels for oversight of the safe and environmentally responsible development of traditional and renewable ocean energy and mineral resources on the Outer Continental Shelf for FY 2010 through FY 2012 are as follows and are inclusive of what are now two bureaus – the Bureau of Safety and Environmental Enforcement (BSEE) and the Bureau of Ocean Energy Management[1]:

FY 2010	$239.0 million
FY 2011	$286.4 million[2]
FY 2012	$358.4 million

[1]FY 2011 and prior amounts are adjusted to reflect the transfer of $19.9m in BA to the Office of Natural Resources Revenue for its share of administrative costs previously covered within the budget of the former Minerals Management Service.
[2]For a more direct year-to-year comparison, this amount excludes the one-time rescission of $25m in prior-year balances related to the OCS Connect project.

These amounts represent an increase in funding of $119.4 million or 50% between FY 2010 (actual) and FY 2012 (enacted), with the large majority of this increase focused on operations now managed by BSEE.

The FY 2012 Budget, which Congress provided in full in the FY 2012 appropriation, included $83 million in funding increases for regulatory programs now managed by BSEE. Of this increase, $56.4 million was specifically focused on strengthening BSEE's inspection and monitoring capability. The inspection and monitoring capability component includes the recruitment and hiring of additional inspectors and engineers, as well as necessary resources such as training, tools, and equipment to support the inspection function.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL 2 3 2012

The Honorable Rob Bishop
Chairman
Subcommittee on National Parks, Forests and
Public Lands
Committee on Natural Resources
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed are responses to follow-up questions regarding the Tuesday, March 20, 2012, oversight hearing on the "Proposed Dwight D. Eisenhower Memorial." These responses have been prepared by the National Park Service.

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 National Parks, Forests and
Public Lands

QUESTIONS FOR THE RECORD

Subcommittee on National Parks, Forests and Public Lands
Committee on National Resources
House of Representatives
Oversight Hearing on the Proposed Dwight D. Eisenhower Memorial
March 20, 2012

QUESTION:
What sort of maintenance will the memorial require? What is the estimated annual cost to maintain the memorial?

ANSWER:
It is difficult to define with certainty what sort of maintenance would be required as the NPS has no past experience with a tapestry system such as the one being proposed for this Memorial. According to the Eisenhower Memorial Commission's (EMC) design team, the tapestry will not require special maintenance. The Architect/Engineer Firm, Gehry Partners/AECOM JV, has put together a comprehensive testing program for the tapestry. The first two phases of the testing have been successfully completed by recognized independent testing agencies. Further testing will be done to ensure the final tapestry assembly meets the level of durability required. The NPS plans to use data from the EMC's material testing on the tapestry to provide some basis for estimating the ongoing maintenance needs for the tapestries as that information becomes available; however, this may need to be adjusted as more information on the materials and maintenance needs is forthcoming. The EMC has budgeted for the provision of a lift and trailer so that NPS maintenance staff can access the tapestries on occasions when such access is needed. The NPS does have experience with the proposed at-grade elements of the memorial site, which would include grounds maintenance, horticultural tree work, gardening, and facility management activities related to plumbing, electrical and mechanical systems for the visitor support facility. Previous proposals for decorative water features have been deleted from the memorial design, which will reduce required maintenance. The NPS is required to retain storm water run-off from the site and the design incorporates a system for re-using non-potable water collected on the site.

Because of the unique challenges associated with the maintenance and daily operations of the Memorial, the NPS does not have an estimate for the annual maintenance cost of the Memorial at this time. On April 13, 2012, the NPS, in consultation with the General Services Administration (GSA) and EMC, requested that a Total Cost of Facility Ownership (TCFO) analysis be performed by the EMC's consulting team to enable the NPS to better understand the long-term financial and other resource obligations created by the Memorial. The NPS submitted an additional statement of work to GSA on July 5, 2012. The GSA will procure the analysis after receiving funding approval from EMC.

The TCFO analysis should establish cost estimates for the operations, interpretation, maintenance and recapitalization activities to allow for more accurate and effective resource planning, budgeting and work scheduling. The analysis will incorporate information based on interviews with NPS operations staff, a review of the equipment, assemblies and other features of

the Memorial, and the use of industry standard estimating data. The EMC has requested that the NPS tell them what has and has not worked in the past on other memorials.

In the TCFO analysis, the EMC's consultants should:

- Estimate the annual operations (interpretation, custodial maintenance, building maintenance, landscape maintenance, tapestry maintenance, security and utilities) cost and workforce requirements for the Memorial;
- Estimate the annual maintenance (preventative maintenance, recurring maintenance and recapitalization needs) needs for systems associated with the Memorial, including cost and workforce requirements;
- Provide an out-year (including inflation and other appropriate factors) and present value projection of the estimated annual expenditures for the Memorial over a fifty year horizon;
- Provide all documentation to support estimates including data sources, assumptions and cost factors.

QUESTION:
How does this memorial conform to the L'Enfant and McMillan Plans?

ANSWER:
The site selected for the Memorial is a site identified in the 2001 Memorials and Museums Master Plan (MMMP). The MMMP, produced by the National Capital Planning Commission (NCPC) in cooperation with the Commission of Fine Arts (CFA), the NPS, and others, drew upon the L'Enfant and McMillan plans and the existing conditions of Washington to identify potential future memorial sites and to describe the characteristics and potential constraints of the identified sites. The NPS believes that the proposed design of the Memorial appropriately recognizes the characteristics and key features of the site and, in particular, the civic plaza component takes advantage of the site's location on two important streets in the L'Enfant and McMillan Plans: Maryland Avenue and Independence Avenue.

The EMC and the NPS have consulted extensively with the NCPC, CFA, the District of Columbia State Historic Preservation Officer (DCSHPO), the Advisory Council on Historic Preservation (ACHP), various civic groups, and individuals in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) (NHPA) and its implementing regulations, 36 C.F.R. Part 800. Through the process of consultation and design analysis, the placement of the tapestry and columns, the central core of bas relief blocks and landscaping, and other features have been adjusted to minimize potential effects to historic properties, including the L'Enfant and McMillan Plans. The plaza design restores an emphasis to the Maryland Avenue vista corridor from Seventh Street, SW, to view the U.S Capitol in particular, and would provide a new civic space where a collection of roads, parking spaces, and an underutilized landscaped plaza exists. The establishment of a new civic space was one of the goals for the site when it was identified in 2001 as a memorial site in the MMMP.

QUESTION:
Has the Park Service made a determination with regard to the durability of the tapestries?

ANSWER:
The NPS does not have prior experience in working with a tapestry system such as the one being proposed for this Memorial. Therefore, there is not enough information at this time to be able to determine the durability of the tapestries. Information from the further testing of the tapestry assembly by the EMC, further development of the design, and from the Total Cost of Facility Ownership, which is described above, will provide the NPS with additional data to use in determining the Memorial's durability. This determination is a requirement of the Commemorative Works Act, (40 U.S.C. Chapter 89) (CWA), before the NPS can issue the construction permit for the Memorial.

QUESTION:
Would you briefly review where the current design is in the approval process and which steps remain?

ANSWER:
The Eisenhower Memorial still needs final design approvals from CFA and NCPC, and determinations by NPS particularly on the durability and structural soundness of the Memorial. The CFA and NCPC meetings, where the final design will be considered for approval, have not yet been scheduled, and the NPS determinations would necessarily follow.

Every memorial proposed for land covered by the CWA must have multiple reviews and approvals of both the site and the design through the CFA, NCPC and the National Capital Memorial Advisory Commission (NCMAC), in meetings open to the public. These reviews occur before final approval is granted for construction, which takes the form of a construction permit issued by NPS if the memorial is destined for parkland. The CFA reviews memorial projects from the earliest stage of development through the final detail stage, granting two formal approvals -- concept and final -- during the process. The NCPC reviews the development of a memorial design approximately in parallel with the CFA reviews and grants preliminary and final approvals during the process. The NCMAC must be consulted on both the site and the design for a memorial before it is submitted for approval by the CFA and the NCPC. The design is also subject to multiple reviews by the NPS, including a review to determine that the memorial will be structurally sound and constructed of durable materials.

To date, the CFA has reviewed the design of the Eisenhower Memorial on several occasions and most recently granted concept approval for the general configuration on September 15, 2011. The NCPC has also informally reviewed the design several times and most recently commented on the concept design and its alternatives at a public meeting on February 3, 2011. To date, NCPC has not taken any formal action on the project. The design has been submitted for NCPC's preliminary approval, although a date for the review has not been set. Further reviews and final approvals from both CFA and NCPC will be required before a permit can be issued by the NPS for the construction of the Memorial. Consultation with NCMAC on the proposed

design is completed. NCMAC was consulted on several occasions, first, for the site and then during design development, most recently at a September 14, 2011, public meeting. The NPS, preparatory to the submission of the design for preliminary approval by the NCPC, completed an Environment Assessment (EA) pursuant to the National Environmental Policy Act for the Eisenhower Memorial design and issued of a Finding of No Significant Impact on March 6, 2012. This was the second EA that NPS prepared for this memorial, the first EA centered on the site.

In addition to these design approvals and consultations, the EMC must submit completed construction documents to the NPS and must demonstrate that it has sufficient funds to complete construction of the Memorial, which includes a ten percent donation for future catastrophic repair and maintenance. In Fiscal Year 2012, the Congress elected to provide partial funding for the construction of the Memorial and also determined that by doing so the requirement to demonstrate sufficient funds to complete the Memorial had been met.

QUESTION:
In reviewing the potential effects of the design on protected historic properties and districts, how did you determine the Area of Potential Effect? How did you account for cultural and historic effects, if at all, in contrast to visual effects? Why did you not consider that there is a direct sightline from the memorial to the Washington Monument and to the Library of Congress, both of which are protected sites on the National Register of Historic Places?

ANSWER:
The Area of Potential Effect (APE) means the geographic area within which the Memorial may cause alterations in the character or use of historic properties. The NPS determined the APE following the process set out in the NHPA Section 106 regulations, which is in consultation with the NCPC, GSA the DCSHPO, and the Section 106 consulting parties. The APE for the Memorial includes parcels, buildings, and view corridors in the vicinity of the Memorial. The purpose of the APE is to aid federal agencies to identify historic resources that may be affected by their actions.

Effects on cultural and historic resources were considered in both the NEPA and Section 106 processes, and included such impacts as the modifications to the plaza of the Department of Education building, the historic right-of-way of Maryland Avenue, SW, and potential archeological impacts on the Memorial site resulting from the construction. These issues are considered in the NEPA analyses and addressed in the Section 106 Memorandum of Agreement that was executed by the NPS and other parties including the Memorial sponsor, the DC SHPO and the Advisory Council on Historic Preservation (ACHP).

The NPS, in consultation with the NCPC, DCSHPO, and Section 106 Consulting Parties, did consider sightlines into the site from various locations and from the site toward the surrounding area. While the Washington Monument and the dome of the Library of Congress are visible from portions of the Memorial site, the views are significantly obscured by buildings and trees and so the views were not considered to be substantially affected by the Memorial.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 29 2012

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

Dear Mr. Chairman:

Enclosed are responses prepared by the United States Fish and Wildlife Service to questions submitted following the Subcommittee's Friday, February 17, 2012, oversight hearing titled "The proposed Comprehensive Conservation Plan for the Chincoteaque National Wildlife Refuge."

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 Minority Member
Subcommittee on Fisheries, Wildlife, Oceans
and Insular Affairs

February 17, 2012
Chincoteague National Wildlife Refuge
Questions for the U.S. Fish and Wildlife Service

Chairman John Fleming, M.D. (LA – 4)

(1) In her testimony, Regional Director Wendi Weber stated that "In 2009, the parking lots were totally destroyed by a November nor'easter." Please describe the meaning of the term "totally destroyed"?

Response: "Totally destroyed" refers to major portions of the Toms Cove recreational beach and visitor use infrastructure that were damaged so as to be unusable or inaccessible by the public. After the 2009 nor'easter, the parking lots had to be rebuilt in a new location and were not ready for use by the public for an extended period of time.

(2) Using the Service's definition, please provide to the Subcommittee every example of where this 961-spaces parking lot was "totally destroyed" over the past ten years? Please describe the reason for the destruction, the date of the incident occurred and the exact cost to the Fish and Wildlife Service to rehabilitate the parking lot?

Response: The Fish and Wildlife Service (Service) is not the aprincipal federal agency charged with the restoration and rehabilitation of the recreational parking lots located at the Chincoteague National Wildlife Refuge. That responsibility falls to the National Park Service. Attached for the Subcommittee's review is a table providing 20 years of storm damage information and 10 years of storm damage repair cost information provided by the National Park Service. The information provided is for storms only, and does not include high-tide or overwash events not associated with a storm.

The table shows four storm events in the past ten years which meet the above definition of "totally destroyed" - Hurricane Isabel in 2003, Hurricane Ernesto and Nor'easter in 2006, Nor'easter Ida in 2009, and Hurricane Irene in 2011. In addition to those four storm events, there may have been some high-tide or overwash events that destroyed the parking lots, but we do not have verifiable data of the dates, cost to repair, or extent of damage from those events.

(3) When will the Comprehensive Conservation Plan be completed for the Chincoteague National Wildlife Refuge? Where are you in the process? When will the public have an opportunity to comment on the Draft Environmental Impact Statement?

Response: The final CCP for Chincoteague and Wallops Island NWRs is anticipated for completion in summer 2013. We are currently developing and evaluating alternatives, and expect a draft CCP/EIS to be available by the end of 2012 for public review and comment.

(4) Why did you decide to complete an Environmental Impact Statement and not just an Environmental Assessment for this refuge?

Response: The National Environmental Policy Act (NEPA) requires the preparation of an EIS if the proposed federal action has the potential to significantly affect the quality of the human environment. We believe the decisions that will be evaluated in the Chincoteague CCP meet that standard, and that a more thorough review done in an EIS is warranted.

(5) How do you respond to the testimony of Supervisor Wanda Thornton that "I have to say that the process we are going through now is by far the most divisive and infuriating process I have encountered in my more than twenty years of public service"?

Response: We regret that Supervisor Thornton feels this process is divisive and infuriating. We are committed to working closely with Supervisor Thornton and other elected officials to ensure they feel and are substantively involved in the process.

(6) The refuge manager for Chincoteague was recently quoted that "Beach access is critical to maintain the economic vitality of the Town of Chincoteague and the surrounding counties." What is your definition of access and does it include a shuttle service from a remote parking lot three miles from the existing beach?

Response: Access can be defined as "a means of approaching or entering a place" (Oxford Dictionary). Access to the recreational beach can occur through a variety of means, including biking, walking, driving personal vehicles, and riding a shuttle. In all proposed alternatives, there is no elimination of personal vehicles. People who have driven their cars in the past to the beach will still be able to drive their cars and park at the beach in the future. A remote parking lot and shuttle system would only provide additional opportunities for access.

(7) Did the Service advise the Mayor, the Town Council or any elected officials that the agency was going to seek a federal grant from the Paul Sarbanes Transit in the Parks Program? Please explain any communications prior to the grant application?

Response: The Service has publically communicated our interest in acquiring property for offsite parking for nearly 20 years. When we were approached in 2010 by the Maddox family, we did communicate with elected officials about our interest, although the details associated with the appraisal and offer are matters which the family wished to keep private. In those communications with elected officials, including a meeting with Congressman Scott Rigell on May 13, 2011, we discussed our intent to search for outside sources of funding to acquire the property. However, we did not explicitly state that the Paul Sarbanes Transit in the Parks program was one of the programs we intended to submit an application to.

(8) Does the Service intend to apply for additional DOT Transit in the Parks Program grants to actually build a new parking lot and contract for a shuttle service?

Response: At this time, the Service does not intend to apply for additional Transit in the Parks Program funding. In fact, the Service will not receive the $1.5 million Transit in Parks grant awarded to the Service until the CCP is complete and unless off-site parking and alternative

transportation are included in the final CCP. In December 2011 the Service submitted an application, through the Virginia Department of Transportation, for $1.5 million from the Public Lands Highway Discretionary (PLHD) program to help fund land acquisition. However, the Service has deferred its PLHD application. We do not intend to apply for other grants to acquire offsite parking, or for parking lots construction or expenses related to a shuttle service, until we have a final CCP that includes offsite parking and a shuttle system.

(9) What has been the local reaction to the Service's decision to expand the refuge by buying the Maddox Family Campground?

Response: Local reaction to the concept of acquiring the Maddox Family Campground has been mixed. The Service received feedback from many residents who believe this could lead to elimination of beachside parking and private vehicle access to the recreational beach. Conversely, we received a signed petition from 57 local business owners and residents who support the purchase of the Maddox Family Campground, "for the following reasons: to be available as an alternative in case the beach parking lots are lost due to a summer storm or hurricane, to provide the capability of emergency parking and for supplemental parking with a shuttle service to the beach area." Mr. Wayne Maddox stated in the Eastern Shore Post that "Chincoteague National Wildlife Refuge has been very up-front with us. The agency wants to obtain offsite parking for visitor convenience and in emergencies. They even asked our permission to keep the family name ...we have no reason to believe otherwise and take the folks ... at their word."

(10) Under the Regulatory Flexibility Act, isn't the Service required to undertake a review of the impacts of the Comprehensive Conservation Plan on local small businesses who may be impacted by management changes in the future? Have you undertaken such a review?

Response: Regulations and policy that guide our comprehensive conservation planning efforts require us to consider and evaluate a range of alternatives, and their potential direct, indirect, and cumulative effects on a variety of resources, including economic and social factors. The Service's economists have begun their preliminary economic analysis of the CCP alternatives to determine the economic impact of the proposed alternatives, which would include the impact on small businesses. The evaluation is expected to be released in the draft CCP/EIS at the end of 2012.

(11) The Town of Chincoteague has conducted a survey of its visitors who overwhelmingly stated some 82 percent that they will not return to the Island if they must transit from a remote parking lot to the beach. Does the Service disagree with these findings? Has the Service undertaken their own survey of visitors? Is the issue of the town's economy relevant to the CCP process?

Response: The Service does not dispute the results of the town's survey. However, the survey asked visitors if they would return to visit Assateague Beach "... if direct beach parking was not available ...." Direct beach parking would be available in all alternatives being considered.

The Service has not undertaken a similar survey of visitors. However, we are completing an economic analysis as part of the CCP, as the town's economy is relevant to the CCP process. Our economists estimate that activities associated with the refuge are worth approximately $42 million annually to the town.

(12) What is the cost to complete the parking on the new 65-acre lot? What is the annual cost to contract for a shuttle service? What are the yearly operating costs?

Response: Estimated initial costs for acquisition of the Maddox Family Campground and instituting a shuttle system total $9.4 million ($7.5 million for land acquisition, $1 million for construction (parking lot, shelters, sidewalks, etc.), and $900,000 for a shuttle). We currently estimate $240,000 in annual operating costs.

(13) What is the annual cost to rehabilitating the existing 960 parking spaces that are occasionally impacted by storm surges or infrequent hurricanes?

Response: The National Park Service has provided us with cost estimates for repairing parking lots and roads due to storm damage in 2007 through 2011: more than $2 million in 5 years that are non-routine repair:

2007* $746,213
2008* $0
2009* $196,931
2010* $343,771**
2011* $724,112

*Years noted are when repair investments were made; depending on date of a storm, repair investments and storm year may be different.
** National Park Service requested $607,716, but returned unused funds.

While the Service also provides $200,000 per year to the National Park Service from entrance fees to help fund these costs as well as other maintenance and visitor services costs, the National Park Service has to seek additional funding from Federal Highways Administration through the Emergency Relief for Federally Owned Roads program (ERFO). Given predictions for more frequent and more intense storms in the future, these costs are predicted to rise.

(14) According to documents prepared by the Service, it costs the agency between $200,000 to $700,000 per incident to rehabilitate the existing parking facilities because of storm surges. Yet, there is a second document from the Service stating that the cleanup costs for Hurricane Irene was $69,000 and $34,000 for a nor'easter. What are the true cleanup costs?

Response: While the Service has cited the figure of $200,000 to $700,000 per incident, we have been clear that those costs are paid by the National Park Service, not the U.S. Fish and Wildlife Service. Those figures were provided to us by the National Park Service. The $69,000 and

$34,000 figures are not for parking lot repairs. These costs were incurred by Fish and Wildlife Service for roof repair, pipe replacement, and other Service infrastructure repairs associated with the Nor'easter of 2009 and Hurricane Irene in 2011.

(15) Has the Town of Chincoteague expressed an interest in helping with those rehabilitation costs or providing manpower or equipment for the cleanup? What has been the Service's reaction to those offers?

Response: The National Park Service is responsible for the restoration and rehabilitation of the recreational parking lots at Chincoteague National Wildlife Refuge. The Service is unaware of any offer from the town of Chincoteague to the National Park Service to share repair costs of the parking lots after they have been destroyed by coastal storms. The town has offered to assist the refuge in clean-up efforts following a storm; however, we have been able to accomplish refuge clean-up using staff and dedicated volunteers. Under the authority of the new Mutual Aid Agreement signed in 2010 between the town and the refuge, it would be mutually beneficial to have staff from both entities assist with clean-up efforts after a damaging storm. The Fish and Wildlife Service would support this course of action.

(16) How much does the Service charge each vehicle who parks at one of the existing 960 spaces? How much do you collect each year? Has this money been used to rehabilitate the existing parking area? Please provide the Subcommittee with a complete breakdown on how this parking money is spent each year?

Response: Currently, the Service charges for each vehicle that enters the refuge $8, regardless if its destination is the recreational beach or one of the many trails or attractions found on-site.

Total annual revenues from entrance fee dollars averages $750,000 to $850,000. Under the authority of the Federal Lands Recreation Enhancement Act (FLREA), 20 percent of the total revenues collected are provided to the Service's Northeast Regional Office to be used in a competitive grant program for field stations that provide visitor services, or maintenance projects that have a direct tie to the visitor. Additionally, each year the Service transfers $200,000 to the National Park Service for maintenance of the recreational beach parking lots, visitor safety services (lifeguards), and law enforcement support. The Chincoteague National Wildlife Refuge retains approximately $400,000 to 450,000 annually.

In compliance with FLREA, the Service allocates these funds for:

- Visitor services, visitor information, visitor needs assessments, interpretation and signs;
- Habitat restoration directly related to wildlife-dependent recreation limited to hunting, fishing, wildlife observation, or photography;
- Law enforcement related to public use and recreation;
- Repair, maintenance, and facility enhancement directly related to visitor enjoyment, visitor access, and health and safety. This includes annual or routine maintenance, deferred maintenance, and capital improvements.

- Costs of collection – operating and capital; and
- Fee management agreement or visitor reservation system.

(17) One of the alternatives suggests that the current population of ponies, which is about 150, should be reduced. What is the carrying capacity for Chincoteague ponies on the refuge?

Response: We are not proposing to reduce pony numbers. The Service has an agreement with the Chincoteague Volunteer Fire Company that allows for up to 150 adult ponies. Currently there are approximately 125 ponies. Two of the alternatives would keep the limit at 150, and one of the alternatives would make the limit 125, making the number in the VFC agreement equal to the actual population. We have not completed a formal study to determine the carrying capacity of the Chincoteague ponies on the refuge.

(18) How many ponies would the Service like to see utilizing the refuge?

Response: We are not proposing to reduce the herd. We will continue to monitor the ponies and their grazing impacts on refuge habitats. If we note that ponies are having a detrimental impact, we will work with the owner (Chincoteague Volunteer Fire Company) to remedy those impacts.

(19) How would you describe the impact of the 150 ponies that currently live and graze on some 3,240 acres of the refuge?

Response: Grazing effects on wildlife are mixed. Grazing can help attain some wildlife objectives. For example, allowing ponies in North Wash Flats impoundment prior to the breeding season removes vegetation, creating preferred habitat for plovers and other beach-nesting birds. Pony fecal matter may stimulate the growth of invertebrate food matter for waterfowl. In salt marshes, the impacts of pony grazing on wildlife habitat may outweigh the benefits because: (1) trampling during the nesting season can disturb or destroy nests; (2) direct forage competition reduces food resources for wildlife; and (3) grazing alters vegetation structure and species composition, resulting in habitat loss for marsh-dependent focal species.

Studies of pony grazing on vegetation communities on the Maryland end of Assateague Island by the National Park Service (Sturm 2007 and 2008) are applicable to the refuge because herd size and vegetation types are comparable to the Virginia side. Comparing grazed to un-grazed low salt marsh study sites, Sturm 2008 found that areas grazed by ponies had significantly lower overall plant cover, decreased reproductive success of *Spartina alterniflora*, and a shift in species composition from *S. alterniflora* to *Distichlis spicata*. Ponies alter the species composition of low salt marsh communities by preferentially grazing on *S. alterniflora*, thus providing a competitive advantage to other plant species. The latter is significant for wildlife because *D. spicata* (saltgrass) provides very poor nesting cover and food resources for focal species compared to *S. alterniflora* (Sturm 2007 and 2008). Pony grazing is therefore a concern in salt marshes because it can reduce the abundance and distributions of salt marsh obligate breeding birds such as clapper rail, seaside, and saltmarsh sparrows (NPS 2006).

Recent research by the National Park Service also found evidence that ponies' grazing stimulates the accelerated expansion of *Phragmites australis*, an aggressive invasive species (Mark Sturm, AINS, pers. comm.). This would further adversely impact wildlife habitat because *Phragmites* displaces plant species favored by focal species for nesting and feeding.

(20) What has been the impact of the ponies on threatened piping plovers and endangered Delmarva Peninsula fox squirrels?

Response: For the majority of the year, ponies have little impact on piping plover and none on the Delmarva fox squirrel. The ponies are confined to two grazing units and excluded from piping plover habitat. However, during the annual pony walk, piping plovers are at risk where the pony route is adjacent to breeding piping plovers. To mitigate and prevent potential take during the annual one-hour pony walk, piping plovers are monitored by biologists along the pony route.

(21) Two of the three proposed alternatives suggest that a new public recreation beach be established north of the existing beach. Isn't it true that this new area consists of sensitive wetlands habitat? Would the Service propose to build a parking area adjacent to this new beach site and what federal permits would you need?

Response: While we have not yet identified the exact footprint of the parking lot and north recreational beach that will be part of two alternatives, it is likely that some development could be proposed in wetland habitat. The Service would propose to construct beach parking adjacent to the recreational beach. If either of these alternatives were selected, the Service would need to apply for a standard joint permit application (JPA) within the Virginia Water Protection Permit Program Regulation, 9 VAC 25-210. This administrative process would comply with all local, state and federal wetland permit regulations. The Service would ensure minimization and mitigation of any wetland impacts.

(22) What would be the likely cost to build a new parking area at the proposed public recreation beach and other amenities for the 8,000 people who may utilize it each day?

Response: The potential costs of relocating the parking lots and other improvements have not yet been determined, but we are in the process of calculating all costs. All costs will be available in the draft CCP/EIS.

(23) How much money did the Town of Chincoteague receive in 2011 under the Refuge Revenue Sharing Program?

Response: Accomack County received $72,938, while the Town of Chincoteague received $6,360.

(24) How much has the Obama Administration requested that the Congress appropriate for this Fund in FY'13?

Response: The President's budget request did not include funding for the National Wildlife Refuge account for refuge revenue sharing.

Congressman Scott Rigell (VA-2)

(25) In your testimony you mentioned that the beach parking lot was "totally destroyed" in 2009 and 2011. Will you describe specifically what the term "totally destroyed" means?

Response: "Totally destroyed" refers to major portions of the Toms Cove recreational beach and visitor use infrastructure that were damaged so as to be unusable or inaccessible by the public. After the 2009 nor'easter, the parking lots had to be totally rebuilt in a new location and were not ready for use by the public for an extended period of time.

(26) On the occasions when the parking lot has been "totally destroyed" what was required to make necessary repairs to re-open the parking lot.

Response: The Fish and Wildlife Service is not the principal federal agency charged with the restoration or rehabilitation of the recreational parking lots located at the Chincoteague National Wildlife Refuge; that is the responsibility of the National Park Service. Based on past observations and the work currently underway by the National Park Service to restore the parking lots destroyed by Hurricane Irene, the following steps are being taken:

1. Secure funding – before restoration of the parking lots (other than minor damage) can be undertaken, funding must be secured. The cost estimate for a complete rebuild of the parking lots destroyed by Hurricane Irene exceeds $700,000. The National Park Service secured funding from the Emergency Relief of Federally Owned Roads program (ERFO), which provides assistance to federal agencies when their federal roads that have sustained damaged from natural disasters.
2. Define the wetland boundary – each time a strong coastal storm hits Assateague Island, the island literally rolls over on itself, moving the island in a westward direction. This is a normal barrier island response to coastal storms and sea level rise. When this happens, the bayside wetlands immediately adjacent to the island are covered with sand that has washed across the island; this has provided a new upland site to rebuild the parking lots. However, a new wetland/upland boundary has to be determined so the new parking lot may be aligned to the new upland.
3. Recover materials – in order to recycle and reuse as much of the old parking lot material as possible to reduce costs, the National Park Service reclaims old shell and clay material from the old parking lot, which requires heavy equipment such as bulldozers, graders, large high-flotation material hauling dump trucks, etc. The reclaimed materials are stockpiled on-site for reuse at a later time.
4. Design – the new parking lots are laid out on the ground using a design best fitted to the new wetlands delineation provided by the regulatory agencies. To date, the National Park Service has always been able to fit 961 parking spaces for cars on the newly created uplands. This is likely not sustainable into the future.

5. Construction – during the winter months, when visitation is low, the construction work can be accomplished in phases, which allows the National Park Service to complete one parking lot and open it to the public in a safe manner. If the lots are lost during the summer months, i.e., the peak visitation period, the demand for any parking spaces will quickly exceed the capacity the National Park Service can provide and will thus create an unsafe environment for the public and equipment operators. Therefore, the parking lots are totally closed to public access until they are fully restored. When at all possible, the National Park Service will provide parking at the beach. Assuming funding availability, the total time needed to completely repair storm damages similar that those caused by Hurricane Irene is approximately 3 months.
6. Reinstall infrastructure – the last stage of recovery is the replacement of shower stalls, pump houses, restroom facilities, lifeguard stands, displays, and informational and traffic signs, etc.

(27) In your testimony you note that when the parking lot is destroyed it costs between $200,000 and $700,000 to repair. That is a significant range. Can you be more specific about the costs to repair the beach after the 2009 and 2011 events you described? Can you give a detailed breakdown of the repair costs?

Response: The National Park Service has provided us with the following cost estimates for repairing parking lots and roads due to storm damage from Nor'easter Ida in 2009 and Hurricane Irene in 2011:

Total investment in 2010 (as a result of Hurricane Ida in 2009): $343,771** (National Park Service requested $607,716, but returned unused funds.)
Total investment in 2011 (as a result of Hurricane Irene in 2011): $724,112

A more detailed breakdown of the repair costs would need to be obtained from the National Park Service.

(28) How much of the repair was accomplished with existing staff and equipment during normal working hours versus additional cost that is not normally included in the Refuge/Seashore annual budget?

Response: For the Hurricane Irene repairs currently underway, approximately $151,300 (21%) of the total estimated repair cost of $724,112 is being accomplished with existing National Park Service staff and equipment during normal working hours. According to the National Park Service, all of the personnel, material, supply, and equipment costs for repairing the roads and parking lots of the Toms Cove recreational beach are being funded through the Emergency Relief for Federally Owned Roads (ERFO) program.

While the use of existing National Park Service staff to conduct storm damage repairs is cost effective, the additional workload detracts from the park's ability to conduct normal operational activities such as preventative maintenance and repairs to other visitor use facilities. Similarly,

the use of National Park Service-owned equipment contributes to accelerated wear and tear that is not accounted for in normal replacement cycles.

(29) Have the Town of Chincoteague or private citizens of the town ever offered to help mitigate some of the repair costs by volunteering manpower and/or materials?

Response: The National Park Service is responsible for the restoration and rehabilitation of the recreational parking lots at Chincoteague National Wildlife Refuge. The Service is unaware of any offer from the town of Chincoteague to the National Park Service to share repair costs of the parking lots after they have been destroyed by coastal storms.

(30) In the case that such assistance has been offered, has the Refuge accepted such offers of assistance? If not, on what basis?

Response: The town has offered to assist the refuge in clean-up efforts following a storm, but not repair costs. The Service has been able to accomplish refuge clean-up using staff and dedicated volunteers. However, under the authority of the new Mutual Aid Agreement signed in 2010 between the town and the refuge, it would be mutually beneficial to have staff from both entities assist with clean-up efforts after a damaging storm. The Service would support this course of action.

(31) The Fish and Wildlife Service has made an offer to purchase property within the town of Chincoteague for $7.5 million dollars for the purpose of establishing a park and ride transit system to access the recreational beach. Beyond the $7.5 million to purchase the property, what additional funds will be needed to make necessary improvements to install the parking facility and facilitate a shuttle system?

Response: The Service has not made an offer to purchase property in the town of Chincoteague, but has negotiated an option to purchase property. In addition to the $7.5 million to acquire the land, we estimate it could cost an additional $1 million for to construction a parking lot, shelters, sidewalks, and other amenities to develop a parking facility. We estimate a cost of $900,000 to start-up a shuttle. Annual operating costs are estimated to be $240,000.

(32) You mentioned that the parking lot suffered substantial damage in 2009 and 2011. Can you give a more complete picture of similar damage and associated repair costs for the past 20 years?

Response: Attached for the Subcommittee's review is a table provided by the National Park Service that outlines 20 years of storm damage information, and 10 years of storm damage repair cost information. Please note the moving of the Toms Cove Visitor Center following the 1991/92 and 1998 storms. The National Park Service estimates that damage similar to that of 2009 and 2011 occurred in 1991/92, 1993, 1998, 2003, 2006, 2009, and 2011.

(33) The Refuge charges an entrance fee for every vehicle that enters the refuge. What is the average annual revenue from these fees?

Response: Total annual revenues from entrance fee dollars averages $750,000 to $850,000. Twenty percent of the total revenues collected is provided under the authority of the Federal Lands Recreation Enhancement Act of 2004 to the Service's Northeast Regional Office to be used in a competitive grant program for field stations that provide visitor services or maintenance projects that have a direct tie to the visitor. Each year the Service transfers $200,000 to the National Park Service. The Chincoteague National Wildlife Refuge retains approximately $400,000 to 450,000 annually. These funds are spent on activities including: visitor information; interpretation and signs; habitat restoration related to hunting, fishing, wildlife observation, or photography; law enforcement related to public use and recreation; visitor facility repair, maintenance, and enhancement; and costs of fee collection and management.

(34) What percentage of entrance fees is set aside for parking lot maintenance and repair?

Response: The National Park Service is the aprincipal federal agency charged with the restoration and rehabilitation of the recreational parking lots located at the Chincoteague National Wildlife Refuge. Through an intra-governmental agreement between the National Park Service and the Fish and Wildlife Service, the Service transfers $200,000 to the National Park Service for maintenance of the recreational beach, parking lots, visitor safety services (lifeguards), and law enforcement support.

(35) In your testimony you describe some of the opportunities that have been made for the public to give "input to help shape the Refuge's CCP". Can you give specific examples of public input that has shaped or changed Refuge assumptions, plans, or goals? Were any of the draft alternatives revised based on public comments? If so, please give specific examples.

Response: The Service has worked to ensure that that process for developing the CCP for Chincoteague NWR is open and transparent, and provides extensive opportunity for public input. During the scoping phase, we held 8 public meetings or open houses, 1 joint public meeting with the National Park Service, and 4 official workshops with the community. Based on public input during early meetings where we learned that the number of parking spaces is important to the community, we developed an alternative with 961 parking spaces at the beach. Also, the idea of moving the beach north to a less vulnerable location came from members of the community. Another example of public input shaping the alternatives is the elimination of Alternative C in December, 2011. Many members of the community, including the town of Chincoteague, asked us to eliminate this option.

The remaining three alternatives in the draft CCP are currently being reviewed and revised to reflect the comments we have received. The Service has adhered, and will continue to adhere, to the integrity of the public process required by NEPA. We will select a preferred alternative based on the Service and Refuge System missions, the purposes for which the refuge was established, other legal mandates, and public and partner responses to the draft CCP/EIS.

(36) You described the aftermath of the 2011 Hurricane Irene when the parking lot was damaged and a local business in the town assembled a temporary shuttle system for beach

visitors. It seems clear to me that the town is fully capable of establishing emergency alternative parking on the rare occasions when it is necessary without relying on the federal government to provide this service. Why should federal taxpayers spend millions of dollars to set up a shuttle system which may only be needed for a few days on rare occasions and which the Town is capable of providing on its own?

Response: After Hurricane Irene damaged the parking lots and recreational beach, the public beach was temporarily moved to an alternate site outfitted with lifeguard stands and portable toilets. This location was about 1.5 miles away from the closest refuge parking lots. The refuge manager asked the town mayor if the town could uses its existing trolley to shuttle visitors to the beach, but the town declined to do so. In addition, the refuge manager offered to allow local hotels and motels to use their own vans and shuttles to bring visitors to the beach, but they also declined. As a result, the Chincoteague Natural History Association (CNHA), a non-profit organization that supports the refuge, offered to operate its tour bus from the refuge parking lots to the alternate beach. For five days CNHA provided consistent shuttle service for 3,286 beach visitors.

The Service is happy to explore ways to work with the town to provide a shuttle service for visitors to the beach when the beach parking is damaged, unusable, or full on peak visitation days. Our intent in considering a shuttle as part of an alternative transportation system is to ensure beach access, thus promoting the tourism economy. We believe we share this interest with the town. We will continue discussions with the town to find economical ways to meet our shared interest.

(37) To what extent does piping plover habitat figure into the management planning process?

Response: The protection and conservation of endangered and threatened species is paramount in all aspects of our management planning efforts. Chincoteague NWR was established in 1943 under authority of the Migratory Bird Conservation Act for the protection and management of migratory birds, especially migrating and wintering waterfowl. Since that time, objectives have been expanded to protect and manage threatened and endangered species and other wildlife, and to provide for wildlife-oriented public use.

Four Federal Endangered Species Act (ESA) Recovery Plans are in effect to protect and enhance threatened and endangered species which are residents of Chincoteague and/or Wallops Island NWRs: Atlantic Coast Piping Plover Recovery Plan (USFWS 1996), Delmarva fox squirrel Recovery Plan (USFWS 1993), Recovery Plan for Seabeach amaranth (USFWS 1996), and Recovery Plan for U.S. Populations of Loggerhead Turtle (NMFS and USFWS 1993). Current refuge management with respect to these federally-listed species has been guided by these Recovery Plans and numerous ESA Section 7/Biological Opinions for refuge projects.

(38) What is the approximate range of piping plover nesting habitat?

Response: The following excerpt from the Piping Plover Atlantic Coast Population Revised Recovery Plan (1996) describes the nesting/breeding range of piping plover:

On January 10, 1986, the piping plover (*Charadnus melodus*) was listed as endangered and threatened under provisions of the Endangered Species Act of 1973 (ESA), as amended (U.S. Fish and Wildlife Service 1985). This species breeds only in North America in three geographic regions. The Atlantic Coast population (Threatened) breeds on sandy beaches along the east coast of North America, from Newfoundland to South Carolina. The Great Lakes population historically nested on sandy beaches throughout the Great Lakes, but has declined dramatically and now occurs on just a few sites on the upper lakes. The third population breeds on major river systems and alkali lakes and wetlands of the Northern Great Plains.

The Chincoteague National Wildlife Refuge Complex supports over one half of the southern recovery unit nesting population of piping plovers for the Atlantic Coast region.

(39) Is the piping plover population growing?

Response: The following excerpt describing the population status comes from: U.S. Fish and Wildlife Service. 2011. Abundance and productivity estimates – 2010 update: Atlantic Coast piping plover population. Sudbury, Massachusetts. 4 pp.

The 2010 Atlantic Coast piping plover population estimate was 1,782 pairs, more than double the 1986 estimate of 790 pairs (Table 1). Discounting apparent increases in New York, New Jersey, and North Carolina between 1986 and 1989, which likely were due in part to increased census effort (USFWS 1996), the population posted a net increase of 86% between 1989 and 2010. The largest net population increase between 1989 and 2010 has occurred in New England (266%), followed by New York-New Jersey (56%). In the Southern recovery unit, net growth between 1989 and 2010 was 54%, but almost all of this increase occurred in two years, 2003-2005. The eastern Canada population has fluctuated from year to year, with increases often quickly eroded in subsequent years.

The uneven pattern of population growth among recovery units has also been accompanied by periodic declines in both overall and regional populations. Most recently, the total Atlantic Coast population estimate attained 1,890 pairs in 2007 before declining 6% to 1,782 pairs in 2010. Decreases during this period occurred in all recovery units except New England, where the population grew 7% between 2007 and 2010. Abundance in both the eastern Canada and New York-New Jersey recovery units declined 15%, while the Southern recovery unit population experienced an 8% net decrease. Other periodic regional declines include decreases of 21% in the eastern Canada population in just three years (2002- 2005) and 68% in the southern half of the Southern recovery unit during the seven years (1995-2001).

The 64% decline in the Maine population between 2002 and 2008, from 66 pairs to 24 pairs, followed only a few years of decreased productivity and provides another example of the continuing risk of rapid and precipitous reversals in population growth. Thus, optimism about

progress towards recovery should be tempered by observed geographic and temporal variability in population growth.

(40) There has been some discussion of relocating the recreational area of the beach to a point farther north. If this happened, would the Fish and Wildlife Service guarantee that parking within reasonable walking distance of the new recreational area would be created and maintained at no less than the current parking capacity of 961 spaces?

Response: NEPA requires us to assess a range of alternatives in the CCP. While some alternatives would provide 961 spaces, we cannot guarantee the number of spaces right now, as that would be pre-decisional. Under alternative B, if the recreational beach were moved north, then 961 parking spaces could be maintained adjacent to the beach. Under alternative C, if the recreational beach were moved north, 480 spaces would be maintained adjacent to the beach.

(41) If the recreational beach were moved and a new parking lot built as proposed under Alternative B, how close would that new lot be to the beach?

Response: If the recreational beach were moved and a new parking lot built as proposed under alternative B, the parking would be adjacent to the recreational beach. We have not yet identified the exact footprint of the proposed parking lot, but we have received public input that it is not desirable for this distance to be significantly longer than the current distance from the parking lot to beach at Toms Cove. We are currently exploring various parking options to insure that the walk from car to beach will not be overly burdensome to the beach visitor.

(42) Would the new parking lot have to be built on what could be considered wetlands or endangered species habitat?

Response: The proposed area for relocated parking lots in Alternatives B and C would likely impact approximately 4 to 8.5 acres of habitat, a portion of which may be classified as wetlands or Delmarva fox squirrel habitat. The refuge would conduct an intra-service consultation, as required by section 7 of the Endangered Species Act, to address any impacts to the Delmarva fox squirrel. We will also design new facilities and infrastructure to minimize and limit any potential adverse impacts to endangered species and wetlands. Our actions will not compromise the recovery of any threatened or endangered species, and we will minimize and mitigate for any wetland impacts.

(43) In order to relocate the recreational beach, would any new roads have to be built or existing roads widened?

Response: Yes, Wildlife Loop Drive and the Service Road would need to be widened.

(44) Would construction of new roads or widening of existing roads take place on wetlands or endangered species habitat?

Response: The proposed area for new or widened roads in Alternatives B and C would likely impact approximately 16 acres of habitat, some of which can be classified as wetlands or Delmarva fox squirrel habitat. The refuge would conduct an intra-service consultation, as required by section 7 of the Endangered Species Act, to address any impacts to the Delmarva fox squirrel. We will also design new facilities and infrastructure to minimize and limit any potential adverse impacts to endangered species. Our actions will not compromise the recovery of any threatened or endangered species, and we will minimize and mitigate for any wetland impacts.

(45) Would permits be required before a road and parking lot could be constructed?

Response: Yes. If either of alternative B or C were selected the Service would need to apply for a wetland standard joint permit application (JPA) within the Virginia Water Protection (VWP) Permit Program Regulation, 9 VAC 25-210. This administrative process would comply with all local, state and federal wetland permit regulations. We will also complete an intra-service section 7 consultation to fully comply with Endangered Species Act protocol, and include those findings in the CCP/EIS.

(46) What government agencies would have to approve those permits?

Response: The standard JPA would need to be approved by the U.S. Army Corps of Engineers, the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality, and the local wetlands boards. This joint administrative process would comply with all local, state and federal permit regulations. The intra-service section 7 consultation is done with the U.S. Fish and Wildlife Service's Virginia Ecological Services office.

(47) Is it common for government agencies to approve road or parking lot construction on endangered species habitat on public lands? Can you give examples?

Response: Approval of major projects on endangered species habitat on public lands takes place on a case-by-case basis. On Chincoteague NWR, the moist soil management unit known as D-pool is the likeliest area for relocation of the parking lot, and it is not endangered species habitat. Nevertheless, we will design any new facilities and infrastructure to minimize and limit any potential adverse impacts to endangered species. We will also complete an Intra-Service section 7 evaluation to fully comply with Endangered Species Act protocol, and include those findings in the CCP/EIS. Our actions will not compromise the recovery of any endangered or threatened species.

The U.S. Fish and Wildlife Service completes hundreds of section 7 consultations with other Federal agencies every year, some of them involving construction projects. For example, the Service completed a consultation with the U.S. Army's Fort Drum (New York) in 2009 on impacts to the endangered Indiana bat. We wrote a biological opinion that included several categories of activities, including construction, military training, forest management, and outdoor recreation. This consultation identified ways to move forward with the projects while minimizing or avoiding impacts to listed species.

(48) Many people have expressed doubt that such permits would ever be issued or that if they were issued, they would be tied up in court and the construction would never happen. Do you consider these doubts to be reasonable?

Response: It is true that development proposed in wetland habitat can meet delays. However, we are assessing an area on the refuge that would minimize impacts to wetlands and wildlife. We are also meeting with the permitting agencies to quantify these impacts, so that we can fully assess this option in the draft CCP and EIS. We will not select a preferred alternative that includes strategies that cannot be reasonably implemented.

(49) If the beach were to be relocated, could you provide a guarantee, perhaps in the form of a written modification to the draft alternatives, that the existing beach and parking lot would continue to be maintained until the new beach, parking, and access road opened?

Response: If and when the new beach is being prepared, the beach and beach parking at Toms Cove will still be available. We will clarify in writing in the draft CCP that we intend to maintain the beach and beach parking during construction.

(50) The Town of Chincoteague, Accomack County, and the Virginia House of Delegates have all passed resolutions opposing the acquisition of property within the town of Chincoteague for the purpose of establishing a park and ride transit system. Does it concern the FWS that officials at all levels of government have substantial objections to this plan?

Response: It does concern us that local and state government officials have substantial objections to this plan, as the intent of our plan is to support goals shared by all parties – to conserve the important wildlife and habitats of Chincoteague National Wildlife Refuge for future generations, to provide recreational opportunities for the visiting public, and to continue to support the local tourism economy. We believe that increased communications among the refuge, the town, the county, and the state will help clarify our mutual interests and help us move forward together.

(51) At any time while the Refuge was pursuing property for a transit system, was there a draft management alternative that did not call for such a transit system?

Response: We initially proposed one alternative without off-site parking or shuttle system. This alternative has since been dropped from further evaluation, in response to comments received from the town and the public. Among the comments we received were: "Seen as a stop-gap measure," "Waste of time and money," "Not a good long-term solution," and "Not significantly different from A." In a letter to the Service dated October 3, 2011, the town stated that "Alternative C, which would reduce USFWS program activities below current levels, is not desirable."

(52) Is Congressional authority necessary for the FWS to deliberately abandon the 1959 public access easement to the Atlantic Ocean beach and replace it with a Refuge Manager's compatible use determination that may be withdrawn at any time?

Response: According to "Assateague Island National Seashore: An Administrative History" by Barry Mackintosh (1982), the 1959 easement was part of an agreement between the Chincoteague-Assateague Bridge and Beach Authority (Authority) and the Bureau of Sport Fisheries and Wildlife (Bureau, precursor to the FWS). The agreement assigned to the Authority the south four miles of the island for 40 years, renewable for two 15-year periods. These rights were subject to "such terms and conditions as the Secretary of the Interior deems appropriate for the adequate protection of the wildlife refuge."

The 1959 public access easement has not been in effect since 1966 when it was acquired by the federal government as directed by the Assateague Island National Seashore enabling legislation, which states:

"Notwithstanding any other provision of this Act [16 USCS §§ 459f et seq.], land and waters in the Chincoteague National Wildlife Refuge, which are a part of the seashore, shall be administered for refuge purposes under laws and regulations applicable to national wildlife refuges, including administration for public recreation uses in accordance with the provisions of the Act of September 28, 1962 (Public Law 87-714; 76 Stat. 653) [16 USCS §§ 460k et seq.]."

(53) Is Congressional authority necessary for the FWS to break the 1959 contract agreement that sets aside and assigns over 4 miles of beach for non-wildlife dependent recreational public use at the south end of Assateague Island?

Response: No. The 1959 agreement is no longer in effect. See answer # 52.

(54) Will the FWS grant a similar perpetual access easement and assigned area to the American public if the recreational beach is relocated approximately 1.5 miles to the north as proposed draft Alternative B?

Response: If the recreational beach is relocated approximately 1.5 miles to the north as proposed in draft alternative B, public access will continue as it occurs currently. We do not feel a perpetual access easement is necessary, as we have been working with the National Park Service to maintain a recreational beach and beach parking for over 30 years without such an easement.

(55) How will the CCP process evaluate the Town's 123 Common Sense Plan for maintaining the land base at Toms Cove?

Response: We have considered the town's 1-2-3 plan. The majority of the short-term ideas within step 1 of the town's submitted 1-2-3 plan were already reflected in one of the draft CCP alternatives, and we were pleased to see that the town's plan and our alternatives shared so many points. Working to ensure public safety is a priority, which is why we are including the following

statement as common to all alternatives in the CCP: "The refuge will work with its gateway coastal community, the town of Chincoteague, to explore potential impacts and identify protective methods to address hazard mitigation, in coordination with others, such as Accomack County, Commonwealth of Virginia, NPS, NASA, FEMA, and USACE."

However, most of the actions in steps 2 and 3 focus on beach nourishment and creation of man-made dunes – which would require significant involvement and funding of other federal agencies. We consider these actions to be outside the scope of the CCP in terms of timeline, funding, and purpose/mission.

It is the position of the Service that natural shoreline processes (including migration) are necessary to maintain the biological integrity, diversity and environmental health of barrier beach island and salt marsh habitats in the face of rising rates of sea level and climate change. Also, beach nourishment is very costly. The Service investigated beach nourishment during the early stages of developing potential alternative for the CCP, and contacted the U.S. Army Corps of Engineers (Corps) to obtain an estimate of the scope and cost of beach nourishment for a project this size. Using research and analysis undertaken for the Wallops Flight Facility Shoreline Restoration and Infrastructure Protection Program as a model, a representative from the Corps roughly estimated that a beach nourishment project of similar scope could require an initial estimated investment of $30 million, with recurring maintenance costs of $1.5 to 2.5 million necessary every 3 to 5 years. In order to obtain a more precise cost estimate, the Service has requested that the Corps provide, by the end of May 2012, an analysis of the work required and a more precise cost estimate for stabilizing the recreational beach and parking lots. The three draft potential alternatives we are currently developing will identify strategies to maintain beach access and beach parking, while also considering fiscal responsibility and long term sustainability. Because of the significant estimated cost, the predicted short term viability, and other environmental factors, we consider beach nourishment to be outside the scope of the CCP, and will not be evaluating nourishment in any of the alternatives.

(56) How much does the proposed relocation of replacement visitor use facilities proposed by CCP Alternative B cost to construct?

Response: The potential costs of relocating the parking lots and other improvements have not yet been determined, but we are in the process of calculating all costs. All costs will be available in the draft CCP/EIS.

Congresswoman Colleen Hanabusa (HI – 1)

(57) How many times has the Chincoteague beach parking lot been damaged or destroyed since at least 1990 or the original hardtop parking lot was built? What were the costs associated with these repairs?

Response: Attached for the Subcommittee's review is a table provided by the National Parks Service detailing 20 years of storm damage information, and 10 years of storm damage repair cost information. This document identifies 21 individual incidents where the lots have been

damaged or destroyed since 1990. Please note the moving of the Toms Cove Visitor Center following the 1991/92 and 1998 storms. The National Park Service estimates that damage similar to that of 2009 and 2011 occurred in 1991/92, 1993, 1998, 2003, 2006, 2009, and 2011.

(58) Can you provide the scientific evidence indicating that there is local sea level rise?

Response: Scientific models show that the Earth's climate will continue to change at an accelerated rate, resulting in stronger and more frequent coastal storms and rising sea levels. Models predict that rising sea levels over the next 100 years will flood coastal marshlands and transform inland habitats at Chincoteague National Wildlife Refuge. However, the Service is basing its decisions not on models, but on changes we can see or have observed. According to the National Oceanographic and Atmospheric Administration's Technical Report NOS CO-OPS 36 (Zervas, C. 2001, Sea level Variations of the United States 1854-1999), Sea level rise averages 3.6 to 7.0 mm per years in Virginia's lower Chesapeake Bay region. A combination of strong coastal storms, changes in sediment and barrier island movements, and sea level rise have impacted the refuge. For example, since 1966 the shoreline at the current beach parking location has moved 800 feet inland.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

AUG 17 2012

The Honorable Rob Bishop
Chairman,
Subcommittee on National Parks, Forests
and Public Lands
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the National Park Service to written questions submitted following the February 28, 2012, oversight hearing on the NPS's Fiscal Year 2013 Budget Proposal.

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 Raul M. Grijalva
Ranking Member

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

United States House of Representatives Committee on Natural Resources
Subcommittee on National Parks, Forests and Public Lands
February 28, 2012

National Park Service Projects in Washington State

Director Jarvis, your regional office has informed me that the Pacific Region's maintenance backlog currently stands in excess of $2.7 billion – which is nearly one-third of the total Park Service backlog nationwide. In Washington, the backlogs total nearly $414 million, most of which are located in eastern Washington, even though the Park Service doesn't have an office located there. Chairman Hastings is concerned to learn that the Park Service has requested additional costly 'nice to have' aesthetic and trail projects as part of a small hydroelectric project in Okanogan County that is under consideration of FERC. Will you assure Chairman Hastings that the Park Service will not further press those requests when FERC has determined they are not needed for approval of the hydro license?

NPS Response: Of the nine national park units in Washington State, Lake Roosevelt National Recreation Area and Whitman Mission National Historic Site are located in eastern Washington, east of the Cascade Divide. The remaining seven units are located on the west side of the Cascade Divide. The amount of deferred maintenance in the Washington and the Pacific West Region is proportional to that of the National Park System as a whole given the number and size of park units that compose the Pacific West Region. While reducing deferred maintenance is a priority for the National Park Service (NPS), fulfilling our stewardship and consultation responsibilities is also of primary importance.

The Federal Power Act (FPA) generally requires hydropower license applicants to consult with the National Park Service. The Okanogan County Public Utility District has applied to the Federal Energy Regulatory Commission (FERC) to restore hydropower production at Enloe Dam on the Similkameen River. The NPS has participated in the licensing proceeding since 2008, representing the public's interest in recreation, including consideration of the newly designated Pacific Northwest National Scenic Trail and a water trail along the Similkameen River. The Department of the Interior and the NPS provided comments requesting an aesthetic flows evaluation during the FERC's FPA comment period in September, 2011. These comments did not request the construction of additional assets. The next step in the process would be the issuance of a license for the project by FERC. It is the prerogative of the FERC to decide if the National Park Service's comments are incorporated into any new license. The NPS does not anticipate further comment on the project at this time.

Coal Mine near Bryce

A couple weeks ago, the National Park Service objected to a planned coal mine on BLM property a dozen miles from the Bryce Canyon. The park service is concerned that the natural sounds could be disturbed near the edge of the park. This is an attempt by the park service to enforce buffer zones and will cost Utah $1.5 billion.

Mr. Abbey, will you continue to allow the park service to reach beyond its statutory boundaries (as was the case with the 77 leases) and derail your permitting process?

NPS Response: After consultation with the Committee staff, this question has been forwarded to the Bureau of Land Management, which will provide the Committee with a response.

Climate Change Funds

A big priority for you has been expanding climate change programs at NPS. You are asking for an additional $5 million for 2013. The budget says "the NPS has taken action to mitigate the effects of climate change on park resources." What actions have been taken?

NPS Response: The National Park Service Climate Change Response Program (CCRP) fosters communication, provides scientific information and planning guidance, and supports adaptation and mitigation actions to protect natural and cultural resources in the face of climate change. The CCRP is supporting three climate change adaptation coordinators, one each in the Pacific Islands, South Atlantic, and North Atlantic Landscape Conservation Cooperatives.

Below are some examples of specific actions that have been taken:

- Provided support for several national parks. This included planning at Everglades National Park for restoration of visitor services at Flamingo using structures that can be moved to avoid storm events, and working with the Corps of Engineers at Fort Pulaski National Monument to design protection for the Cockspur Lighthouse from sea level rise.

- Conducted training sessions for more than 150 people in the use of scenario planning which is used for long range adaptation planning.

- Initiated 15 climate change vulnerability assessments targeting over 50 high-risk national parks. These assessments address resources including salt marshes in Acadia National Park, floodplain habitats and inundation at Congaree National Park, climate refuges and connectivity for desert bighorn sheep and four species of concern in southwestern Utah parks and monuments, and vulnerability of Sequoia-Kings Canyon National Parks to changes in the pattern, frequency and intensity of the bushfires and wildfires that prevail in the area.

- Finalized detailed work plans and began enhanced monitoring for 94 parks in 13 I&M networks to address rapid climate change.

- Partnered with other Department of the Interior bureaus at the national and regional levels in each of the 22 Landscape Conservation Cooperatives to conduct science needs assessments, including vulnerability assessments, a tool for climate change planning.

- Placed 14 interns and 11 fellows in parks and offices across the country through the George Melendez Wright Internship and Fellowship Programs to carry out climate-change projects and scientific research. Example products include exhibits on climate change at Cape Cod National Seashore, a study of harmful algal blooms ("red tide") associated with ocean warming off the coast of Olympic National Park, and development of a geospatial risk model to predict areas of high risk of exposure to tick-borne pathogens for hikers along the Appalachian Trail.

- Authored more than 30 peer-reviewed publications. Also produced technical reports and conducted over 50 presentations for NPS managers, scientists, non-governmental organizations, elected officials, and the public. Outcomes from these efforts include improved resource management and an enhanced scientific knowledge base.

- Coordinated with university and NGO partners on 5 workshops, 16 sites visits, and a series of surveys with park staff and visitors to explore climate change interpretation and education needs and activities in parks.

- Developed pilot training module on climate change for new park superintendents. The training, which was provided through a series of four webinars, was completed in July of 2012.

<u>Occupy</u>

Mr. Abbey, on January 26th, your department published a notice in the federal register that the BLM will begin charging a $10 overnight camping fee within the North Fruita Desert Special Recreation Area. Obviously this has caused some concern and raised some objections. Mr. Jarvis, what advice do you have for Mr. Abbey, if the campers decide not to pay the fee and then occupy the site for several months?

NPS Response: The experience the NPS has had with Occupy DC would have little relevance to addressing infractions of camping rules on lands managed by the BLM.

Mr. Jarvis, with regard to Occupy DC, what has the park service had to pay for the man power, trash pickup, and other costs associated with the encampment?

NPS Response: In the period from December 4, 2011, through May 6, 2012, the National Park Service incurred costs of approximately $1,502,000 related to the Occupy DC encampments at McPherson Square and Freedom Plaza. Of this total, the National Capital Region of the NPS incurred costs of approximately $102,000 for personnel, supplies, and maintenance, while the United States Park Police incurred costs of approximately $1,400,000 for personnel and supplies.

Big Game Management in National Parks

In recent years, the NPS employed snipers and "qualified volunteers" to cull elk and deer herds in several parks. These plans typically come with great expense, into the millions of dollars. Considering the financial obligations facing this country, is it time to consider allowing hunters with state licenses, who will pay for the privilege, to enter parks and do the job of managing big game herds in parks?

NPS Response: The National Park Service has several tools available for directly managing wildlife populations in parks. These include hunting, where authorized by statute, and culling by NPS employees, contractors, and skilled volunteers. Traditional hunting is a recreational activity, subject to the hunter's discretion as to where, when, and whether to take particular animals, and usually containing elements of fair chase. It is usually conducted and managed in a way that maintains sustainable population levels, rather than reducing or eliminating them. Culling, by contrast, is conducted solely for purposes of population reduction, under NPS direction and supervision, and does not necessarily include any recreational or fair chase elements. A decision on how to manage overabundant elk or deer herds is made in each affected park and will vary depending upon the resource conditions, funding, public input, logistics and safety. In some cases culling may be the only effective way to achieve population reductions within a necessary timeframe. In order to determine how herds will be culled, the NPS conducts a public process to determine the most humane, effective and efficient means of addressing the issue of overabundant elk or deer in parks. While culling does impose costs, some of these are planning, compliance, and oversight costs that would also be incurred if NPS were to institute new hunting programs.

The NPS Organic Act and long-standing NPS policies allow hunting in parks where it is specifically mandated by federal law or where it has been authorized on a discretionary basis under federal law and special regulations. The NPS manages 397 parks that include 84 million acres of public lands, and hunting is permitted in 61 park units (58.6 million acres or 69.8% of lands managed by NPS). The NPS supports hunting in the parks where is has been authorized and, in these areas, hunting can sometimes be used to help manage elk or deer populations either as a stand-alone tool or in combination with other management actions. For example, at Apostle Islands National Seashore, park managers have augmented public hunting with the use of skilled volunteers to increase harvest of white-tailed deer to protect critical park resources. In Rocky Mountain and Theodore Roosevelt National Parks, where hunting is not authorized, the NPS works closely with other federal and state managers to successfully manage overabundant herds.

Grand Canyon Bottled Water

I understand that bottled water is now banned at Grand Canyon National Park and that the plan is to provide filling stations...is that correct?

NPS Response: Grand Canyon National Park no longer sells bottled water in containers of less than one gallon. The park already has nine water filling stations in addition to numerous faucets, water fountains, and other sources. Prior to banning the sale of water in small plastic bottles, the

park was required to go through a rigorous approval process to ensure that the public would not be in danger of not having access to enough potable water.

We have heard reports that the well that supplies potable water to visitors has run dry in the past, is that correct?

NPS Response: Water to the South Rim of the Grand Canyon and Phantom Ranch is provided through a trans-canyon pipeline that is fed from Roaring Springs, a natural water source on the North Side of the canyon. The water source has never run dry in the past.

Looking at your budget justification, I see you have a tier 2 project to provide potable water to the South Rim and a tier 3 project to "replace failed North Rim potable water distribution system."

Are [you] putting visitors at risk by banning waters sales when, by your own budget, it is clear the potable water system is now deficient?

NPS Response: The budget reflects the fact that the trans-canyon pipeline referenced in the response to the previous question has exceeded its design life and is in need of replacement to ensure that the supply of potable water is not disrupted. However, the park maintains reserves of water on each side of the canyon. Should the water reserves on either side of the canyon become depleted, the park would be able to implement emergency water hauling measures and truck potable water in from outside sources.

Are soda sales still allowed? How does that jive with the First Lady's "Let's Move" campaign?

NPS Response: Soda continues to be sold at Grand Canyon National Park. The National Park Service was able to stop the sale of small containers of bottled water without limiting the availability of water to visitors; this would not be the case with other bottled products. The National Park Service supports the First Lady's goals of promoting healthy choices. Consistent with these goals, the National Park Service's *A Call to Action* encourages visitors to make healthy lifestyle choices and encourages concessioners to make more healthy alternatives to soda available.

<u>MISC. NPS</u>

1) **Director Jarvis, your testimony states: "In many communities, especially in small, rural communities, National Parks are the clean green fuel for the engine that drives the economy." What on earth does this mean?**

NPS Response: The phrase "clean, green fuel" refers to the tremendous economic benefits national parks foster in local communities while preserving resources and access to outdoor recreation opportunities. Many small communities depend heavily upon the jobs their local national park creates in the tourism industry. The National Park System received 281 million recreation visits in 2010 and park visitors spent $12.13 billion in local gateway regions. Visitors

staying outside the park in motels, hotels, cabins, and bed and breakfasts accounted for 56% of the total spending.[1]

2) What is the status of upkeep work at Jimmy Carter National Historic Site? Does the park service still have a policy to mow Jimmy Carter's lawn and mow his grass?

NPS Response: The National Park Service provides grounds and exterior house maintenance at the former president's home in Plains, Georgia, as part of the agreement that was made when President Carter donated his home to the National Park Service subject to a life estate. Because the Carter home will always be a key historic resource for the park, it is in the National Park Service's interest to ensure that the property is appropriately maintained.

3) What is the status of the Presidio Trust and their mandate to become self sufficient? Will they be able to meet the deadline at the end of FY 2012?

NPS Response: In response to this question, the Presidio Trust has indicated to the National Park Service that it will be able to meet its self-sufficiency mandate. According to the Trust, its earned revenue fully offsets its operating costs.

4) I notice that your budget reduces funds for national heritage areas to encourage them to become self-sufficient. Has any heritage area shown an ability to become self-sufficient?

NPS Response: Quinebaug and Shetucket National Heritage Area has a plan to become self-sufficient; that is, to no longer rely on NHA program assistance, by 2016. A number of the older areas are in the process of developing sustainability plans, while newer areas are required to factor sustainability planning into their management planning process. We are working with all the areas on long-term planning for broad, flexible funding options, including a potential range of options for National Park Service support after the sunset of the initial funding authority.

I see heritage areas are still budgeted for $9 million. How many seasonal employees could be hired with that money?

NPS Response: The National Park Service would be able to hire approximately 800 seasonal employees with $9 million dollars. Seasonals are typically hired during an individual park's highest visitation season and can range in employment periods from a few weeks to several months.

5) Since the implementation of the Coburn Amendment with regard to Second Amendment rights, have you seen an increase in gun violence or poaching attributable to the new law?

NPS Response: We cannot say with any certainty that the passage of the Coburn Amendment (Section 512 of the Credit Card Accountability Responsibility and Disclosure Act of 2009) caused a change in the prevalence of gun violence or poaching in the National Park System. While the NPS collects data on gun crimes and poaching, we have not analyzed those statistics to

determine the specific factors that may be responsible for changes in the rates of gun incidents and poaching.

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[i] Daniel J. Stynes, Professor Emeritus, Department of Community, Agriculture, Recreation and Resource Studies, Michigan State University, "Economic Benefits to Local Communities from National Park Visitation and Payroll, 2010," http://www.nature.nps.gov/socialscience/docs/NPSSystemEstimates2010.pdf

United States Department of the Interior

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AUG 2 0 2012

The Honorable Rob Bishop
Chairman,
Subcommittee on National Parks, Forests
and Public Lands
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Management to written questions submitted following the February 28, 2012, oversight hearing on the BLM's Fiscal Year 2013 Budget Proposal.

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 Raul M. Grijalva
Ranking Member

Questions for the Record
Subcommittee on National Parks, Forests, and Public Lands
House Natural Resources Committee
BLM's FY 2013 Budget Proposal, Director Robert Abbey
February 28, 2012

The following question was originally forwarded by the Committee to the National Park Service; BLM provides a response here:

"Coal Mine Near Bryce." A couple weeks ago the National Park Service objected to a planned coal mine on BLM property a dozen miles away from Bryce Canyon. The park service is concerned that the natural sounds could be disturbed near the edge of the park. This is an attempt by the park service to enforce buffer zones, and it will cost Utah $1.5 billion.
Mr. Abbey, will you continue to allow the park service to reach beyond its statutory boundaries (as was the case with the 77 leases) and derail your permitting process?

Response: The Bureau of Land Management welcomes input from other Federal agencies and members of the public on this and other projects. On the Draft Environmental Impact Statement (EIS) for the Alton Coal Tract Lease by Application, the BLM has been working with not only the National Park Service but also the U.S. Fish and Wildlife Service and the Environmental Protection Agency, in addition to the cooperating agencies, the Office of Surface Mining and the Utah Division of Oil, Gas, and Mining. The BLM is in the process of reviewing the approximately 187,000 comments it received on the draft EIS, and analyzing how the comments will be addressed in a Supplemental Draft EIS, which is expected to be released in January 2013.

1. **As part of the Secretary's "Western Oregon Strategy" the BLM is promoting several "Pilot Project" timber sales focusing on "ecological restoration" on the O&C lands. The first such project, the "Pilot Joe" timber sale was recently toured and heralded by Secretary Salazar. To help the Committee understand the merits of this approach we would like the following information:**

   a) **The total costs for BLM to develop and sell the 1.5 million board foot Pilot Joe project.**

Response: The total cost for BLM Medford District to develop and sell the 1.5 million board foot Pilot Joe project was $525,000.

   b) **The total costs for BLM to develop and sell the other 20 million board feet of timber volume offered in the Medford District in FY 2011.**

Response: The cost to develop and sell the other 20 million board feet in FY 2011 was $5,000,000.

2. **Another aspect of the Secretary's Western Oregon "pilot projects" was a report from Drs. Norm Johnson and Jerry Franklin on the pilots and broader implications. That report indicated that their model of "ecological forestry" would generate less than *2/3* of the volume per acre envisioned under the Northwest Forest Plan and less than 112 of the volume per acre envisioned under the 2008 Resource Management Plans on a majority of BLM's western Oregon forests. The Secretary has indicated that he intends to move forward with applying this "ecological forestry" approach in new Resource Management Plans.**

   a) **If the Department does implement this approach for managing the O&C lands how does it intend to generate the revenue needed by local governments and provide adequate timber to local mills with much lower timber harvest volumes per acre?**

Response: The goals of the Northwest Forest Plan, including the production targets, have not been achieved due to litigation and other constraints. Current forestry practices, limited almost entirely to thinning, will not provide sustainable timber revenues in the long-term. Ecological forestry is being explored through pilots and the BLM planning process as an alternative that could increase timber harvests over current levels and sustain them over time. The Secretary has indicated he intends to move forward with the ecological forestry approach through five to eight additional projects in 2013 and 2014, and explore broader implementation across the landscape through the planning process. As that process has just begun, it is too early to state its outcomes. However, Drs. Franklin and Johnson have given us estimates.

In their study released on February 15, Drs. Johnson and Franklin projected harvest levels for the O&C of approximately 217-286 million board feet per year for the next 15 years under current land allocations in the Northwest Forest Plan, with the level within the range of harvests dependent on the availability and desirability of cutting older forest in the Matrix. This range is higher than recent harvests on BLM Western Oregon Forests and is equal to or greater than likely offerings for the next few years. Their study projected a long-term sustained yield (reached in 15-30 years) of 122-166 million board feet per year under current land allocations, with the level within the range again dependent on disposition of the existing older forest. That range compares to our estimate of a long-term sustained yield under continuation of current policy implementation of approximately 20-50 million board feet per year.

   b) **How is this "ecological forestry" approach consistent with the O&C Act of 1937, which states that timberlands are to be managed for "permanent forest production" with timber to be "sold, cut and removed in conformity with the principal [sic] of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow and contributing to the economic stability of local communities and industries, and providing recreational facilities."**

Response: The BLM's definition of sustained yield is ". . . the volume of timber that a forest can produce continuously at a given intensity of management," which is consistent with the O&C Lands Act of 1937. Through the pilot projects and its planning process, the BLM is exploring whether more active management of the BLM lands using ecological forestry principles will restore forest health and provide sustainable timber harvests for local mills and the communities who rely on the timber industry for jobs and economic strength.

3. **In 2009 Secretary Salazar committed to a timber sale program of 230 million board feet (mmbf) in western Oregon. In hard hit southwest Oregon, the administration committed to offering 21 mmbf in the Medford District. In Fiscal Year 2011 the BLM only awarded 137 mmbf in western Oregon and 6.3 mmbf in the Medford District. The Committee understands that the primary reason for this shortfall is administrative protests on a large number of timber projects. What is the BLM doing to resolve the protests so this timber can be made available to local mills?**

Response: The BLM Medford District and the BLM Oregon State Office are organizing district and state office staff to increase the agency's capacity to respond to forestry protests and appeals of decisions taken to the Interior Board of Land Appeals (IBLA). As of June 2012, the Medford District has resolved all but two FY 2011 timber sale protests, and it expects to issue those protest decisions in the very near future. (In addition to 2011 sales, the Medford District has issued protest decisions for those FY 2012 timber sales that have been protested.) Several of the FY 2011 timber sale protest decisions have been appealed to IBLA; the Medford District is responding to the IBLA's schedule of proceedings.

The BLM also hopes to reduce the volume of protests by building more consensus through the public process that is a part of its planning efforts. Through this process and with the benefit of the latest science, the BLM hopes to develop Resource Management Plans that restore healthy habitat and provide sustainable timber harvests and revenues for counties.

4. **Director Abbey, at a recent meeting, you pledged to follow up on concerns raised to you by myself and Congresswoman McMorris Rodgers regarding BLM and the Okanogan County Public Utility District's license application for the Enloe Dam in north central Washington state, which is now pending before FERC. When will you provide answers to me and the Congresswoman on our questions as requested last month, and will you also provide an estimate of the timeframe expected for BLM to process any right of way application Okanogan PUD has filed or may file in the future associated with that project?**

Response: BLM Director Bob Abbey responded to the January 23 inquiry from Representative Hastings and Representative McMorris-Rogers by letter dated March 7, 2012 ***(see attachment 1)***. The BLM is waiting for the FERC to issue the license before we process the PUD's right-of-way application. Once the FERC issues the license, the BLM will require approximately 16 to 18 months to process the right-of-way. Over the next several weeks the BLM's Spokane District Office will explore options to begin review, consultation, and other analyses prior to the processing of the right-of-way.

5. **On February 20th, Secretary Salazar was in Oregon and announced several timber sales the Interior Department would be undertaking and that BLM would begin gathering public input for the revision of six resource management plans covering much of the Oregon and California Grant lands in western Oregon, known as "O&C lands." When and where are those public meetings occurring?**

Response: During May and June of 2012, the BLM held eight public scoping meetings throughout western Oregon, including:

May 16	BLM Medford District Office Medford, Oregon
May 17	BLM Grants Pass Interagency Office Grants Pass, Oregon
May 23	Shilo Inn Klamath Falls, Oregon
May 24	BLM Salem District Office Salem, Oregon
May 29	Springfield Public Library Springfield, Oregon
May 30	Coos Bay Public Library Coos Bay, Oregon
May 31	BLM Roseburg District Office Roseburg, Oregon
June 5	Robert Duncan Plaza Building Portland, Oregon

In total, approximately 170 members of the public participated in the scoping meetings, where a range of topics were discussed including wildlife, economic contributions, travel management, recreation, and timber harvest levels. The BLM accepted scoping comments through July 5. Additional meetings will be scheduled if requested.

6. **Please provide BLM's position (or the Administration's position) on proposals to transfer most of BLM's O&C lands to the Forest Service to be managed in trust that would authorize the harvest of significantly more timber than BLM's proposed "Western Oregon Strategy"?**

Response: Those proposals have not been reviewed within the Administration for the purpose of developing a position.

7. **Has BLM provided any written feedback or comments about the U.S. Fish & Wildlife Service's recently released proposed critical habitat designations for Northern spotted owl? Please provide the Committee on Natural Resources with a copy of all such written comments.**

Response: A copy of the BLM's written comments on the proposed critical habitat designation is attached *(see attachment 2)*.

8. **In June 2010, the Arcata, California BLM field office announced events to celebrate the National Lands Conservation Service, including a slide presentation featuring photographs taken by Mr. Ron LeValley, senior biologist for Mad River Biologists. (see:htm:llwww.blm.gov/ca/st/enlinfo/newsroom12010/junelNC1073trinidadcelebration.**

html). Publicly available materials also suggest that the BLM has had interaction with Mr. LeValley and Mad River Biologists relating to endangered species act training and other activities. Please identify all sources of funds that the BLM has provided to either Mr. LeValley and Mad River Biologists and all activities that BLM staff have participated in which Mr. LeValley and/or Mad River Biologists have participated.

Response: A response was provided to the Committee on June 8, 2012.

9. **On February 14, BLM circulated an electronic communication inviting 49 individuals to a "public meeting" on February 18th with Secretary Salazar to "discuss the progress that has been *made*, and is ongoing, to conserve and protect the San Juan Islands, since his last public meeting on April 27, 2011." How was the list of names of invitees assembled and who was consulted regarding the public meeting before the event was announced by the Interior Department? Can you provide the Committee with a complete invitation list of email addresses sent by BLM staff for this event?**

Response to Bishop 9: The lists were compiled from previous requests made by stakeholders who asked to be notified about projects in the San Juan Islands, and included those who attended previous meetings or otherwise specifically expressed interest in special designations related to the San Juan Islands. In addition, the BLM also included people and organizations who may not have officially notified us, and others who would be interested, such as County Commissioners, Tribal member, Federal, State, and local governments, as well as chambers of commerce. A list of invitee names and organizations, where appropriate, is included below. .

San Juan Invitation List

Aitken	Shona	Wolf Hollow Wildlife Rehabilitation Center
ALBOUCQ	NANCY	
AVENT	CAROL & JOHN	
BARSH	RUSSEL	KWAIHT
BARTON	LINDA	
Bayas	Kristina	San Juan County Parks
Beaudet	Paul	(not provided)
Behnke	Charlie	Lopez Island Conservation Corps
Bell	Liz	(not provided)
Bell	Elizabeth	Wilburforce Foundation
BENTLEY	BARBARA	
BERGQUIST	JIM	TURN POINT LIGHTHOUSE PRESERVATION SOCIETY
BISHOP	BYRON	
Borman	Lincoln	San Juan County Land Bank
BORMANN	LINCOLN	SAN JUAN COUNTY LAND BANK
Brast	Cyndi	
Broadhurst	Virginia	Northwest Straits Commission

BROWN	BARBARA	
Bruels	Glen	
Buffum	Stephanie	Friends of the San Juans
Charles	Frances	Lower Elwha Tribal Council
CHARNLEY	CEDAR	
Cladoosby	Brian	Swinomish Indian Tribal Community
CLARK	TIM	FRIENDS OF LOPEZ HILL
Clausen	Debra	San Juan Preservation Trust
COWAN	TOM	
Cultee	Cliff	Lummi Indian Council
DeVaux	Nancy	
DILLING	CYNTHIA	
Doran	Molly	Skagit Land Trust
Dye	Paul	The Nature Conservancy
Dykstra	Peter	The Wilderness Society
FISHER	PETER	EASTSOUND PLANNING REVIEW COMMITTEE
Gage	Ted	Samish Indian Nation
GAYDOS	JOE	THE SEADOC SOCIETY
Graves	David	National Parks Conservation Association
GREACEN	CHRIS	
HALL	BRUCE	
Hares	David	
HARRIS	MIKE	ORCAS ISLAND FIRE DEPARTMENT
HELFMAN	GENE	
Hopkins	Deborah	San Juan Islands Visitors Bureau
Hudson	Linda	Keepers of the Patos Light
HUSTON	ANNIE	
Illg	Liz	San Juan Islands Visitors Bureau
JACKSON	JUDY	
Jacobson	Robin	San Juan Islands Visitor's Bureau
JONAS	MIKE	TURN POINT LIGHTHOUSE PRESERVATION SOCIETY
Kelly	Robert	Nooksack Tribal Council
Kerr	Sally	San Juan County Parks & Rec. District
KIVISTO	SHARON	SAN JUAN ISLANDER.COM
Koski	Kari	Soundwatch
KYSER	CONNIE	
LAUSCH	ANGIE	
LAWSON	GEORGE	
LEE	RICH	
Lekanof	Debra	Swinomish Tribe

Lela	Asha	Islanders for NCA
LeMieux	Adam	Cong. Rick Larsen's Office
Leschner	Lora	Pacific Coast Joint Venture
Lubenau	Carolyn	Snoqualmie Tribe
MACDONALD	LESLIE	
Mai	Marilee	Snoqualmie Tribe
MARLER	STEVE	
MARQUIS	CELIA	LOPEZ ISLAND FAMILY RESOURCE CENTER
McCOY	NANCY	
Merkel	Joel	Sen. Cantwell's Office
MEYER	JUDY	
MILLER	RHEA	
MUCKLE	SUSAN & MIKE	
MURPHY	MADRONA	SAN JUAN CHAPTER NATIVE PLANT SOCIETY
Myhr	Bob	Islanders for NCA
Neill	Jim	Washington State Parks
NISHITANI	LOUISA	
NORTH	SORREL	
OLSON	SANFORD	
PAXSON	CHAUNCY & MARY ELIZABETH	
PRINCE	MILLA	
PRINCE	CHARLES	
Reeve	Sally	Islanders for NCA
Reeve	Tom	Islanders for NCA
Rettmer	Rebecca	Lummi Island Heritage Trust
ROSS	MARILYN	
SAEJI	CEDARBOUGH	
Schlund	Ted	Washington State Parks
SECUNDA	KIM	
Sheldon	Melvin, Jr.	Tulalip Board of Directors
SPEES	MARCIA	
Stephens	Jamie	San Juan County Council
Stephens	Jessica	INCA
Strathmann	Richard	UW Friday Harbor Lab
Sullivan	Jeremy	Port Gamble S'Klallam Tribal Council
Sweet Dorman	Lois	Snoqualmie Tribe
Taylor	Kirman	Lopez Community Trails Network
TAYLOR	KIRMAN	LOPEZ COMMUNITY TRAILS NETWORK

Varga	Frank	Skagit Valley Herald
VERNON	SUSAN	
VYNNE	ROBER & MELISSA	
Walker	Elaine	Anacortes American
Wasserman	Larry	Swinomish Tribe
WAUGH	SUSAN	
Wedow	Amanda	Lopez Island Conservation Corps
WESTON	SHANN	WSU BEACHWATCHERS
Weston	Shann	SJ Beachwatchers
WIGRE	VERONICA	
Wilk	Denise	Keepers of the Patos Light
Wilk	Daniel	Orcas Island Eclipse Charters
WINDROPE	AMY	SAN JUAN INITIATIVE
Wooten	Thomas	Samish Nation
Wuthnow	Dona	San Juan County Parks
Wuthnow	Dona	San Juan County Parks
YARNALL	BRUCE	
Ybarra	Uriel	Sen. Murray's Office
		FRIDAY HARBOR POWER SQUADRON
		LOPEZ COMMUNITY LAND TRUST
		LOPEZ ISLAND YACHT CLUB
		ORCAS ISLAND COMMUNITY FOUNDATION
		SJ Preservation Trust

10. On March 4th, BLM's office in Idaho announced it was deferring for two years action on a final environmental impact statement on the China Mountain wind project on the Idaho/Nevada border due to "concerns" over sage grouse habitat. The draft EIS was circulated for public comment almost a year ago. Can you please advise why this decision will require further review and outline the data/science used for revisions to resource management plans relating to sage grouse?

Response: The proposed China Mountain Wind Energy project is sited within one of two important sage-grouse strongholds essential for the long-term persistence of greater sage-grouse, and it lies within a large preliminary priority habitat area that contains approximately 42 percent of the sage-grouse population in the Western Association of Fish and Wildlife Agencies' sage-grouse management zone IV. The BLM completed and released a Draft EIS analyzing the project on April 8, 2011. Comments on the Draft EIS by the U.S. Fish and Wildlife Service and both Nevada and Idaho state game management agencies, as well as the Shoshone Basin Sage-grouse Local Working Group, have stated that the project (as proposed in April 2010) could have more than minor adverse effects to sage-grouse due to the importance of the involved habitat, potential habitat fragmentation issues, population impacts, and the unfeasibility of mitigation for

these effects on remaining populations. The Fish and Wildlife Service determined in 2010 that the Greater Sage-Grouse was warranted but precluded from listing under the Endangered Species Act. In a subsequent stipulated settlement agreement, the Service indicated it would re-evaluate the status of sage-grouse by September 30, 2015. The BLM is working nationally and in Idaho, with partner entities, to conduct analysis and amend our Resource Management Plans to expand or include conservation measures which, if fully implemented, may make it unnecessary to list the Greater Sage-grouse under the ESA. We anticipate completing this work in 2014, prior to the Service's re-evaluation and decision in 2015.

ATTACHMENT 1

United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
http://www.blm.gov

The Honorable Doc Hastings
Chairman
Committee on Natural Resources
House of Representatives
Washington, DC 20515

MAR - 7 2012

Dear Mr. Chairman:

Thank you for your January 23, 2012, letter regarding issues related to Washington State Public Utility District's (PUD) Federal Energy Regulatory Commission (FERC) hydropower license application in Okanogan County, Washington. It was a pleasure to meet with you and Chairman Hastings and discuss this in person.

You identify concerns with the mitigation measures that the Bureau of Land Management (BLM) recommended to FERC for licensing the Enloe Dam hydropower project. Although the BLM recommended these measures to FERC as allowed by section 10(a) of the Federal Power Act, FERC did not include them as terms in its May 2011 draft or August 2011 final Environmental Assessment (EA). By law, these items are not mandatory, and FERC is not required to include them in the license.

Most of the lands within the project area are Federal lands managed by the BLM. Therefore, the PUD must obtain a right-of-way (ROW) from the BLM to construct and operate the project. Your letter mentioned that the PUD is concerned the BLM will require the mitigation measures that FERC rejected as stipulations for the ROW. Such a determination cannot occur until the BLM completes its processing of the ROW application and its review of the FERC EA and license.

The BLM will consider costs associated with the stipulations and mitigation in its decision on the ROW grant and will work with the applicant to seek agreement on these matters to the extent possible before offering the grant. If the BLM makes a determination to include these measures, absent such agreement, the PUD will have an opportunity to appeal the ROW grant.

I appreciate your continued interest and the BLM looks forward to continued engagement with the PUD and FERC on the ROW application. A similar reply was sent to Representative McMorris Rodgers.

Sincerely,

Robert V. Abbey
Director

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Oregon State Office
P.O. Box 2965
Portland, Oregon 97208

JUL 06 2012

In Reply Refer To:
6841, 6842 (OR910)

Memorandum

To: Regional Director, Pacific Northwest Region
U.S. Fish and Wildlife Service

From: Michael S. Mottice
Acting State Director, Oregon/Washington

Subject: Comments on the Proposed Rule for Revised Northern Spotted Owl Critical Habitat

The Bureau of Land Management (BLM) appreciates the opportunity to provide comments on the *Proposed Rule for Revised Critical Habitat for the Northern Spotted Owl* (see Attachment 1) and the associated Economic Analysis (Attachment 2). Our main comments are as follows:

- The BLM agrees that the Fish and Wildlife Service's (Service) use of a suite of models to assess different configurations of habitat helps facilitate the objective evaluation of the proposed designation. We would like to continue to work with the Service to refine the proposed designation considering the very detailed, stand-level information we have for the BLM-managed lands as a result of our recent and on-going land use planning efforts.

- The Final Rule for Critical Habitat will be an important consideration in all subsequent biological assessments prepared by the BLM and reviewed by the Service. The BLM believes the final effects determination should be based on the relative amount of change at either the subunit or Critical Habitat Unit (CHU) scale, the type of impact, the Primary Constituent Element (PCE) impacted relative to its availability and the longevity of the effect on the PCEs, and the ability of the subunit/CHU to provide the functions for which it was included. The BLM recommends that the Final Rule include a more explicit description of how subsequent land treatment actions which affect Critical Habitat would be evaluated.

- The BLM also appreciates the Service's recognition in the proposed rule that the application of silvicultural techniques can enhance the development of desirable structural characteristics and that active management is necessary in some areas to restore ecosystem function and to improve forest resiliency in the face of disturbance processes.

such as fire, and climate change. The BLM would like to continue working with the Service to better describe, in the Final Rule, how active forest management in Critical Habitat might be used to achieve conservation goals at the landscape level. This will not only facilitate project planning but will inform the BLM's ongoing land use planning process.

- Considering that the Federal agencies have land use plans which include conservation measures for the NSO, that our actions are guided by the 2011 Recovery Plan, and that we consult with the Service on all actions which may affect listed species, it would seem that the additional conservation benefit of designating Critical Habitat could be minimal on Federal lands. While we understand the regulatory requirement to designate Critical Habitat, there are additional administrative burdens associated with assessing and consulting on projects designated as Critical Habitat. Therefore, the BLM recommends that the Final Rule include as much clarity as possible on how proposed land treatments would be evaluated in order to reduce the cost of this added administrative process – consulting on the likelihood of adverse modification for actions in Critical Habitat.

- In our review of the economic analysis, we would like to better understand how some of the BLM data were used to determine the effects of the Proposed Critical Habitat (PCH) on sustained yield timber harvest.

We look forward to continuing work with the Service between now and the publication of the Final Rule. If you have any questions, please contact Lee Folliard, Chief, Branch of Forest Resources and Special Status Species, at 503-808-6077.

Attachments

Bureau of Land Management Comments on Proposed Rule for Revised Northern Spotted Owl Critical Habitat
(Attachment 1)

1. Extent of Designation

The Bureau of Land Management (BLM) has reviewed the Proposed Critical Habitat (PCH) rule, the PCH map, and other data associated with the designation of PCH. Based on that review and discussions with the U.S. Fish and Wildlife Service (Service) and other land management agencies, the BLM is providing additional information specific to BLM-managed lands that we believe can further revise and refine the proposed designation. We understand that the Service will use that information in new (updated) runs of its northern spotted owl (NSO) population model.

The Service's process to determine what areas contain the physical and biological features that are "essential to the conservation" of the NSO was necessarily coarse-grained, and evaluation of different possible configurations involved changes on the order of millions of acres. The BLM appreciates the effort the Service went to in order to develop multiple scenarios for possible reserve designs and test them through HexSim, and we understand that the Service did not have the time, due to court deadlines, to explore smaller, targeted changes. The BLM has data for our western Oregon forest lands that allow assessment down to the stand level with the ability to predict stand characteristics and occurrence of spotted owl habitat. The BLM developed an approach to refine the PCH on BLM-managed land using the Service's modeling results (coarse scale) and BLM specific data (fine scale). The incorporation of BLM data provides a potentially more refined representation of how BLM-managed lands can contribute to NSO conservation.

The BLM initially evaluated PCH by focusing on the Service's modeling and how the Zonation model assembled habitat areas. We believe the mechanics of the Service's model process are such that areas of marginal habitat suitability were incorporated. We reviewed the PCH, compared it to BLM-mapped nesting habitat, and believe that the location of some portion of the PCH provides very limited support for NSOs. This is primarily because the lower quality habitat areas occur on the periphery of the designations and do not include the structure likely to support nesting. For this reason, we started our refinement by looking only at the Service's modeling that showed the area incorporating the highest 30 percent relative habitat suitability (Z30). The BLM reviewed the acres and distribution of Z30 from Zonation and the other acres of PCH not in Z30 (PCH minus Z30) by modeling region and BLM ownership. Comparison of HexSim output from the different scenarios suggests that, in most modeling regions, reduction in the area of lower relative habitat suitability (areas $\geq$ Z30) would likely have limited detectable effects on function of the network. The BLM-managed lands in the PCH are a relatively small proportion of the total, and other scenarios with less BLM habitat showed limited detectable changes in HexSim output when compared to the PCH. The BLM Oregon and California (O&C) lands include 10 percent of the PCH but approximately 20 percent of the Z30.

At this time, we are providing an outline of our process to refine the designation on BLM-managed lands in western Oregon (see below). We expect to work with the Service to address

technical questions and provide any other information requested. The BLM recommends that the Service evaluate this refinement through the HexSim modeling process and continue to work with us on iterative refinements based on joint discussion.

Process outline for refinement of PCH on BLM:

a. The PCH was reduced to include only the areas ≤ Z30 (i.e., the 30 percent best habitat). This was done to avoid excluding the best habitat configuration according to the Service's model.

b. The PCH as currently defined roughly follows habitat suitability gradients, resulting in highly convoluted polygons. The BLM reviewed the Z30 polygons and immediate surrounding areas and compared them to BLM maps of NSO nesting/roosting habitat. Our intent was to refine PCH boundaries to create habitat blocks incorporating the Z30 "kernel" and the highest quality habitat as informed by the BLM habitat layers. Where vegetation appeared to provide only low quality habitat but the BLM believed that adding additional habitat was warranted, we added in areas that BLM growth projections indicated were more likely to attain habitat conditions within, approximately, 30 years.

c. The BLM compared the PCH against the BLM habitat layer at the stand level, summed habitat up to the section scale (640 acres), and considered sections that contained ≤ 25 percent nesting/roosting habitat and areas with ≥ 75 percent.

d. Connectivity between the Coast Range and the Cascades and northwestern Oregon and the mid- and southern coast appear to be important. We maintained areas that provided for connectivity on BLM-managed land.

e. Lastly, the PCH was refined to address pragmatic management issues and lack of biological function from small, isolated areas that lack direct connectivity to other areas and/or are too small to support more than one pair of breeding owls.

The combination of revisions described above will result in an overall reduction of PCH on BLM lands; however, we believe it may better incorporate the extant high quality habitat, achieve comparable conservation benefits, and provide for dispersal in areas of concern while removing lower quality habitat that has limited conservation value.

2. Section 7 Consultation/Destruction or Adverse Modification

Section 7(a)(2) of the Endangered Species Act of 1973 requires Federal agencies to consult with the Service to ensure that Federal actions do not result in adverse modification or destruction of Critical Habitat. Section 7 prohibits actions that would jeopardize the species but provides a process whereby Federal agencies may obtain a permit to take individuals of the listed entity incidental to an otherwise lawful activity, provided that such take does not jeopardize the species. There is no take prohibition for Critical Habitat, only the prohibition against adverse

modification or destruction. Therefore, while 50 Code of Federal Regulations (CFR) §402 requires consultation for actions that may affect Critical Habitat, the effects analysis should consider the scale at which the habitat was evaluated for designation.

As we have discussed with the Service, the BLM believes that the consultation determinations of *not likely to adversely affect* or *likely to adversely affect* should consider the scale and intensity of alteration of Critical Habitat. Formal consultation is warranted when a proposed project is sufficient in complexity, intensity, or scale that the more detailed and rigorous analysis is necessary to ensure that adverse modification would not occur. When a project's effects are insignificant compared to the scale of the designated Critical Habitat unit, informal consultation is more appropriate. The BLM believes that constructing a rule with this in mind is both more efficient and more in keeping with the intent of active management in Critical Habitat.

To further facilitate the consultation process, the BLM recommends a more explicit description of the scale at which primary constituent elements were estimated to be present and the scale at which NSOs are believed to perceive habitat and a discussion of the relative importance of the PCEs to the conservation of the NSO (nesting/roosting habitat is more limited than dispersal and takes much longer to develop). We agree that the 500-acre scale described in the proposed rule is a good starting point for initial assessment of effects. However, this should not be confused with the core area analysis conducted on individual NSO sites to determine likelihood of take. Beyond the initial 500-acre assessment, the effects analysis should consider the type of impact, the longevity of the effect, the ability of the subunit/CHU to provide the functions for which it was included, and the relative amount of change at either the subunit or CHU scale. Providing operational direction regarding effects analysis and consultation procedures can be challenging, but the BLM believes that this is an important consideration and hopes that we can continue to work on refining this direction in the Final Rule.

3. Active Management and Ecological Forestry

The proposed rule provides a strong scientific basis for promoting the concept of ecosystem management principles and active forest management to contribute to the conservation of NSO habitat. The BLM supports these concepts and encourages the Service to continue this emphasis in the final rule. The BLM understands the Service's interest in incorporating the Endangered Species Act's direction to conserve the ecosystem on which the NSO depends and the guidance in the Recovery Plan and PCH rule to undertake actions to restore ecological processes and patterns and enhance resilience and resistance to unnatural disturbance regimes. It will be important for the BLM and the Service to work closely together on future land management planning to implement active management concepts on a landscape-scale while meeting the intent of Critical Habitat function.

It would be helpful if the Final Rule included more explicit guidance on the application of active management at a landscape-scale or CHU-scale, particularly in moist forest ecosystems. The Service has identified PCH in certain dry forest areas where NSO habitat occurs as the result of anthropogenic actions (fire suppression resulting in the invasion by true firs, etc.). Restoration of ecological function and vegetation diversity and distribution more similar to historic conditions would necessarily eliminate, permanently in some cases, stands that are currently

providing NSO habitat. Fully articulating the rationale for including these areas in the Final Rule and clarifying expectations regarding the goals of forest restoration will be important to facilitating management in these areas.

The proposed rule indicates that the Service sought to "ensure sufficient spatial redundancy in Critical Habitat within each recovery unit." This "redundancy" is mentioned in the proposed rule, but the extent and intent is not explored in the CHU or subunit discussions. Inclusions of redundant habitat and habitat function make ecological sense, especially in the more dynamic fire-prone areas, and have been incorporated into other Critical Habitat designations. However, it would be helpful if the Service provided clarification regarding the purpose and expectations for any redundant inclusions.

The BLM appreciates that the Service has engaged the BLM and the U.S. Forest Service in assisting with Item #3 of the Presidential Memo on Proposed Revised Habitat for the Spotted Owl: Minimizing Regulatory Burdens. Item #3 provides direction to develop clear guidance for evaluating logging activity in Critical Habitat. The BLM would like to continue working with the Service to better describe how active forest management in Critical Habitat will be evaluated. This will not only be of great help in the consultation process but will assist in the BLM's project planning process.

4. Definitions

While some terms are necessarily qualitative, we would ask that the Service review its use of terms, particularly for forest structural classes (e.g., old, old growth, late seral, mature) and provide citations or support for the terminology used. The BLM recognizes that there are multiple definitions available and none are absolutely correct, but it is that very breadth that makes it important to identify which definition is being used. Un-sourced, descriptive terms can and do result in miscommunication and misunderstandings at the implementation level. By providing the source for the definitions and consistency in use of terms, many of these miscommunications and misunderstandings could be minimized.

5. GIS Data Layers and Ownership

The GIS data provided by the Service for the 2012 revised PCH uses a different ownership boundary for BLM-managed lands in western Oregon than what we maintain as our official ownership boundaries. These two versions of BLM-managed lands do not overlap exactly and will cause future reporting, analytical, and implementation challenges for the BLM. We encourage the Service to review its data layers, obtain correct ownership boundaries, and otherwise ensure the final product contains a more useable and accurate depiction of the Service's Critical Habitat boundaries. The BLM can provide the Service with specific issues discovered during review of the PCH map products.

Spatial misalignments between the PCH polygons (delivered on March 1, 2012), the Zonation results (delivered on April 25, 2012), and the BLM's corporate surface management agency (SMA) dataset create a highly fractured geographical representation of the landscape. A spatial intersection of PCH and SMA in western Oregon reveals more than 19,000 PCH polygons with

an area ≤ 1.0 acre occurring on water, private, State, and Federal lands. Visually, these polygons appear as slivers along the peripheries of the intersected features and could produce inclusion/exclusion errors in the final designation that are not easily resolved. Attempts to correct these misalignments by the BLM and/or other agencies would result in multiple variants of the official version that could not be compared with confidence.

The BLM has provided the Service with SMA data prior to previous NSO Critical Habitat modeling efforts to establish an ownership baseline common to both agencies. The SMA dataset is also available on the Oregon/Washington BLM, public website. We hope that the Service will consider reviewing its methodology to identify additional processing or quality assurance steps that will ensure final designations are spatially aligned with ownership patterns. This is particularly important if SMA is used as a parameter in any step of the modeling process. If the Service decides to use an alternative SMA GIS layer to inform PCH, it would be beneficial if the Service would provide a copy to the BLM.

Bureau of Land Management Comments on the Economic Analysis for Revised Northern Spotted Owl Critical Habitat
(Attachment 2)

The Bureau of Land Management (BLM) provided data to the U.S. Fish and Wildlife Service's (Service) contractor for each subunit for short term effects on timber harvest.

- Reserved and Matrix Acres by the BLM classification of northern spotted owl habitat and an age-based threshold for over and under 80 years of age.
- Thirty years of projected harvest acres and volume for harvest for each allocation by thinning and regeneration harvest.

When we reviewed the data displayed in Exhibit 4-6 and Exhibit 4-8 of the Economic Analysis, we were unable to discern how our data were used. We would also like to understand how the Service considered the effects on long-term, sustained yield timber production due to the shift in management objectives for the Matrix lands that are proposed to be designated as critical habitat.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

AUG 20 2012

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 United States Fish and Wildlife Service to questions submitted following the Subcommittee's Thursday, May 17, 2012, hearing on *"H.R. 3065 and H.R. 3706 titled: Target Ranges; Virgin Islands CFO."*

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

COMMITTEE ON NATURAL RESOURCES
Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs
May 17, 2012 Legislative Hearing

U.S. Fish and Wildlife Service

Chairman John Fleming of Louisiana

1. **What is the number of public target ranges in the United States? How many are located on property under the jurisdiction of the Department of the Interior?**

   Response: The Department of the Interior does not track the number of public target ranges. The National Shooting and Sports Foundation or other similar organizations may track the number of public target ranges in the United States.

   There are no public target ranges on lands administered by the U.S. Fish and Wildlife Service (Service). Several units of the National Wildlife Refuge System have shooting or archery ranges within their boundaries, but none of the shooting ranges are open for public use. These ranges are primarily used as Federal, state, and local law enforcement qualification ranges. The archery target areas are generally closed for public use; however, some are occasionally used for special events, such as youth archery education programs.

2. **How many Americans are receiving training each year at public target ranges? What is the value of this training and how does the availability of these practice facilities enhance public safety during an actual hunt?**

   Response: The Service does not maintain data on the number of Americans receiving training at public target ranges.

   Shooting, whether with gun or bow, is an American tradition. Creating opportunities for young Americans to experience this tradition, and pursue the goal of "marksmanship," also provides opportunity for them to learn about responsibility, about dedication, and about accomplishment. The Department supports H.R. 3065 because it will help facilitate such opportunities.

3. **How will changing the amount of funds available to states under the Pittman-Robertson Program facilitate the construction and maintenance of public target ranges? What types of programs are likely to be affected by this diversion of funds?**

   Response: The amount of Pittman-Robertson Federal funds available to each state will not be affected by H.R. 3065 since the formulas which apportion the Pittman-Robertson funds to each state and territory are not changed. Based on existing formulas, states are apportioned Pittman-Robertson funds in three amounts: (1) Wildlife Restoration, (2) Basic Hunter Education programs, and (3) Enhanced Hunter Education and Skills programs. Each state fish and wildlife agency will continue to have discretion over selecting eligible activities and the funding level it will use for its share of Pittman-Robertson funds. Generally, the Pittman-

Robertson funds used for wildlife restoration are a primary portion of the state fish and wildlife agency's on-going operations. Section 4(c)(3), which modifies the period for a state to obligate funds for the acquisition, construction, or expansion of a public target range from 2 years to 5 years, will allow a state to plan for a major project while minimizing the impact to on-going operations.

4. **What is the cost to our taxpayers by increasing from 75 to 90 percent the amount of Pittman-Robertson funds that can be used by the states?**

Response: There is no cost to taxpayers by changing the maximum amount of Pittman-Robertson funds that may be used for a shooting range from 75 to 90 percent. The total program funding will not be affected by increasing the Federal share to 90 percent. The state (non-Federal) share may decrease from 25 to 10 percent under H.R. 3065. This decrease would provide a cost savings to the states and provide an incentive to invest in program projects.

5. **What is the rationale and need for Section 5 of H. R. 3065 that stipulates that the United States "Shall not be subject to any civil action or claim for money damages for any injury to or loss of property, personal injury, or death caused at a public target range"?**

Response: Our understanding is that State fish and wildlife agencies believe one of the major objections to operating public target ranges on Federal land is the local Federal land manager's fear of being sued. Many states have similar limits of liability within their state laws. The states proposed this wording to remove the liability and suit objection raised by local Federal land managers and to afford the Federal agencies liability protection similar to that which the state agencies enjoy.

6. **What is the status of the updated National Survey of Fishing, Hunting and Wildlife-Associated Recreation? Do you expect that when completed it will indicate that there are now more or less than 12.5 million people who enjoyed hunting in 2006? How do we encourage greater outdoor recreation?**

Response: The U.S. Census Bureau recently completed data collection for the latest update of the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation. The Census Bureau started with a sample of over 50,000 households to identify a sample of sportspersons (e.g., anglers and hunters) and wildlife watchers (e.g., observers, feeders, and photographers). The Census Bureau then collected detailed information on participation and expenditures in three different interview waves in April 2011, September 2011, and January 2012. Data collection was completed May 25, 2012. Preliminary information on the estimated number of persons 16 years of age and older who hunted in the United States in 2011 will be available in August 2012. The Service anticipates that the number of people 16 years old and older who hunted has increased since 2006.

The National Survey does not collect information on ways to encourage greater participation in fishing, hunting, and wildlife-associated recreation. However, past surveys have asked

why people did not participate in this type of recreation or did not participate as much as they would have liked. The major reasons for not participating in outdoor recreation have been not enough time and work/family obligations. Providing close-to-home outdoor recreation opportunities may help people who do not have the time or resources to travel significant distances. Increased support for youth outdoor recreation programs in urban areas also may encourage increased participation in outdoor recreation. Urban programs often need assistance in providing support services such as transportation, staff, and supplies in order to take children to nearby parks, natural areas, and outdoor recreation programs.

7. **What is the cost of completing this nationwide survey?**

   Response: The survey costs $12 million to complete. The greatest cost is attributed to acquiring state-level reliable data for the 50 states.

8. **How significant is the accumulation of lead at public shooting ranges? Have there been any peer reviewed studies which have evaluated the impact of lead on wildlife at shooting ranges? What were the conclusions of these studies?**

   Response: The Service does not maintain data on the accumulation of lead at public shooting ranges. We defer to the U.S. Environmental Protection Agency on this matter.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

TAKE PRIDE IN AMERICA

AUG 2 1 2012

The Honorable Rob Bishop
Chairman
Subcommittee on National Parks, Forests and
Public Lands
Committee on Natural Resources
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses to follow-up questions regarding H.R. 624, "To establish the First State National Historical Park in the State of Delaware, and for other purposes" from the legislative hearing on Thursday, June 28, 2012. These responses have been 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 Raul Grijalva, Ranking Minority Member, Subcommittee on National Parks, Forests and Public Lands

Enclosure

Questions for the Record
Subcommittee on National Parks, Forests and Public Lands
House Committee on Natural Resources
Legislative Hearing on June 28, 2012
Witness: Victor Knox, Associate Director, Park Planning, Facilities and Lands, National Park Service

Question 1

In your written testimony regarding H.R. 624, you mention that the Lewes Historical District and Ryves Holt House are listed on the National Register of Historic Places based primarily on its fine examples of Victorian architecture. You go on to say that you do not believe the Ryves Holt House is national significant, nor meets the park's scope. According to the National Historic Places continuation sheet (http://pdfhost.focus.nps.gov/docs/NRHP/Text/92000462.pdf)–the Ryves Holt House was built in 1665- making it the oldest house in Delaware and one of the oldest in the nation. Would you agree that this is far earlier than the Victorian architecture time period? The document goes on to say that the Ryves Holt House was built by or for Dutch Mennonites- some of the earliest Dutch settlers in Delaware. Would you agree that this fits the early Dutch settlement theme of the national park? The document goes on to say the house survived the almost total destruction of Lewes by Captain Thomas Howell in 1673, who had been sent by Maryland's Lord Baltimore to wipe out the settlement during a brief period of Dutch control. Would you agree that this fits the early settlement theme of the national park? The document goes on to say the house was the home of Ryves Holt from 1723 until his death in 1763. Ryves Holt was the High Sheriff of Sussex County, Collector of the Public Levy, Justice of the peace, King's Attorney, Clerk of the Court, Speaker of the Senate Council and Chief Justice of Delaware at various times in his life. Would you agree that this fits with the park's scope of early settlement to first statehood? And finally, is there any law that specifically requires a site must be a national landmark to be included in a national park? Has there ever been a site that has been recommended by the Park Service or been included in a national park that was not previously a historic landmark?

Response: The Ryves Holt House is listed on the National Register of Historic Places as a contributing structure within a locally significant district. Its history fits with the early settlement theme of the proposed park. However, in order to meet the National Park Service's criteria for inclusion in the National Park System, a site must possess national significance.

One of the criteria used to determine national significance is the ability of the property to convey its historical associations or attributes. While the interior of the Ryves Holt House retains evidence of the original 17th century structure, the house has undergone extensive additions and changes over the succeeding centuries. The original one-room dwelling has been enveloped in succeeding periods of construction. Because the original structure is not visible and the current structure does not convey the historic character related to early Dutch settlement or the period in which Ryves Holt was in residence, the property does not meet the required national significance criterion for inclusion in the National Park System.

There is no law that requires a site to be a National Historic Landmark (NHL) in order to be included in the National Park System. Many nationally significant sites that are not NHLs have been recommended for inclusion by the NPS, or added to the National Park System by Congress.

Question 2

Regarding H.R. 624, there has been some recent press about a parcel of land known as Woodlawn in northern Delaware as being available for donation to be part of the National Park System. Currently, the Woodlawn property, located near Brandywine State Park in Delaware, is not listed as a site in H.R. 624. Did the National Park Service study the property as part of the Special Resource Study for H.R. 624? If not, why not and is the National Park Service studying the historical significance of the property currently? Does the National Park Service believe this Woodlawn property fits within the scope of H.R. 624, and how does the National Park Service believe it does fit the scope?

Response: The National Park Service did not consider the Woodlawn property as part of the Delaware National Coastal Special Resource Study. This property is not currently listed in the National Register of Historic Places and was not identified by the Delaware State Historic Preservation Office as potentially being nationally significant for its association with the themes considered by the study.

The National Park Service has not made a determination of the Woodlawn property's national significance or its potential to fit into the themes outlined in the study. However, a study of the property initiated by The Conservation Fund suggests the property may have the potential to meet the criteria for national significance.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

AUG 24 2012

The Honorable Don Young
Chairman,
Subcommittee on Indian and
Alaska Native Affairs
Committee on Natural Resources
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Management to written questions submitted following the March 20, 2012, legislative hearing on H.R. 4027, clarifying authority granted under the Act entitled "An Act to define the exterior boundary of the Uintah an Ouray Indian Reservation in the State of Utah, and for other purposes," and H.R. 4194, amending the Alaska Native Claims Settlement Act to provide that Alexander Creek, Alaska, is and shall be recognized as an eligible Native village under that Act, 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 Dan Boren
Ranking Member

Questions for the Record
March 20, 2012 hearing
House Natural Resources Committee
Subcommittee on Indian and Alaska Native Affairs

H.R. 4027

1. The Bureau of Land Management (BLM) testified that the Department could not support the bill. The BLM identified two reasons for the Department's opposition: I) that its reserved interest in minerals exchanged would terminate in 30 years, and 2) that it did not want to lock in the legislation a federal royalty rate that might change in the future. The BLM stated that that Department needed these provisions changed to protect the interests of the federal government.

The Department's position does not seem to account for the federal government's interests in maintaining its trust responsibility to the Tribe including protection of tribal natural and cultural resources, and the Department's long-standing policy, since 1948, of seeking return of Hill Creek Extension lands to tribal ownership. In addition, the Department's concerns about these two issues seem speculative compared to the very real benefits that would accrue to the Tribe, Utah Public Schools, and the federal treasury when the exchanged minerals are developed in the near future as the Tribe and SITLA have already agreed to do.

The BLM's testimony did not describe how the Department balanced these competing interests of the federal government. It appears that within the Department, tribal interests come after all others, which seems to be the case here. Please describe in detail how it is that speculative concerns about mineral development are prioritized over the tribal trust responsibility, protecting tribal cultural resources, and the Department's long-standing policy of returning Hill Creek Extension lands to the tribe.

The Department of the Interior supports the goals of H.R. 4027 and would like to work toward the relinquishment and selection of mineral estates on the Hill Creek Extension of the Uintah and Ouray Reservation in Uintah and Grand Counties in Utah. The concerns of the Department are not with the provisions benefitting the Ute Indian Tribe, but rather with the provisions that provide an unequal benefit to the Utah State and Institutional Trust Lands Agency (SITLA).

The underlying 1948 and 1955 Acts, as well as the Federal Land Policy Management Act (FLMPA), require that transfers of land be of equal value. H.R. 4027 provides for an acre-for-acre (rather than equal value) transfer. The legislation provides for an overriding interest in the lands' mineral values in an attempt to address unequal value of the parcels to be exchanged. However, the overriding interest is undermined by other provisions in H.R. 4027 that put significant limits on that overriding interest to the benefit of SITLA and to the detriment of the American taxpayer. Specifically, we cannot support the 30-year limitation and the static royalty rate included in the overriding interest. These provisions do not directly benefit the tribe.

2. What is the current and past ten (10) years of revenue from Federal mineral leasing and production of Federal minerals on the Hill Creek extension of the Uintah and Ouray Indian Reservation in the State of Utah?

The Department of the Interior's Office of Natural Resources Revenue provided the information in the attached table on reported revenue from Federal oil and gas leases within the Hill Creek Extension of the Uintah and Ouray Indian Reservation for Fiscal Years 2002-2011.

Reported Royalty Revenue for Leases in the Hill Creek Extension of the Uintah and Ouray Indian Reservations Fiscal Years 2002-2011

Revenue Type	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Royalty	$ 17,494,746.08	$ 17,347,804.01	$ 24,208,460.02	$ 34,367,766.39	$ 50,228,378.32	$ 39,348,876.31	$ 56,877,846.94	$ 33,269,081.21	$ 39,371,193.31	$ 43,403,869.95
Other Royalties *	$ 343,833.43	$ 1,090,655.43	$ (23,547.75)	$ 649,242.09	$ (612,770.76)	$ 990,754.28	$ 3,161,640.82	$ (2,737,725.82)	$ 877,294.00	$ 11,786.31
Other Revenues **	$ 3,473.00	$ (24,170.38)	$ 1,907.63	$ 3,243.56	$ 2,555.52	$ 1,583.67	$ 1,002.00	$ 400.00	$ 1,680.00	$ 400.00
Bonus	$ 115,200.00	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Rent	$ 34,685.39	$ 12,070.50	$ 5,815.50	$ 3,099.50	$ 2,223.50	$ (1,156.50)	$ (2,120.50)	$ 843.50	$ 863.50	$ 743.50
Total	**$ 17,991,937.90**	**$ 18,426,359.56**	**$ 24,192,635.40**	**$ 35,023,351.54**	**$ 49,620,386.58**	**$ 40,340,057.76**	**$ 60,038,369.26**	**$ 30,532,598.89**	**$ 40,251,030.81**	**$ 43,416,799.76**

* Estimated Royalties and Settlement Payments

** Minimum Royalty Payments

H.R. 4194

1. Please describe the regulatory and judicial process under which Alexander Creek became a Group instead of a Village Corporation.

Alexander Creek was not listed as an eligible village corporation in section 11(b)(1) of ANCSA. For groups like Alexander Creek that claimed village status but were not listed in section 11 of ANCSA, the Secretary of the Interior had 2½ years after passage of ANCSA, until June 18, 1973, to determine if the group met ANCSA village eligibility criteria under section 11(b)(3) of the Act. One of those criteria is that twenty-five or more Natives were residents of an established village on the 1970 census enumeration date [April 1, 1970].

Initially, the Bureau of Indian Affairs (BIA) certified Alexander Creek as an eligible ANCSA village with 31 members. That decision was appealed by the State of Alaska and others. The appeal of the Alexander Creek eligibility decision was filed with the now defunct Alaska Native Claims Appeal Board (ANCAB) and was assigned to an Administrative Law Judge (ALJ) for a full hearing. In an open proceeding, the ALJ heard testimony and ultimately made a decision overturning the BIA finding.

Following the ALJ hearings, the ANCAB concurred with the recommendation of the ALJ to overturn the BIA finding, which was forwarded to the Secretary of the Interior and accepted. Subsequent judicial review of this case by federal trial and appeals courts in Washington, D.C. (discussed in answer to question 2 below) found that the ANCAB appeal procedure violated the provisions of ANCSA calling for full participation of the Native corporations as well as basic principles of fairness under the Due Process provisions of the Constitution. Accordingly, the matter was remanded to the Secretary of the Interior for a redetermination of village eligibility.

Following the D.C. Circuit remand, on December 17, 1979 (discussed in answer to question 2 below), a settlement agreement between the Secretary of the Interior, Cook Inlet Region, Inc., and Alexander Creek certified Alexander Creek's status as a Native Group. Section 1432(d) of the Alaska National Interest Lands Conservation Act of 1980 both authorized the December 1979 settlement agreement and directed the Secretary to certify Alexander Creek as a Native Group.

2. On two occasions, the U.S. Court of Appeals for the Ninth Circuit ordered the Department of the Interior (Department) to reinstate Alexander Creek's Village status? Why did the Department not reinstate such Village status to Alexander Creek?

The Department of the Interior is only aware of two federal court decisions involving Alexander Creek's status under ANCSA. Neither of these two cases were appeals to the Ninth Circuit.

The first decision was from the United States District Court for the District of Columbia, *Koniag, Inc. v. Kleppe*, 405 F. Supp. 1360 (D.D.C. 1975). The District Court decision dismissed the appeal challenging the BIA determination that Alexander Creek was an eligible village corporation due to the lack of the State of Alaska's standing to make the appeal, and found certain procedures used by the Department of the Interior were in error.

That case was then appealed to the United States Court of Appeals for the D.C. Circuit, *Koniag, Inc. v. Andrus*, 580 F.2d 601 (D.C. Cir. 1978), cert. denied *Koniag, Inc. v Andrus*, 439 U.S. 1052 (1978). Among other rulings, the D.C. Circuit found the State of Alaska had standing to challenge the Alexander Creek BIA decision. The Court also found certain proceedings by ANCAB violated ANCSA and principles of Due Process, and remanded the cases to the Secretary of the Interior for a redetermination of the eligibility of Alexander Creek (and other groups claiming village status). Instead of a redetermination, the parties settled the claims by agreeing that Alexander Creek would have Native Group status under ANCSA.

3. Is it fair to say a mistake was made in counting the number of Native residents of Alexander Creek? Who is responsible for the mistake: the Department, Congress, or a nongovernment entity?
Initially, the BIA certified Alexander Creek as an ANCSA village corporation with 31 members. The BIA decision was appealed to the ANCAB which referred the case to an ALJ for hearing and found there were only 22 qualifying residents of Alexander Creek on the relevant date of April 1, 1970. The Secretary of the Interior accepted the decision of ANCAB and affirmed the finding that Alexander Creek did not meet the ANCSA requirements for a village corporation. While the decision of the Secretary is the last decision on the eligibility of Alexander Creek, the judicial review (discussed in answer to question 2 above) of Interior's determination found the process used to review the appeal was invalid. The final D.C. Circuit Court decision did not reinstate the BIA determination and did not find the Secretary's count of eligible village residents to be incorrect. Instead, the Circuit Court decision remanded the matter to the Secretary for a redetermination of the eligibility of Alexander Creek as an ANCSA village corporation. That redetermination was never made, however, because before DOI could respond to the DC Circuit's remand order, the matter was settled by the parties' formal agreement in December of 1979 that Alexander Creek is a Native Group under ANCSA.

4. Under ANCSA, a Native Group is entitled to 7,680 acres of land. It is the Chairman's understanding that Alexander Creek has received title to about 1,700 acres of its entitlement lands to date. Why is this the case, and when will Alexander Creek's full entitlement as a Native Group be conveyed? Where does the process currently stand?
The Agreement of December 17, 1979, recognizes that Alexander Creek will receive 7,680 acres of land, subject to the provisions of the agreement. The agreement provided that the BLM would convey to Alexander Creek land that the State of Alaska returned to the United States for the express purpose of re-conveyance to Alexander Creek. The amount of acreage received from BLM, which was about 1,700 acres, would be deducted from the 7,680 acres owed to Alexander Creek under the agreement. The remainder of lands to be transferred to Alexander Creek would come directly from Cook Inlet Region, Inc. (CIRI), not the BLM. It is correct that Alexander Creek has only received approximately 1,700 acres from the BLM toward its ANCSA land entitlement. However, under the December 17, 1979 settlement, the United States has fulfilled its ANCSA obligations by re-conveying the 1,700 acres to Alexander Creek.

The settlement agreement reflects the understanding of all parties that the total conveyance to Alexander Creek may be less than 7,680 acres, and in that instance neither CIRI nor the United States is obligated to provide additional acreage. Due to the December 17, 1979 agreement, the remaining land entitlement is to come directly from CIRI.

5. According to the Department's testimony, "[T]he BLM's Alaska Land Conveyance program is now in a late stage of implementation." According to the President's FY 2013 budget request, BLM has only surveyed and patented about 60 percent of the approximately 150 million acres to which the State of Alaska and the Native community (pursuant to ANCSA) are entitle. On millions of acres the conveyance process has not even yet begun. This amounts to little more than one percent more than the BLM had completed last year, and at twice the funding than has been requested this year. At this rate, it would take roughly 41 more years to see a full conveyance of all Statehood Act and ANCSA lands. In this light, is it fair to consider the conveyance process to be in a "late stage"? (sic)

a. When does the Department predict all State and Native conveyances will be complete?

Substantial survey and final adjudication workload exists before all ANCSA and State entitlements are completed. The Department of the Interior and the BLM are committed to the conveyances of lands, not only to individuals and to corporations formed under the Alaska Natives Claim Settlement Act, but also to the State of Alaska under the Alaska Statehood Act. The BLM will continue to utilize best practices and efficiencies to ensure that the funding appropriated by Congress for the Alaska Land Conveyance program is used in the best manner possible. Utilizing interim conveyances and tentative approvals, the BLM has conveyed legal and functional title to more than 96 percent of State and ANCSA entitlements. Slightly less than four percent of ANCSA and State entitlements remain in federal ownership.

b. How are Alaska Native Corporations supposed to use their land to provide for economic well-being of their shareholders if they do not have all of their land conveyed yet?

The BLM has transferred ownership to more than 96 percent of ANCSA entitlements. The BLM continues to work with Alaska Native Corporations on priority requests that are based on economic need so that title can be transferred where possible to those lands on which a corporation determines immediate need. The title conveyed allows Native Corporations to exercise rights as landowners on the conveyed ANCSA entitlements. Substantial survey and final record adjudication workload exists before all ANCSA and State entitlements are completed and final patents issued.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

INTERIOR DEPARTMENT COMMENT ON NREL PHASE 1 REPORT

The National Renewable Energy Laboratory's (NREL) Report, "Navajo Generating Station and Air Visibility Regulations: Alternatives and Impacts" resulted from a request to NREL by the Department of the Interior (Interior) to develop and objectively synthesize factual information and analyses pertinent to the determination by the U.S. Environmental Protection Agency (EPA) of Best Available Retrofit Technology (BART) in a Federal Implementation Plan (FIP) for NGS. The study focuses primarily on the compilation of additional detailed information and completion of a comprehensive and objective analysis consistent with the five statutorily prescribed BART factors.[1] The study made no presumption about what the appropriate BART determination should be. Rather, its goal was to provide NGS stakeholders, including EPA, with additional data and input regarding the technical and economic feasibility of options for compliance with the Clean Air Act's BART requirement.

In preparing this report, NREL sought information from a wide array of NGS stakeholders, including Interior, the Navajo Nation, Hopi Tribe and other Arizona tribes, Salt River Project, Central Arizona Water Conservation District (operator of the Central Arizona Project [CAP]), the non-federal owners of NGS, conservation organizations and other groups representing local residents and stakeholders, and others.

The time constraints of EPA's BART rulemaking process required that NREL complete this report in a very short time period -- about five months -- to allow EPA sufficient time to review and consider the report prior to issuing a proposed BART rule. In the face of this tight schedule, NREL carried out an extraordinary amount of very high quality work on an extremely complex set of issues to produce this report.

The short time frame for this report was further limited by NREL's independent peer review process for the report. Each chapter of the report was reviewed by an independent outside expert in the subject matter of the chapter. This independent peer review further ensures the objectivity and absence of bias in the NREL report.

Interior has many different interests at stake in both the future of NGS and the BART rulemaking. Through the Bureau of Reclamation (Reclamation), the Department is the largest owner of NGS, with a 24.3% share of the plant's power production. Reclamation also constructed and oversees operation of the CAP. The Bureau of Indian Affairs

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[1] Cost of compliance; energy and non-air-quality environmental impacts of compliance; existing pollution control technology in use at the source; remaining useful life of the source; and the degree of improvement in visibility which may reasonably be anticipated to result from the use of the technology.

supports the interests of the many tribes interested in the future of NGS, including the Navajo Nation, the Hopi Tribe, and the many Arizona tribes which have contracts for CAP water. The National Park Service oversees all the national parks, including the Grand Canyon and the many other parks whose air quality is impacted by NGS emissions. Interior's Office of Surface Mining regulates the Peabody Coal Mine that provides coal to NGS. The U.S. Fish and Wildlife Service, as the agency charged with carrying out the federal Endangered Species Act and other federal wildlife laws, has interests in ensuring the protection of the species under its purview and the clean air and water on which those species depend. In addition, the Secretary's Indian Water Rights Office is in charge of negotiating and implementing Indian water settlements, including a number of settlements involving Arizona tribes that relinquished their senior water rights claims in return for affordable CAP water.

Interior believes that, overall, the NREL report provides an excellent review and synthesis of the many interests and processes that could be affected by EPA's BART rulemaking for NGS. Interior and its agencies are continuing to review both the NREL report and other new reports and information relevant to this proceeding; should any DOI agency find it appropriate to comment on specific matters in the NREL report or elsewhere, it will provide comments directly to EPA.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

AUG 3 1 2012

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 questions submitted following the Subcommittee's Tuesday, March 20, 2012, oversight hearing on "Examining the Proposed Fiscal Year 2013 Spending, Priorities and the Missions of the Bureau of Reclamation and the U.S. Geological Survey's Water Resources Program." We have also included an attachment.

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

Questions for the Record
House Water & Power Subcommittee Hearing
"Examining the Proposed Fiscal Year 2013 Spending, Priorities and the Missions of the Bureau of Reclamation and the U.S. Geological Survey's Water Resources Program"
March 20, 2012

Ranking Member Grace Napolitano

- To date, projects authorized and constructed under the authority of Title XVI have been at specific locations. Do you agree that the program's effectiveness could be enhanced through the development of larger, regional-scale projects?

  Response: Water recycling projects are conceived and developed by communities large and small, from localities like Redwood City, CA, to large municipalities like Los Angeles. Some projects, such as the Inland Empire Regional Water Recycling Project, which was authorized in 2008 and is estimated to deliver 38,000 acre feet annually at full build-out, are regional in their scale. Regional-scale projects that include multiple partners are an important part of the Title XVI Program. Reclamation's existing funding criteria, in fact, provide significant consideration of the extent to which a project implements a regional planning effort or includes collaborative partnerships to meet the needs of a region or watershed. Reclamation has also met with the Partnership for Regional-Scale Reuse formed by North Bay Water Reuse Authority and South Bay Water Recycling regarding their desire to advance regional-scale projects. To the extent that regional-scale projects make sense for the communities to be served, Reclamation will continue to work with project sponsors within the limitations of staff time, authority and budget.

- There are some projects, like the San Jose Water Recycling Project, that has fronted the federal portion of the project and are awaiting reimbursement.
  - What is Reclamation's ability to retroactively repay the federal portion?
  - Could Reclamation credit these funds as a part of the non-federal portion for different phases of the project?

  Response: Reclamation always provides the authorized federal cost-share on a reimbursable basis, therefore all project sponsors front the federal portion. The availability of appropriations governs how long a recipient must wait to receive reimbursements for the authorized federal share of a project's construction costs, subject to the availability of appropriations, the statutory federal cost ceiling for the specific project, and the allocability, allowability, and reasonableness of the costs incurred. For each authorized project, Reclamation tracks the Federal and non-Federal cost-share at the project level, not by individual phase. With the San Jose Area Title XVI project, for example, where the project sponsor has provided greater than 75% cost-share for phases completed in the past, Reclamation is able to provide funding for current phases at a greater than 25% cost share to bring Federal funding for the project to date closer to a

25% Federal/75% non-Federal cost share. Reclamation may also provide Federal funding for previously completed work in order to expedite the reimbursement process. Title XVI funding opportunity announcements specifically invite project sponsors to request funding for new activities or for any work previously completed without Federal funding.

- I would like to look at scenarios on how funding for Title XVI projects benefit water supply. Could you please compare the cost of Title XVI water to other sources of water, and the pros and cons related to each water source?

  Response: As with all water projects, construction and operational costs for individual recycling projects vary considerably depending on a number of project-specific factors. For recycled water projects, constructing redundant distribution and storage facilities are significant construction cost variables. In addition, energy costs and treatment needs are among significant variables influencing the cost to operate the facilities. Since the projects are locally owned and operated, Reclamation's estimates of operational costs do not always provide the most accurate summary of current costs. Nevertheless, Reclamation is able to compute a rough cost per acre foot from total Federal and non-Federal project funding and recycled water deliveries.

  Through fiscal year 2011, approximately $556 million in Federal funding has been appropriated for authorized Title XVI projects. Over $1.6 billion in non-Federal cost share has also been contributed for those projects. In fiscal year 2011, project sponsors estimate that 260,000 acre-feet of recycled water was delivered to customers. Using those figures, an average cost per acre foot for water recycling projects works out to about $2,138 in Federal funding per acre foot. Including both Federal and non-Federal funding, an average cost per acre foot for water recycling projects is about $8,500 per acre foot. Note that these estimates include significant funding for project phases that are under construction and that will result in additional water deliveries once complete; therefore, the cost per acre foot will likely decrease as new project phases come on line. Reclamation continues to work with project sponsors to refine estimates of the recycled water expected to result from appropriations to date.

  Comparing these costs to those associated with other sources of municipal and industrial (M&I) water, such as surface storage, can make for an incomplete comparison, since those projects have much different configurations and obviously very different water sources. For one of Reclamation's better known projects, the Central Valley Project (CVP) in California, typical M&I water rates contracted between Reclamation and water districts are between $15.00 and $109.40 per acre foot on an annual, not permanent, basis. However, those figures do not account for the entirety of other costs being incurred to mitigate for the impact of the CVP on fisheries and the natural environment. Additionally, these rates recover over time the total capital cost for construction and on-going operations and maintenance of the facilities, causing difficulties in a comparison to a Title XVI project. Also, surface storage projects are multi-purpose and often include non-reimbursable purposes which don't typically exist in a Title XVI project.

Furthermore, projects like the CVP were built decades ago, prior to the enactment of environmental laws such as the National Environmental Policy Act, Clean Water Act and Endangered Species Act, when the cost of labor and materials were significantly cheaper, and little to no provisions were made for the rights of Native Americans. For these reasons, comparing M&I water from existing traditional surface storage projects to ongoing or proposed water recycling facilities lends itself to an incomplete comparison.

As stated in testimony provided to the Subcommittee at the February 7, 2012 hearing titled "Water for Our Future and Job Creation: Examining Regulatory and Bureaucratic Barriers to New Surface Storage Infrastructure," Reclamation continues to study and construct surface storage projects where conditions are viable, where Congressional authorization and appropriations are provided, and where the prospective benefits justify the costs. However, new projects must compete for funds with dozens of other Congressionally-mandated priorities. Reclamation believes that the diversity of 21st century water challenges calls for a diversity of solutions, from surface storage projects to water conservation and recycling and others, that are appropriate, environmentally and economically sound, and in the interest of the American public.

- The Administration's FY 2013 budget proposes authorizing language that affects provisions of the Central Utah Project Completion Act (P.L. 102-575). What is the Agency's justification for incorporating this project back into Reclamation?

Response: As summarized in the budget request, the Department made this proposal to consolidate activities, increase consistency in the management of water projects within the Department of the Interior, reduce duplication and decrease costs. Under the proposal, construction activities would continue on the Utah Lake System Pipelines, water conservation projects, and on Utah Reclamation Mitigation and Conservation Commission Projects.

Representative Jim Costa

- Mr. Connor, the San Joaquin River Settlement requires the Secretary to "immediately" begin development of a plan for the "recirculation, recapture, reuse, exchange transfer of the Interim and Restoration Flows for the purpose of reducing or avoiding" water supply impacts to Friant water users. What is the status of this plan? When do you expect it to be completed?

Response: Since 2008, we have been working with the parties to develop and implement the Plan. The draft Plan was completed in February 2011. Since that time, we have worked diligently to resolve remaining issues in order to complete and finalize the Plan. The Friant Water Authority recently filed a lawsuit over interpretation of a section of the San Joaquin River Restoration Settlement Act, which could delay necessary discussions with interested parties and completion of the Plan. Fortunately, in the interim, we continue to implement

recapture and recirculation of the Interim Flows. From October 2009 to February 2012, we have recaptured and recirculated approximately 83,000 acre-feet. For the 2012 Contract Year we expect to recapture and recirculate more than 60 percent (approximately 100,000 acre-feet) of the Interim Flows released.

- What is the status of the projects authorized by Title III of the Settlement Act to restore the carrying capacity of the Friant-Kern and Madera Canals and install pump-backs on the Friant Kern Canal? When will actual construction begin on each of these projects?

  Response: In connection with the Friant-Kern Canal (FKC) Capacity Restoration Project, the draft Feasibility Report and environmental compliance were completed in June 2011, and we expect to finalize them by December 2012. We are working to complete the final designs also by December 2012, with the first stage of construction starting this winter.

  In connection with the Madera Canal Capacity Restoration Project, we expect to have the draft Feasibility Report and other required environmental documents available for public review in spring 2013. In order to assist the Feasibility Report's alternatives development, we are working with the Madera-Chowchilla Water and Power Authority to develop and construct several demonstration projects. We intend to start construction of the first demonstration project this winter.

  In connection with the FKC Reverse Flow Pump-Back Project, initial cost estimates significantly exceeded authorized funding and we continue to work with the parties to identify and develop alternatives within the authorized funding amount.

- As you know, the Friant Water Authority operates and maintains the Friant-Kern Canal under a contract with Reclamation and because of this experience the Authority is capable of undertaking the capacity correction project for the Friant-Kern Canal. What is the status of discussions between the Bureau and Friant on a cooperative agreement for Friant's management of the project?

  Response: Reclamation and the Friant Water Authority are working together to identify appropriate roles and responsibilities for the design and construction of the project. Construction by the Friant Water Authority through a cooperative agreement is expected to commence in the winter of 2012.

- The FY 2013 budget request includes $5 million to begin the cost-shared program authorized by Title III of the Settlement Act for the development and construction of local groundwater recharge and storage projects intended to offset water supply impacts to Friant contractors. Although this program isn't coming on-line as soon as we had intended, I am pleased to report that it will be getting underway in FY 2013. When will Friant irrigation districts be able to apply for project funding under this program?

Response: We expect the Funding Opportunity Announcement to be released by Spring 2013.

- Last fall, the Bureau of Land Management issued a draft recommendation for a Wild and Scenic Rivers designation for the segment of the San Joaquin River that includes the site of the proposed Temperance Flat Reservoir. Such a designation would preclude construction of the project. Has the Bureau of Reclamation commented on BLM's draft proposal?

Response: BLM is aware of the congressionally authorized feasibility study, discussed it on page 3-39 of the Wild and Scenic River Suitability Report, and noted that designation could prevent the storage project from being implemented. Reclamation did not formally comment on BLM's draft proposal, however Reclamation did participate in informal meetings and discussions regarding BLM's Bakersfield Resource Management Plan. Reclamation intends to complete its feasibility report for the Temperance Flat Reservoir alternative, providing Congress detailed information on the potential feasibility of the reservoir alternative to consider and weigh alongside proposals for a Wild and Scenic River designation.

Representative Jeff Denham

New Melones Reservoir and the Stanislaus River

- I recently included Reclamation in a letter to Federal and State operating and regulatory agencies regarding the operations of New Melones Reservoir and recent impacts to salmon survival on the Stanislaus River. In my letter, I requested the local irrigation districts be made members of the Stanislaus Operating Group or what is otherwise known as "SOG."
    - How many meetings of the SOG have occurred since my letter to you on November 18, 2011?

Response: Nine

- Have the local irrigation districts been invited to join the SOG?

Response: Not yet

- If not, why not?

Response: The most recent (2009) Biological Opinion (BiOp) from the National Marine Fisheries Service (NMFS) requires Reclamation to seek input regarding potential effects to sensitive and at-risk fish species through the Stanislaus Operating Group (SOG). Participation by local irrigation districts and other non-agency stakeholders in SOG is still pending final coordination by Reclamation with NMFS on the level and extent of that participation.

- Additionally, I've been made aware that hundreds of recent salmon smolts were killed on the Stanislaus River from information derived from the operating and regulatory agencies.

    - Are you aware of these recent fish kills? Please provide me with any and all details of Reclamation's involvement and knowledge of these most recent fish kills and what Reclamation's response was.

Response: Reclamation is aware of the stranding of 67 Chinook salmon fry, three stickleback, and one sculpin at Lover's Leap on the Stanislaus River. The California Department of Fish and Game (DFG) reported this information to Reclamation on February 14, 2012; DFG was able to put 20 Chinook salmon fry and two stickleback back into the river.

The Lover's Leap restoration project is an effort to restore spawning and rearing habitat in the Lower Stanislaus River. The goal of this project is to contribute to the Central Valley Project Improvement Act goal of doubling natural production of Central Valley anadromous fishes. The affected area was an area of restoration where a gravel pile was moved to get back into the system (this was not part of the original restoration plan); when the flows dropped, it created some small standing pools that stranded the fish previously mentioned.

Releases for February started at 600 cubic feet per second (cfs), were dropped to 400 cfs on February 12, and to 300 cfs on February 20. The NMFS BiOp reasonable and prudent alternative, Appendix 2E schedule for below normal water year, calls for a minimum of 200 cfs. All these releases were higher than the minimum Appendix 2E schedule. This action was required to keep storage close to the top of the allowable maximum storage level.

San Joaquin River Restoration Program

- To date, how much money (mandatory and discretionary) has been spent on the San Joaquin River Restoration Program?

Response: From Fiscal Year 2007 to 2011, $70.324 million has been expended on the San Joaquin River Restoration Program (Restoration Program). This includes $37.694 million in Federal funding and $32.630 million in State funding.

    - How much money was the Program quoted at when it was presented to Congress in 2007 and what is the estimated total program cost to date?

Response: The Program Management Plan for the Restoration Program, prepared in spring 2007, included a range of cost estimates that were prepared during the negotiation of the Settlement. These estimates ranged from $250 million to $800 million. On March 30, 2009, the San Joaquin River Restoration Settlement Act, Title X, Subtitle A of Public Law 111-11, was enacted and authorized approximately $600 million in Federal funding for the implementation of

the Restoration Program. The State of California has committed an additional $200 million to implement the Restoration Program. Thus, approximately $800 million of Federal and State funding is authorized to implement the Restoration Program. A large portion of the federal funding is subject to indexing on an annual basis.

- How much money does Reclamation anticipate it will need over the next ten years to complete the Program as planned?

Response: Reclamation is currently working with the other State and Federal agencies implementing the Restoration Program and with the parties to the Settlement in NRDC, et al., v. Rodgers, et al., to revise and prioritize the schedule for implementation of the Restoration Program, laying out a clear plan with measurable goals, a realistic cost estimate, and a defined endpoint. The draft framework for implementation has been released and it shows that we believe that the Restoration Program can be implemented within the funding authorized by Public Law 111-11.

- With Reclamation's funding request for Fiscal Year 2013, what specific phase 1 projects and activities will be undertaken or completed with those funds.

Response: Phase 1 projects and activities in Fiscal Year 2013 include the following:

- Arroyo Canal Fish Screen and Sack Dam Fish Passage Project – Reclamation anticipates beginning construction of this project in Fiscal Year 2013. This project includes a fish screen on the Arroyo Canal to prevent entrainment of Chinook salmon in the canal and modifications to Sack Dam to allow for fish passage around the structure. This will be the first priority project constructed under the Settlement. The Arroyo Canal is the sole intake for San Luis Canal Company providing irrigation water for approximately 47,000 acres of highly productive agricultural lands in the San Joaquin Valley, along with moving water to federal and state wildlife refuges and private duck clubs. Henry Miller Reclamation District #2131 owns and operates the Arroyo Canal and Sack Dam for the benefit of the San Luis Canal Company and is Reclamation's State partner for this project.

- Mendota Pool Bypass and Reach 2B Channel Improvements Project – Reclamation plans to make significant progress on the planning, environmental compliance documents, and the design efforts for this Phase 1 project in Fiscal Year 2013. We expect to release a Draft Environmental Impact Statement for the project in Spring 2013. We also anticipate beginning the land acquisition process and the final design efforts in preparation for construction starting in late calendar year 2015. This project would include the construction of a bypass channel around Mendota Pool to

route the Restoration Program's flows and reintroduced salmon around the water supply facilities in Mendota Pool and prevent entrainment of salmon in these facilities. The project would also include the expansion of the Reach 2B channel from the Chowchilla Bypass to the new Mendota Pool Bypass to increase channel capacities to pass the Restoration Program's flows and to provide for riparian and floodplain habitat.

- Reach 4B, Eastside Bypass, and Mariposa Bypass Channel and Structural Improvements Project – Reclamation also plans to make significant progress on the planning, environmental compliance documents, and the design efforts for this Phase 1 project in Fiscal Year 2013. We expect to continue our efforts in preparing initial designs and formulating the project description and alternatives for this project in anticipation of the release a Draft Environmental Impact Statement for the project in fall 2013 (in Fiscal Year 2014). This project would determine the routing of the Restoration Program's flows and reintroduced fish in either the Reach 4B1 channel or the Eastside and Mariposa bypasses or a combination of both. Alternatives would include improvements to either or both channels to provide for fish passage, reduce entrainment, and provide floodplain rearing habitat.

- In addition to the specific Phase 1 projects above, Fiscal Year 2013 funding will support activities toward achieving the Restoration Program's Water Management Goal. All required environmental documents will be finalized for the Friant-Kern Canal Capacity Restoration Project by the end of 2012. Construction by the Friant Water Authority, through a Cooperative Agreement with the Restoration Program, is expected to commence in Winter 2012.

Finalization of the Part III Guidelines providing financial assistance for local projects is expected during Summer 2012, and an initial funding announcement is expected by Spring 2013.

- What is the timeline for the completion of the infrastructure projects where construction has not begun, such as the Mendota bypass and any possible fish screens?

Response: As identified above, we expect construction on the Arroyo Canal Fish Screen and Sack Dam Fish Passage Project to begin in Fiscal Year 2013 (in early calendar year 2013). We expect construction of the Mendota Pool Bypass and Reach 2B Channel Improvements Project to

begin in late calendar year 2015. We expect to determine when construction will begin on the Reach 4B, Eastside Bypass, and Mariposa Bypass Channel and Structural Improvements Project as part of the revised schedule and budget currently under preparation.

- How many fish screens is Reclamation anticipating will be needed and when?

  Response: The Settlement in NRDC, et al., v. Rodgers, et al., specifically includes one fish screen as part of the Phase 1, highest priority channel and structural improvement projects at the Arroyo Canal. We expect to begin construction of this screen in early calendar year 2013.

  The Settlement also calls for a series of improvements as part of the Phase 1 projects that may require additional fish screens. We are currently determining what additional screens may be needed as part of the formulation of alternatives in the Mendota Pool Bypass and Reach 2B Channel Improvements Project and the Reach 4B, Eastside Bypass, and Mariposa Bypass Channel and Structural Improvements Project.

  In addition, the Settlement calls for modifications to the Chowchilla Bifurcation Structure to provide fish passage and prevent entrainment as part of the Phase 2 high priority channel and structural improvement projects. A fish screen may be needed as part of this effort. We expect to begin the alternatives formulation for this project after completion of the environmental compliance and design efforts for the Phase 1 projects.

- Will the fish screens be "positive barrier" screens?

  Response: The fish screen on the Arroyo Canal will be a "positive barrier" screen. It is anticipated that the remainder of the screens as part of the Restoration Program would also be positive barrier screens.

  - If so, how will they be designed to handle a flow schedule that is yet to be determined long-term?

    Response: These screens will be designed to handle the full Restoration Flows called for in the Settlement to begin no later than January 1, 2014. The Restoration Flows will be released up to channel capacity, accounting for seepage and levee stability concerns, along with the historical range of flood flows.

- Does Reclamation's funding request provide money to pay out damages from seepage impacts to private landowners from increased flows down the San Joaquin River? Does Reclamation have the authority to resolve these claims?

  Response: Consistent with the San Joaquin River Restoration Settlement Act, Reclamation has been working to implement the Restoration Program in a way that does not result in material adverse impacts to third parties, including material adverse impacts due to groundwater seepage. We also recognize that, for a variety of reasons, we may not always be able to avoid all such impacts. We are addressing these issues and other Restoration Program challenges by working in a collaborative manner with the parties to the Settlement, adjacent landowners, and downstream water users.

  After significant review, we believe that Reclamation does have the statutory authority to compensate for certain damages, including groundwater seepage, resulting from implementation of the Restoration Program. We are currently working with the Solicitor's Office to clarify this authority and to review the Reclamation Manual to determine the circumstances under which we can use this authority for the Restoration Program and develop a clear process, including timelines, for the evaluation and compensation of claims.

  Reclamation's Fiscal Year 2013 funding request does not specifically identify funding to compensate for damages. The statutory authority we intend to use to compensate for certain damages, including groundwater seepage, requires the use of appropriated funds. Although we are working diligently to address issues before damages occur, in the event that they do occur, we would use appropriated funds to compensate for such damages.

  - If so, please provide the specific legal authority and how the program is implemented.

    Response: The statutory authority is provided in 43 USC § 377b. As described above, we are reviewing the Reclamation Manual to determine the circumstances under which we can use this authority for the Restoration Program along with developing a clear process, including timelines, for the evaluation and compensation of claims. We expect to complete this effort along with a draft Reclamation Directive and Standard outlining the process by late 2012.

  - If not, is legislative action necessary to ensure that private property is protected from adverse impacts of governmental actions?

Response: See response above. We believe we have the statutory authority to compensate for certain damages, including groundwater seepage, resulting from implementation of the Restoration Program.

Sacramento-San Joaquin Delta

- What has Reclamation requested for the re-consultation for the Delta Smelt and Salmon Biological Opinions?

  Response: Reclamation's FY 2013 Request does not include funding for the re-consultation of the Delta Smelt and Salmon Biological Opinions. Actions to meet the requirements for the re-consultation were still being developed at the time the Budget was submitted to Congress. Funding for FY 2013 activities will be re-aligned from within existing appropriations.

- Specifically, what activities will that funding cover?

  Response: The court order requires completion of National Environmental Policy Act analysis on the US Fish and Wildlife Service Biological Opinion by December 2013 and National Marine Fisheries Service Biological Opinion by February 2016. Funds will be used to continue those efforts.

Representative John Garamendi

- Mr. Commissioner, can you tell us what your plans are for thoroughly studying all conveyance alternatives for moving water past the Delta, not just the large, isolated conveyance facility that has been identified?

  Response: The BDCP Environmental Impact Report/Environmental Impact Statement (EIR/EIS) is evaluating a wide range of alternatives. There are 15 action alternatives and one no-action alternative which will be described in the BDCP EIR/EIS. The BDCP EIR/EIS is analyzing various combinations of water conveyance configurations including capacities ranging from 3,000 to 15,000 cfs, different operating scenarios, habitat restoration, and the effects on biological resources and water supply. In addition to conveyance sizing the alternatives include a variety of conveyance alignments and other specifications resulting from public scoping sessions conducted in 2008 and 2009 and the California Water Reform Act of 2009.

- What are your plans for conducting a thorough study of through-Delta conveyance as a part of the BDCP process?

Response: Alternatives being analyzed in the EIR/EIS include both through-Delta conveyance and conveyance by pipeline/tunnel or canal. The EIR/EIS will set forth the results of the studies of these various conveyance facilities. The information resulting from the EIR/EIS studies (including the through-Delta conveyance) being conducted will be used for the selection of the proposed project submitted by the state of California as part of the Endangered Species Act (ESA) Section 10 application process.

- After all diversion and non-diversion conveyance alternatives have been identified, it is essential that a thorough benefit-cost analysis be conducted for each. Can you tell us how you plan to go about that?

  Response: As part of the overall BDCP process, several analyses are being completed that address costs and benefits. First, the current BDCP draft documents include initial cost estimates for construction and implementation of a preliminary project. Secondly, the state of California is conducting an economic analysis of the benefits associated with BDCP alternatives. Lastly, the BDCP EIS/EIR will include an analysis of the socioeconomic impacts associated with alternatives. This information will be used to determine the proposed project to be included in the ESA section 10 permit application.

- Will the benefit-cost analyses you undertake include all foreseeable direct and indirect economic impacts of the Delta and Delta Counties, including the impacts of any new water infrastructure and habitat conservation projects? If not, why not?

  Response: The cost-benefit analyses identified above will assist in identifying the direct and indirect economic impacts of any new conveyance facility and habitat restoration projects in the Delta.

- It is essential that all decisions made through the BDCP process be based on the best possible science. What steps are taking to ensure that all BDCP proposals are given an independent review that involves all stakeholders, including the Delta Counties?

  Response: Reclamation continues to reaffirm the federal commitment to work in close partnership with the State and key stakeholders including the Delta Counties to pursue the development of BDCP. We are fully committed to a sound and credible scientific basis for BDCP. This commitment has been unwavering and has been frequently reiterated. Credible science is essential for the BDCP to meet regulatory approval standards and to garner broad stakeholder support. The science issues underlying BDCP are longstanding, complex, and in certain cases contentious. Federal agencies have engaged independent science review under the Delta Stewardship Council's Delta Science Program and are in partnership with the state, working towards a sound and credible scientific basis for the BDCP.

- Does the BDCP process include establishing through-Delta flow standards, consistent with California's water rights priority system and statutory protections of area of origin prior the adoption of BDCP? If so, please describe that process.

  Response: Although the BDCP process itself does not include establishing through-Delta flow standards, any BDCP proposed project must comply with state water rights, including State Water Resources Control Board flow requirements.

- Does the BDCP process include a science-based peer-reviewed analysis of water amounts and flows needed for use, under current law, in the Delta for determining available surplus water supply, and does the BDCP restrict the exporting of water from the Delta to only surplus water?

  Response: Any water conveyed as part of BDCP must meet all requirements of state and federal law, including requirements of the applicable state water permits and beneficial use standards. The working assumption of BDCP does not include any reliance on surplus water.

Representative Paul Gosar

1. The Department of Interior has a lot of interests related to Navajo Generating Station, with one being the Bureau of Reclamation's entitlement to nearly 1/4 of the Navajo Generating Station for CAP purposes. Can you please tell us a) if there are increased costs associated with NGS, how will BOR pay for its portion of the costs? b) if the AZ water rights settlement is affected by any changes in revenues, how will those obligations be met?

   Response a): The Central Arizona Project (CAP), of which the Navajo Generating Station (NGS) is a principal feature, has been transferred into operations status and the Central Arizona Water Conservation District (CAWCD) is the responsible operating entity. CAWCD is responsible for all costs associated with operation, maintenance, and replacement (OM&R) of NGS. Increases in NGS costs are ultimately recovered by CAWCD through the energy rate component of its water delivery rate which is paid by CAP water users.

   Regarding costs associated with the U.S. Environmental Protection Agency's (EPA) Best Available Retrofit Technology (BART) determination, or other OM&R activities including those related to land leases and fuel costs, CAWCD is responsible for all future costs at NGS as part of its role as the OM&R entity for the CAP. All NGS costs funded by CAWCD would be recovered by passing these costs on to CAP water users through increases to the energy rate component of CAP water rates, either in one year or over a

number of years; however, should the energy rates need to be dramatically increased to cover increased NGS costs, nothing would preclude the Secretary of the Interior from seeking authorizations and appropriations to cover all or part of the funds necessary for major replacements or capital improvements at the NGS for BART-related costs to soften or offset cost impacts.

Response b): The Arizona Water Rights Settlement Act of 2004 is a complex piece of legislation that directly settled the water rights of several tribes and also presented a priority arrangement of possible future benefits for tribes that had already settled their water rights as well as those tribes that might settle in the future. The passage of the AWSA was, in part, successful and widely supported by Arizona tribes because of the expectation that revenues greater than CAWCD's annual repayment obligation would be available at some point in the future to provide additional benefits to the tribes. If revenues above those needed for CAWCD's annual repayment obligation are not realized, there is no impact on funding for the first set of tribal benefits prioritized in AWSA. However, increases in NGS OM&R expenses would reduce the likelihood or magnitude of a future revenue stream to fund the second set of tribal benefits as prioritized in AWSA. Because of the potential impacts of EPA's BART determination, the Department has been keenly interested in the matter and, in addition to consulting with impacted and potentially impacted Tribes, has engaged in extensive discussions and meetings with the Environmental Protection Agency and the Department of Energy. The Department also commissioned the NREL Phase I NGS study as described in the response to question 4 to ensure the EPA has unbiased information available to them regarding all aspects of the potential BART ruling`.

2. The National Renewable Energy Lab was expected to undertake a second phase of the study to examine renewable alternatives. What, if anything, has BOR done to examine energy alternatives for NGS to power the needs of the Central Arizona Project?

Response: Both Reclamation and CAWCD have been looking into future long term alternative energy options for the CAP, including but not limited to, use of existing available power, non-renewable energy alternatives, and renewable energy alternatives. Some examples of these efforts are provided below.

- Reclamation has supported the Department of the Interior's (Interior) efforts on the NREL study, contributing almost 60 percent of the costs associated with Phase I of the study, as well as staff assistance to Interior in managing the study process.
- Reclamation has sponsored, under a separate contract, site-specific studies by NREL to evaluate locations along the CAP aqueduct which might be suitable for constructing and operating renewable energy facilities to power individual CAP pumping plants.

- Reclamation is finalizing a cost model that will assist decision-makers in determining the economic viability of potential retrofit technologies addressing environmental regulations (BART, MATS, Ash Rule), which also takes into consideration all other anticipated costs required to continue operation of Navajo through 2044. This model will assist both Reclamation and CAWCD in making informed decisions related to the cost of NGS and alternative energy sources.
- CAWCD and Reclamation together have made and continue to make alternative transmission arrangements which both assist in reducing the cost of purchasing power from the market, and provide for re-routing of purchased power from non-Navajo generation resources (including in-state as well as outside sources).
- CAWCD has contracted with Department of Energy's (DOE) Idaho National Laboratory to obtain information on various generation options that would best fit its needs.
- CAWCD is currently identifying all locations within Arizona where interstate gas lines cross Navajo and CAP project transmission facilities to identify potential locations for developing combined cycle generation.

3. Does BOR or the EPA plan to fund the NREL study or is it your understanding that EPA may make a decision about the future of this plant, which the United States has an ownership interest in and has legal and policy commitments flowing there from without having any back-up plan for feasible alternatives? What are your options, as a lot of this falls under your purview, should the EPA take action that leads to plant closure? How would you develop alternative generation to support CAP deliveries in such a short time and how would you fund the federal portion of those alternatives? I understand that the Department of the Interior planned to submit comments on the NREL report. Would you please share with the Committee the comments that were submitted by DOI?

Response: Interior, including Reclamation, is supportive of initiating Phase 2 of the NREL study. NREL finalized the last chapter of the Phase 1 study report, which identifies potential generation alternatives that might be studied in Phase 2. This Generation Alternatives Chapter was made available to the public on June 28, 2012. If or when Interior initiates Phase 2, we currently envision engaging in a process similar to what occurred under Phase 1. Participants in Phase 1 and other interested publics would be invited to provide input during development of that scope of work. Interior will need to investigate funding sources, including potential cost share partners. It is likely that Reclamation will fund part of the Phase 2 study. It is not known whether EPA could or would contribute funding to that study.

Subsequent to the release of the Phase 1 study report (Chapters 1-7), staff from EPA, DOI, and Interior met to discuss the timing and implications of EPA's BART decision, whatever it may be, the goal of which is to incorporate a smooth transition ("glide path") within that decision. Reclamation has been able to provide EPA with information

clarifying aspects of NGS' operations and decisions that need to be made regarding plant operations. Ultimately, however, BART for NGS is EPA's decision; Reclamation has no control over EPA's responsibilities or authorities.

Although Reclamation has no reason to believe that EPA will make a decision on BART at NGS that would cause the NGS participants (co-owners) to determine that continued operation of NGS would be uneconomical, CAWCD and Reclamation are considering short-term options for acquiring replacement power if that were to occur, including, but not limited to the following:

- Purchasing power on the open market.
- Expanding transmission routing opportunities to minimize the cost of purchasing power from the market.
- Entering into agreement(s) for development of new sources strategically located near CAP pumping loads.
- Combination of the above.

At this point, we believe there would be at least a 5-year period between the point at which a potential decision would be made to decommission the plant and when an alternative energy source(s) would have to be in place to avoid or minimize the amount of power that would need to be purchased from the market.

The short-term options mentioned would only provide sufficient power to operate the CAP in the event NGS is decommissioned. Approximately one-third of Reclamation's available NGS capacity is typically surplus to CAP power needs and is marketed. The revenues generated by the sale of this surplus power partially offset the CAWCD repayment obligation and fund AWSA-related tribal benefits mentioned in response to Question 1.b).

Decisions regarding short-term energy options to replace NGS power would be based upon objectives that are different from those used in considering alternatives for long-term replacement power, as mentioned in the above response to Question 2. Renewable energy alternatives and most, if not all, alternative sources of energy that are not already in operation, generally require a substantial amount of time to construct and become operational, which makes them unavailable for consideration as short term options.

Please see response to Rep. Gosar's Question 1.a) regarding how the Federal portion would be funded.

[ATTACH DOI COMMENTS on NREL]

4. The NREL report very clearly calls into question whether or not ANY perceivable visibility improvements would result from the investment of over $1 billion for additional emissions

controls at NGS. Given that uncertainty, might it not be prudent for the Administration to determine that the existing controls at NGS constitute BART for now and wait for further information/data before requiring any additional investments in controls?

Response: The Department of the Interior, through Reclamation, commissioned NREL's Phase 1 Study in order to provide EPA with unbiased information regarding the five BART factors as they apply to NGS. Those BART factors include: cost of compliance; energy and non-air-quality environmental impacts of compliance; existing pollution control technology in use at the source; remaining useful life of the source; and the degree of improvement in visibility which may reasonably be anticipated to result from the use of the technology. The NREL Phase 1 report provides a detailed response to this question by providing the relative costs and benefits of each of several possible measures that might be required as BART to control haze-causing emissions at NGS. The NREL report looks at the relative costs and benefits of a range of possible BART determinations, including a BART proposal of no additional control measures to various other measures, and BART proposals ranging from Selective Non-Catalytic Reduction, estimated to cost less than $20 million, to Selective Catalytic Reduction (SCR), estimated at about $550 million, to SCR plus baghouses, estimated to cost about $1.1 billion. The NREL Phase 1 study reviewed in detail the unique role of NGS in the operation of the CAP and in Arizona Indian water settlements, as well as in the economies of Navajo Nation, Hopi Tribe, and Page, Arizona. As a result of the NREL Phase 1 report and other information provided to EPA on this matter, it is apparent that EPA has before it comprehensive information concerning a full range of potential BART options and all of the impacts of implementing such options..

5. In addition to issues of regional haze and visibility, the BART determination for NGS presents some extremely problematic issues with the federal trust responsibility to Native American communities in Arizona. How has BOR consulted with the Tribes on these issues and what has been the response?

Response: Reclamation met with EPA at the beginning of EPA's public process for determining BART for NGS. Our purpose was to explain our involvement in the NGS; its history and critical role in the CAP; to request additional time to comment and provide information on all CAP tribes likely to expect Government-to-Government consultations. EPA ultimately extended its Federal Register Notice-published deadline for comments to accommodate, in part, consultation with the Tribes.

Interior, NREL, and Reclamation staff conducted a Government-to-Government consultation with the Gila River Indian Community on the NREL study and the pending

BART decision on August 31, 2011. Later that same day, the same staff participated in an information meeting convened by the Inter Tribal Council of Arizona for its members and the Navajo Nation, on the same topics. An all Arizona Tribal Government-to-Government consultation meeting was conducted by Interior on September 15, 2011; a Government-to-Government consultation was conducted with the Navajo Nation in Window Rock, Arizona, on October 17, 2011. Also, we have participated in Tribal consultation and information-sharing sessions conducted by EPA with Arizona Tribes. In addition to these formal consultations, numerous other information sharing sessions were conducted with Tribes and other impacted parties beginning in 2009 and continuing throughout the process.

NREL held individual information-gathering meetings with the Navajo Nation and Hopi Tribe. Because much of the information used in the Phase 1 study report was provided by these two tribes and the Gila River Indian Community, they also were asked to review the draft report to ensure there were no major technical or factual errors.

Generally, although each Tribe has expressed slightly different views, the CAP Tribes are concerned about increased costs for CAP water that may result from an EPA BART determination. Tribes which are currently constructing agriculturally-based delivery systems or are using CAP water for farming purposes are particularly concerned because cost increases can have a large effect on the profitability of farming in central Arizona. The Navajo Nation and Hopi Tribe have expressed their concerns over the potential impacts of an NGS BART determination on the local economy and jobs on the Reservations.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

SEP 04 2012

The Honorable Don Young
Chairman
Subcommittee on Indians and Alaska Native Affairs
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Indian Affairs to questions submitted following the Subcommittee's Wednesday, January 25, 2012, legislative hearing on *"**H.R. 2467*** --To take certain Federal lands in Mono County, California, into trust for the benefit of the Bridgeport Indian Colony. ***S. 292***--A bill to resolve the claims of the Bering Straits Native Corporation and the State of Alaska to land adjacent to Salmon Lake in the State of Alaska and to provide for the conveyance to the Bering Straits Native Corporation of certain other public land in partial satisfaction of the land entitlement of the Corporation under the Alaska Native Claims Settlement 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 Dan Boren
Ranking Minority Member

In light of the 2009 Supreme Court ruling in Carcieri v. Salazar and the fact that the Bridgeport Indian Colony was not federally recognized until 1974, how does the Secretary plan to take the land specified by H.R. 2467 into trust for the Tribe?

If H.R. 2467 is passed into law, then the law itself will dictate how the Secretary for the Department of the Interior shall take such lands into trust for the Bridgeport Indian Colony.

Section 5 of the Indian Reorganization Act provides general authority for the Department to take lands into trust for the benefit of an Indian tribe. H.R. 2467 provides separate congressional authority for the Department to take lands into trust for the Bridgeport Indian Colony. Therefore, the *Carcieri* decision is not a factor in taking lands into trust under the authority of H.R. 2467, if enacted into law.

Additionally, if the Secretary does take land into trust, is this land given the same "tribal trust land" status with the same rights and privileges as land taken into trust prior to the Carcieri decision? Or does the land taken into trust by H.R. 2467 become a new category of "trust land" with its own rights and privileges? If this is the case, how are these new rights and privileges determined?

If H.R. 2467 is passed into law, the Secretary for the Department of the Interior shall take the land into trust pursuant to the legislation. The status of such lands identified in H.R. 2467, shall then be considered to be "in trust" for the benefit of the Bridgeport Indian Colony with the same status of all other trust lands the U.S. holds in trust for Tribes currently, carrying with those lands the certain privileges and immunities for "trust status," unless the legislation specifies otherwise.

Finally, if the land taken into trust under H.R. 2467 is designated with a new "trust land" category and has similar rights and privileges to "tribal trust land," then why does Congress need to implement a Carcieri fix?

In *Carcieri v. Salazar*, the Supreme Court was faced with the question of whether the Department of the Interior could acquire land in trust on behalf of the Narragansett Tribe of Rhode Island for a housing project under the authority of section 5 of the Indian Reorganization Act, 25 U.S.C. § 465. The Court's majority held that section 5 permits the Secretary to acquire land in trust for federally recognized tribes that were "under federal jurisdiction" in 1934.

Again, Section 5 of the Indian Reorganization Act provides general authority for the Department to take lands into trust for the benefit of an Indian tribe. H.R. 2467 provides separate congressional authority for the Department to take lands into trust for the Bridgeport Indian Colony. Therefore, the *Carcieri* decision is not a factor in taking lands into trust under the authority of H.R. 2467, if enacted into law.

Second, whether a tribe was acknowledged by the federal government as a federally recognized tribe after 1934 does not necessarily mean the tribe was not "under federal jurisdiction" in 1934. Whether a tribe was under federal jurisdiction in 1934 requires a fact-intensive analysis of the history of interactions between that tribe and the United States. This analysis ordinarily requires the Department to examine: (1) whether there was an action or series of actions before 1934 that

established or reflected federal obligations, duties or authority over the tribe; and (2) whether the tribe's jurisdictional status remained intact in 1934.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

SEP 07 2012

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 March 29, 2012, legislative hearing on: *"H.R. 1917, Joint Ventures for Bird Habitat Conservation Act; H.R. 1960, North American Wetlands Conservation Act; and H.R. 3074, The Cormorant Management and Natural Resources Protection 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 Gregorio Sablan
Ranking Member

Questions for the Record
U.S. Fish and Wildlife Service
March 29, 2012 Legislative Hearing

Chairman John Fleming, M.D. (LA)

H. R. 1917: Joint Ventures for Bird Habitat Conservation Act

1. **After 25 years of being administered as a line item within the Fish and Wildlife Service's Migratory Bird Program, why is there a need to now statutorily establish the Migratory Bird Joint Ventures Program?**

The U.S. Fish and Wildlife Service (Service) understands that constituent and stakeholder groups who support the Joint Ventures program also have supported the establishment of a specific, statutory authorization for the program. The Service conducts the Joint Ventures program through existing statutory authorities.

2. **During FY'11, the Fish and Wildlife Service provided the Joint Ventures Program with $12.8 million in appropriated dollars. How was this money specifically spent? Please detail the major expenditures?**

The migratory bird Joint Ventures are self-governed, multi-partnered entities which receive allocations from appropriations provided by Congress to the Service. Each Joint Venture has a Management Plan, approved by the Service, in which their projects and priorities are identified. The Joint Ventures are required to report to the Service on their progress, and they are rated by their accomplishments across a Joint Ventures Matrix, which includes five different categories: 1) Organizational Performance, 2) Biological Planning and Conservation Design, 3) Habitat Delivery, 4) Monitoring/Research, and 5) Communication.

Approximately 90% of appropriated funds are sent to the Service's eight Regional offices to support Joint Venture activities. An additional 2% of appropriated funds support implementation of North American Wildlife Management Plan (NAWMP). Administration of NAWMP and Joint Venture partnerships represents only about 7% of the total appropriation.

The table and text below includes information requested by the committee.

FY 2011 appropriated funds were allocated as follows:

FY 2011 Migratory Bird Joint Venture Appropriated Funds

	Total
Total Federal Allocation	**$12,890,000**
FWS National Administration Support (Cost Share)	**$137,134**
North American Waterfowl Mgmt Plan / Joint Venture (National Office)	$1,156,643
Total Allocation for Joint Ventures	**$11,596,224**
Regional Administration Support	$782,369
Coordination and Partnership Support	$3,263,425
Biological Planning and Conservation Design	$2,699,890
Habitat Delivery	$2,151,976
Monitoring/Research	$2,010,940
Communication	$687,623

North American Waterfowl Management Plan / Joint Venture (National Office) - $1,156,643
These funds cover the following two expenses:

1. *Funding for the North American Waterfowl Management Plan (NAWMP), which pays for costs associated with the Plan committee, the National Science Support Team, and in FY 2011, provided funds to support a revision of the Plan, scheduled for 2012.*

2. *Administration of NAWMP and the Joint Venture partnerships, which includes personnel costs within the Branch of Science and Planning of the Service's Migratory Bird Program Division of Bird Habitat Conservation; travel costs needed to represent, manage, and support NAWMP and Joint Venture partnerships; and office expenses (e.g. rent, printing, supplies).*

Regional Administration Support - $782,369
These funds support the Migratory Bird programs in the regional offices of the Service. They are collected independently by each region from the Joint Ventures they support and administer in their region.

a. Categories of Use of the Appropriated Funds by the Joint Ventures
These general performance categories are drawn from the Joint Venture Matrix:

1. ***Coordination and Partnership Support – $3,263,426:*** *This category includes coordination of the partnerships and Management Boards and the significant resources they bring to the Joint Ventures, development of new and existing partner relationships, management of the technical teams that help define and support the priorities of the Joint Ventures, and facilitation of the conservation actions of the partnership. The success of the Joint Ventures as a model for*

cooperative conservation comes from the coordinated efforts of the partnership to develop Joint Venture priorities, create an implementation plan with habitat and population goals, and to support the conservation actions needed to reach these goals.

2. ***Biological Planning and Conservation Design - $2,669,890:*** *Strategic Habitat Conservation is an initiative through which the Service carries out landscape-level conservation. This approach, which uses science to develop conservation approaches that can be adapted through data gathered by monitoring and research, enables Joint Ventures to focus their conservation programs and resources on the highest priority areas at the level needed to sustain healthy populations of migratory birds. This category supports activities including: definition of biological planning units, understanding limiting factors, and development of decision support tools for specific management actions. For example, Joint Ventures help identify priority wetlands across the landscape that will provide the best benefit to wildlife to help partners make decisions on where to focus conservation efforts.*

3. ***Habitat Delivery - $2,151,976:*** *Joint Ventures work to inform and implement habitat conservation on the ground that is linked to the biological planning and conservation design efforts of the partnership. Funding in this category helps support these efforts. For example, Joint Ventures are working with the Natural Resource Conservation Service on the Greater Sage Grouse, Lesser Prairie Chicken, and Golden-winged Warbler Initiatives to support conservation that provides the best benefits to these species.*

4. ***Monitoring and Research - $2,010,950:*** *Joint Ventures support the development of models linking bird population objectives to habitat objectives, habitat inventory and monitoring programs, and population monitoring efforts. Joint Ventures use this information to evaluate management actions and to improve biological plans so partners can efficiently and effectively target conservation delivery programs toward healthy bird populations. For example, the Sea Duck Joint Venture coordinates a large-scale migration study of sea ducks in the Atlantic Flyway to better document range affiliation, habitat use, and migratory patterns that will guide future habitat conservation efforts for these birds.*

5. ***Communication - $687,623:*** *Joint Ventures identify audiences that are most critical for conservation success and develop the most appropriate tools and messages to reach them. Examples of some of the communication tools used are: strategic communication planning, training for partners, partner outreach via outlets such as meetings, electronic newsletters, radio programs, print materials, and websites. Joint Ventures use strategic communications to identify relevant stakeholders and give them the tools and information they need to achieve on-the-ground bird and habitat conservation.*

b. Joint Venture Personnel costs: *Of the $12.9 million in funds appropriated to NAWMP/Joint Ventures in FY 2011, approximately $7 million went to support staff in each of the Joint Ventures. These positions represent Joint Ventures coordinators and other technical support staff who coordinate and support the goals and conservation activities of the North American Waterfowl Management Plan across the 21 Migratory Bird Joint Ventures. Joint Venture staff provide critical support by coordinating individuals and organizations working in partnership to support the delivery of habitat for migratory birds.*

c. ***Funding Support:*** *In FY 2011, Joint Ventures provided approximately $1 million to partners as part of cooperative agreements or small grants (offered by a Joint Venture Management Board) to catalyze on-the-ground conservation activities of Joint Venture partners, provide seed funds to build capacity to support the development of new conservation efforts, and to assist research and monitoring projects that provide information critical to help meet Joint Venture priorities across the landscape.*

d. Budget Increases from FY2008 – FY2012: *Between FY 2008 and FY 2012, the appropriation for Migratory Bird Joint Ventures increased by approximately $4 million. These funds were used to support four new Migratory Bird Joint Ventures (Appalachian Mountain, East Gulf Coastal Plain, Oaks and Prairies, Rio Grande) in FY 2009,* as well as to increase support for established Joint Ventures.

2. How much non-federal money has been invested into this program?

From FY 1999 – FY 2011, $106.6 million in appropriated funds has leveraged approximately $4.0 billion in non-federal partner funds, or approximately $37 in non-federal partner funds for every $1 in appropriated funds.

4. How does the Joint Venture Program compliment or duplicate activities funded under the North American Wetlands Act?

The North American Wetlands Conservation Act (NAWCA) was passed, in part, to support activities under the North American Waterfowl Management Plan (NAWMP). NAWCA grants support cooperative projects that conserve North American wetland ecosystems for waterfowl, other migratory birds, fish, and wildlife. In this way, it encourages the formation of public-private partnerships to develop and implement wetland conservation projects consistent with the conservation priorities established by the Joint Ventures. The Joint Ventures were established to implement NAWMP, and Joint Venture partners frequently are involved in the planning, development, and delivery of wetland conservation projects funded by NAWCA grants. The strong correlation between NAWCA awards and Joint Venture goals is supported by the participation of Joint Venture Coordinators in prioritizing NAWCA proposals within their specific geographic boundaries. Projects selected for funding through NAWCA are also strategically targeted to

complement other wetland conservation projects within Joint Venture boundaries and regional landscapes to ensure the best investment of federal and non-federal matching dollars.

5. What would be an appropriate annual funding level for the Joint Venture Program?

The President's FY 2013 request of $14.1 million for NAWMP/JVs will permit all 21 Joint Ventures to continue ongoing landscape conservation planning and habitat projects that benefit populations of migratory birds; maintain the application of regionally-based adaptation strategies among multiple partners, including state agencies, local governments, private corporations and landowners, as well as non-profit organizations; and develop effective strategies for migratory bird conservation in response to a range of threats to habitat and the health of wild bird populations. The level of funding reflects the cost of operations and projects for the full complement of anticipated Joint Ventures now in place.

6. Should H. R. 1917 be amended to include an annual authorization and expiration date? Without this language, wouldn't the Congress simply be permanently authorizing this program?

The Administration has no position on this matter.

7. There is language within H. R. 1917 that says: "The Department of the Interior, through the United States Fish and Wildlife Service, is authorized under a number of broad statutes to under(take) many activities with partners to conserve natural resources, including migratory birds and their habitats." Could you name those broad statutes and what is their fundamental purpose?

The Service carries out the conservation of natural resources under many statutes. For the conservation of migratory birds, these include:

- The Migratory Bird Treaty Act (16 U.S.C. 703-712), which prohibits the "take" of species and taxonomic families of native birds protected through four international treaties the U.S. has with Canada, Russia, Japan, and Mexico. It authorizes appropriations to carry out its provisions, which implement the purposes of these treaties.
- The Fish and Wildlife Conservation Act (16 U.S.C. 2901-2911), which authorizes financial and technical assistance to the States for the development, revision, and implementation of conservation plans and programs for nongame fish and wildlife.
- The North American Wetlands Conservation Act (16 U.S.C. 4401-4412), which provides funding and administrative direction for implementation of the North American Waterfowl Management Plan and the Tripartite Agreement on wetlands between Canada, U.S. and Mexico; statutory authority for the provision of grants for the conservation of wetlands that benefit waterfowl and other species.
- The Partners for Fish and Wildlife Act (16 U.S.C. 3773-3774), which authorizes the Service to provide technical and other assistance to partners for wildlife habitat conservation on private lands.

- The Fish and Wildlife Coordination Act, 16 U.S.C. 661 et seq., which authorizes the Secretary to provide assistance to and cooperate with public and private entities for the "development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat."

8. Have the 25 Joint Ventures established in the United States and Canada ever received grant money under the North American Wetlands Conservation Act? If yes, how were these funds spent?

Rarely, the Service is the lead partner in a restoration project that receives a NAWCA grant. For example, in 2000, the Rainwater Basin Joint Venture was the lead partner in a wetland acquisition and restoration project funded through a $50,000 NAWCA Small Grant.

There are 21 migratory bird Joint Ventures.

H. R. 1960: North American Wetlands Conservation Act

1. Who is on the North American Wetlands Council and how do they get on the Council?

The North American Wetlands Council composition is established by the North American Wetlands Conservation Act (NAWCA). The Council consists of nine members, including two permanent members, the Director of the Fish and Wildlife Service (Service) and the Secretary of the Board of the National Fish and Wildlife Foundation. The Secretary of the Interior (Secretary) appoints the remaining seven and any ex-officio members to the Council for three-year, staggered terms. In accordance with NAWCA, four of these appointments are directors of state fish and wildlife agencies representing each of the four migratory bird administrative flyways: the Atlantic, Pacific, Mississippi, and Pacific Flyways. The Secretary also appoints three members who represent charitable and nonprofit organizations that actively carry out wetlands conservation projects under NAWCA, the North American Waterfowl Management Plan, or the 1988 Tripartite Agreement to expand cooperative efforts to conserve wetlands in Mexico for wintering migratory birds.

Current members are:

Dan Ashe, *Director, U.S. Fish and Wildlife Service* • Jeff Trandahl, *Executive Director, National Fish and Wildlife Foundation* • Wayne MacCallum, *Council Chair and Director, Massachusetts Division of Fish and Wildlife* • Terry Steinwand, *Council Vice-Chair and Director, North Dakota Game and Fish Department* • Jim Karpowitz, *Director, Utah Division of Wildlife Resources* • Jonathan Gassett, *Commissioner, Kentucky Department of Fish and Wildlife Resources* • Scott Yaich, *Director of Conservation Operations, Ducks Unlimited* • David Nomsen, *Vice President of Governmental Affairs, Pheasants Forever* • Mary Pope Hutson, *Vice President, Land Trust Alliance*. The alternate member is Keith Ouchley, *Executive Director, The Nature Conservancy of Louisiana*. Ex-officio members are Mark W. Elsbree, *Vice President, Northwest Region, The Conservation Fund* • Glenn Olson, *Donal O'Brien Chair in Bird Conservation and Public Policy, National Audubon Society* • Martin Vargas

Prieto, *Director of the Wildlife Division, SEMARNAT* • and Virginia Poter, *Director General, Canadian Wildlife Service, Environment Canada.*

2. How do you quantify the success of the North American Wetlands Conservation Act (NAWCA)?

From September 1990 to date, some 4,500 partners in 2,216 projects have received more than $1.18 billion in grants. They have contributed another $2.47 billion in matching funds and $1.25 in non-matching funds to affect approximately 27 million acres of bird habitat across North America. These habitat conservation measures have had a significant effect on populations of migratory birds and other wildlife. Successful recovery of waterfowl populations across the nation is attributed to the implementation of the North American Waterfowl Management Plan, which was instituted as an agreement among North American nations in response to significant declines in waterfowl. In fact, the 2009 U.S. State of the Birds report indicated that over the past 40 years wetland- associated species held their own or increased, while bird species associated with other habitats (arid lands, grasslands, and forests) declined. NAWCA has also been reported to have a positive economic impact on the national economies of the United States and Canada. An economic analysis conducted during a 2002 program assessment conducted for the Service by Responsive Management reported that $411 million in federal funds invested from the Standard Grants Program (FY 1991-2001) and the Small Grants Program (FY 1996-2001) was translated into nearly $3.5 billion in additional economic activity in the U.S. and Canada.

3. What is the cost to create or restore one acre of wetlands?

Using NAWCA proposal data, we estimate that each acre restored or established with NAWCA grant and match funds costs approximately $239. Non-match funds that may have contributed to the restoration of these acres were not considered.

4. Prior to establishing the North American Wetlands Conservation Program in 1989, approximately how many acres of wetlands existed in the United States?

When European settlers arrived, wetland acreage in the lower 48 states is estimated to have been more than 220 million acres, or about 5% of the total land area. Between 1985 and 1997 the total wetland acreage in the coterminous U.S. was estimated at 105.5 million acres, or less than half of what had been present approximately 350 years earlier.

5. It is now more than 20 years later, how many new wetland acres have been created or restored because of a grant issued under NAWCA?

More than 2.25 million acres have been proposed for restoration or creation through NAWCA projects.

6. **Since this program was first authorized in 1989, the Congress has provided $583 million in direct appropriations and an additional $630 million in fines, interest payments and money allocated from the National Coastal Wetlands Planning, Protection and Restoration Program. This is a significant amount of money. What have the taxpayers gotten for that investment?**

Taxpayers have directly benefited from the protection, restoration, enhancement, and management of approximately 27 million acres of wetlands and associated habitats through grants provided by the North American Wetlands Conservation Act (NAWCA). NAWCA-sponsored wetland conservation across the continent has helped maintain and improve waterfowl and other migratory bird populations; provided essential and significant habitat for fish, shellfish, and other wildlife of commercial, recreational, scientific, and aesthetic value; and supported wetland-dependent rare, threatened, and endangered species. Additionally, NAWCA associated acres have contributed to flood and storm control, water quality, and ground water recharge. NAWCA projects also have provided areas for outdoor recreation, such as hunting, bird-watching, fishing, and hiking. NAWCA funded projects have in turn added jobs and brought income into communities through project construction and through the economic impact attributable to wildlife-related recreation (hotels, service stations, restaurants, etc.).

7. **What is the value of wetlands to hurricane prone regions of the United States like the Gulf of Mexico?**

Nowhere are the functions of wetlands more critical than along coastal areas exposed to hurricanes and tropical storms. In such relatively flat terrain, healthy wetlands buffer incoming wind and waves and pool surge waters. Studies by the Army Corps of Engineers estimate that the elevation of a storm surge is reduced by a foot for every 2.7 miles of marsh it passes over. The loss of 1.2 million acres of coastal wetlands in Louisiana has greatly increased the vulnerability and exposure of this area to such storms.

8. **Have there been any calculations of how much additional damage or restoration dollars would have been necessary if there were no wetlands in the Gulf of Mexico prior to the arrival of Hurricane Katrina?**

We are not aware of any such studies. However, according to Louisiana's 2012 Coastal Master Plan, the loss of barrier islands, marshes, and swamps that reduce incoming storm surge would substantially increase the vulnerability of coastal Louisiana communities, nationally important navigation routes, and energy infrastructure. Without continued restoration of these wetlands, expected annual damages from flooding by 2061 would be almost ten times greater than today, from a coast-wide total of approximately $2.4 billion to a coast-wide total of $23.4 billion.

9. **Of the $37.4 million provided to the Program in FY'11, how much of this money was spent on the acquisition of wetlands through either fee title or conservation easements?**

Grant and match funds are combined to track proposed activity costs. Therefore, it is not possible to know exactly how much of the FY 2011 appropriation would be spent on habitat acquisition. Based

on grant and match costs for activities proposed for 2011 NAWCA projects, an estimated $23.7 million of the $37.425 million appropriation would be used for habitat protection.

10. What is the basis of the statement that the NAWCA creates nearly 4,000 private sector jobs each year? Where are those jobs being created?

A 2002 assessment of the program, sponsored by Ducks Unlimited, estimated that current NAWCA grant and match expenditures create nearly 7,500 new jobs annually in the United States on average, generating over $200 million in worker earnings each year. Jobs that directly benefit from NAWCA projects include construction workers, contractors, equipment operators, wildlife biologists, realtors and land purchasers, engineers, and local business people selling supplies, materials, and equipment. Additionally, other businesses and industries (including hotels, car rental agencies, restaurants, sporting goods stores, and firearm dealers) benefit due to increased recreational opportunities generated by the projects.

H. R. 3074: Cormorant Management and Natural Resources Protection Act

1. During the hearing on H. R. 3074, Mr. Jimmy Anthony, representing the Louisiana Department of Wildlife and Fisheries, testified that "We need more flexibility at the state level." Do you agree with that statement?

The Service believes that the States have considerable flexibility under the current management program to address depredation caused by double-crested cormorants. The Service is updating the current Environmental Impact Statement process for cormorant management, which will enable the States to work with the Service to identify specific needs for increased flexibility for the States, as appropriate, in the management of this species.

2. Would the Fish and Wildlife Service be willing to work with the four Flyway Councils to give states additional tools to address the serious problems of an over population of double-crested cormorants is causing in places like Lake Waconia in Minnesota and East Sand Island in Oregon? Please elaborate on how this flexibility would be implemented?

Yes. The Service works closely with the Flyway Councils on migratory bird management across a wide range of migratory bird issues. The Service has published a Notice of Intent to update the existing cormorant management EIS, and the four Flyway Councils have already provided their comments. We will carefully consider the approach proposed by the Flyway Councils through these comments.

3. What is the current population of double-crested cormorants in the United States?

The Service estimates the current continental population of double-crested cormorants to be approximately 2 million birds.

4. What is the current estimate of the Great Lakes cormorant population? When was the last survey conducted?

The last complete survey of the Great Lakes was conducted in 2009, when 107,152 breeding pairs counted. One bird per breeding pair added to the count to take into account non-breeding birds, bringing the estimate to 321,456 birds. A little more than half of those were on the Canadian side of the Great Lakes. Indications are that numbers on the US side are declining gradually, while those on the Canadian side are stable.

5. Why did it take more than fifty years to have double-crested cormorants protected under the Migratory Bird Treaty Act of 1918? Prior to achieving protected status, didn't many biologists consider these birds to be a pest or nuisance species?

The 1936 Migratory Bird Convention with Mexico was first amended in 1972, when a number of taxonomic families of migratory birds were added, including Phalacrocoracidae, the family that includes double-crested cormorants.

6. What kind of damage are cormorants causing in the Great Lakes?

Depending on the location, complaints range from concerns over sport fish populations, impacts to vegetation from bird droppings, and conflicts with co-nesting bird species.

7. Has the federal government conducted any surveys of the impact of cormorants on fishery resources? What were the findings of these surveys?

Researchers at the U.S. Geological Survey and USDA Wildlife Services' National Wildlife Research Center have carried out a number of research projects on cormorant predation on freshwater fish in western Lake Erie and in western Lake Ontario and the St. Lawrence River. Scientific demonstration of cormorant impacts on specific, local fisheries has been difficult to secure, but certain studies have indicated such an impact is possible. Studies of populations of cormorants and fish stocks are led primarily by state agencies, because the fisheries occur in state waters. In most affected areas, data have not been available to assess such impacts.

8. Do individual private landowners have the tools they need to effectively address the impacts of Double-crested cormorants? What additional authority would be helpful?

A private landowner who is experiencing economic losses, or who is concerned about health and safety issues caused by double-crested cormorants can apply to the Fish and Wildlife Service for a depredation permit to alleviate the problems. Under the Aquaculture Depredation Order, commercial freshwater aquaculture producers in 13 states can kill cormorants without a permit if the birds are preying on the producers' fish stock.

9. How will authorizing State Governors allow them to more effectively address the problems that cormorants are causing to ecosystems?

It has not been demonstrated that double-crested cormorants are causing damage to ecosystems. States work closely with the Service to manage populations of all bird species protected under the

Migratory Bird Treaty Act, and states are currently authorized to work with constituent groups for which Depredation Orders have been set. The current Public Resource Depredation Order allows 24 states to address cormorant impacts to vegetation, other birds, and fish.

10. What is the impact of cormorants on other avian species that share the same habitat?

The impacts of cormorants on co-occurring birds are generally minimal. In some cases, cormorants can impact important habitat for other bird species.

11. Are cormorants a problem at any of the 71 National Fish Hatcheries? How has the Service addressed this predation problem?

We are not aware of any significant impacts of cormorants on National Fish Hatcheries. Fish rearing facilities at the National Fish Hatcheries are typically covered or protected from predatory birds.

12. What is the status of the development of a Regional Management Plan for double-crested cormorants by the Fish and Wildlife Service?

The Service is updating the 2003 Environmental Impact Statement on cormorant management in the United States, and regional cormorant management will likely be examined through this process.

13. What kinds of complaints are received by the Fish and Wildlife Service about cormorants in the Great Lakes Region?

The type of complaint varies depending on the location. Most complaints tend to be sport fish related, particularly in Minnesota, Michigan, New York, and to a lesser extent Wisconsin. There are also commercial fishing conflicts reported by several Tribes in Michigan. Impacts to vegetation are the dominant complaint in Ohio and Wisconsin, and to a lesser extent in New York. Conflicts with co-nesting species have been a concern in Minnesota (specifically on Leech Lake and Mille Lacs National Wildlife Refuge) and in Ohio (related to the vegetation damage).

14. What other regions of the country have been impacted by cormorants?

The current depredation orders cover areas of the nation with known impacts. The Aquaculture Depredation Order for double-crested cormorants covers Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Minnesota, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The Public Resource Depredation Order covers Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, West Virginia, Wisconsin and Vermont. Issues have arisen also for specific resources impacted in the Pacific Northwest.

Ranking Member Gregorio Sablan (CNMI)

1. How do Joint Ventures and LCCs work together?

Landscape Conservation Cooperatives (LCCs), like Joint Ventures, are geographically-oriented, self-directed partnerships. Both focus on conservation science needs, but, while Joint Ventures are primarily focused on bird conservation science and delivery, LCCs focus on identifying, prioritizing, and providing the science and science tools needed for partners to deliver, assess, and adapt conservation approaches across all natural and cultural resources. LCC Steering Committees and partnerships include representatives of other geographically-oriented, multi-partner conservation efforts, like the Joint Ventures, as well as the National Fish Habitat Partnerships, and myriad other such partnerships.

2. How many more Joint Ventures do we think there will be? Do you expect to approve more Joint Ventures?

Currently there are 21 Joint Ventures supported by the Service. All anticipated Joint Ventures are now in place, with coverage across the entire nation, except for a few counties in California. No new Joint Ventures are anticipated at this time.

3. Appropriations for NAWCA have been cut. How will this cut affect NAWCA projects and the Service's goals for migratory bird populations?

The decrease in funding will result in a decrease in acreage protected or restored for waterfowl and other wetland-dependent wildlife and will result in the loss of support available through matching funds. It will likely result in a reduction in non-matching partner funding, as well. Therefore, it will result in fewer NAWCA projects and the benefits to wildlife, outdoor recreation, water quality, and local economies they provide.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

SEP 1 1 2012

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

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Indian Affairs to questions submitted following the legislative hearing on June 22, 2011, on **H. R. 1560, to amend the Ysleta del Sur Pueblo and Alabama Coushatta Indian Tribes of Texas Restoration Act to allow the Ysleta del Sur Pueblo to determine blood quantum requirement for membership in that tribe, and H.R. 1158, Montana Mineral Conveyance 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 Dan Boren
Ranking Minority Member

Responses to questions submitted by Congresswoman Colleen Hanabusa in follow up to the June 22, 2011 hearing before the House Natural Resources Subcommittee on Indian and Alaska Native Affairs on H. R. 1560, to amend the Ysleta del Sur Pueblo and Alabama Coushatta Indian Tribes of Texas Restoration Act to allow the Ysleta del Sur Pueblo to determine blood quantum requirement for membership in that tribe, and H.R. 1158, Montana Mineral Conveyance Act.

1. **Question: Was the 1/8 blood quantum required for membership into the Tigua Indians of the Ysleta del Sur Pueblo instituted when the tribe was first federally recognized or was it instituted in the Ysleta del Sur Pueblo and Alabama Coushatta Indian Tribes of Texas Restoration?**

   Response: The Tribe's membership roll was in existence prior to enactment of the Restoration Act. The tribe's membership consisted of individuals listed on the Tribal Membership Roll approved by the Tribe's Resolution No. TC-5-84, on December 18, 1984, and approved by the Texas Indian Commission's Resolution No. TIC-85-005 adopted on January 16, 1985; and descendants of an individual listed on that Roll who possessed 1/8 degree or more Tigua-Ysleta del Sur Pueblo Indian blood, and enrolled by the tribe.

2. **Question: Why in 1983 did fiduciary responsibility for the tribe get transferred from the State of Texas to the federal government? Was there something improper in the initial transferring of the fiduciary responsibility to the state of Texas that made it essential that the federal government take back that responsibility?**

   Response: The purpose of the Restoration Act was to overcome the lack of authorization in the State of Texas' constitution to treat Indians differently than other citizens. The City of El Paso had expanded and grown up around the Pueblo; the Tiwa Indians suffered extreme conditions of poverty and hardship. Many of the Tiwa Indians and their children were uneducated and lacked the normal bare necessities of life such as shoes and clothing. Their average annual income was approximately $400 per year. They were assessed between $80 and $100 per year for city taxes on their small adobe shacks, which they could not pay, resulting in every Tiwa home facing tax foreclosure.

   Despite its acceptance of the transfer of responsibilities, if any, by the Act of April 12, 1968; 82 Stat. 93, the State of Texas undertook actions in the early 1980's which threatened the continued existence of the Pueblo. The State premised its actions on the opinion of Attorney General Jim Mattox that the acceptance of the trust responsibilities was unconstitutional under the State's constitution and the trust was dry.

   The Tiwa and the Alabama Coushatta Tribes beseeched Congress to protect them from the actions of the State. On August 18, 1987, the United States Congress restored the Federal trust relationship between the United States and the Tiwa and the Alabama and Coushatta Tribes. The new designation of the Tiwa Indians, i.e., their official name, is the Ysleta del Sur Pueblo.

3. **Question: In Ms. Gillette's oral testimony, she stated that it was not the policy of the Department of the Interior to impose a threshold blood quantum requirement on eligibility for membership in a federally recognized tribe when the Restoration Act was passed. Please elaborate on this answer, specifically addressing the issue of federal liability and any role it may have placed in the extension of federal benefits and protections to the Ysleta del Sur Pueblo.**

Response: During the passage of the Restoration Act, the legislative history shows that it was not the policy to "impose a threshold blood quantum requirement on eligibility for membership in a federally recognized tribe." However, the legislative history also shows that the Administration in 1987 did express concerns with the introduced version of the Restoration Act that included, in one version, a 3 year fixed time limit, and in another version, a 10 year fixed time limit, "that after a period of years, the Pueblo could amend its membership criteria and thereby expand the tribal service population.

The legislative history shows that the 10 year period during which tribal membership criteria would be fixed by the Restoration Act was deleted, thereby permanently locking in the Tribe's existing membership criteria. This amendment was agreed to based upon the fact that the membership criteria at that time was the Tribe's existing membership criteria and the Tribe did not oppose the amendment.

Thus, we see no legal issues associated with the current legislation's proposed amendment regarding the membership eligibility requirements of the Ysleta del Sur Pueblo. This view is consistent with the long standing Departmental policy that tribes have the authority to define membership in their tribes and the federal government will not interfere with the tribe's criteria. This position was confirmed by the Supreme Court in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

H.R. 1158, Montana Mineral Conveyance Act

1. **Section 5 and Section 2, Subsection 8, of H.R. 1158 states that the Northern Cheyenne Tribe will waive all legal claims against the United States. I do not want to see a situation where the federal government faces a class action lawsuit because the waiver of this right to a future suit is improper. Thus, what process or transaction is in place to ensure that this is a proper waiver?**

Response: Under the proposed legislation, the Tribe is waiving "each claim relating to the failure of the United States to acquire in trust for the Tribe as part of the Reservation the private mineral interests underlying the Cheyenne tracts," Sec. 5(a), and "all legal claims against the United States arising from the longstanding and continuing loss of the Tribe of mineral rights relating to the Reservation land." Sec. 2(8). Those claims are detailed in Sec. 2 at (5) and (7). Upon enactment of the legislation, BLM is will enter into one or more conveyance document(s) with the Tribe. Those documents will further address the scope of the waivers and describe the Tribe's authority to enter into the

conveyance(s) and the waivers. This process will help to ensure that the waiver is proper.

2. **H.R. 1158 waives the Northern Cheyenne Tribe's right to a future claim against the United States and in her testimony Ms. Gillette recommends that Great Northern Properties similarly waive their right to a future claim against the federal government. Can you provide for me a list of potential claims you are envisioning that could be brought against the United States?**

   Response: Ms. Gillette recommended this waiver out of fairness to the Tribe, since it was waiving its claims. We are currently unaware of any specific claims that Great Northern could bring against the United States.

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SEP 1 1 2012

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 Bureau of Ocean Energy Management to questions submitted following the Subcommittee's Thursday, March 8, 2012, oversight hearing on "***Effect of the President's FY 2013 Budget and Legislative Proposals for the Bureau of Ocean Energy Management and Bureau of Safety and Environmental Enforcement on Private Sector Job Creation, Domestic Energy Production, Safety and Deficit Reduction.***"

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 D. Holt
Ranking Minority Member

QUESTIONS FOR THE RECORD
Subcommittee Chairman Doug Lamborn

Subcommittee on Energy and Mineral Resources
Oversight Hearing on *"Effect of the President's FY 2013 Budget and Legislative Proposals for the Bureau of Ocean Energy Management (BOEM) and Bureau of Safety and Environmental Enforcement (BSEE) on Private Sector Job Creation, Domestic Energy Production, Safety and Deficit Reduction."*

March 8, 2012

Mr. Tommy Beaudreau
Director
Bureau of Ocean Energy Management

Q1. Director Beaudreau – How do you define a successful lease sale, is it solely sale volume, acreage or revenue? Is a sale where we see a decline of 50% in the number of separate bidders from the previous sale successful? How few bidders are acceptable in a "successful" sale?

A1. Each individual lease sale should advance BOEM's overall goal of managing the nation's offshore resources in a manner that promotes efficient and environmentally responsible energy development to help meet the country's energy needs, consistent with our mandate under the Outer Continental Shelf Lands Act. BOEM is committed to structuring its sales so as to make significant resources available for lease in areas with the greatest resource potential, and with terms that provide fair market value to taxpayers and encourage diligent development. Judging a sale's results against others can be misleading, depending on market factors such as prevailing oil and gas prices, the specific pool of available lease tracts in a given sale, bidder expectations about the size and quality of resources in those tracts, proximity to existing infrastructure, etc.

BOEM sets the terms of each sale to support the priorities noted above. Specifically, the terms of sales reflect recent administrative reforms to ensure fair return to taxpayers and encourage diligent development. These terms include escalating rental rates to encourage prompt exploration and development of leases, as well as extensions of time under the lease if the operator demonstrates a commitment to exploration by drilling a well during the primary term. The durational terms of leases are graduated by water depth to account for differences in operating at various water depths.

In 2007, former Secretary Kempthorne raised offshore royalty rates from 12 ½ percent to 16.7 percent, and in 2008 raised the royalty rate for all blocks in the Gulf of Mexico (GOM) to 18 ¾ percent. This administration has maintained the 18 ¾ percent rate

offshore in the GOM.

In addition, BOEM recently increased the minimum bid for deepwater leases to $100 per acre, up from $37.50, to ensure that taxpayers receive fair market value for offshore resources. This action also provides bidders with additional impetus to invest in leases that they are more likely to develop. Rigorous analysis of the last 15 years of lease sales in the GOM showed deepwater leases that received high bids of less than $100 per acre, adjusted for energy prices at the time of each sale, experienced virtually no exploration and development drilling.

The terms of sale also reflect a series of conditions to protect the environment. For example, these include stipulations to protect biologically sensitive resources, mitigate potential adverse effects on protected species, and avoid potential conflicts associated with oil and gas development in the region.

Measuring by the number of bidders alone is not necessarily the best way to quantify interest in a sale, or whether the sale as a whole is advancing the objectives described above. However, the number of bids and the value of high bids are good indicators of overall industry interest in particular lease sales. For example, the December 2011 Western GOM Lease Sale 218 attracted 241 bids submitted by 20 companies on 191 tracts offshore Texas, compared to 189 bids submitted by 27 companies on 162 tracts during the previous Western GOM Lease sale in August 2009. Lease Sale 218 garnered the third highest amount of high bids of the last 10 lease sales in that planning area, and netted $325 million in high bids for the United States Treasury.

Q2. Are there steps the Bureau can take to increase the number of bidders to encourage? more participation?

A2. Most of the fluctuation in the number of companies participating in specific lease sales is due to factors related to changing market conditions. The oil and gas resources available in the offered area, prevailing energy prices, industry costs, technology, and available prospects in other locations are important contributors to the number of companies that participate in a particular lease sale. The location and specific tracts available in a particular sale are significant factors in the level of industry interest. In the Central and Western GOM, BOEM typically offers nearly all unleased acreage, excluding Congressional moratorium areas imposed by the Gulf of Mexico Energy Security Act of 2006 and areas within the boundaries of the Flower Garden Banks National Marine Sanctuary.

In recent years, the trend for the number of bidders in a sale has been steady for tracts offered in water depths greater than 200 meters in the Central GOM. These areas tend to hold the most promising oil discoveries, including a number of important plays that have been discovered within the past few years alone. BOEM believes that it is most important to encourage competition on the best prospects, and has developed policy changes like the ones described above in order to encourage focused bidding on the areas of greatest potential.

Notably, while deepwater areas tend to be most attractive to industry, fewer companies have the financial and technical capabilities to operate in those depths compared to the shallower waters on the shelf.

Q3. The recent IHS-CERA study commissioned by the Bureau showed that natural gas on the shelf faces an uncertain economic future at the current royalty rates due to the high government take in a low price environment. What steps is the Bureau taking to encourage gas development on the shelf, bring back additional bidders and leases, and promote offshore development of our resources?

A3. Weaker demand for GOM shelf leases reflects the basin maturity and the economics of natural gas production in the shallow GOM water depths. Shallow water leases tend to be more gas prone, and recent declines in the price of natural gas caused by the availability of abundant new sources of cheaper-to-develop onshore gas has further weakened interest on the GOM shelf. In addition, most of the remaining undiscovered resources are anticipated to be in smaller fields, at ultra-deep depths, and in locations that are more difficult and expensive to explore. Based on our experience with deep well-depth royalty relief programs, it is unlikely that lowering royalty rates on newly issued leases would encourage additional drilling without resulting in undesirable losses of future royalties on higher valued tracts that would be leased and developed even without royalty relief.

Q4. Director Beaudreau – What is BOEM doing to ensure that Exploration Plans are being processed within 30 days in accordance with statute 43 USC 1340 (c)(1)? For instance, how is the Bureau working to reduce or eliminate the issue of plans waiting months in some cases before being considered "deemed submitted"? Can you provide for us a detailed description of the reasons for the delays associated with plans being deemed submitted?

A4. BOEM continues to meet statutory requirements for the review of Exploration Plans (EPs). In order to ensure orderly processing of EPs, BOEM, in accordance with 30 CFR 550.231(a), has 15 working days to review an EP for completeness. An EP that does not fully comply with legal and regulatory standards will not be deemed submitted, and will be returned to the operator for completion.

Consistent with BOEM's strengthened standards, BOEM is committed to ensuring that the EP review process is efficient and transparent to industry and promotes allowing operators to achieve compliance with BOEM's standards and regulatory requirements.

BOEM is taking concrete steps to facilitate this approach. For example, BOEM assigns a designated "plans coordinator" to work with operators and to provide them a single point of contact throughout the review of each EP. Further, on April 25, 2012, BOEM held a technical workshop with industry operators to discuss the heightened standards for offshore EPs, share best practices, and obtain industry feedback regarding the EP review process. The goal of this workshop was to promote compliance and

further increase the efficiency of EP review. The program included a specific focus on identifying frequent errors in EP submissions, and offering tips for resolution. Addressing operator errors in submittals, particularly early on in the EP completion and review process, can increase efficiency by avoiding unnecessary reviews of incomplete plans, and reduce the need for BOEM to return materials to operators with requests for corrections and additional information.

United States Department of the Interior

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Washington, DC 20240

SEP 1 1 2012

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 questions submitted following the Subcommittee's July 10, 2012, legislative hearing on "***H.R.6060*** --the Endangered Fish Recovery Programs Extension Act of 2012."

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

Democratic Questions for the Record on behalf of Congresswoman Napolitano

7/10/12 – Subcommittee on Water and Power Hearing on H.R. 6060, *"Endangered Fish Recovery Programs Extension Act of 2012."*

QUESTION: What is the current overhead for the Program?

ANSWER: Funds utilized by the Bureau of Reclamation (Reclamation) and other entities for Program tasks are assessed varying rates of overhead. These tasks include habitat maintenance, fish stocking, non-native fish removal and other Program activities, and implementing partners include public universities, state game agencies, local water districts, private sector contractors and other Federal agencies. Each entity which utilizes the funds has its own unique overhead rate. Consequently there is not a single representative overhead rate for the program. Section 3 of the proposed legislation focuses on the overhead rate applied by the Fish and Wildlife Service, therefore we offer the explanation below of its methodology for calculating and applying overhead.

The Fish and Wildlife Service (Service) conducts a portion of its work under the recovery programs with funds transferred from Reclamation. It is on these funds that the overhead charge is applied. In Circular A-25, OMB directs Federal agencies to recover full costs associated with providing goods and services to private entities, States, tribes, and other government agencies to ensure that the service, sale, or use of provided Service goods or resources is economically self-sustaining. Fish and Wildlife Service Policy (264 FW 1) establishes the Service's overhead rates. The standard overhead rate applies to reimbursable agreements in which Service personnel perform the activities in leased facilities. The rate covers costs for leased space, payroll / personnel / finance systems, phones, Regional office support, contracting / procurement activities, and information system infrastructure.

The Service Region 6 has an agreement in place through at least September 30, 2014, that limits the "overhead charge" (i.e., the indirect cost recovery rate for funds transferred to the Service from Reclamation) to half the current rate (reducing the rate from 22% to 11%) for funds transferred to the Upper Colorado and San Juan Programs. This agreement has been in place with the Upper Colorado Program for more than a decade, but was recently expanded to include the San Juan Program. The Service Region 2 is involved only in the San Juan Program. It has charged the 22% indirect cost recovery rate for funds transferred from Reclamation for the San Juan Program, because the San Juan Program is smaller in size and the total overhead collected in fiscal year (FY) 2010 from direct fund transfers to Region 2 was considerably smaller. However, the Service Region 2 has recently initiated a similar agreement (reducing the rate from 22% to 11%), which will be in effect in FY 2013. On the total transferred from Reclamation to the Service under both recovery programs in 2010, the two Service regions charged an average overhead rate of 13.4%. In FY 2013, all projects carried out by the Service for the Upper Colorado and San Juan Programs will have a reduced overhead rate of 11%.

QUESTION: Can you describe how the Service reimbursable overhead is used by the Agency for these programs?

ANSWER: The overhead charge is formally called the "indirect cost recovery rate." It is not merely a fee for transferring funds, but a response to the requirements of OMB Circular A-25. As mentioned above, Fish and Wildlife Service Policy (264 FW 1) establishes the Service's cost recovery rates, which cover costs for leased space, payroll, personnel, finance systems, phones, Regional office support, contracting & procurement activities, and information system infrastructure. Simply put, when one agency accepts funds from another agency or entity to conduct a project, those funds must cover not only the direct expenses of staff working on the project, but also at least some portion of the indirect expenses of supporting those staff (e.g., leased space, Regional and Washington office administrative support, etc.).

As an example, in FY 2012, Reclamation funded $1,824,676 of Service projects under the Upper Colorado Program. Per a long-standing agreement, the Service charges only half of its standard 22% indirect cost recovery rate on these funds, and therefore charged $200,714, for a total transfer of $2,025,390 from Reclamation to the Service in Interagency Agreements in FY 2012. The 11% indirect cost recovery charge is apportioned within the Service as follows:

4% to Service Washington Office (Service-wide) administration

3% to Service Regional (Region 6) Office (Region-wide) administration

1.5% to Service Regional Ecological Services administration

2.5% to Service Regional Ecological Services space

The San Juan Program did not have an agreement in place to reduce the indirect cost recovery rate until after FY 2012, and therefore in FY 2012, a rate of between 17 and 22% was applied to Service projects. Reclamation funded $1,024,308 of Service projects under the San Juan Program in FY 2012 and added indirect cost recovery charges totaling $177,547, bringing the total to $1,201,855. Apportionment of the indirect cost recovery charges within the Service in Region 2 is similar to that in Region 6.

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SEP 14 2012

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 Bureau of Land Management to questions submitted following the Subcommittee's Friday, September 9, 2011, oversight hearing on "**Impacts to Onshore Jobs, Revenue, and Energy: Review and Status of Sec. 390 Categorical Exclusions of the Energy Policy Act of 2005.**"

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

Sincerely,

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

Enclosure

cc: The Honorable Rush D. Holt
Ranking Minority Member

Subcommittee on Energy and Mineral Resources
Oversight Hearing on "Impacts to Onshore Jobs, Revenue, and Energy: Review and Status of Sec. 390 Categorical Exclusions of the Energy Policy Act of 2005"
September 9, 2011

Questions for the Record for BLM Deputy Director Mike Pool

Chairman Doug Lamborn (CO)

1. **Deputy Director Pool, BLM has, in the past, made significant modifications to administrative requirements to which oil and natural gas operators on public lands are subject, without recourse to formal rulemaking processes with provision for notice and comment. This was the case with IM 2010-117, describing revisions to BLM land use planning and lease parcel reviews, and with IM 2010-118, describing revisions to BLM policy regarding use of EPAct05 Section 390 Categorical Exclusions. Please explain the agency's rationale for pursuing this course of action. How does the agency make a distinction between subject matter that merits an administrative rulemaking process, and subject matter that may be addressed by internal guidance to agency staff in the form of an instructional memorandum.**

Response to 1:
The BLM engages in rulemaking when it is imposing a requirement or revising a requirement previously imposed, that confers a new privilege or duty upon a member of the public. In general, an instruction memorandum is used to direct BLM employees how to perform their program work, as in this case NEPA analysis, or to provide clarification and interpretation of existing regulations.

2. **Deputy Director Pool, the purpose of categorical exclusions are to streamline the permitting process and expedite American energy production and job creation. Do you believe that categorical exclusions accomplish this goal?**

Response to 2:
Certain actions are categorically excluded from NEPA review because the class of actions has been determined to typically not raise the potential for significant environmental impacts. Categorical exclusions can, when appropriately applied to a specific proposed action, provide an efficient tool to reduce paperwork and potential delay by eliminating the BLM's need to conduct and prepare further, more detailed, environmental analysis and documentation – EA/FONSIs or EISs – to support the authorization of specific Federal activities. This tool is used by the local office where appropriate and where it makes sense. BLM line managers have the best information to make decisions that match the appropriate level of NEPA review for a proposed activity to the conditions on the ground.

Some BLM field offices have made use of Section 390 CXs more than others. The differences stem from a variety of factors and circumstances, such as whether an office has recently completed any site-specific NEPA documentation, the level of confidence the authorized officer

has in using a Section 390 CX, and the level of understanding the resource specialist has about the environmental sensitivity in the area where the project would take place. While a particular use of a Section 390 CX does not, in most cases, save substantial time, the cumulative time savings from processing multiple actions with Section 390 CXs can be significant.

3. **Deputy Director Pool, despite the fact that the GAO report on categorical exclusions did not recommend their elimination, but instead recommended simply that clarification be provided on how they would be used. Why did BLM then choose to essentially eliminate of the use of categorical exclusions?**

Response to 3:
The BLM's Section 390 CX reform policy did not eliminate the agency's ability to use the Section 390 CXs. The policy made the process for using Section 390 CXs consistent with the agency's existing environmental review process for using administrative CXs, including the need to conduct a review for extraordinary circumstances. If extraordinary circumstances associated with an action are identified, there is an indication that this particular proposed action could raise significant environmental impacts and therefore it is not appropriate to use an administrative categorical exclusion and further NEPA review, either an Environmental Assessment or and Environmental Impact Statement, is required. The BLM's policy to review the potential for significant impacts based on the site and project specific circumstances before proceeding with the Section 390 CX, aligned the use of Section 390 CX with all other BLM CXs, was supported by the Council on Environmental Quality and was responsive to a legal challenge, concerns raised by members of Congress, and information identified in the GAO's report which recommended that the BLM issue detailed and explicit guidance that addresses the gaps and shortcomings in its Section 390 guidance.

As part of BLM's multiple-use mission, the BLM seeks to protect all resource values as it administers the development of domestic energy resources such as oil and gas on public lands. This is achieved, in part, by ensuring that adequate reviews are conducted before authorizing oil and gas development activities, including the identification of appropriate mitigation measures. Environmental analysis documents associated with land use plans do not generally include an analysis that adequately evaluates the effects of specific oil and gas development proposals.

For these reasons, the BLM issued a policy in 2010 that required a review of extraordinary circumstances to help ensure impacts that may be significant were adequately evaluated before authorizing the development of federal oil and gas resources.

4. **Deputy Director Pool, as I'm sure you know, the Administration used categorical exclusions over 179,000 times to advance the progress of taxpayer funded stimulus projects. Can you please explain to the Committee why the Administration found categorical exclusions acceptable to use for stimulus projects, but categorical exclusions were not acceptable for oil and gas projects that have previously gone through extensive environmental reviews?**

Response to 4:

The Department of the Interior and the BLM are able to categorically exclude some types of activities (most of which are unrelated to federal oil and gas development) from the preparation of an environmental analysis document. Stimulus projects covered a wide array of activities that fit into one or more of the categories that could qualify for an administrative categorical exclusion. All categorical exclusions used for an American Recovery and Reinvestment Act (ARRA) project were reviewed for extraordinary circumstances, and in the absence of extraordinary circumstances the project proceeded based on the CX. The range of categorical exclusions used for ARRA projects was much broader than the five types of narrowly defined oil and gas activities that may be categorically excluded by a Section 390 CX. Also, criteria used to identify projects appropriate for stimulus funding included the need for proposed projects to be "shovel ready." Essentially these projects were prescreened to determine if they raised potentially significant environmental concerns and would therefore merit additional, more extensive environmental analysis, before they could be undertaken. Most projects that had a potential for significant environmental issues were not selected for stimulus funding in the first place.

5. **Deputy Director Pool, can you explain whether the agency's experience with implementation of the Energy Leasing Reforms indicates staffing and budget are adequate at Field, District and State Offices to execute the new Reform plan and to fulfill other agency mandates.**

Response to 5:
The Secretary's oil and gas reforms, announced in 2010, establish a more orderly, open, consistent, and environmentally sound process for developing oil and gas resources on public lands. The BLM continues to implement these key policy changes that include an upfront investment in site visits, environmental documentation, and public participation. This has strengthened the BLM's ability to document its decision-making process. Initial indications are that protests for oil and gas leasing are decreasing but not eliminated. We continue to create these and other efficiencies.

In these times of increasing fiscal constraint, the BLM is initiating its reforms within current budgets to the extent practical by adjusting program funding and priorities. The BLM is committed to doing its part to implement these policy changes within appropriated funding levels for 2012.

   a. **Are backlogs developing in BLM Offices with respect to required pre-lease or leasing actions, with respect to issuance of permits, or with respect to other agency actions?**

   Response to 5a:
   No. The BLM issued 2,188 leases during fiscal year (FY) 2011. This is 116 more than were issued in FY 2009 and 880 more than were issued in FY 2010. Using the Leasing Reform Policy, the BLM continues to process expressions of interest and issue leases in areas where oil and gas development is appropriate. At the end of FY 2011, there were more than 7,000 APDs approved for operations on BLM and tribal lands, but not yet drilled by industry. At

the end of FY 2011, there were 730 APDs pending longer than 30 days for a BLM decision to approve or deny the application.

b. What are the potential impacts of these backlogs to the public lands and resources, and how and when will these backlogs be eliminated?

Response to 5b:
With over 7,000 APDs approved, but not yet drilled, opportunities remain to develop resources on the public lands. Nonetheless, the BLM continued to process more applications for permit to drill than had been received during the year, thereby continuing to reduce the number of pending applications, including those that are in "backlog" status.

c. Do you believe that using categorical exclusions would be a sufficient way to eliminate some of these backlogs?

Response to 5c:
There are a variety of options the BLM utilizes to fulfill its NEPA requirements. The Section 390 CXs are one of those options that are beneficial in circumstances where they are applicable. However, in order to use a Section 390 CX, activities must meet the particular criteria of a given category, such as proposing to drill a new well on an existing well pad or proposing surface disturbance that is no greater than 5 acres.

The design features of projects to develop federal oil and gas resources are not driven by the criteria associated with the Section 390 CXs. Therefore, not all proposals to develop federal oil and gas resources fall within the criteria of the Section 390 CXs. For example, many proposals do not entail drilling a new well on an existing well pad or disturbing less than 5 surface acres and, therefore, do not qualify for a Section 390 CX. Compliance with NEPA would need to be accomplished through other means, such as the preparation of an Environmental Assessment and Finding of No Significant Impact (EA/FONSI) or an EIS as appropriate.

6. Deputy Director Pool, can you please provide the Committee with a full set of numbers of categorical exclusions (CX) issued by field office and state beginning with 2006 when the statutory CXs were first implemented through the end of fiscal year 2011? This includes, for each field office, total CXs used by type (#1, #2, #3, #4, and #5), total APDs approved, the percentage of total CXs used, and total APD's approved.

Response to 6:
The data presented in the table below is from periodic data requests that did not always coincide with a fiscal year, is not maintained in a database that can be queried or manipulated, and is complete through June 30, 2011. The table summarizes the number of categorical exclusions (CXs) issued by each field office and state beginning with FY 2006 through June 30, 2011 to approve APDs. The percentage of total Section 390 CXs used to approve APDs is calculated using the sum of approvals that relied on CX#1 (individual surface disturbance less than five acres), CX#2 (drilling at a location at which drilling has previously occurred within the last five years), and CX#3 (drilling in a developed field for which an environmental document, approved

within the last five years, analyzed drilling as a reasonably foreseeable activity). This is because these three CXs are the only CXs that may be used to support the BLM's APD approval. Section 390 CX#4 (placement of a pipeline within a right of way corridor approved within the last five years) and CX#5 (maintenance of a minor activity) may be used to support the approval of other authorizations provided for under the Mineral Leasing Act (MLA), such as MLA Rights-of-Way (ROW) and Sundry Notices (SN).

PERIOD: Fiscal Year 2006 to 3rd Quarter of Fiscal Year 2011 (October 1, 2005 - June 30, 2011)									
State	Field Office	Total CX #1 Used	Total CX #2 Used	Total CX #3 Used	Total CX #4 Used	Total CX #5 Used	Total CXs Used	Total APDs Approved	Percentage of APDs Approved with CXs
AK	Anchorage	4	17				21	37	57%
	Alaska	**4**	17				**21**	37	**57%**
CA	Bakersfield	18	3	182			203	1375	15%
	California	**18**	**3**	**182**			**203**	**1375**	**15%**
CO	Canon City			2			2	142	1%
	Little Snake	6	5	1	5		17	181	9%
	San Juan/Durango	1			1		2	335	1%
	Glenwood Springs	61	158	50	18	1	288	1580	18%
	Grand Junction	6	19	21	6	1	53	453	12%
	White River	6	48	5	6	7	72	862	8%
	Colorado	**80**	**230**	**79**	**36**	**9**	**434**	**3553**	**12%**
ES	Jackson	22	29	32	2	4	89	255	35%
	Milwaukee			3			3	31	10%
	Eastern States	**22**	**29**	**35**	**2**	**4**	**92**	**286**	**32%**
MT	Dickinson			103			103	781	13%
	Great Falls	2	3	60	5	11	81	392	21%
	Miles City		2	45	2		49	349	14%
	Montana	**2**	**5**	208	7	**11**	**233**	**1522**	**15%**
NV	Reno (Mineral Res. Div.)	2	**5**			1	8	37	22%
	Nevada	**2**	**5**			**1**	**8**	37	**22%**
NM	Carlsbad	19	12	5	40	2	78	2582	3%
	Farmington	58	30	970	12		1070	2689	40%
	Hobbs	47	11	443	11	1	513	1009	51%
	Albuquerque							37	
	Roswell	13	2	17	14		46	267	17%
	Tulsa		20				20	478	4%
	New Mexico	137	**75**	1435	77	3	1727	7062	**24%**
UT	Moab/Price	51	71	19	1	4	146	492	30%
	Salt Lake	7	6				13	38	34%
	Vernal	42	41	1170	39	17	1309	4418	30%
	Utah	**100**	**118**	**1189**	40	**21**	**1468**	**4948**	**30%**
WY	Buffalo	168	208	344	43	46	809	8129	10%
	Casper	44	46	389		19	498	636	78%
	Rock Springs			49			49	442	11%
	Kemmerer	38		7			45	187	24%
	Lander	9	29	9	28	3	78	379	21%
	Newcastle							194	
	Pinedale	90	665	1706	5	9	2475	3135	79%
	Rawlins	163	24	36	1	5	229	1296	18%
	Worland/Cody	33	1	40		38	112	202	55%
	Wyoming	**545**	**973**	2580	77	**120**	4295	14600	**29%**
	Nationwide	**910**	**1455**	5708	239	**169**	8158	33420	**24%**

Ranking Member Edward J. Markey

1. **Can you please explain how the 2010 policy guidance issued by the Obama Administration addressed some of the problems with the Bush Administration's policy for implementing the categorical exclusions for some oil and gas permits under Section 390?**

Response to 1:
As part of BLM's multiple-use mission, the BLM seeks to protect all resource values as it administers the development of oil and gas resources on public lands. This is achieved, in part, by ensuring that adequate NEPA reviews are conducted prior to authorizing oil and gas development activities, and appropriate mitigation measures are identified. Environmental analysis documents associated with land use plans cover broad areas and do not generally include an analysis that adequately evaluates the effects of site-specific oil and gas development proposals.

The BLM's policy to review the potential for significant impacts based on the site and project specific circumstances before proceeding with the Section 390 CX, aligned the use of Section 390 CX with all other BLM CXs, was supported by the Council on Environmental Quality and was responsive to a legal challenge, concerns raised by members of Congress, and information identified in the GAO's report which recommended that the BLM issue detailed and explicit guidance that addresses the gaps and shortcomings in its former Section 390 guidance. For these reasons, the BLM issued a new policy that requires a review of extraordinary circumstances to help ensure impacts that may be significant are adequately evaluated before authorizing the development of federal oil and gas resources.

2. **The BLM announced on September 9th that it would be moving forward with a formal rulemaking. However, given the August 12 court decision, it is my understanding that the BLM will be operating under the Bush administration's policy for Section 390 categorical exclusions, while the rulemaking is ongoing. How will BLM operations in its field offices during the period between now and when the rulemaking is completed?**

Response to 2:
On August 19, the BLM complied with the Court's Order to stop using the Section 390 CX guidance in Instruction Memorandum (IM) 2010-118 to the extent it limited the application of Section 390 CXs in specific ways. The BLM directed its field offices to resume following the guidance outlined in the 2008 BLM NEPA Handbook when considering the application of Section 390 CXs. This includes:

- Documenting, and incorporating into the well file or case file, the decision-maker's rationale as to why one or more Energy Policy Act CXs apply;
- Not conducting a review for extraordinary circumstances when considering the use of a Section 390 CX; and
- Clarifying that other procedural requirements still apply, such as consultation under the Endangered Species Act and National Historic Preservation Act.

It is still the BLM's policy to maintain a structured, multi- or interdisciplinary permit review and approval process, conduct onsite exams for 100 percent of proposed well and road locations, comply with other procedural requirements required by other environmental statutes, such as the National Historic Preservation Act and the Endangered Species Act, and apply appropriate mitigation and BMPs to all permitted actions even when using a Section 390 CX.

3. **Your testimony states that BLM plans to initiate rulemaking in "the near term." How quickly do you anticipate BLM being able to begin the rulemaking process and how quickly do you anticipate finalizing the rulemaking?**

Response to 3:
When the BLM determines how best to address the Court's order and implement Section 390 of the Energy Policy Act of 2005 (EPAct), it will initiate a rulemaking effort. The BLM expects the rulemaking process to take approximately 18 months.

4. **The GAO has found that the implementation of the Bush Administration's policy was inconsistent amongst BLM offices and documented harm to air quality and wildlife habitat as a result of over-use of these exclusions. Will returning to the Bush Administration's policy while the rulemaking process is ongoing lead to the same problems?**

Response to 4:
The BLM's policy is still to maintain a structured, multi- or interdisciplinary permit review and approval process, conduct onsite exams for 100 percent of proposed well and road locations, comply with other procedural requirements required by other statutes, such as the Federal Land Policy and Management Act, Clean Air Act, Clean Water Act, and Endangered Species Act, and apply appropriate mitigation and BMPs to all permitted actions even when using a Section 390 CX.

The BLM's interim direction is to follow the guidance outlined in the 2008 BLM NEPA Handbook when considering the application of Section 390 CXs. .

5. **The Bush Administration policy prevented BLM from even considering whether there were extraordinary circumstances, such as threats to public health and safety, impacts to endangered species or cumulative impacts that would warrant additional environmental review when a Section 390 exclusion was utilized. Do you think it's important for BLM's rule to allow for a review of extraordinary circumstances? If so, why?**

Response to 5:
The review of extraordinary circumstances helps to identify those circumstances where other substantive environmental requirements, such as the Clean Air Act and the Endangered Species Act, must be satisfied before the proposed action can proceed. As previously mentioned during the Deputy Director Mike Pool's testimony, one of the options the BLM will be considering as part of the agency's rulemaking effort would be those elements of its 2010 guidance the Court vacated, which include a review of extraordinary circumstances. The BLM will provide notice

and an opportunity for the public to comment, consistent with the Administrative Procedure Act (APA), as part of its rulemaking effort.

6. **Another concern raised by the GAO regarding Section 390 was the large amount of variation among the BLM field offices in how they each implemented Section 390. This led to a great deal of uncertainty, and a large number of protests challenging BLM's actions. Do you think it's important to standardize the permit application process of Section 390 as part of the new rule?**

Response to 6:
The Section 390 CXs are used to support decisions to authorize specific oil and gas permits issued by the BLM. An example of such a permit includes an Application for Permit to Drill (APD). Unlike decisions to issue a federal oil and gas lease, which may be protested administratively, decisions to issue a specific permit to develop federal or Indian oil and gas resources are subject to legal appeal under procedures outlined in 43 CFR Part 4.

The application for a permit to drill is a standardized process. The BLM Authorized Officer has the final decision-making authority with respect to the appropriate form of analysis needed before a decision can be made on a drilling application. BLM application review policies provide a framework for management. These policies are not site-specific prescriptions but guide responsible energy and mineral development. The policies enable local review to account for site specific resources, resource uses, industry interests, and community needs. This flexibility is needed to be responsive to different combinations of these factors. Nonetheless, the APD outcomes may vary somewhat when compared regionally because of accounting for specific local conditions. The outcomes, however, comply with laws, regulations, and policy.

7. **The GAO's 2009 report noted that significant impacts to air quality and wildlife habitat had occurred in areas where Section 390 categorical exclusions were heavily utilized, especially in Wyoming, Utah, and New Mexico. How does the BLM plan on reviewing drilling permits where these environmental impacts have occurred in light of the current court ruling?**

Response to 7:
On August 19, the BLM complied with the Court's Order by directing its field offices to stop using the Section 390 CX guidance in IM 2010-118 and resume using the guidance outlined in the 2008 BLM NEPA Handbook when considering the application of Section 390 CXs.

It is still the BLM's policy to maintain a structured, multi- or interdisciplinary permit review and approval process, conduct onsite exams for 100 percent of proposed well and road locations, comply with other procedural requirements required by other environmental statutes, such as the Clean Air Act and the Endangered Species Act, and apply appropriate mitigation and BMPs to all permitted actions even when using a Section 390 CX.

8. **Does BLM still plan on developing a standardized checklist for the review and use of Section 390 categorical exclusions, as the GAO recommended? Or will this be part of a new rulemaking process?**

Response to 8:
The BLM is considering long-term options for regulations to address the Court's order, which range from reverting to the previous policy outlined in the 2008 BLM NEPA Handbook to proposing those elements of IM 2010-118 the Court vacated and enjoined the agency's ability to implement. The BLM's rulemaking effort will address the Court's concern that BLM provide notice and an opportunity for the public to comment before BLM adopts procedures that would bind the agency and impose or affect individual rights and duties.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

SEP 2 1 2012

The Honorable Rob Bishop
Chairman
Subcommittee on National Parks, Forests and
Public Lands
Committee on Natural Resources
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed is the response to the follow-up question from the oversight hearing "Concession Contract Issues for Outfitters, Guides and Smaller Concessions" on Thursday, August 2, 2012. These responses have been 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 Raul Grijalva, Ranking Minority Member, Subcommittee on National Parks, Forests and Public Lands

Enclosure

Question for the Record for Peggy O'Dell
Deputy Director for Operations, National Park Service, Department of the Interior

United States House of Representatives Committee on Natural Resources
Subcommittee on National Parks, Forests and Public Lands
Oversight Hearing on Concession Contract Issues for Outfitters, Guides and Smaller Concessions
August 2, 2012

Question from Representative Scott Tipton:

Ms. O'Dell, my constituents have contacted me regarding a Park Service proposal to consider prohibiting guided climbing services from holding permits on U.S. national parks.

American Mountain Guides Association (AMGA) members have been fighting very hard through their sister organization, the International Mountain Guide Association, to work on reciprocity for American and foreign guides. My understanding is that if a climbing guide becomes an AMGA/IMGA certified guide, that guide is then able to lead a guided climbing expedition on foreign soil; however, this is not necessarily the case in the United States.

To address this barrier, the AMGA has helped establish the Certified Guiding Cooperative, which allows IMGA members to become members of the cooperative and guide on public land throughout the cooperative's permit.

Now the Park Service is considering a ban on that business form. What is the reason for this proposed ban, given the significant economic and recreational contribution made to Colorado by members of the AMGA/IMGA?

Response:

Commercially guided climbing businesses that operate in national parks must be authorized to do so under either a commercial use authorization (CUA) or a concession contract, although generally CUAs are used. The National Park Service is considering whether or not Certified Guiding Cooperative (CGC) shareholder-members should be allowed to operate their individual businesses under a single CUA. No decision has been made at this time.

The NPS's main concern is the ability to hold the CGC, or a similar entity, accountable for the actions of its members. When a business holds a CUA, its qualified employees may conduct a business operation in a park and the business may be held responsible for the actions of its employees. If the NPS issues a single CUA to a cooperative, and allows shareholder-members who are not employees of the cooperative to operate in parks, it would be difficult for the NPS to enforce compliance with the terms and conditions of the CUA, or for customers to seek a remedy from the CUA holder in the event of an injury. This could adversely affect other member guides and visitors, since the NPS may be forced to revoke a CUA, thereby eliminating the ability of

other guides to operate under the group authorization. Allowing this business model could set a precedent for commercial services that would have broad implications for other types of business operations in national parks. For these reasons, the NPS is weighing whether or not a single CUA for CGC shareholder-members is appropriate in national parks.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

OCT 05 2012

The Honorable John Fleming
Chairman
Subcommittee 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 United States Fish and Wildlife Service to questions submitted following the Subcommittee's May 8, 2012, legislative hearing on **H.R. 3210, To amend the Lacey Act Amendments of 1981 to limit the application of that Act with respect to plants and plant products that were imported before the effective date of amendments to that Act enacted in 2008, and for other purposes; and H.R. 4171, To amend the Lacey Act Amendments of 1981 to repeal certain provisions relating to criminal penalties and violations of foreign laws, and for other purposes.**

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 Minority Member

COMMITTEE ON NATURAL RESOURCES
Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs
May 8, 2012 Legislative Hearing
United States Fish and Wildlife Service

Chairman John Fleming of Louisiana

1. **What evidence is available to conclusively prove that the 2008 Amendments have been successful in stopping illegally harvested wood and wood products?**

   Response: The U.S. Fish and Wildlife Service (Service) conducts criminal investigations under the provisions of the 2008 amendments to the Lacey Act. The Service does not conduct assessments of the impact of the amendments on illegal logging, so we do not have that information.

2. **Has the agency reviewed the report of the Chatham House that apparently stipulates that "the Lacey Act has helped reduce illegal logging by at least 22 percent"? Do you agree with that conclusion and please describe how this level was achieved?**

3. **Response:** While the Service is aware of this study we have not formally analyzed or reviewed it and cannot directly comment on its analysis or conclusions. **The fundamental goal of the 2008 Amendments was to stop illegal wood and wood products from entering the United States. How much of these products have been seized over the past four years?**

   Response: The Service is not responsible for inspecting imported wood and wood product shipments and defers to the Department of Agriculture for information on seizures of illegal wood and wood product shipments on import.

   The Service has completed one forfeiture action under the 2008 plant amendments involving three pallets of tropical hardwoods unlawfully imported from Peru worth approximately $7,000. A federal civil forfeiture proceeding based on a Service investigation has been completed with respect to ebony wood imported from Madagascar by a U.S. guitar company.

4. **Is there illegal logging going on in the United States? How many of the 2,365 Lacey Act investigations in 2010 involved illegal logging in this country?**

   Response: The Service is unaware of any 2010 Lacey Act investigations involving illegal logging in the United States. However, at least one such Service investigation has been conducted this year (2012), and the Service has the authority (along with other Federal agencies such as the U.S. Forest Service) to enforce the Lacey Act in the context of illegal domestic logging.

5. **What is the current number of ongoing Lacey Act investigations involving the 2008 Amendments? Are these cases likely to be resolved this year?**

Response: The Service has opened six such investigations since May 22, 2008. Four are ongoing investigations of commercial wood or timber imports in which charges have yet to be filed. One investigation (involving a large commercial shipment of musical instruments) has been recommended for closure. A sixth investigation (involving Gibson Guitar Corporation and a large commercial shipment of wood) has been resolved through a Criminal Enforcement Agreement which is publicly available. Most of the pending investigations are complex and require extensive pre-charge coordination and documentation. Therefore, the Service cannot estimate when these cases may be resolved. The Service cannot speak to additional investigations, if any, handled by the Departments of Agriculture or Homeland Security.

6. **How much of the rosewood being harvested in Madagascar is illegally entering the international wood products trade? What steps is the federal government taking to stop this importation?**

Response: The Service does not monitor rosewood harvest in Madagascar, track global trade in wood products, or inspect international wood product shipments in the United States. If the Service obtained credible information of a specific incident of illegally exported wood products being imported into the United States, FWS law enforcement could initiate a criminal investigation into that conduct, resources permitting.

7. **Are you familiar with the report entitled "The Laundering Machine" produced by the Environmental Investigation Agency? What is your reaction to its conclusions and does this organization represent the United States or any other governmental entity outside of the United States?**

Response: The Environmental Investigation Agency (EIA) is a non-governmental organization and does not represent the U.S. Government or any foreign government. The Service is familiar with the EIA report entitled "The Laundering Machine, " and the associated petition that was submitted by EIA in April 2012 to the Interagency Committee on Timber Trade under the United States-Peru Trade Promotion Agreement, on which the Department of the Interior (DOI) is a member. The report and petition allege substantial illegal harvesting and export of timber from Peru to the United States and other countries between 2008 and 2010. DOI (including the Service) and the other members of the Interagency Committee are reviewing the report and petition, and have already taken a number of steps, both internally and via contact with Peru, to try to verify the information provided in the report and determine appropriate actions in response.

8. **Do you agree with the conclusions contained within the report "The Laundering Machine" that "At least 112 illegal shipments of cedar or mahogany wood 'laundered' with phony papers and signed off on by Peruvian government officials**

arrived in the United States"? If yes, what steps were taken to stop these shipments and how much of the 112 shipments were seized?

Response: Please refer to the response provided to question 7.

9. **Where is the conclusive evidence that the Government of Peru is actively involved in the "laundering" of millions of dollars of illegally obtained cedar or mahogany wood?**

Response: Please refer to the response provided to question 7.

Application of Foreign Laws:

1. **In terms of the 2008 Amendments, how many foreign laws are there that affect plants, timber or wood products?**

   Response: As with wildlife, virtually all countries have one or more laws that protect their forests and other plant resources. The Service does not know the number of foreign wildlife laws that are (and have been) applicable to U.S. wildlife importers since 1935 (when foreign law provisions for wildlife were first added to the Lacey Act). Similarly, we do not know the number of foreign laws that currently protect plants.

   It is highly unlikely, however, that any single importer would need to be familiar with all of these laws to conduct legal plant or wildlife trade. Most importers deal repeatedly with the same suppliers in one or, at most, a handful of countries. For decades, thousands of responsible U.S. wildlife importers have successfully ensured that their shipments comply with foreign laws. The 2008 amendments hold plant importers to the same standard.

2. **What is the scope of the term "foreign law"?**

   Response: The 2008 amendments specified that the underlying laws for triggering a plant trafficking violation include statutes that "protect the plant" and "regulate the theft of plants, taking of plants from a park, forest reserve, or other officially protected area...or the taking of plants without, or contrary to, required authorization" as well as those that "require royalties, taxes or stumpage fees for the taking, possession, transportation or sale of any plant" and those that "govern the export or transshipment of plant" (16 USC 3372(a)(2)(B)).

3. **Isn't it true that federal courts have ruled that the term "foreign law" is all encompassing in terms of foreign laws, foreign regulations, foreign resolutions and foreign decrees? What are the limits and how many of these "foreign laws" must American citizens comply with?**

   Response: With regard to the Lacey Act, the courts have determined that foreign laws include foreign regulations. Anyone importing plants into the United States must determine if the plants were taken, possessed, transported, or sold in violation of any foreign law that regulates: theft of plants; the taking of plants from a park, forest reserve, or other officially protected area; the taking of plants from an officially designated area; or the taking of plants without, or contrary to, required authorization. They would need to ensure that the appropriate royalties, taxes, or stumpage fees required under foreign law were paid for the taking, possession, transportation, or sale of any plant. Additionally, they must ensure the plants were not taken, possessed, transported, or sold in violation of any foreign law governing the export or transshipment of plants. The number of laws applicable would be country specific.

4. **What is your response to the Heritage Foundation's recent article "Defanging the Lacey Act" which says in part that "No one should be forced to run the risk of**

conviction and imprisonment for making a mistake under a foreign law"?

Response: While we are not aware of this article, the Service notes that "making a mistake" does not trigger the risk of "conviction and imprisonment" under the Lacey Act. Criminal charges under the Lacey Act require investigators and prosecutors to prove beyond a reasonable doubt to the unanimous satisfaction of a federal jury or judge that a violation was either knowingly and deliberately committed (felony charge) or that the defendant failed to exercise "due care."

5. **Has the U.S. Supreme Court ever ruled on the constitutionality of the Lacey Act?**

Response: Yes. The Supreme Court has affirmed the constitutionality of the Lacey Act (Maine v Taylor, 477 U.S. 131, 106 S.Ct. 2440).

6. **Is our Lacey Act imposed on any other foreign nations and its citizens?**

Response: Any person, regardless of citizenship, or company operating within the jurisdiction of the United States, is subject to the requirements of the Lacey Act.

7. **Are there any other fish and wildlife laws that demand compliance with foreign laws, regulations and decrees?**

Response: It is our understanding that the Lacey Act is the only Federal wildlife law requiring Americans to exercise due care under foreign law (as well as state, tribal, and other Federal law) when importing wildlife and plants or moving them in interstate commerce.

The Endangered Species Act, which implements the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in the United States, requires Americans importing and exporting wildlife and plants to comply with treaty requirements. Each foreign CITES signatory country also has legislation implementing the treaty, which applies to Americans engaged in trade of CITES species.

8. **Has the federal government made any effort to create a comprehensive database of foreign laws that could result in the conviction of American citizens?**

Response: The Service is unaware of any effort to create a comprehensive database of foreign laws and defers to the Department of State on this issue.

9. **Has anyone calculated the cost of such a database?**

Response: The Service defers to the Department of State on this issue.

10. **How do you respond to the assertion of the American Law Division of the**

Congressional Research Service that "The 2008 Amendments allow enforcement of foreign laws that are not directly related to conservation or U. S. jobs, such as failure to pay foreign stumpage fees, or shipping wood in violation of a country's export restrictions"?

Response: The 2008 Amendments to the Lacey Act specifically prohibit the possession of any plant "...(ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any State or any foreign law; or (iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export of transshipment of plants" (16 USC 3372(a)(2)(B)).

Given the unambiguous text of the Lacey Act, we would agree with the Congressional Research Service (CRS) that failing to "pay foreign stumpage fees, or shipping in violation of a country's export regulations" is prohibited under the 2008 Lacey Act Amendments.

The portion of CRS's assertion that is more difficult to assess is how these specific provisions are tied to conservation or U.S. jobs. We acknowledge that in some cases it can be difficult to know when such regulations have a conservation nexus. Royalties, taxes, and stumpage fees may berelated to conservation. For example, revenues generated from royalties, taxes, or stumpage fees may be used to replant trees, operate forestry departments, fund for conservation research, and rehabilitate damage done by logging, all of which would represent a conservation benefit. Alternatively, such revenues may be directed to the local populations and local government, providing incentives to sustainably manage the forest in-lieu of clear-cutting the land for other uses. The Service supports the requirements related to "royalties, taxes, or stumpage fees" since the revenue assessments are often connected directly or indirectly to conservation.

Requiring adherence to foreign laws and regulations helps protect U.S. jobs by leveling the playing field. If the United States allowed the importation of plants that were not harvested or obtained legally by virtue of, for example, failing to pay the requisite fees, it would provide an unfair competitive advantage to foreign logging operations. Companies who play by the rules would be undercut by those who seek to undermine the laws and regulations of the foreign country with direct impacts to U.S. jobs.

11. Would you support revising the 2008 Amendments to limit the application of foreign laws to those that are directed at the protection, conservation and management of plants? If not, please explain?

Response: Although this language is not necessary, the Service does not object to language being added to sections 16 USC 3372(a)(2)(B) and 3(B) pointing out that the types of underlying laws covered are those "a purpose of which is the protection, conservation, or management of plants or the ecosystems of which they are part," as that is consistent with how we implement the Lacey Act. The term "directed at" is vague and potentially ambiguous because laws often have multiple purposes while being primarily

focused on one thing.

We also note, however, that the insertion (as specified in H.R. 3210) of the proposed language in 16 USC 3373(a)(1) [which addresses all civil penalties] would have a broader and unintended impact. In this section of the statute, the term being striken ("foreign law") does not just apply to plants but also to foreign laws related to fish and wildlife)

Contraband, and Strict Liability under the Lacey Act:

1. **Why are all products seized as potential violations of the Lacey Act treated as contraband?**

   Response: The Lacey Act specifically makes it "unlawful for any person ...to possess any fish or wildlife taken, possessed, transported or sold in ...violation of any foreign law..." (16 USC 3372(a)(3)(A)). Under 16 USC 3374(a)(1), such products are subject to forfeiture "notwithstanding any culpability requirements for civil penalty assessment or criminal prosecution...".

   The Service, however, must still be able to show that products have been imported or received in violation of a foreign or other law (i.e., that there is a documented violation not just a "potential violation" of the Lacey Act), and those with an ownership interest in such property have access to mechanisms for challenging forfeiture, explaining mitigating circumstances, and seeking return of the property. *See U.S. v. 144,774 Pounds of Blue King Crab*, 410 F. 3d 1131 (9th Cir. 2005).

2. **What happens to these items once they are forfeited to the U.S. Fish and Wildlife Service?**

   Response: Unlawfully exported plants and plant products forfeited under the foreign law provisions of the Lacey Act may be: returned to the country of origin at that country's expense; retained for Service use or transferred to another government agency for official use; donated or loaned for scientific, educational or other appropriate use; or destroyed.

3. **Is it legal for Americans to purchase them from the Fish and Wildlife Service and to possess them in the future?**

   Response: Under a December 2007 policy, the Service cannot sell wildlife or plant products that are "prohibited for export by the country of origin" (i.e., products forfeited under the foreign law provisions of the Lacey Act). Authorized disposal methods include use by a Federal agency, donation or loan, or destruction. A wildlife or plant product that is donated or loaned may be possessed legally under the terms of an agreement. For example, products may be donated to schools for use in wildlife conservation education, and schools can then legally possess those

products under the terms of the donation agreement. In addition, the Service has received authority to conduct special auctions to sell confiscated wildlife products from the National Wildlife Property Repository in order to clear space and reduce costs for housing those products. The auctions are closely managed to ensure only legal wildlife products are sold, and the proceeds from those auctions support conservation education and other activities benefitting wildlife.

4. **Please describe how an individual who imports a wood or wood products can exercise "due care"? Is proper "due care" currently a legal defense in federal court?**

Response: "Due care" is a widely applied legal principle that requires people and businesses to make a reasonable effort to ensure that their actions are not harmful or illegal. What constitutes "due care" will depend on the specific circumstances involved in the particular situation. For example, "due care" for a musician might mean buying from an established, reputable retailer rather than buying from a foreign source off the Internet knowing the wood used in the instrument was highly protected and hard to obtain, and the price offered was well below normal.

Under "due care," companies should take reasonable and prudent measures to ensure that the wood, or other commodity, they import is of legal origin. Examples of such measures might include checking with Foreign Ministries of Agriculture to confirm that their source companies are properly licensed or certified and requesting information from such entities on applicable laws in the country of harvest. During the declaration process, the importer will need to provide the species of the plant/wood and where the plant/wood was harvested. Importers can ask the seller to provide an affidavit confirming that the plant/wood product has been harvested, transported and/or sold in compliance with that country's laws.

U.S. companies engaged in large-scale trade may consider hiring local brokers from the country where the plant/wood products originated to verify, interpret and translate documents and laws and thus ensure legality. Another option would be to utilize the services of legal research firms specializing in foreign law or international trade. Companies might also employ a person to travel to the country of export to select specific plant/wood products and verify first hand that the product is of legal origin. "Due care" for businesses would also require being alert to common sense "red flags" such as goods priced significantly below the going market rate or a demand for cash only transactions.

When the Service learns that a shipment contains illegally-sourced plant material, the investigator considers what the importer knew, when they knew it, and what steps they took to ensure that the shipment was legal. We look at the totality of the circumstances. With respect to criminal charges under the Lacey Act, the Government must prove that the violation was knowingly and deliberately committed (felony) or that the defendant failed to exercise "due care" (misdemeanor). In cases involving the latter, the issue of

"due care" will clearly be critical to both defense and prosecution arguments. We note that, while a number of Lacey Act cases result in misdemeanor pleas, representing a compromise resolution of a case charged as a "knowing" felony, investigators rarely refer a case based on the misdemeanor level of knowledge (*i.e.*, lack of due care) alone.

5. **Please describe the importance of "strict liability" and if you believe it is essential to the enforcement of the Lacey Act.**

   Response: The purpose of the Lacey Act is to prevent trafficking and illegal exploitation of wildlife and plants protected under state, Federal, tribal, and foreign laws. Wildlife and plants unlawfully taken, transported, and exported in violation of such laws represent contraband in and of themselves and as such should not be allowed to remain in commerce. Whether or not those engaged in illegal import or interstate commerce did so deliberately or not does not affect the contraband nature of the product involved. The strict liability provisions of the Lacey Act provide bottom line protection to wildlife and plant resources. Without strict liability forfeiture, there is no incentive for a buyer to ask questions and thereby avoid participating in the trade of illegal items. If a buyer risks the loss of an item because it is illegal, the buyer is more likely to take steps prior to purchase to ensure the legality of the item. If a buyer has taken such steps in good faith, his or her actions may help support a petition for remission of the forfeited item.

6. **Over ten years ago, the Congress eliminated "strict liability" under our migratory bird baiting law. Prior to enactment, the Fish and Wildlife Service argued that if "strict liability" was eliminated, it would be difficult, if not impossible, to prosecute baiting cases in the future? Since 2000, has the Service prosecuted any baiting cases? How many have gone forward?**

   Response: The Service still makes baiting cases, but they are less common and more difficult to pursue. The Service analyzed data on migratory game bird baiting investigations for the five hunting seasons prior to the elimination of the "strict liability" language and for the five that followed statutory change. The Service conducted approximately 1,569 baiting-related investigations over the first set of seasons compared to 702 in the five seasons after the change. This represents a 55 percent decrease in the number of baiting-related investigations in the five years following enactment of the amended statute.

Innocent Owner Protections:

1. **What was the purpose of the innocent owner provision in the Civil Asset Forfeiture Reform Act of 2000?**

   Response: The innocent owner provision was intended to provide relief for owners of instrumentalities used to commit the crimes where the owner was innocent and the property was not contraband or otherwise illegal to possess.

2. **Prior to the Ninth Circuit decision in the United States v 144,774 Pounds of Blue King Crab case, isn't it true that American citizens were able to utilize an "innocent owner" defense under the Lacey Act?**

Response: No. The Civil Asset Forfeiture Reform Act (CAFRA) restricts the innocent owner defense and does not provide for such a defense when the property is otherwise illegal to possess. The Ninth Circuit affirmed the innocent owner defense wording provided by CAFRA in the US v. King Crab case.

3. **Do you believe that the innocent owner defense will be abused? If yes, why?**

Response: While we cannot speculate on possible abuse of the innocent owner defense, the Service supports and follows CAFRA guidelines that create a process for removing contraband or items otherwise illegal to possess from circulation. CAFRA and Service regulations provide mechanisms for parties to dispute forfeiture and present evidence during forfeiture proceedings.

4. **What is fundamentally wrong with allowing U. S. citizens the opportunity to go to court and prove that they exercised "due care" in the importation of a wood or wood product?**

Response: Under the Lacey Act, lack of "due care" is an element that must be proven by the prosecution to substantiate any misdemeanor charge. However, the Service agrees with and adheres to the parameters set forth in CAFRA including the strict liability standard for forfeiture of property that is contraband or otherwise illegal to possess. Both CAFRA and Service regulations provide mechanisms that allow persons with interests in property to petition for remission and to show that return is reasonable and just under the specific circumstances of the seizure.

5. **Under current law, if I import 1,000 dining room tables from Brazil but have no knowledge that a thin piece of the furniture's inlay is made of mahogany which the U. S. government believes may have been illegally harvested, what happens to that furniture? What defense do I have in this case? What happens to the furniture if I am compelled to sign forfeiture documents? Is it destroyed?**

Response: No one is forced by the Service to sign forfeiture documents. Forfeiture is an administrative mechanism that provides individuals with notice and a process when they are in possession of items subject to seizure because the item was involved in illegal conduct. If the tables were seized for forfeiture in the situation described above, the Service would follow CAFRA regulations and our forfeiture proceedings outlined in sections 12.21 and 12.22 of 50 CFR 12. These regulations include an avenue for a person to file a petition for remission of forfeiture presenting information as to why the property should be returned.

Under Service regulations and policy, disposition options for these tables, if forfeited because they were exported in violation of foreign law, would include donation, use by

the Service or other government agency or destruction, but not sale.

Ranking Member Gregorio Sablan (CNMI)

1. **The Fish and Wildlife Service enforces a variety of federal statutes, including the Lacey Act. Of all the cases FWS investigates each year, approximately what proportion are Lacey Act cases related to the 2008 amendments?**

   Response: Of the 4,478 investigations currently in progress, cases related to the 2008 plant amendments total six and account for approximately 0.1 percent of all Service investigations.

   a. Do any of these cases involve individuals and their personal property? Has any personal property been confiscated as a result of the 2008 amendments?

   Response: None of the Service investigations conducted under the 2008 amendments involves individuals and their personal property. The Service has not seized any plants or plant products that represent the "personal property" of individuals.

   b. Have any criminal charges been filed on these 6 cases?

   Response: No charges have been filed to date.

2. **Why ask businesses to fill out declarations if the agencies don't have the resources to analyze each piece of paperwork?**

   Response: The Service has required wildlife importers and exporters to submit declarations since the mid-1970s. Service wildlife inspectors review all declarations before clearing the shipment.

   A declaration requirement serves, for example, as a deterrent to illegal trade and trafficking and provides a mechanism for encouraging importers and others to exercise "due care" in conducting international commerce in wildlife and plant resources. Declarations also serve as a resource that investigators or prosecutors may analyze in any given case, or to ascertain patterns or schemes, and have been so used in investigations.

   Plant declarations are required and collected by USDA APHIS. We cannot comment on how that agency processes such declarations.

3. **What is the impact of prohibiting US Fish and Wildlife agents from carrying firearms?**

   Response: Removal of the explicit statutory authority for Service law enforcement officers to carry firearms under the Lacey Act is of particular concern both for our special agents and for enforcement officers with the agency's National Wildlife Refuge System.

Service law enforcement officers regularly encounter armed and dangerous criminals while enforcing federal wildlife conservation laws. Placing law enforcement officers in the position of being unable to defend themselves or others creates an unacceptable risk and endangers the officers, the resources they protect, and the public.

Elimination of the authority to carry firearms when enforcing the Lacey Act may remove in its entirety the authority for Service special agents and refuge law enforcement officers to carry a firearm during any enforcement activity. Many of the wildlife protection laws passed after the Lacey Act (e.g., the Migratory Bird Treaty Act, Eagle Protection Act, National Wildlife Refuge System Administration Act, and Endangered Species Act) do not address this issue, likely because of the pre-existing authority under the Lacey Act.

Prohibiting Service officers from using firearms would also weaken the Nation's access to the law enforcement expertise and manpower that the agency provides to U.S. Government efforts to protect Americans from terrorism and help communities across the Nation respond to natural disasters and other emergencies.

4. **What are some examples as to why civil penalties are not enough of an enforcement tool, even for the first offense?**

Response: A Lacey Act with only civil penalties provides little deterrent to natural resource trafficking, and such penalties would, in many situations, constitute only an insignificant "cost of doing business." In organized schemes involving high-value resources, civil fines (which do not exceed $10,000) become merely an occasional "tax" levied on illegal activities. Lacey Act cases can—and have—involved products valued in the tens of millions of dollars. In comparison, the prospect of being fined $250,000 and spending 5 years in prison per Lacey Act violation is a significant disincentive for black market trafficking.

The fact that a crime is a "first offense" says nothing with respect to its scope and impact on conservation. Many Service investigations of large-scale wildlife trafficking would end "not with a bang, but a whimper" were the consequences of first offenses limited to civil penalties.

Such a restriction would provide little incentive for compliance (at least on an initial "deal") and might actually make that first illegal transaction even more tempting and lucrative. First offenders deliberately trafficking in state-protected resources or importing critically endangered species would serve no prison time and lose only a modest amount of money for ignoring natural resource protection laws. Courts could not order restitution to be paid to states, tribes, or other groups, and no conservation efforts could be funded with these monies.

5. **If the applicability to foreign laws is removed from the Lacey Act, how is that going to impact our ability to promote international wildlife conservation? What are some examples?**

Response: Elimination of the foreign law provisions of the Lacey Act will effectively gut our Nation's ability to promote international wildlife conservation. The Lacey Act is one of the most effective wildlife laws on the books, and its effectiveness stems from prohibitions that protect animal and plant resources from rapacious exploitation here and around the world. On the international front, the Lacey Act provides an unparalleled tool for combating large-scale smuggling and the subsequent interstate commerce in global species.

The existence and enforcement of the Lacey Act's foreign law provisions have made the United States a leader and role model for countries around the world—particularly those that, like the United States, have long been major markets for wildlife and plant resources illegally taken in developing countries that struggle to feed their people, let alone protect their wildlife, plants, and forests. Through these provisions, our Nation holds itself accountable for stopping illegal trade in natural resources involving interests in our country, and recognizes and supports the efforts of other countries to level the playing field for legitimate businesses who manage their natural resources responsibly.

Investigative results such as those cited below testify to the effectiveness of the Lacey Act in shutting U.S. ports of entry and borders to illegal wildlife trade. Such results have inspired other countries, such as Australia and the nations of the European Union, to weigh the option of developing similar legislation. Canada has already adopted such legislation, and the CITES Secretariat advocates the development of such legislation in the training kits it provides to help countries implement CITES. None of the investigations cited below would have been conducted without the Lacey Act's foreign law provisions.

- A South Carolina company that supplies monkeys for medical research paid a $500,000 fine for importing scores of wild-caught monkeys unlawfully taken and exported in violation of Indonesian law.

- The German owner of an international marine products business was fined $30,000 and forfeited 40 tons of coral illegally smuggled into the United States in violation of Philippine law (and thus the Lacey Act) and CITES.

- A Florida man and his two seafood companies, which illegally imported more than 1,000 pounds of spiny lobster and 340 pounds of queen conch from the Bahamas that had been harvested and exported in violation of that country's wildlife laws, were fined $75,000 and forfeited $13,930 worth of seized seafood and the $300,000 sport fishing vessel used to transport the smuggled goods.

- The owner of two Florida businesses specializing in the sale of Amazonian tribal artifacts made from jaguar teeth, scarlet macaw feathers, and the parts of other species protected under CITES and Brazilian law was convicted on Lacey Act charges and sentenced to 40 months in prison.

- A joint U.S./Canadian investigation of illegal hunting in British Columbia

documented the importation of unlawfully acquired big game trophies by U.S. hunters and resulted in successful prosecutions on both sides of the border. A commercial guide was sentenced to one year in prison, fined $20,000, and barred from hunting in Canada for 10 years. Three American hunters were fined $80,000.

6. **The FWS testimony states that the FWS concentrates on commercial scale violations rather than individuals. What is the process the FWS uses to conduct these types of investigations?**

Response: Service special agents are highly trained criminal investigators. Like all Federal agents, they use a broad array of investigative techniques consistent with the laws of the United States. During the course of an investigation agents may conduct surveillance, interview witnesses, execute search warrants, and analyze records, emails, and recorded phone conversations. Investigative strategies may range from tracing a paper or computer-based trail of business transactions to using undercover techniques to infiltrate and expose commercial wildlife trafficking.

7. **Are the threats to conservation, the agricultural industry, and public health and safety from poachers and traffickers any less serious today than they were in 1981 when the felony upgrade was signed into law? Are there any examples to speak to these threats?**

Response: Threats to conservation, the agriculture industry, and public health and safety associated with wildlife poachers and traffickers are as—if not more—serious today than they were in 1981. Species moving in trade are being adversely affected by accelerated habitat loss, increased competition with invasive species, and the initial impacts of climate change. The emergence of a global economy and population growth have created new demand for animal and plant products. Advances in information technology and services such as international overnight package delivery have been as advantageous to black market trade as they have to legitimate businesses.

Sustainability is a major concern with respect to any utilization of natural resources, and practices such as illegal logging threaten not only species but entire tropical ecosystems. The growth in wildlife trade over this period means that a greater diversity of species is being imported, including many that carry diseases that can be transferred to humans or other animals.

8. **How do the Lacey Act forfeiture requirements compare to other forfeiture requirements for federally recognized contraband?**

Response: Other Federal enforcement agencies are also subject to the Civil Asset Forfeiture Reform Act. Like the Service, they adhere to a strict liability standard for forfeiture of property that is contraband or otherwise illegal to possess.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

OCT 0 8 2012

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

Dear Mr. Chairman:

Enclosed are responses prepared by the Office of Surface Mining to questions submitted following the Committee's Thursday, July 19, 2012, oversight hearing on the "**Status of Obama Administration's Rewrite of the Stream Buffer Zone Rule and Compliance with Committee Subpoenas.**"

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 Edward J. Markey
Ranking Minority Member

U.S. House of Representatives
Committee on Natural Resources
Oversight Hearing
Thursday, July 19, 2012
"Status of Obama Administration's Rewrite of the Stream Buffer Zone Rule and Compliance with Committee Subpoenas"

Questions for Director Joseph Pizarchik, Office of Surface Mining Reclamation and Enforcement, Department of the Interior

Questions from Chairman Doc Hastings:

1. You mentioned in the hearing that there was a settlement conference with the plaintiffs to the litigation surrounding the Stream Buffer Zone Rule. Please provide the following information regarding this status call?

- The name of all organizations involved in the status update mentioned in your testimony.
- The name of all individuals from each organization involved in or present during the status mentioned in your testimony.

Answer: Representatives of the plaintiff National Parks Conservation Association and of Coal River Mountain Watch and its co-Plaintiffs participated in the status call.

2. During your testimony on July 19, 2012 you indicated that the team assigned to the drafting of the environmental impact statement, regulatory impact analysis, and Stream Protection Rule were currently not working on the rewrite but has been reassigned to their normal roles. Can you please provide the number of staff currently working on the EIS, RIA, and draft rule, including but not limited to OSM and DOI staff as well as third party contractors? Additionally, can you please provide the number of staff working on the project in January 2011, including those working on the draft EIS, RIA, and the draft Stream Protection Rule?

Answer: The proposed Stream Protection Rule, accompanying draft EIS, and regulatory impact analysis have not yet been completed or published. Throughout the rulemaking process, the number of staff working on the project—in January 2011 or at any other time—varies on a daily basis as other assignments intervene. Career OSM staff, with assistance from contractors, are currently taking the time necessary to conduct a thorough analysis of the possible draft proposed rule changes, a reasonable range of alternatives, and the necessary supporting documents.

Questions for Director Joseph Pizarchik, Office of Surface Mining, Reclamation and Enforcement, Department of the Interior:

"Status of Obama Administration's Rewrite of the Stream Buffer Zone Rule and Compliance with Committee Subpoenas"

Questions from Rep. Bill Johnson:

In 2004, the Pennsylvania Department of Environmental Protection closed the Maple Creek Mine. That was a longwall mine and four of the five panels had already been mined, and all five had been permitted as of 2001. The 5th had been set up to be mined, but then the DEP shut down the mine because, it claimed, there was a stream on the surface. To most people, that stream was actually a ditch with no water except occasionally, with it rains. DEP called it an ephemeral stream and forced the closure of the mine. 550 people lost their jobs. You were assistant director in the Bureau of Regulatory Council at the time.

a. What is the difference between what you did at Maple Creek and what you are proposing here?

b. The basis of the policy in both cases appears to be the same: stopping mining wherever there is any presence of water. If this policy resulted in the layoffs of over 500 people at Maple Creek, why would you expect it to turn out any differently if replicated on a nationwide scale?

c. If you know, based on what happened at Maple Creek that this type of policy undoubtedly ends up closing mines and laying off miners, why are you continuing down the same destructive path at OSM?

d. You previously testified before Congress that the SBZ would not result in any lost jobs, yet when you implemented the almost identical program at the state level in Pennsylvania, 550 jobs were lost. Did you forget about what happened in Pennsylvania, or were you not honest with us the last time you testified?

Answer: At this time, there is no Stream Protection Rule. OSM has yet to publish a proposed rule. Thus, it is premature to compare potential rule changes that are still being developed to the matter to which you are referring.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

OCT 12 2012

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 Office of Surface Mining to questions submitted following the Subcommittee's March 6, 2012, oversight hearing on the "**Effect of the President's Fiscal Year 2013 Budget and Legislative Proposals for the Office of Surface Mining on Private Sector Job Creation, Domestic Energy Production, State Programs and Deficit.**"

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 D. Holt
Ranking Minority Member

QUESTIONS FOR THE RECORD

House Committee on Natural Resources

Subcommittee on Energy and Natural Resources
Office of Surface Mining Reclamation and Enforcement (OSM) Director Joe Pizarchik
March 6, 2012

Oversight Hearing on "Effect of the President's FY 2013 Budget and Legislative Proposals for the Office of Surface Mining on Private Sector Job Creation, Domestic Energy Production, State Programs and Deficit Reduction"

Subcommittee Chairman Doug Lamborn

1. Can you tell this Committee specifically how much money OSM has spent on the rewrite of the 2008 Stream Buffer Zone Rule?

Answer: The Office of Surface Mining Reclamation and Enforcement (OSM) has been developing improvements of its regulations to more completely implement the Surface Mining Control and Reclamation Act by better protecting streams from the adverse impacts of coal mining while helping meet the nation's energy needs. Since 2009, OSM has spent about $7.7 million to develop this rulemaking.

2. Can you tell us how much more money will be needed to finish the rule?

Answer: No. There are too many factors that will impact future costs such as the number and complexity of public comments received, the number of public hearings held, etc.

3. How much more money will it cost the government to renegotiate a second settlement and does that include paying attorney fees to the plaintiffs?

Answer: The government has no current plans to negotiate a second settlement.

Specific Questions re: Cost Recovery/User Fees

OSM has requested an amount for state Title V regulatory program grants in FY 2013 that reflects an $11 million decrease from FY 2012. While OSM does not dispute that the states are in need of an amount far greater than this, the agency has suggested once again that the states

should be able to make up the difference between what OSM has budgeted and what states actually need by increasing cost recovery fees for services to the coal industry.
1. What exactly will it take to accomplish this task?

Answer: Each state has the legal authority to collect a fee from the applicant to cover up to the actual or anticipated cost of reviewing, administering, and enforcing the permit. How that would be accomplished would depend on the circumstance and processes of the individual states.

2. Assuming the states take on this task, will amendments to their regulatory programs be required?

Answer: It depends on the individual state. Federal law did not require states to develop programs that require a program amendment to modify their fee structure. Those states that chose to include such a constraint on their authority may need to amend their program and those states that did not elect to include such a constraint on their authority can adjust their fees without a program amendment.

3. How long, in general, does it take OSM to approve a state program amendment?

Answer: The amount of time that it takes to process a state program amendment varies depending on the number of issues in each amendment. In addition to internal review and clearance within OSM and the Department, all state program amendments require publication of a proposed rule in the *Federal Register*, an opportunity for public comment, and then publication of a final rule in the *Federal Register*. Between 2007 and 2010, OSM processed three state program amendments dealing with fees; the average number of days for processing was 237.

The state of Alabama submitted a program amendment to OSM in May of 2010 to raise current permit fees and authorize new, additional fees. It took OSM a full year to approve this amendment, resulting in lost fees of over $50,000 to the state.

1. If OSM is unable to approve requested state program amendments for permit fee increases in less than a year, how does the agency expect to handle mandated permit increases for all of the primacy states within a single fiscal year?

Answer: The proposed FY 2013 budget for OSM does not mandate permit fee increases for any state. Section 507(a) of the Surface Mining Control and Reclamation Act (SMCRA) specifies that "[e]ach application for a surface coal mining and reclamation permit pursuant to an approved State program . . . shall be accompanied by a fee as determined by the regulatory authority." The amount charged is left to the state, however. In addition, states are encouraged

to recover the cost of other services they provide. How individual states choose to recover the cost of services they provide to the industry is a matter of the state's discretion. Some state programs specify the permit fee amounts in the state program. Any change to the fee amounts, therefore, requires a state program amendment. Other states have set out permit fees according to a schedule that is separate and apart from the state program, in which case fee changes do not require a state program amendment.

2. If OSM is not expecting to pursue this initiative in fiscal year 2013, why include such a proposal in the budget until OSM has worked out all of the details with the states in the first instance?

Answer: As early as February 2010, states have been encouraged to adjust their fees to recover more of the cost of the services they provide to industry. The FY 2011, FY 2012, and FY 2013 budget proposals for OSM have all included the proposed reduction in Federal spending. The FY 2013 proposal includes a similar reduction of $3.4 million for OSM's regulatory programs. OSM is pursuing a rulemaking to adjust its fees to recover the costs of reviewing, administering and enforcing permits for Federal programs. OSM anticipates that this rulemaking will become effective in fiscal year 2013. Moreover, in response to requests from the states and in order to reduce Federal spending, OSM is exploring all available options to assist primacy states in the collection of fees.

3. What types of complexities is OSM anticipating with its proposal at the state level? Many of the states have already indicated to OSM that it will be next to impossible to advance a fee increase proposal given the political and fiscal climate they are facing.

Answer: States are encouraged to follow OSM's example and recover more of the cost of the services provided to industry and reduce state spending as OSM will reduce Federal spending.

OSM's solution seems to be that the agency will propose a rule to require states to increase permit fees nationwide.

1. Won't this still require state program amendments to effectuate the federal rule, as with all of OSM's rules?

Answer: OSM has no plans to propose a rule requiring states to increase permit fees.

2. How does OSM envision accomplishing this if the states are unable to do it on their own?

Answer: Beginning as early as February 2010, states were encouraged to adjust their fees to recover more of the cost of the services they provide to industry. The FY 2011, FY 2012, and

FY 2013 budget proposals for OSM all included the proposed reduction in Federal spending. OSM stands ready to assist any States that elect to adjust their fees and request assistance in their efforts to do so.

3. Even if a federal rulemaking requiring permit fee increase nationwide were to succeed, how does OSM envision assuring that these fees are returned to the states?

Answer: OSM does not intend to propose a rulemaking to require permit fees be increased nationwide. Rather, states have asked OSM to collect fees on their behalf. OSM is exploring all legal and practical options for providing such assistance to the states, including the remittance of such fees to the states.

4. Will OSM retain a portion of these fees for administrative purposes?

Answer: Because OSM is still considering the resources and legal authorities it has to address the request from the states to assist in the collection of fees, we do not yet know how we will accomplish this objective. Many options are under consideration.

Congressman Glenn 'GT' Thompson

1. What is OSM's current costs for administering the programs in the two federal program States, Tennessee and Washington, and on Indian lands for which you will be seeking reimbursement? And what does this amount to on a per-ton of coal basis?

Answer: OSM spends about $4.7 million per year of Federal taxpayer funds to review permit applications and administer and enforce coal mining permits in two Federal program states (Tennessee and Washington) and on Indian lands where OSM is the regulator. The $4.7 million is based on the best available actual cost data. The actual cost will vary based upon the number of permits, revisions, etc., that are processed, administered, and inspected in any given year.

It is difficult to calculate and fairly assign the cost on a per-ton basis. Each permit's cost per-ton changes through the lifecycle and circumstances of the permit.

Congressman Mike Coffman

1. You stated in your testimony that we must rely on domestic supply of coal in order to reduce our dependence on foreign oil but how will increasing fees on coal production increase our supply? Won't the effect of these increased fees be a reduction of production and supply? Therefore, increasing the cost of energy for families?

Answer: OSM plans to revise its rules to recover from the coal industry much of the cost that OSM incurs in reviewing, administering, and enforcing mining permits on lands where OSM is the regulatory authority. OSM intends to recover its costs for these activities in Federal Program States and on Indian Lands. OSM's proposal neither increases fees on coal production nor mandates permit fee increases for any state that has assumed primary responsibility for regulating surface coal mining operations within its borders. Those states are encouraged to recover from the permitted mine operator the cost of the services that the states provide. How individual states choose to recover those costs, however, is a matter left to each state's discretion.

OSM does not believe that a cost recovery rulemaking will lead to a reduction in the Nation's supply of coal.

2. Your budget states that the FY 2013 budget is a disciplined, fiscally responsible request that lowers the cost to the American taxpayer while ensuring coal production occurs in an environmentally responsible way. However, isn't the reality that the increased "fees" will be passed onto the consumer?

Answer: The proposed Fiscal Year 2013 budget for OSM does not mandate permit fee increases for any state. States are encouraged to recover the cost of services they provide from the permitted mine operator, but it is a matter left to the state's discretion.

The Federal Government currently provides funding to States and Tribes to regulate the coal industry. To eliminate a de facto subsidy of the coal industry, the budget encourages States to increase their cost recovery fees for coal mine permits. With additional funding from fees, the States will need less Federal grant funding, so the budget reduces grant funding accordingly.

3. OSM proposes to reduce the budget by "$10.9 million in discretionary spending for State regulatory program grants" and this is to be "offset with increased user fees for services provided to the coal industry". Which states do you anticipate will have to increase their fees to

compensate for the loss of this federal revenue? Also, how will these increased fees (taxes) impact the economic viability of the coal industry?

Answer: The proposed FY 2013 budget for OSM does not specify how a state ought to offset its reduced regulatory grant amount. States are encouraged to recover the cost of services they provide from the permitted mine operator, but it is a matter left to the state's discretion.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 28 2012

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 Bureau of Land Management to questions for the record submitted following the Thursday, May 3, 2012, legislative hearing on: **"Map It Once, Use It Many Times Act.; Federal Land Inventory Reform Act of 2011."**

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 D. Holt, Ranking Member
Subcommittee on Energy and Mineral Resources

Questions for the Record
Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
Chairman Doug Lamborn

Oversight hearing on "Federal Geospatial Spending, Duplication and Land Inventory Management"
and
Legislative hearing on H.R. 4233 (Lamborn), Map it Once, Use It Many Times Act and H.R. 1620 (Kind/Bishop of UT), Federal Land Asset Inventory Reform Act of 2011

May 3, 2012

1. In its statement, the Department said, "According to the Congressional Research Service, the Federal government owns 635 to 640 million acres of the nearly 2.3 billion acres that constitute the United States. The largest land managers for the Federal government are the Departments of the Interior, Agriculture, Defense, and Energy. Within the Department of the Interior, the Bureau of Land Management administers approximately 245 million acres; the National Park Service manages approximately 80 million acres; the Fish and Wildlife Service manages approximately 150 million acres as part of the Refuge System; and the Bureau of Reclamation manages 8.7 million acres associated with Bureau of Reclamation projects. The U.S. Forest Service, in the Department of Agriculture, manages approximately 193 million acres. Approximately 27.9 million acres in the United States are managed by the Department of Defense. Additionally, hundreds of thousands of buildings and structures are managed by a multitude of Federal agencies." The frequent use of the word "approximately" is striking. Does the Department of the Interior believe it has a current, accurate parcel-based inventory of all the land it owns? Please explain and identify the inventory.

Response: The reported acreage of Federal lands is "approximate" because the amount of the Federal estate changes due to land sales, exchanges, and acquisitions. Land statistics reported from the inventory of the Department of the Interior are a snapshot in time of the Federal estate consisting of both surface rights and subsurface rights. The use of the word "approximate" necessarily puts the consumer of this information on notice that statistics are updated in response to regular and ongoing transactions and events.

2. In the Department's statement, it estimates the cost to implement the FLAIR Act would be in the billions of dollars.

The Congressional Research Service (Issues Regarding a National Land Parcel Database (2009) reported, "The Western Governors' Association (WGA) has also supported federal, state, tribal, and local coordination of GIS activities and encouraged regional, state, and interstate data sharing. (Western Governors' Association, Policy Resolution 09-8, "Collaborative Geographic Data is Part of the Nation's Critical Infrastructure," at http://www.westgov.org/wga/policy/09/GIS.pdf.) Further, WGA recognized that BLM is working with state and local governments to develop current and standardized digital representations of the Public Land Survey System and parcel data, and has referred to this collaboration as the Cadastral National Spatial Data Infrastructure (Cadastral NSDI). The

Western Governors called on Congress to provide the funding necessary for BLM to complete, enhance, and maintain the Cadastral NSDI in coordination and partnership with state, tribal, and local governments. One estimate of funding to implement the WGA recommendation is $350 million over three years.

Please provide an assessment and analysis of the Department's estimate of a cost in the "billions". What is included in that estimate? What is the breakdown of costs? What assumptions are included in that estimate?

Response: The implementation of the Cadastral NSDI recommended by the WGA Policy Resolution 09-8 is narrower in scope than the FLAIR Act requirements. The WGA Resolution directs the BLM to collect geographic information to support the cadastral data about land parcels. In contrast, the FLAIR Act would direct the BLM 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, and would be more complex and costly than the inventory recommended by WGA.

The BLM's initial estimate of costs is 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**	

3. In testimony before the Senate Appropriations Subcommittee on Interior and Related Agencies March 10, 2005, then-Secretary of the Interior, Gale Norton said, "The Department currently uses 26 different financial management systems and over 100 different property systems." Please identify the over 100 property systems. Also, how many are still maintained by the Department today and what, if anything has been done to integrate, merge, consolidate or terminate any of the more than 100 property systems? What is the annual cost of operating and maintaining these 100+ systems? Are there other land inventories operated and maintained by the Department that are not included in the 100 mentioned by Secretary Norton?

Response: While it is not clear what inventories, methods, and classifications were referenced in 2005 testimony or which, if any, may not have been included, it is likely that the inventories referenced may have included real property, such as the Federal Real Property Profile, as well as inventories of capitalized equipment such as computers, equipment and vehicles. The

Department is in the process of consolidating individual agency capitalized equipment inventories such as these to achieve cost savings where appropriate.

In April 2011 the Government Accountability Office (GAO), issued a report—Federal Land Management: Availability and Potential Reliability of Selected Data Elements at Five Agencies (**GAO-12-691T**)—that described which data the agencies collected, where the agencies stored these data, and the potential reliability of these data however the report contained no recommendations. This report, which included four DOI agencies as well as the U.S. Forest Service (USDA), examined over 100 data elements that fall into three broad categories: (1) information on federal land and the resources the agencies manage, (2) revenues generated from selected activities on federal land, and (3) information on federal land subject to selected land use designations. The report identified 26 primary agency data systems from which findings were extracted. These data systems are listed and described in the report. The annual cost for managing these systems was not reported.

4. Sec. 201 of the Federal Land Policy and Management Act (FLPMA) [43 U.S.C. 1711] requires the Secretary to "prepare and maintain on a continuing basis an inventory of all public lands and ... This inventory shall be kept current ..." . What is the status of that inventory? How current and accurate is that inventory? Is it parcel-based? What is the annual cost of operating and maintaining that inventory?

Response: In order to meet its FLPMA obligations, the BLM requires reliable and up-to-date information on BLM-administered lands and mineral estate and the resources they hold. Maintaining an inventory of lands and mineral estate and of the existing resources (e.g., natural gas or coal reserves, sensitive plant or water resources, areas with recreational opportunities, wilderness characteristics, or significant cultural and heritage resources) allows the BLM to make informed decisions in meeting its multiple-use, sustained yield mandate. Section 201(a) of FLPMA requires that the inventory be prepared and maintained on a continuing basis. Because the Secretary is to rely, to the extent it is available, on this inventory when preparing or revising land use plans (FLPMA Section 202(c)(4)), the inventory of lands and resources are generally conducted and maintained at the land use planning unit level. Most BLM planning units are defined by Field Office boundaries, so this is generally the basis of the inventory, rather than parcels. For some resources, however, an inventory is based on ecosystem, habitat, watershed, geographic, or state boundaries.

BLM does not annually update the inventories used for land use planning. However, BLM adds information to the inventories when conducting studies, land surveys, and monitoring efforts that make up the day-to-day activities of BLM State and Field Offices. Resource inventories in some areas may be more recent than in others because BLM offices do not undergo land use planning at the same time and because studies, surveys, and monitoring efforts do not necessarily coincide with planning cycles. As lands are acquired or disposed of, or as surveys refine boundaries, BLM updates inventories for these parcels.

These inventories are central to the BLM's day-to-day functions and are the basis for the BLM's environmental reviews and planning processes.

5. Executive Order 13327 - Federal Real Property Asset Management, calls for "a single, comprehensive, and descriptive database of all real property under the custody and control of all executive branch agencies". However, it exempts public domain lands. Section 7 states "In order to ensure that Federally owned lands, other than the real property covered by this order, are managed in the most effective and economic manner, the Departments of Agriculture and the Interior shall take such steps as are appropriate to improve their management of public lands and National Forest System lands and shall develop appropriate legislative proposals necessary to facilitate that result." What actions have been taken to include the public domain lands in the Real Property Inventory? What steps has the Secretary taken as required by section 7? What legislative proposals have been developed pursuant to section 7?

Response: Pursuant to Executive Order 13327, public domain lands are not included in the Real Property Inventory. In 2010 the BLM initiated the Mineral and Land Records Verification and Validation Program which is focused on developing an accurate land inventory, improving the level of data, transparency and accountability, and helping to achieve efficient and effective management of mineral and land records. Additionally, in 2011 the BLM launched a new public internet portal to allow a single point of access to BLM mineral, land, and resource data inventories.

6. Why was a data layer, or framework layer, for underground infrastructure not included in the National Spatial Data Infrastructure (NSDI)? What benefits would the public realize if we had better data on the location of underground infrastructure?

Response: The NSDI framework currently has seven geographic data themes that include geodetic control, orthoimagery, elevation, transportation, hydrography, governmental units, and cadastral information. The seven themes of geographic data are those that are produced and used by most organizations. Various surveys indicate that they are required by a majority of users, form a critical foundation for the NSDI, and have widespread usefulness.

The framework consists of many data sets that are, or can be, integrated and related to each other and to other data. It is recommended that "underground infrastructure," be integrated and related to the cadastral framework data theme as land restrictions and encumbrance detail, rather than adopted as a separate theme under the NSDI framework. Relating underground infrastructure to the NSDI cadastral framework theme can save time, effort, and expense in using geographic data for specified business purposes. It can give the public and other data users ready, reliable data in a consistent form. It also can give data producers a reference source, standards, and guidance for creating geographic data.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 2 8 2012

The Honorable Edward Whitfield
Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Management to questions for the record submitted following the Thursday, August 2, 2012, oversight hearing on: **"The American Energy Initiative: Focus on Growing Differences for Energy Development on Federal vs. Non-Federal Lands."**

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 Bobby L. Rush, Ranking Member
Subcommittee on Energy and Power

Questions for the Record
Michael D. Nedd, BLM Assistant Director
House Energy and Commerce Subcommittee on Energy and Power
"The American Energy Initiative – The Growing Differences for Energy Development on Federal vs. non-Federal Land"
August 2, 2012

The Honorable Ed Whitfield

1. **In May the Department of the Interior issued a report to the President titled "Oil and Gas Lease Utilization, Onshore and Offshore" with the intended purpose to show energy companies are sitting on idle leases. What was missing was any discussion about the role Interior is playing in holding up energy projects.**

   a. **A company cannot drill on federal land without an approved application for permit to drill. How many applications for permit to drill (APD) nationwide are currently pending with Interior?**

   Answer: As of September 1, 2012, the Bureau of Land Management (BLM) has 3, 908 pending APDs. Because the BLM has been reducing a backlog of APDs, this is the lowest number of pending APDs since 2005.

   As of September 7, 2012, the Bureau of Safety and Environmental Enforcement (BSEE) has 57 APDs pending review and approval for oil and gas activities on the Outer Continental Shelf. Eleven of these APDs are for new deepwater wells in the Gulf of Mexico, which were submitted during the week of September 3.

   b. **How long is it currently taking for Interior to process an APD? Has this time increased since 2008?**

   Answer: The table below provides an overview of key timeframes associated with the processing of a BLM-approved APD after the applicant has submitted a complete application. Per statute (Section 366 of the Energy Policy Act of 2005), the BLM may not make a decision on an APD until the application is complete. Section 366 was reflected in the regulations in 2007 through the BLM's revision of Onshore Oil and Gas Order Number 1, Approval of Operations, which, among other things, outlines components of a complete APD.

BLM APD Processing Times by Fiscal Year							
	2005	2006	2007	2008	2009	2010	2011
Average Days After Application is Complete	39	127	74	134	84	72	71

   The graph and the two tables below provide an overview of key timeframes associated with the processing of a BSEE approved APD. Figure 1 below illustrates the approval times for Deepwater (> 500 feet) New Well APDs submitted post-

Deepwater Horizon and approved before the end of May 2012. The time to review permits initially increased relative to pre-*Deepwater Horizon* review times due to new safety requirements, but those times shortened significantly as operators and BSEE staff became more familiar with those new requirements such that the average review time for the ten deepwater New Well permits issued immediately prior to May 31, 2012, was 34 days.

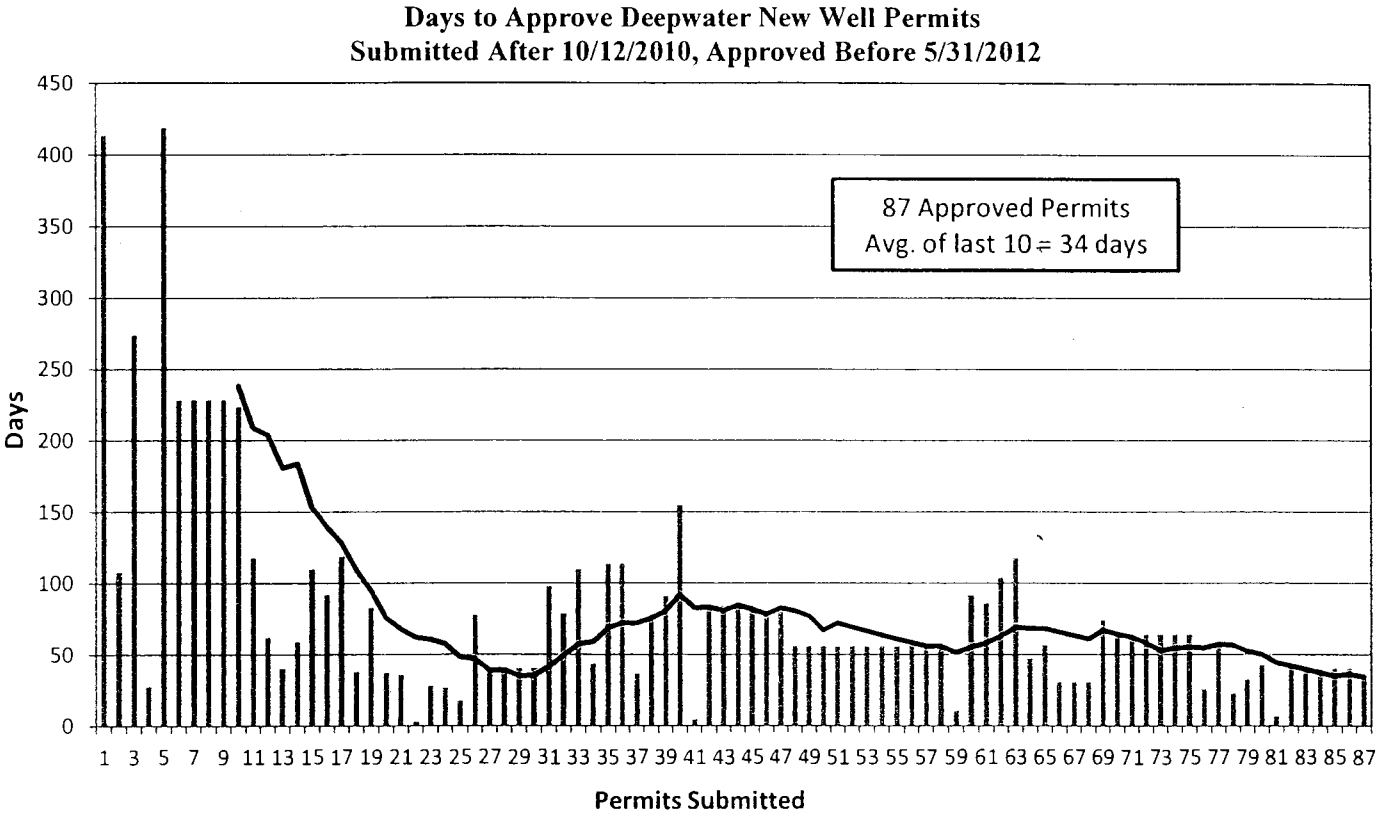

Figure 1. Graph of permit approval times for deepwater New Well permits submitted after October 12, 2010, and approved before May 31, 2012. The earliest submitted permits are on the left; more recently submitted permits are on the right. The trend line in this chart is a moving average of the 10 previous permit approval times, designed to highlight the longer-term trends. The total number of permits = 87; the average approval time for the 10 most recently approved permits prior to 5/31/2012 is 34 days.

The tables below were included in the Department's response to GAO's recent Plans and Permits Report (GAO-12-423), and provide additional detailed information on the permitting time frame pre and post *Deepwater Horizon*.

Table 1: Review Time Frames and Average Number of Returns Per Submission for All Types of Approved Deepwater Drilling Permits

	New well			Revised new well		
	January 1, 2005, through April 19, 2010	October 12, 2010, through May 31, 2011	June 1, 2011, through May 31, 2012	January 1, 2005, through April 19, 2010	October 12, 2010, through May 31, 2011	June 1, 2011, through May 31, 2012
Number of submittals	414	17	70	687	35	192
Median days from initial submittal until final approval	20	119	56	1	3.8	2.1
Average number of returned drilling permits per approved submittal	1.57	3.5	2.04	0.54	1.69	0.44

	Sidetrack			Revised sidetrack		
	January 1, 2005, through April 19, 2010	October 12, 2010, through May 31, 2011	June 1, 2011, through May 31, 2012	January 1, 2005, through April 19, 2010	October 12, 2010, through May 31, 2011	June 1, 2011, through May 31, 2012
Number of submittals	259	7	21	177	15	45
Median days from initial submittal until final approval	4	34	10.6	1	1.7	1.3
Average number of returned drilling permits per approved submittal	0.85	3.88	1.81	0.32	1.00	0.48

	Bypass			Revised bypass		
	January 1, 2005, through April 19, 2010	October 12, 2010, through May 31, 2011	June 1, 2011, through May 31, 2012	January 1, 2005, through April 19, 2010	October 12, 2010, through May 31, 2011	June 1, 2011, through May 31, 2012
Number of submittals	149	7	28	124	10	40
Median days from initial submittal until final approval	1	0.7	1.8	1	2.9	2
Average number of returned drilling permits per approved submittal	0.55	2.29	0.79	0.39	1.00	0.73

Table 2: Review Time Frames and Average Number of Returns per Submission for all Types of Approved Shallow Water Drilling Permits

	New well			Revised new well		
	January 1, 2005, through April 19, 2010	June 8, 2010, through May 31, 2011	June 1, 2011, through May 31, 2012	January 1, 2005, through April 19, 2010	June 8, 2010, through May 31, 2011	June 1, 2011, through May 31, 2012
Number of submittals	1,105	51	67	1,246	93	96
Median days from initial submittal until final approval	11	38	29	1	1.7	1.2
Average number of returned drilling permits per approved submittal	1.25	2.72	1.97	0.31	0.85	0.72

	Sidetrack			Revised sidetrack		
	January 1, 2005, through April 19, 2010	June 8, 2010, through May 31, 2011	June 1, 2011, through May 31, 2012	January 1, 2005, through April 19, 2010	June 8, 2010, through May 31, 2011	June 1, 2011, through May 31, 2012
Number of submittals	648	81	79	492	94	83
Median days from initial submittal until final approval	4	23	18.6	1	1	1.6
Average number of returned drilling permits per approved submittal	0.72	2.20	1.64	0.34	0.75	0.63

	Bypass			Revised bypass		
	January 1, 2005, through April 19, 2010	June 8, 2010, through May 31, 2011	June 1, 2011, through May 31, 2012	January 1, 2005, through April 19, 2010	June 8, 2010, through May 31, 2011	June 1, 2011, through May 31, 2012
Number of submittals	377	20	45	233	14	41
Median days from initial submittal until final approval	1	1	1	1	0.9	1
Average number of returned drilling permits per approved submittal	0.38	1.14	0.87	0.26	0.38	0.60

c. How many lawsuits and appeals from environmental groups does Interior face each year in regards to oil and gas projects? How does this affect the cost and time it takes to approve projects?

Answer: Since 2008, environmental organizations have filed a total of 26 lawsuits against the BLM challenging various aspects of the agency's administration of oil and gas resources. Annual totals have ranged from a high of nine lawsuits in 2008 to two lawsuits thus far in 2012. During the same timeframe, industry and other parties have filed 12 lawsuits against the BLM on various matters pertaining to oil and gas administration. The BLM does not maintain statistics on administrative appeals.

The BLM faces continual oil-and-gas-related litigation, protests, and appeals from environmental groups as well as industry groups and oil and gas companies. The ongoing burden of preparing for, reviewing, and defending or changing agency actions results in additional delay in the permitting process. Key personnel involved in processing permits are also those involved in responding to litigation, protests, and appeals, leaving less time for processing permits. In addition, the BLM becomes more cautious, taking more time in order to conduct a more thorough review of permits. This may also result in applying additional constraints to future permits due to findings from lost litigation, protests, and appeals.

2. **Secretary Salazar recently stated that Interior needs to heavily regulate hydraulic fracturing because some states have no laws regarding hydraulic fracturing. What states, where hydraulic fracturing is currently taking place on federal lands, have no laws regulating hydraulic fracturing?**

   Answer: According to a recent Government Accountability Office report (GAO-12-874), hydraulic fracturing is occurring in a number of states, with disparate laws covering hydraulic fracturing. In some cases, states have no regulations covering certain aspects of well stimulation addressed by the BLM's Proposed Rule. For example, North Dakota and Texas do not have regulations or statutes requiring authorization or notice, prior to hydraulic fracturing. The Proposed Rule issued by the BLM provides for prior authorization and notice requirements. Further, Pennsylvania and Texas do not have any regulations or statutes covering pressure monitoring, testing, limitations or other mechanical integrity requirements during well treatment or stimulation. Requiring mechanical integrity tests to ensure wellbore integrity and verifying zonal isolation of useable water-bearing formations are focal points of the BLM's Proposed Rule.

3. **On the second panel we heard testimony from a representative from the group Trout Unlimited, a group that has consistently opposed oil and gas development on Federal lands. Approximately how many times has the group Trout Unlimited filed lawsuits and appeals against Interior over oil and gas projects in the past 10 years?**

   Answer: According to a Public Access to Court Electronic Records (PACER) search of Federal court cases from January 1, 2003, to the present, Trout Unlimited has not been involved in any litigation involving the Department of the Interior's onshore oil and gas projects. The BLM does not maintain statistics on administrative appeals. (*Note:* Colorado Trout Unlimited is listed as a plaintiff in *Colorado Environmental Coalition v. Kempthorne*, 08-1460 (D. Colo.), which challenged the BLM's adoption of the Roan Plateau RMP on NEPA and FLPMA grounds. However, Colorado Trout Unlimited is a Colorado nonprofit corporation with 10,000 members that is separate from, but affiliated with, Trout Unlimited.)

The Honorable Cory Gardner

1. **Is it true that unitization of leases is a routine process for BLM? How long does the process take on average? In the case of the Thompson Divide Project in Colorado, it**

has taken over 18 months. Can you explain to me why this is the case, and what you see changing in the months to come?

Answer: The unitization of leases is usually a routine process for the BLM. The amount of time required for the BLM to approve a Unit Agreement varies depending on the number of parties participating in agreement, the size of the unit area, the geology, the nature of the oil and gas reservoir, and the proposed well or wells. To be approved, a unit operator must submit a complete application to be evaluated by the BLM. As part of the agency's review, the BLM will designate the unit area upon which the unit operator must then get at least 85% of the mineral owners within the boundary to join the unit and sign the unit agreement. If the proposal is found to be in the public interest and once proof of participation is submitted, the unit can be approved by the BLM. These steps can take anywhere from three months to several years.

Regarding the request for unit approval in the Thompson Divide Area, the BLM issued 18 Federal oil and gas leases consisting of about 32,000 acres of U.S. Forest Service lands to SG Energy to develop oil and gas resources. The leases will expire in 2013. To minimize the impact that drilling and development will have on the area, SG Energy requested that the leases be designated as the Lake Ridge Unit. As part of the review process with the BLM, the proposed unit has been reduced to about 29,000 acres. This acreage consists mostly of Federal minerals leased to SG Energy, but also consists of acreage not owned by the Federal government or leased to SG energy.

Unitization is a routinely used agreement that identifies how an oil and gas reservoir consisting of Federal and non-Federal property will be developed in a manner that can reduce costs, maximize recovery, and help operators minimize the need for infrastructure, disturbance, and other impacts by managing the unit as a single entity rather than individual leases, each requiring development. The BLM has not designated the Unit because of unresolved concerns by the local government, the surrounding community, the Thompson Divide Coalition, Wilderness Workshop, and other environmental protection groups opposed to oil and gas development.

2. **U.S. District Court Judge Marcia Krieger recently affirmed that federal law requires BLM to lease the Roan Plateau in western Colorado. What is BLM's plan for finalizing the environmental review now that litigation is over? When do you expect to issue the first APDs after more than ten years of public process that produced the most restrictive BLM drilling plan in the nation?**

   Answer: On June 22, the United States District Court for the District of Colorado remanded the RMP to the agency for further consideration. The BLM in Colorado is currently engaged in discussions with the lease holders and the litigants to find an appropriate path forward that will take the recent court ruling into consideration.

3. **When will the BLM release a final plan with regard to the oil shale Programmatic Environmental Impact Statement in Colorado? Will it deny any real possibility of commercial development, and when will the BLM release the commercial leasing**

regulations so that interested operators can begin to make investment decisions and create jobs?

Answer: In 2009, a consortium of plaintiffs filed two lawsuits in the Federal District of Colorado, each now captioned *CEC v. Salazar*, against the BLM and the Department of Interior. The first suit challenged the BLM's 2008 oil shale rule and the second suit challenged the BLM's 2008 resource management plan amendments and record of decision for Oil Shale and Tar Sands Resources. Both suits were settled. The BLM agreed in settlement to propose certain amendments to the oil shale rule, and thereafter to publish a final rule. The BLM also agreed to initiate a new planning process for oil shale and tar sands resources on the public lands in Colorado, Utah, and Wyoming, and to use best efforts to complete this process by December 31, 2012.

A draft of the proposed amendments to the rule is under interagency review pursuant to Executive Order 12866.

The Final PEIS/Proposed Plan Amendment is still under preparation. The Draft PEIS/Plan Amendment was published in February, 2012, beginning a 90-day public review period that ended on May 4, 2012. Under the Preferred Alternative presented in the Draft, approximately 462,000 acres would remain open for application for future oil shale and tar sands leasing and development in Colorado, Utah, and Wyoming. The Draft's Preferred Alternative would maintain a focus on research and development prior to commercial development of oil shale and would allow the BLM to obtain more information about the associated technology and environmental consequences before committing lands to broad scale development.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 2 8 2012

The Honorable Rob Bishop
Chairman
Subcommittee on National Parks, Forests and
Public Lands
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Management to questions for the record submitted following the Tuesday, September 11, 2012, legislative hearing on: **"California Coastal National Monument Expansion 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 Raul M. Grijalva, Ranking Member
Subcommittee on National Parks, Forests and Public Lands

QUESTIONS FOR THE RECORD
HOUSE COMMITTEE ON NATURAL RESOURCES
09.11.12 Subcommittee on National Parks, Forests and Public Lands

From Chairman Bishop

Questions for Carl Rountree, Bureau of Land Management

1. Explain the difference in management objectives between designated wilderness and non-wilderness areas included in the NLCS.
As established by Congress in the Wilderness Act of 1964, the primary management objective in designated wilderness is to protect wilderness character. The management objectives for other units of the National Landscape Conservation System (NLCS) reflect the designating legislation or proclamation and vary depending on the type of designation.

2. Explain the extent to which BLM will recognize and protect valid existing rights in areas included in the NLCS.
The BLM continues to recognize and protect all valid existing rights in areas within the NLCSin accordance with the terms of the designation of each NLCS unit.

3. If leases or use permits were previously issued to users within newly designated NLCS units without special conditions of stipulations, under what authority can BLM alter such rights?
Management of existing leases or use permits within NLCS units, including the authority to alter such leases or use permits may be addressed in the designating legislation or proclamation or in other applicable law.

4. Under what authority can BLM require the relocation of established facilities within NLCS units to areas outside of NLCS units?
When facilities within NLCS units are held by valid existing rights, the BLM does not have the authority to require relocation. Management of existing uses within the NLCS units may be addressed in the designating legislation or proclamation or in other applicable law. The BLM may work with any leaseholders interested in voluntarily moving facilities or working to minimize impacts to NLCS resource values.

5. Under what authority can BLM require the relocation of established rights-of-way within NLCS units to areas outside NLCS units?
Unless specified in the designating legislation or proclamation or in other applicable law, the BLM does not have the authority to require the relocation of valid rights-of-way (ROWs) within NLCS units.

6. To what extent will BLM consider safety factors and costs to rights holders when attempting to force relocation of established facilities?
The BLM does not have the authority to require, or force, the relocation of established facilities.

7. Under what authority can BLM revise visual standards within areas that hold existing facilities or other valid existing rights?
The BLM can only designate or revise visual resource management classes for public lands, including all NLCS units, through its land use planning process, which includes opportunities for public participation.

8. The manual states BLM should avoid designating or authoring use of transportation corridors within NLCS units. Will the duration of temporary disturbances be a mitigating factor in such decisions?

When processing ROW applications for the use of a transportation corridor on public lands, including NLCS units, the BLM would consider the duration of temporary disturbances.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 2 8 2012

The Honorable Rob Bishop
Chairman
Subcommittee on National Parks, Forests and
Public Lands
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

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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 M. Grijalva, Ranking Member
Subcommittee on National Parks, Forests and Public Lands

QUESTIONS FOR THE RECORD
HOUSE COMMITTEE ON NATURAL RESOURCES
09.11.12 Subcommittee on National Parks, Forests and Public Lands

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 2 8 2012

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 Bureau of Land Management to questions for the record submitted following the Tuesday, March 20, 2012, oversight hearing on: **"Effect of the President's FY 2013 Budget and Legislative Proposals for the Bureau of Land Management and the U.S. Forest Service's Energy and Minerals Programs on Private Sector Job Creation, Domestic Energy and Minerals Production and Deficit Reduction."**

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 D. Holt, Ranking Member
Subcommittee on Energy and Mineral Resources

QUESTIONS FOR THE RECORD
Subcommittee on Energy and Mineral Resources
Chairman Doug Lamborn

FY 2013 Budget Proposal of the Bureau of Land Management
Bob Abbey, Director, BLM
March 20, 2012

Questions from Chairman Doug Lamborn:

1. ***At the House Natural Resources hearing on February 15, Secretary Salazar implied that the industry was supportive of federal hydraulic fracking regulations and has often said that in developing the regulations the Department worked closely with industry in crafting these regulations. Can you please describe to the committee the companies, Indian tribes, and state government officials you or the Department has consulted with in crafting the federal hydrofracking regulations and what feedback or statements of support were given specifically regarding federal hydrofracking regulations?***

Response: As stewards of the public lands and their resources, the BLM evaluated the increased use of well stimulation practices over the last decade and determined that the existing rules for well stimulation on public lands require updating. Over the past few years, in response to strong public interest, several states—including Colorado, Wyoming, Arkansas, and Texas—have substantially revised their state regulations related to hydraulic fracturing. One of the BLM's key goals in updating its regulations on hydraulic fracturing is to complement these state efforts by providing a consistent standard across all public and Indian lands. The BLM is actively working to minimize any duplication between the proposed rule and the reporting required in state regulations. The rule will create a consistent framework for fracturing across BLM lands in numerous states, consistent with BLM's statutory stewardship responsibilities, unlike the patchwork of state standards among those states.

In April 2011, the BLM hosted a series of regional public meetings in North Dakota, Arkansas, and Colorado—states that have experienced significant increases in oil and natural gas development on federal and Indian lands—to discuss the use of hydraulic fracturing on lands administered by the BLM and on Indian lands. At these meetings, many oil and gas industry representatives, as well as organizations and businesses that support this sector, supported only state regulation of hydraulic fracturing; some indicated support for disclosure of fracturing fluids to the public. The BLM explained that the rules governing drilling practices on lands that it has a responsibility to oversee included obsolete, outdated references to hydraulic fracturing and that the agency reviewed hydraulic fracturing regulations from several states and used valuable information from these state regulations in developing the proposed rule. Further, BLM stressed that the agency was committed to working with individual states on the implementation of the proposed regulation, as it does currently in implementing other drilling-related requirements on our public lands, to encourage efficiency in data collection and reporting.

The BLM's proposed hydraulic fracturing rule is consistent with the American Petroleum Institute's (API) guidelines for well construction and well integrity (*see,* API Guidance Document HF 1, Hydraulic Fracturing Operations—Well Construction and Integrity Guidelines, First Edition, October 2009).

With respect to tribal lands, the BLM has offered government-to-government consultation with tribes on this proposal and offered follow-up meetings as part of the consultation process with individual tribes. In January 2012, the BLM held four informational regional meetings as a starting point of the consultation process, to which over 175 tribal entities were invited. These initial consultations were held in Tulsa, Oklahoma; Billings, Montana; Salt Lake City, Utah; and Farmington, New Mexico. Eighty-four tribal members representing 24 tribes attended the meetings. Senior policy leaders from the Washington Office as well as local line officers who have built relationships with the tribes in the field participated in the regional meetings. The four meetings ended with a commitment to continue the dialogue using the established local relations with the BLM field office managers.

In these meetings, BLM discussed the proposed rule with tribal representatives; these discussions resulted in substantive dialogue about the hydraulic fracturing rulemaking process. A variety of issues were discussed, including applicability of tribal laws, validating water sources, inspection and enforcement, wellbore integrity, and water management. One of the outcomes of these meetings is the requirement in the proposed rule that operators certify that operations on tribal lands comply with tribal laws.

Additional individual meetings with tribal representatives have taken place since January as the consultation process continues. The BLM has met with the United South and Eastern Tribes, an organization representing 25 assembled member tribes, the Coalition of Large Tribes and the Mandan, Hidatsa and Arikara Nation. In the near future the BLM expects to meet with tribal representatives from Montana including the Blackfeet, Chippewa Cree, Fort Belknap, and Flathead tribes. As part of the BLM's commitment to exchange information and provide opportunities for continued government-to-government consultation, the BLM held four regional meetings in June 2012, which took place in Salt Lake City, Utah; Farmington, New Mexico; Tulsa, Oklahoma; and Billings, Montana. The BLM also participated in the National Congress of American Indian summer meeting in Lincoln, Nebraska. On July 13, 2012 the BLM conducted another regional session in New Town, North Dakota which was attended by 15 tribal members representing 5 tribes including the Three Affiliated Tribes of the Mandan, Hidatsa and Arikara Nation, Standing Rock, Turtle Mountain, Fort Peck and the Alabama-Conshatta Tribes of Texas.

The BLM will incorporate information gathered from tribal consultation in developing the final hydraulic fracturing rule. Through ongoing tribal consultation, BLM will continue to seek tribal views regarding the potential impacts of hydraulic fracturing on trust assets and traditional tribal activities.

The comment period for the hydraulic fracturing rule closes on September 10, 2012. The BLM welcomes comments from any interested parties. The BLM will fully consider all comments received during the comment period.

2. ***Your BLM field offices continue to struggle to meet the demands of several new requirements connected with oil and gas exploration and drilling on public lands; requirements connected to APD's, sundry notices and even on leases that have been awarded, paid for and issued but challenged by the environmental litigation industry.***

   a. ***The President said in the State of the Union that he wants to see more leasing. How do you propose to accomplish this goal?***

Response: As of November 2011, the BLM has more than 49,000 leases on more than 38 million acres. Of these, however, fewer than 23,000 leases, totaling fewer than 12.5 million acres, are in production. The BLM continues to implement the Secretary's 2010 oil and gas leasing reforms, which established a more orderly, open, consistent, and environmentally sound process for developing oil and gas resources on public lands. These reforms are helping to reduce potential conflicts that can lead to costly and time-consuming protests and litigation of leases. The BLM will continue to make appropriate public lands available for oil and gas leasing and will do so in a thoughtful and responsible manner consistent with our leasing reforms.

The BLM held 32 onshore oil and gas lease sales during calendar year 2011, offering 1,755 parcels of land covering nearly 4.4 million acres. In total, 1,296 parcels of land were leased generating approximately $256 million in revenue for American taxpayers – a nearly 20 percent increase in lease sale revenue over 2010 levels. The BLM has scheduled 31 oil and gas lease sales for calendar year 2012.

   b. ***As you impose new rules such as HF disclosure requirements, how will that speed up the process of producing more oil and gas domestically?***

Response: BLM developed its proposed hydraulic fracturing rule's disclosure requirements and other proposals based on best practices in industry, and it will be fine-tuning its final regulations based on additional input from industry. With regard to disclosure requirements, the proposal does not impact the speed of drilling, since disclosure is proposed to be made after the drilling has occurred. More generally, the BLM understands the time sensitive nature of oil and gas drilling and well completion activities, and it intends to promptly review requests to conduct well stimulation activities. It is not anticipated that a proposed requirement to submit additional well stimulation-related information with APD applications will impact the timing of the approval of drilling permits. The additional information that would be required by the proposed rule would be reviewed in conjunction with the APD and within the regular time frame for APD processing.

   c. ***Many of your rules (such as rules for Master Leasing Plans) frankly hurt development on public lands, hamper exploration and production on tribal lands and deny states and the federal treasury important royalty income. Have you worked with OMB to stream line your requirements to increase incomes which trickle down to schools, police departments and other state, county and municipal governments?***

Response: The BLM does not believe that oil and gas leasing reforms have slowed development on public lands. To the contrary, prior to the implementation of the Secretary's leasing reforms

in 2010, 49 percent of lease parcels were protested resulting in a backlog of pending parcels awaiting adjudication. To respond to these protests, BLM implemented leasing reform which provided more certainty to industry. Leasing reform front-loaded more analysis and improved the BLM's ability to adjudicate lease sale protests prior to the lease sale. After implementation of leasing reform, lease sale protests dropped to approximately 35% of the parcels offered in 2011.

The BLM has analyzed the costs and the benefits of the proposed hydraulic fracturing rule in a Regulatory Impact Analysis, available in the rulemaking docket. This Analysis assumed that the proposed rule would mitigate risks associated with wellbore integrity and unlined pits, and reduce costs related to surface and subsurface remediation. These estimated benefits range from $12 million to $50 million per year, and estimated costs of imposing the proposed rule range from $37 million to $44 million per year. Given the conservative assumptions made about the costs of remediating contamination and the fact that certain benefits were not quantified, the BLM believes that the quantified range could underestimate actual net benefits.

3. ***States with disclosure requirements – including two with some of the more stringent requirements, Wyoming, and my home state of Colorado – provide detailed approaches to protection of trade secrets relating to the fracture stimulation fluid formulations. The states do so in a way that achieves a balance between the public interest in information about what has been discharged into subsurface strata, and the valid interest of business entities in a process or formulation that presents them with a legitimate competitive advantage. The draft BLM regulations do not seem to provide equivalent assurances to suppliers that have a commercial interest in formulations that is of the sort given protection in the Uniform Trade Secrets Act that has been ratified by 46 states. Please describe how BLM would plan to recognize the property interest in trade secrets that has been acknowledged by the states that are regulating hydraulic fracturing.***

Response: In addition to the water and sand that are the major constituents of fracturing fluids, chemical additives are also frequently used. These chemicals can serve many functions, including limiting the growth of bacteria and preventing corrosion of the well casing. The exact formulation of the chemicals used in fracturing fluid varies depending on the rock formations, the well, and the requirements of the operator.

In order to protect proprietary formulations, the proposed rule would require oil and gas operators using hydraulic fracturing techniques to identify the chemicals used in fracturing fluids by trade name, purpose, Chemical Abstracts Service Registry Number, and the percent mass of each ingredient used. The information would be required in a format that does not link additives to the chemical composition of fluids, which will allow operators to provide information to the public while still protecting information that may be considered proprietary. This design of the disclosure mechanism in the proposed rule will inhibit reverse-engineering of specific additives. The information is needed in order for the BLM to maintain a record of the stimulation operation as performed. The proposed rule, would allow an operator to identify specific information that it believes is protected from disclosure by federal law, and to substantiate those claims of exemption. This approach is similar to the one that the State of Colorado adopted in 2011 (Colorado Oil and Gas Conservation Commission Rule 205.A.b2.ix-xii).

a. *In looking at the BLM draft regulations – it seems that in general they go significantly above and beyond what any state has in place right now. Why did BLM make such drastic changes as opposed to what the states have been doing in regulating fracking for years?*

Response: The BLM recognizes that some, but not all, states have recently taken action to address hydraulic fracturing in their own regulations. The BLM's proposed rulemaking is designed to complement ongoing state efforts by providing a consistent standard across all public and tribal lands and ensuring consistent protection of the important federal and Indian resource values that may be affected by the use of hydraulic fracturing. Moreover, BLM's regulations are now 30 years old and need to be updated to keep pace with the many changes in technology and current best management practices.

The BLM is also actively working to minimize duplication between reporting required by state regulations and reporting required for this rule. The BLM has a long history of working cooperatively with state regulators and is applying the same approach to this effort.

4. *The draft BLM regulations refer to a separate proposal for well stimulation operations that an operator must submit on a separate sundry notice application form – a process entirely separate from the review and approval process for the application for permit to drill (APD). This apparent two-track permit process sets up the possibility that an operator could receive approval of its application for permit to drill, and have approval withheld on its sundry notice for well stimulation – in other words, be approved to drill, but not to compete, its well. How does BLM intend to reconcile this potential permitting dilemma?*

Response: Under the well stimulation rule, the operator has the option to submit a sundry notice with an APD, or submit a separate sundry notice for approval for hydraulic fracturing activity. If an operator submits a sundry notice with an APD for well stimulation on a new well, prior approval would be required as part of the APD approval process that already is in place. If an operator submits a separate sundry notice for well stimulation (in the case of a well permitted prior to the effective date of the rule), the operator would submit a well stimulation proposal for the BLM's approval before the operator begins the stimulation activity.

5. *Unlike the more stringent state disclosure requirements, the draft BLM regulations require pre-approval of fracture stimulation formulations.*

   a. *What is the technical basis on which such approval will be given or withheld by the agency?*

Response: The proposed hydraulic fracturing rule does not call for BLM involvement in determining or approving the chemical composition of the hydraulic fracturing fluid. The proposed rule requires the operators to report the chemical composition of their fracturing fluid within 30 days after they have completed the fracturing activity. The draft rule proposes that prior approval would be required for well stimulation activities, generally in connection with the

prior approval process that already is in place for general well drilling activities through the Application for Permit to Drill (APD) process.
Information collected by the BLM and used for pre-approval of well stimulation activities would be used by the BLM to determine the parameters of the well stimulation operation; verify that the operator has taken the necessary precautions to prevent migration of fluids into usable water horizons; ensure that the facilities needed to process or contain the estimated volume of fluid will be available on location; and ensure the methods used will adequately protect public health, safety and the environment.

b. Can the Secretary describe the staff expertise that will be required to make such determinations, and whether BLM plans to consult with the state agencies that will also be enforcing regulations that pertain to well drilling or completion?

Response: The BLM technical staff includes petroleum engineers, petroleum engineering technicians, geologists, and hydrologists, among others. These BLM specialists have a level of expertise commensurate to that of technical staff employed by industry and the state agencies. BLM technical specialists routinely consult with their state counterparts for operational issues and will continue to do so. One of the BLM's key goals in updating its regulations on hydraulic fracturing is to complement these state efforts by providing a consistent standard across all public and Indian lands.

c. How will BLM archive the data it receives?

Response: Federal oil and gas operations lease and well files are maintained in accordance with laws, regulations, and BLM policy that restrict release of records containing proprietary information. The BLM General Records schedule provides guidance on life cycle maintenance of all records, including a retention and disposal schedule for records that contain proprietary information or information protected by the Freedom of Information Act (FOIA). Oil and gas operations and wells files contain proprietary information that is protected from release by the FOIA and maintained in secure locations with restricted access. These files are transferred to the Federal Records Center (FRC) 10 years after the lease terminates, the bond is released and appeal rights are exhausted.

d. How will this data be compiled, reported and analyzed?

Response: The proposed rule would require that disclosure of the chemicals used in the fracturing process be provided to the BLM after the fracturing operation is completed. This information is intended to be posted on a public Web site, while protecting trade secrets and confidential business information.

BLM engineers will analyze the information and data presented. The results of the analysis would be used to ensure that appropriate protection for other subsurface resources has been achieved; human health and safety measures are considered in the design and execution of the hydraulic fracturing operation; and there is appropriate protection for surface resources. Information collected by the BLM will be used to verify that the operator has taken the necessary precautions to prevent migration of fluids in to the usable water horizons; ensure that the

facilities needed to process or contain the estimated volume of fluid will be available on location; and ensure the methods used will adequately protect public health, safety, and the environment.

Director Abbey, could you please describe the BLM's familiarity with the operational practice in the drilling industry of making adjustments to well stimulation fluid formulations on a relatively continuous manner during the process of drilling and completing a well – including making adjustments to such formulations while hydraulic fracturing operations are underway as a result of many factors including the pH levels of the water used and the temperature of the air during the job?

Response: The proposed hydraulic fracturing rule does not call for BLM involvement in determining or approving the chemical composition of the hydraulic fracturing fluid. The proposed rule requires the operators to report the chemical composition of their fracturing fluid within 30 days after they have completed the fracturing activity.

a. ***Please describe how BLM would expect to administer these regulations if adopted in light of that practice, given the 30 day pre-approval submittal requirement?***

Response: The BLM is not proposing regulations that require 30-day pre-approval submittal requirement for hydraulic fracturing operations. Prior approval would be required for well stimulation activities, generally in connection with the prior approval process that already is in place for general well drilling activities through the Application for Permit to Drill (APD) process.

b. ***Do you agree that because of the level of detail and specificity required by BLM's regulations as drafted (e.g. "complete chemical makeup of all materials used") that an operator that changes its fluid formulation could be forced into a situation where it must stop and resubmit to the agency?***

Response: No, the proposed rule does not work that way. The proposed rule requires the operators to report the chemical composition of their fracturing fluid within 30 days after they have completed the hydraulic fracturing operations, not during operations.

6. ***Recent numbers released by the Energy Information Administration show that since 2000, oil production on private and state lands has risen by 11 percent and natural gas production has risen by 40 percent. Fossil fuel production has dropped by 7 percent since President Obama took office and 13 percent since 2003. From 2010 to 2011, total federal onshore oil and natural gas production is down 13 percent and 10 percent, respectively. What is the reason for the sharp decline in oil and natural gas production on federal lands, when production is increasing rapidly on state and private lands?***

Response: The aggressive development of shale gas and shale oil resources has led to a shift to private lands in the east and south, where new technologies have made production more economically attractive and where there are far fewer public lands. Currently, nearly 37 million acres of federal mineral estate are under oil and gas lease, although less than one-third of that acreage, (about 12 million acres) is currently in production. And the BLM typically processes

between 4,000 and 5,000 drilling permits per year. As of the end of FY 2011, nearly 7,100 drilling permits have been approved and yet remain undrilled by industry on federal and Indian lands. In FY 2011, the Department of the Interior collected royalties on more than 97 million barrels of oil produced from onshore Federal minerals. Also in 2011, the production of nearly 3 trillion cubic feet of natural gas made it one of the most productive years on record. Combined onshore oil production from public and Indian lands has increased every year since 2008. Conventional oil and gas development from public and Indian lands produces 14 percent of the nation's natural gas, and 6 percent of our domestically produced oil.

Questions from Representative Paul A. Gosar, D.D.S.

1. ***Environmental groups have recently ratcheted up an effort to have their members urge the Obama Administration to designate the approximately 1,006,545 acres of public and National Forest System lands, withdrawn from location and entry under the Mining Law of 1872, 30 U.S.C. §§ 22-54 subject to valid existing rights for a period of 20 years, under Public Land Order No. 7787, as a National Monument. Does the President intend to designate the 1 million withdrawn acres in question as a National Monument in response to this pressure from the environmental groups (Sierra Club, Grand Canyon Trust, Center for Biological Diversity & others)?***

Response: Any new special management designations work best when they build on local efforts to better manage places that are important to nearby communities, and this Administration is committed to working closely with the public, the Congress, and local officials. We recognize and respect the importance of public and congressional input in considering protections for our natural, historic, and cultural treasures and constantly strive to take into account the interests of a wide range of stakeholders.

2. ***Since Interior Secretary Salazar signed the Record of Decision in January on Public Land Order No. 7787, he has continually alluded to a study or review that he intends to conduct during the 20-year withdrawal period to determine whether uranium mining can be conducted in a way which is compatible with the protection of the Colorado River Watershed and the Grand Canyon National Park itself. Please characterize the Administration's intentions for what will occur during the 20 year withdrawal? Is there such a study underway? Will there be such a study or review conducted? Will the industry, the states and local communities have any role in it? Will Congress? Will such a review include economic impacts as well as environmental impacts? When will it be conducted, over what duration? Which agencies inside the DOI (or outside DOI) will be responsible for such a review? Will the review or study be shared with Congress?***

Response: The BLM is currently working with the U.S. Geological Survey (USGS), U.S. Forest Service (FS), U.S. Fish and Wildlife Service (FWS), and the National Park Service (NPS) to determine the number and scope of studies that will be conducted over the near and long term during the withdrawal to better understand potential effects of uranium mining on water and biological resources in the region. Once priorities for the studies are set, this interagency team will issue a report on its plans. These studies would add to our scientific knowledge and reduce the uncertainty of potential effects.

In addition, at the conclusion of the withdrawal process the USGS had underway several water-related studies that are expected to continue for several years. These are surface water monitoring and run-off sampling in the north and south parcels and water chemistry monitoring on the Colorado River. The agencies are working to provide funding to continue some or all of these tasks within current agency budgets.

USGS has also identified a number of new studies that could be initiated to better understand groundwater flow paths, travel times, biological toxicity pathways, and radionuclide migration.

The agencies are currently working on the development of a study proposal for vetting by each agency and the Department of the Interior and the Department of Agriculture. The proposal will outline a multi-year work program, costs, and priorities for specific tasks.

Regarding economic and environmental impacts, a future decision on whether to continue or to terminate the withdrawal would be made through the withdrawal review process, including the appropriate level of environmental review and analysis.

3. ***Since only one uranium mine is currently in operation within the withdrawal area and only a few others contemplated, how will the DOI determine the full scope and impacts from these mines on the Grand Canyon and Colorado River Watershed? Will it be confirmed data or hypothesis? If actual data, will DOI be in contact with those operating the Arizona mine and other proposed mines to determine how data gathering will occur? If the affected mining company is not included, how will the impacts of mining be determined? Will naturally occurring impacts to the Grand Canyon and the watershed be included in any review or study? If a study is conducted in coordination and cooperation with industry, would the Administration outline steps that industry could take to mitigate any impacts to the environment so that mining could continue to occur (after the end of the withdrawal) in an environmentally acceptable way?***

Response: There are four authorized uranium mines in the withdrawal area (three on the Arizona Strip and one on National Forest land south of the Grand Canyon), all owned by Denison Mines Corp. Currently, the Arizona 1 Mine is in production, but scheduled to close and go into reclamation later this year. The Pinenut Mine is being prepared to go into production later this year. Denison is in the process of closing and reclaiming the Kanab North Mine, and opening the Canyon Mine, which is on National Forest land.

Denison has also submitted a Plan of Operations (POO) for a new mine (the EZ Mine) on the Arizona Strip. This will require a validity determination and preparation of an Environmental Impact Statement (EIS) before the POO can be approved.

The presence of the existing mines and potential new mines offer additional opportunities to monitor the potential effects of mining on water and biological resources. The BLM and FS will continue working with the USGS, NPS, FWS, and Denison to design and carry out these studies in a manner that takes advantage of these opportunities.

Regarding natural vs. human-caused impacts, the USGS has proposed additional studies that would help better determine these factors, including evaluating and refining the isotopic Uranium Activity Ratio (UAR) analysis that is already in progress. This process seeks to determine the sources of elevated water or soil samples.

4. ***Section 204 of FLPMA required that a 12-part justification for the withdrawal be submitted to Congress as part of the January 9, 2012, actions taken by the Secretary of the Interior. Could the relevant agencies please share those required responses which were used to justify the withdrawal with this committee?***

Response: The 12-part justification was delivered on January 9, 2012, to Chairman Hastings and Ranking Member Markey of the House Committee on Natural Resources, as well as to Chairman Bingaman and Ranking Member Murkowski of the Senate Committee on Energy and Natural Resources.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 28 2012

The Honorable Jeff Bingaman
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Management to questions for the record submitted following the Thursday, July 12, 2012, oversight hearing on: ***"Remediation of Federal Legacy Wells in the National Petroleum, Reserve-Alaska."***

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

07.12.12 Senate Committee on Energy & Natural Resources

Oversight hearing on Remediation of Federal Legacy Wells in the National Petroleum Reserve-Alaska.

FROM CHAIRMAN BINGAMAN

Questions for Bud Cribley, Bureau of Land Management, Alaska State Director

1) Arctic Conditions

Question: Are there any aspects of operating in the Arctic environment that make it more difficult to remediate the legacy wells?

Answer: Yes. These wells are located in remote parts of Alaska where work is performed in extreme conditions. These sites can be several hundred miles from the town of Deadhorse, which is the principal supply depot and nearest developed community. Access into the NPR-A for well-plugging and remediation activities is limited to overland travel in the winter to protect tundra vegetation and because the tundra bog will not support overland travel or infrastructure in the summer months. However, winter temperatures routinely reach -40 degrees Fahrenheit, there is very little daylight during this season, and mobilization efforts during the winter months are extremely difficult. Self-sufficient camps are transported to these sites via ice roads, offshore sea ice, and snow packed roads. Fuel and provisions require constant resupply, and all specialized equipment needs to be winterized for arctic conditions.

2) Funding

Question: Can you please describe for us the Federal funding available for the remediation of the legacy wells?

Answer: To date, $85.9 million has been spent to plug and remediate 18 legacy wells. As shown in the table below, funding for this work has come from the annual appropriations of the Department of Defense and the Department of the Interior and from supplemental appropriations under the American Recovery and Reinvestment Act of 2009 (ARRA). In FY 2005 and FY 2009, the Secretary of the Interior used emergency transfer authority to fund these activities. The FY 2013 President's Budget includes $1.0 million for the legacy wells.

07.12.12 Senate Committee on Energy & Natural Resources

Oversight hearing on Remediation of Federal Legacy Wells in the National Petroleum Reserve-Alaska.

Year	Activity	Amount	Source
2002	Army Corps of Engineers plug and abandon Umiat #2 and #5	$25 Million	Defense Appropriation
2004	BLM plugged Umiat #3, #4, #8 and #10	$1.4 Million	Interior Appropriation
2005	BLM plugged the J.W. Dalton Well	$8.9 Million (including $7.5 Million emergency transfer)	Interior Appropriation
2006	BLM plugged 5 wells in the Simpson Peninsula	$1.8 Million	Interior Appropriation
2008	BLM plugged the East Teshekpuk Lake well	$12 Million	Interior Appropriation
2009	BLM plugged the Atigaru Point #1 well	$14 Million (including $8.9 Million emergency transfer)	Interior Appropriation
2010	BLM plugged the Drew Point #1 well	$16.8 Million	ARRA
2011	BLM plugged the Umiat #9 well	$2.5 Million	Interior Appropriation
2012	BLM is plugged Umiat #6 and #7 wells	$3.5 Million	Interior Appropriation

Question: How much money would be necessary to remediate the remaining NPR-A legacy wells?

Answer: To date, $85.9 million has been spent to plug and remediate 18 legacy wells. The cost of plugging and remediating individual well sites varies due to the location and type of work needed to plug a well or remediate the site, and has ranged from several hundred thousand dollars to $16.8 million. Project costs include cleanup, transport and disposal of reserve pit and other solids waste in addition to the costs of actually plugging wells, especially those threatened by coastal erosion. In circumstances where well sites are in extremely remote locations, the costs of transporting equipment and wastes collected at these sites and disposing of it properly is very expensive.

In 2004, the BLM completed a comprehensive assessment and report of the legacy wells in the NPR-A. This report was shared with the Alaska Oil and Gas Conservation Commission (AOGCC). The BLM prepared a strategic plan to prioritize the remediation of the priority wells identified in the report, in addition to those wells being threatened by coastal erosion. With the completion of the upcoming Iko Bay project, which is anticipated for the winter of 2013-2014 (pending availability of adequate funds), all high priority wells that were identified in the 2004

report will be plugged. The BLM is preparing an update to the report based on field inspections over the last several field seasons, and is working closely with the AOGCC to come to agreement on the actions needed or warranted for the remaining wells. The AOGCC is reviewing BLM well file information, with a goal of completion in the next few months. Once the BLM receives feedback from the AOGCC, the BLM can develop a reasonable cost estimate for the remaining work.

3) Number of Legacy Wells –
Question: Your testimony indicates that of the original 136 wells and boreholes, there are 39 unplugged wells, as well as 2 that have not been located. However, Commissioner Foerster's statement indicates that only 9 of the 136 wells and well sites have been properly addressed by the BLM. Could you please explain for us the discrepancy in these numbers?

Answer: The following table is the current BLM accounting of the 136 legacy wells:

Status	Tally	Action
Wells that are plugged	*19	
Not under BLM's jurisdiction	24	No BLM Action
Not under BLM's jurisdiction (USGS)	18	Final disposition to be determined
Uncased geologic core tests	34	No BLM Action
Wells without accurate GPS coordinates	2	Monitoring area
Remaining unplugged wells	39	Monitoring and Prioritizing
Well Total	**136**	

* Includes one well plugged by the U.S. Navy in 1952 and two wells plugged by the Army Corps of Engineers. BLM has plugged 16 wells, including remediating contaminated soils where necessary and removing well site debris.

The BLM has plugged 16 wells, the Army Corps of Engineers plugged two wells and one well was plugged by the U.S. Navy in 1952. Nine of these wells were

permanently plugged as Commissioner Foerster notes. The BLM has plugged an additional nine wells with surface plugs. These plugs prevent migration of any material to the surface and ensure that no materials are introduced in the well bore. The AOGCC considers these temporarily plugged. The BLM continues to meet with the AOGCC to discuss technical issues, share data, and work towards an agreement on the status of the wells and develop future actions.

Commissioner Foerster's numbers do not take into account 24 wells that were transferred out of Federal ownership to the North Slope borough or to Native Corporations as part of the Barrow Gas Field Transfer Act of 1984 (P.L. 98-366); the one well plugged by the U.S. Navy in 1952; 18 wells that are partially plugged and currently operated by the U.S. Geological Survey (USGS) for monitoring efforts; and 34 uncased geologic bore holes and foundation test holes drilled by the U.S. Navy in the 1940s.

Question: How many wells have been plugged and remediated to date?

Answer: A total of 19 wells have been plugged. Of that number, the U.S. Navy plugged one well in 1952, the BLM plugged 16 wells, including remediating contaminated soils where necessary and removing well site debris, and the Army Corps of Engineers plugged 2 wells. An additional 18 wells are partially plugged and are used and managed by the USGS as climate change monitoring wells.

Question: Please also describe for us the wells that are used currently by the USGS.

Answer: There are 18 wells that were drilled in the late 1970s and early 1980s. These are generally the deeper drilled wells that range from a depth of 4,000 to 20,000 feet deep. These wells have been properly plugged back to a depth of approximately 2,000 feet deep. USGS uses the unplugged interval from the surface to 2,000 feet to monitor changes in depth of permafrost as part of their climate change research. These 18 wells are scattered throughout the NPR-A, but are predominately in the northern portion of the reserve.

4) Work with the State of Alaska
Question: Are you making efforts to work with the State of Alaska on this issue? If so, please describe.

Answer: Yes. The BLM invites state inspectors on all annual surface inspections of the legacy wells, and BLM has asked the AOGCC to provide any input on priorities for site visits. The BLM also invites the AOGCC to witness all plugging efforts conducted by the BLM. The BLM has shared all available well file information with the AOGCC to reach concurrence with the AOGCC on the number of wells present, the current status of these wells, and the status of the wells outside BLM's jurisdiction.

As a matter of practice, the BLM provides Sundry Notices to the AOGCC on all plugging and abandonment efforts to ensure that the BLM is in compliance with state regulations. (A Sundry Notice is a form to evaluate proposed changes to the operation of a well after it has already been permitted.)

For matters where there is a technical question or opinion concerning the final plugging of the well, as in the case of the nine wells that the state considers "temporarily plugged," BLM meets with AOGCC to discuss the well condition and future actions that may be warranted.

The BLM anticipates a hearing with the AOGCC to review the status of 34 uncased or partially cased boreholes drilled for geologic strata and permafrost research. The geologic and foundation core tests are uncased and are shallow (from less than 50 feet deep to 1,600 feet) boreholes. Core tests are naturally reclaimed and are indistinguishable from the natural environment. The BLM intends to request that the AOGCC remove the boreholes from their list of legacy wells.

The BLM is preparing an updated report that summarizes site visits and risk assessments conducted over the past two field seasons, which will be provided to the State once finalized. The BLM has solicited State input concerning prioritization of wells and upcoming projects.

5) Failure to Remediate
Question: Why has the BLM failed to remediate the NPRA legacy wells to date?

Answer: BLM has not failed to remediate all legacy wells: this process is ongoing. The BLM has adopted a risk-based approach to remediation of the most critical legacy wells and conducts an active monitoring program to determine if well or environmental conditions have changed at these sites. The BLM's 2004 Strategic Plan and the soon-to-be completed Strategic Plan Update are both risk-based approaches that consider technical issues and availability of funding. BLM's active monitoring program is also an important element in addressing the legacy well issue and BLM has taken action quickly when the on-the-ground situation warranted immediate action to prevent catastrophic failure that would threaten health and safety and harm the environment. For example, BLM's periodic monitoring efforts showed that several wells were threatened by coastal erosion, the J.W. Dalton (in 2005) and the Atigaru well (in 2009), and needed immediate remediation. As the remediation work for these two wells was costly and there was not time to request money through the normal appropriations process, the Department used an emergency funding transfer mechanism authorized by the Interior Appropriations Act. This rarely-used mechanism allows the Secretary to transfer funds from other BLM and DOI accounts only in very specific emergency situations, and other projects were delayed because of the transfer.

As discussed in the answer to the second part of question 2, the BLM has taken a risk-based approach to the issue. In 2004, the BLM completed a comprehensive assessment and report of the legacy wells in the NPR-A. The BLM prepared a strategic plan to prioritize the remediation of the priority wells identified in the report, in addition to those wells being threatened by coastal erosion. Pending available funding and timing of contracting, completion of the Iko Bay project, which is anticipated for the winter of 2013-2014, all high priority wells that were identified in the 2004 report will be plugged. Additionally, the BLM has remediated all reserve pits that remained as a result of legacy well drilling activity consistent with Federal and State regulations.

In 2010, BLM determined that an update to the 2004 report was warranted and has revisited the sites of all the legacy wells during 2010-2012. The new report, which BLM expects to complete by the end of 2012, will provide comprehensive updated well and site condition information and provide the basis for further strategic planning of legacy well remediation in coordination with AOGCC.

The efforts to plug and remediate abandoned wells are extraordinarily expensive due to the fact that the wells are located in remote parts of Alaska where work is performed in extreme conditions, often several hundred miles from a primary supply depot and nearest developed community. To date, BLM has spent $85.9 million to plug and remediate 18 legacy wells with the cost of plugging and remediating individual well sites ranging from several hundred thousand dollars to $16.8 million. Securing adequate and timely funding to complete remediation efforts in extreme arctic conditions is the limiting factor to proceeding more quickly with additional remediation efforts.

Question: What are your plans to address this problem going forward?

Answer: The BLM expects to complete an updated Legacy Well Summary Report and a Strategic Plan in the next few months. The updated Strategic Plan will outline the agency's priorities for plugging the remaining legacy well sites. In the meantime, the BLM has developed a short-term strategy to address 13 legacy wells over three seasons. The first step in the short-term strategy will be the remediation of the Iko Bay well and two nearby wells over the winter of 2013-2014, pending availability of adequate funds to complete the project.

6) Abandoned Wells in the Lower 48
Question: While I understand that in the Lower 48 the wells were not drilled by the Federal Government, there are many orphaned and abandoned wells on Federal lands in states such as New Mexico that need to be plugged. How much funding does BLM have available for this purpose on an annual basis?

Answer: The BLM refers to an abandoned well as a non-producing well that has been properly plugged, the site reclaimed to its original condition, and abandoned for purposes of oil and gas development. The BLM refers to an orphaned well as a non-producing well on Federal land that is not associated with a responsible or liable party and for which there is not sufficient bond coverage for plugging and surface restoration costs.

The BLM has worked diligently with industry and state and local governments to assure that non-producing wells are properly remediated and the site reclaimed by the responsible party. The BLM works with our cooperators including existing lease holders, oil and gas producers, and local and state governments in partnership to minimize orphaned well occurrence and mitigate orphaned well conditions.

The BLM works on a case-by-case basis to address the issue of orphaned wells. The amount expended by the BLM for the isolated cases of orphaned well remediation and site reclamation varies from year to year but ranges from approximately $75,000 to $125,000 annually of appropriated funds to cover operation needs of well plugging and abandonment. Additional funds for orphan well remediation come from industry, state funds raised through permit fees for orphaned well remediation, and forfeited bond revenues.

From Senator Murkowski

Questions for Bud Cribley, Bureau of Land Management, Alaska State Director

1. What regulatory and legal mechanisms are available to the BLM in cases where a leaseholder or operator maintains operations in a manner which is out of compliance with environmental standards in a chronic or repeated manner on multiple oil or gas wells?

Answer: The BLM's regulations for management and oversight of oil and gas operations are contained in 43 CFR 3160, Onshore Oil and Gas Operations. Subpart 3163 of these regulations addresses Noncompliance, Assessments, and Penalties. As noted in these regulations, the establishment and forfeiture of the oil and gas bond may be used for addressing repeat violations. Without a bond, a lessee may not operate a Federal or Indian oil and gas lease.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 29 2012

The Honorable Jeanne Shaheen
Chairwoman
Subcommittee on Water and Power
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Madam Chairwoman:

Enclosed are responses prepared by the Bureau of Reclamation to the questions for the record submitted following the Wednesday, September 19, 2012, legislative hearing on **H.R. 2842**, Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act of 2012; **S. 3265**, A bill to amend the Federal Power Act to remove the authority of the Federal Energy Regulatory Commission to collect land use fees for land that has been sold, exchanged, or otherwise transferred from Federal ownership but that is subject to a power site reservation; **S. 3464,** A bill to amend the Mni Wiconi Project Act of 1988 to facilitate completion of the Mni Wiconi Rural Water Supply System; and **S. 3483,** A bill to amend the Wild and Scenic Rivers Act to adjust the Crooked River boundary, to provide water certainty for the City of Prineville, Oregon.

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 Mike Lee, Ranking Member
Subcommittee on Water and Power

QUESTIONS FOR MR. PAYNE
09.19.12 Subcommittee on Water and Power

FROM SENATOR MURKOWSKI

QUESTIONS ON HR 2842, BUREAU OF RECLAMATION SMALL CONDUIT HYDROPOWER DEVELOPMENT AND RURAL JOBS ACT OF 2012:

1. What are the financial challenges in developing conduit hydropower at federal canals and pipelines? In particular, what are the capital costs, regulatory costs and other costs on a project covered by this bill?

   ANSWER: The capital cost and other investments required to develop conduit hydropower on federal canals vary widely depending on the facility size and location. In general, conduit hydropower is developed with small units (under 10 megawatts), in locations where environmental and regulatory considerations are minimal. Environmental compliance, transmission agreements, operating arrangements and facility design are among the principal non-capital cost considerations. Because conduit hydropower units are typically small, the size of the investment is not on the scale of typical federal powerplants, which are much larger and have planning and development costs that can run into the tens of millions of dollars.

2. This bill waives the NEPA requirements for small conduit hydropower of less than 1.5 mw because the canals and pipelines necessary for conduit hydro have already been built. The proponents of the bill argue that the NEPA waiver eliminates just the paperwork requirements but not environmental statutes. Will environmental laws like the Endangered Species Act and the Clean Water Act still apply? What about state water laws?

   ANSWER: Many of Reclamation's existing projects pre-date the NEPA process, or are operating in conditions that have changed significantly since construction. For these and other reasons explained in the Department's written statement, we believe the NEPA waiver contained in HR 2842 to be unwarranted. The development of small conduit hydropower projects that meet the qualifications listed in a standard checklist will be eligible for categorical exclusions (CE) under NEPA, resulting in very little paperwork. That checklist is available as part of the Reclamation Manual's Directive and Standard titled *Lease of Power Privilege (LOPP) Processes, Responsibilities, Timelines, and Charges* (FAC 04-08) (http://on.doi.gov/SrhRrW). The only way to determine whether an individual project should be looked at more carefully under NEPA is to allow these processes to take place. Federal and state laws such as the Endangered Species Act and Clean Water Act will continue to apply

regardless of what level of NEPA analysis is performed for new hydropower development or if the process is waived all together.

3. Please elaborate on the potential use of a NEPA categorical exclusion for conduit hydropower development.

ANSWER: Reclamation's existing Lease of Power Privilege procedures allow for a categorical exclusion (CE) under NEPA to be applied to low-impact hydropower projects. These procedures are also documented in the Departmental Manual at 516 DM 14.5(C)(3) and (D)(4), for use when the scope of a project is consistent with the terms of a CE, and there are no extraordinary circumstances. Key considerations in determining if the project is consistent with the terms of the CE are:
(i) the project would utilize an existing dam or conduit;
(ii) points of diversion and discharge of the LOPP powerplant would be in close proximity to the existing infrastructure and would not significantly affect the flow patterns of the water source;
(iii) there would be no increase or change in timing of diversions and discharges; and
(iv) the primary purpose of the infrastructure would remain, e.g., most commonly irrigation.

Reclamation's final Directive and Standard, *Lease of Power Privilege (LOPP) Processes, Responsibilities, Timelines, and Charges*, which was released on September 28, 2012, provides more detailed information on the potential use of a CE for conduit hydropower development.

QUESTIONS ON S. 3464, MNI WICONI PROJECT ACT AMENDMENTS 2012:

1. Please describe all the Federal agencies that have existing authorities and programs to address wastewater facilities and systems within the region that may be better suited to play a role in the project.

ANSWER: The other Federal agencies that have the authority to fund various additional water and wastewater features in the region of the Mni Wiconi project are: Indian Health Service (IHS) with the Department of Health and Human Services (HHS), Bureau of Indian Affairs (BIA) within the Department of the Interior, Housing and Urban Development (HUD), Environmental Protection Agency (EPA), United States Department of Agriculture Natural Resources Conservation Service (USDA NRCS), and USDA Rural Development. IHS in particular has an active program to assess and fund wastewater projects.

Reclamation and the Tribe's rural water staff have met with the other agencies listed above on several occasions to discuss authorities, programs, and capabilities to assist with completion of remaining project components including wastewater facilities. Reclamation's understanding is that while other Federal agencies are supportive of addressing unmet needs, their budgets are limited and projects are objectively prioritized and ranked. Establishing a project specific interagency memorandum of agreement would help define needs, roles, and responsibilities to develop a multi-agency approach to improving these existing water systems. Reclamation introduced a draft interagency agreement at a multi-agency government to government consultation meeting on August 16, 2012. This agreement contemplates periodic meetings to develop a coordinated approach to the upgrades of the water systems.

2. Please describe your current repayment obligations for the Mni Wiconi project, as well as the remaining Federal Funding needed to complete the project. Do you consider it the role of Reclamation to pay for any additional operation and maintenance costs that the project may incur under this bill?

   ANSWER: The Mni Wiconi Act (P.L. 100-516), as amended and currently in force, does not require repayment of project costs. Instead, it required a 20% cost share for the non-tribal components, which has been fully met. Reclamation estimates that the FY 2013 appropriation request of $23 million will be sufficient to cover the remaining construction obligation for project completion as currently authorized. With respect to operation and maintenance costs, in general the Department opposes requirements for federal funding of projects' operation and maintenance costs. S. 3464 would increase Reclamation operation and maintenance obligations by adding payments of water bills on trust lands within White River and by funding initial improvements to existing community water systems.

3. Within your rural water program, if you were to prioritize the projects, where would the Mni Wiconi project fall within a prioritization system?

   ANSWER: Reclamation's recently completed draft assessment report titled "Assessment of Reclamation's Rural Water Activities and Other Federal Programs that Provide Support on Potable Water Supplies to Rural Water Communities in the Western United States" (www.usbr.gov/ruralwater/docs/Rural-Water-Assessment-Report-and-Funding-Criteria.pdf) details the prioritization criteria to be applied to authorized rural water projects. Given Reclamation's application of funding criteria, the Mni Wiconi project has ranked favorably, qualifying for an appropriations request

sufficient to complete the federal cost share under the authorized ceiling, assuming that the President's FY 2013 request of $23 million is appropriated.

QUESTIONS ON S. 3483, CROOKED RIVER COLLABORATIVE WATER SECURITY ACT:

1. Has the Administration proposed that hydro should be developed at this facility? How long has the Administration studied the possible development of hydro at this facility? In addition, what process is being undertaken to ensure that all federal agencies are working towards making this a possibility?

ANSWER: In 2010, Reclamation contracted with HDR to complete a conceptual level feasibility study that ultimately determined that development of hydropower by the Federal government at Arthur R. Bowman Dam (Bowman Dam) on the Crooked River was technically feasible. Since Bonneville Power Administration (BPA) is the federal power marketing agency in the Pacific Northwest, Reclamation provided the study to BPA. After reviewing the study and consulting with their rate payers, BPA notified Reclamation that while technically feasible, they did not believe federal development of hydropower at Bowman Dam was warranted at this time. Bowman Dam was listed as a potential development site in Reclamation's March 2011 Hydropower Resource Assessment at Existing Facilities. The reconnaissance level analysis contained in that report estimated that Bowman Dam could accommodate hydropower development of approximately 3,293 kilowatts, with annual production of approximately 18,282 megawatt hours.

As stated in the Department's written testimony on S. 3483, we believe that Reclamation has the authority to permit non-federal power on the Crooked River Project pursuant to the language of Section 2406 of Public Law 102-486. Therefore, we have recommended that Section 2(B) of the bill be modified to add "or Bureau of Reclamation" after the words "Federal Energy Regulatory Commission." Recently, two private entities have expressed interest in developing hydropower at this site. The U.S. Fish and Wildlife Service, the Bureau of Land Management, and the Bureau of Reclamation have all been involved to varying degrees with the private entities. However, neither the Federal Energy Regulatory Commission nor the Bureau of Reclamation will process applications before the Crooked River Wild and Scenic River boundary is relocated downstream of Bowman Dam.

2. Please describe what can be done administratively to help improve the water situation within the area if this legislation is not passed.

ANSWER: Since the early 1990s, Reclamation has operated Bowman Dam to improve flow conditions in the Crooked River for downstream fish, wildlife and recreation needs, while also meeting water user contractual deliveries. With cooperation from the contract holders and State of Oregon, we have used our flood control authority to shape flood control releases to nearly a year round operation, such that we have been able to augment downstream Crooked River flows to provide fishery and recreation benefits. For example, while statutorily authorized to only provide a 10 cubic feet per second (cfs) minimum winter flow for fishery purposes, we have consistently provided a winter-long minimum flow of 50 -75 cfs (35 cfs in the driest of years) by reshaping flood control releases. In addition, during the irrigation season, Reclamation routinely releases additional flow above that needed strictly for irrigation (typically 15 to 30 cfs, but some years higher) to ensure stream continuity and fishery benefits accrue downstream of irrigation diversions.

Absent this legislation, we would expect to continue similar operations, but recognize that current operations could change in the future if more of the reservoir were contracted for irrigation or other uses, thereby reducing our flexibility to shape flood control flows. Reclamation could potentially work with the Oregon Department of Fish and Wildlife, the Confederated Tribes of the Warm Springs, and other entities to coordinate and shape releases of non-contract water to benefit downstream fish and wildlife purposes. Administratively, Reclamation also could potentially work with Ochoco Irrigation District (OID) to adjust its district boundary to include and deliver project water to McKay Creek water users; S. 3483 exempts OID from environmental compliance for this inclusion. Reclamation also could continue to issue contracts upon request for irrigation purposes. However, the first fill provision for existing contractors and the City of Prineville would not be possible without legislation.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 0 3 2012

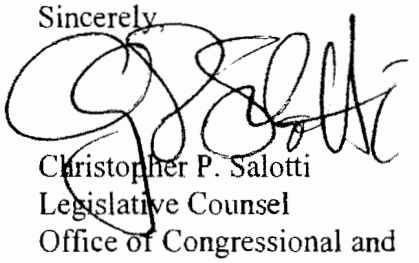
The Honorable Ron Wyden
Chairman
Subcommittee on Public Lands and Forests
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Management to questions for the record submitted following the Thursday, March 22, 2012, legislative hearing on: **S. 303,** A bill to amend the Omnibus Budget Reconciliation Act of 1993 to require the Bureau of Land Management to provide a claimant of a small miner waiver from claim maintenance fees with a period of 60 days after written receipt of 1 or more defects is provided to the claimant by registered mail to cure the 1 or more defects or pay the claim maintenance fee, and for other purposes.; **S. 1129,** A bill to amend the Federal Land Policy and Management Act of 1976 to improve the management of grazing leases and permits, and for other purposes.; **S. 1473,** A bill to amend Public Law 99-548 to provide for the implementation of the multispecies habitat conservation plan for the Virgin River, Nevada, and to extend the authority to purchase certain parcels of public land.; **S. 1492,** A bill to provide for the conveyance of certain Federal land in Clark County, Nevada, for the environmental remediation and reclamation of the Three Kids Mine Project Site, and for other purposes.; **S. 1559,** A bill to establish the San Juan Islands National Conservation Area in the San Juan Islands, Washington, and for other purposes.; **S. 1635,** A bill to designate certain lands in San Miguel, Ouray, and San Juan Counties, Colorado, as wilderness, and for other purposes.; **S. 1687,** A bill to adjust the boundary of Carson National Forest, New Mexico.; **S. 1774,** A bill to establish the Rocky Mountain Front Conservation Management Area, to designate certain Federal land as wilderness, and to improve the management of noxious weeds in the Lewis and Clark National Forest, and for other purposes.; **S. 1788,** A bill to designate the Pine Forest Range Wilderness area in Humboldt County, Nevada.; **S. 1906,** A bill to modify the Forest Service Recreation Residence Program as the program applies to units of the National Forest System derived from the public domain by implementing a simple, equitable, and predictable procedure for determining cabin user fees, and for other purposes.; **S. 2001,** A bill to expand the Wild Rogue Wilderness Area in the State of Oregon, to make additional wild and scenic river designations in the Rogue River area, to provide additional protections for Rogue River tributaries, and for other purposes.; **S. 2015,** A bill to require the Secretary of the Interior to convey certain Federal land to the Powell Recreation District in the State of Wyoming.; and **S. 2056,** A bill to authorize the Secretary of the Interior to convey certain interests in Federal land acquired for the Scofield Project in Carbon County, Utah.

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 John Barrasso, Ranking Member
Subcommittee on Public Lands and Forests

QUESTIONS FOR THE RECORD
SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES
03.22.12 Subcommittee on Public Lands and Forests

From Chairman Bingaman

Questions for Mike Pool, Bureau of Land Management

S. 303 -- Miner Waiver Amendments

(1) Am I correct in my understanding that S. 303 provides that certain claims listed in the bill be considered to have received what is called a "first-half final certificate" before September 30, 1994, thus making the claimant eligible to receive a "patent" — or fee simple title — to these federal lands and minerals under the Mining Law of 1872 for $2.50 per acre?

Deeming a claimant to have received a first half first certificate before September 30, 1994, will allow the BLM to continue to process the pending patent application for the mining claims listed in the bill. To be eligible for a patent, the claimant would need to pay the purchase price, which is $2.50 per acre for a placer claim, and satisfy all the other requirements for patenting under the Mining Law of 1872, including demonstrating, and verifying the existence of a valuable mineral deposit as of the date the claimant satisfied all the requirements for patenting. If the applicant, satisfies these requirements, then the applicant would receive a patent.[

From Senator Barrasso

S. 1129 - - Grazing Improvement Act

(1) What impact does litigation have on the BLM's resources and ability to issue grazing permits in a timely manner?

Litigation work associated with administration of the grazing program varies greatly by state and region across the Bureau. In some Field Offices there is little to no litigation workload, while in other offices it may account for a substantial amount of staff time. The timing of litigation can further influence the capability for on-the-ground range management. For example, if staff must prepare case files, prepare briefings, or offer testimony during the field season (usually spring and summer months) then their ability to perform monitoring, compliance checks, and NEPA work necessary to support fully processing permits becomes limited.

(2) In the last ten years, how many grazing permits have been reissued using current appropriation rider language while the NEPA process is still being completed?

Based on information readily available, the BLM has issued an average of 1,300 permits per year under the appropriation riders for the past 5 years. Actual annual numbers for

the last five years are shown in the table below. The BLM rangeland administration databases do not include the number of permits issued under appropriations riders prior to 2007 but the number of permits issued annually is likely similar to the number of permits issued over the last five years.

BLM Grazing Permits & Leases Issued or Processed from 2007-2011					
Permit Status	2007	2008	2009	2010	2011
Issued using Appropriations Language Authority	1068	1333	1741	1286	1203
Issued after completion of NEPA Process	2011	2168	2554	1843	1945
Total Issued	3079	3501	4295	3129	3148

(3) Section 123 of the Consolidated Appropriations Act of 2012 provided flexibility when considering NEPA analysis for trailing or crossing permits. As mentioned in your response to my question about how the BLM is interpreting and implementing the law, will you provide documentation about how the local field offices will be determining or handling this issue?

The BLM has prepared guidance on administration of crossing permits and associated NEPA documentation. This guidance has been transmitted to the field as an instruction memorandum and is available at the following website: www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2012/IM_2012-096.html.

(4) The BLM budget proposes to cut $15.8 million from the Rangeland Management program for grazing administration. How do you justify cutting rangeland management programs when your agency has a backlog of NEPA allotments to complete, and is struggling to complete allotment management plans, rangeland health assessments, and process permits?

The FY 2013 budget requests a decrease of $15.8 million, which will bring the budget to the 2010 levels. The Budget includes appropriations language for a three-year pilot project to allow BLM to recover some of the costs of issuing grazing permits/leases on BLM lands. BLM would charge an administrative fee of $1 per Animal Unit Month, which would be collected along with current grazing fees. The budget estimates the administrative fee will generate $6.5 million in 2013, and that it will assist the BLM in processing pending applications for grazing permit renewals.

From Senator Murkowski

Questions for Mike Pool, Bureau of Land Management

S. 303, a bill to amend the Omnibus Budget Reconciliation Act of 1993 to require the Bureau of Land Management to provide a claimant of a small miner waiver from claim maintenance fees with a period of 60 days after written receipt of 1 or

more defects is provided to the claimant by registered mail to cure the 1 or more defects or pay the claim maintenance fee, and for other purposes;

(1) On average, how many miners a year fail to submit their small miner waiver request applications and thus lose their mining claims for failure to file their applications on time? Are we talking a handful, dozens or hundreds? How many small miner waivers do you process each year and what is the total universe of miners who hold less than 10 claims and thus qualify for the waiver program? What is the total cost currently of sending a letter to a miner informing him that his application did not arrive in a timely fashion and that his claims are being revoked?

Currently, almost 30,000 claimants hold 10 or fewer claims. In 2011, a total of approximately 41,000 claims were forfeited by small miners and entities holding larger numbers of claims. Mining claims are forfeited for many reasons, and the number of claims forfeited can vary widely from year to year. Often, claimants voluntarily forfeit their mining claims because the claimant has evaluated the claim and found no mining opportunity worth pursuing at this time; however, the BLM has no way of knowing whether a forfeiture is voluntary or inadvertent. . On an average for the last five years, the BLM has processed approximately 21,000 waivers annually. The BLM estimates that the total cost currently of sending a letter to a miner informing him that the BLM did not timely receive the statutorily required maintenance fees and that his claims have been forfeited by operation of law is about $41.50, including staff time.

(2) How many appeals of claim forfeiture caused by miners failing to meet the required filing deadlines are currently pending? What is the cost of an average appeals process to adjudicate such forfeitures?

The BLM tracks if an appeal is filed but does not track the action the mining claimant is appealing. Between October 1, 2010, and September 30, 2011, 71 appeals were filed involving 352 claims, but as stated, there is no consolidated record of the reason or reasons for the appeals. Without knowing the reason for the appeal or the number of claims involved, estimating the cost to adjudicate each appeal of a forfeited claim is not possible.

(3) The Department, in its testimony on the bill, objects to it because of the "enormous administrative burden" it would cause the Department to comply. The Department is apparently concerned that miners in great numbers would file their applications late should S. 303 pass. Would the Department's concerns be alleviated if a penalty would be added for late filings to provide a continued financial incentive for miners to file their forms on time, but not lose their claims as the automatic response to late filings, or in cases where the Department may have improperly processed filings? What might be an acceptable level of penalty to encourage on-time filing, a fine of $1 per claim per day for a late filing, a fine of $5 a day per claim for a late filing? How high would such a penalty need to be to likely make a modified process revenue neutral to the BLM?

Imposing a late fee or fine would not relieve the administrative burden to the BLM under S. 303, although it would recover some of the associated costs of the new administrative duties. For all claimants who submit an untimely waiver as well as for claimants who did not pay the maintenance fee or file a waiver at all, the BLM would still be required to check its records and determine whether the claimant was eligible for a waiver on the date the payment was due, and, if so, send a notice to those claimants and provide a 60-day period in which to cure by filing a proper waiver or paying the maintenance fee. If the claimant didn't respond to the 60-day cure notice, the BLM would then have to issue an appealable decision declaring the claim(s) forfeited. Imposing the late fee or fine would not remove the additional administrative steps of investigating the ownership of each claim and then sending out notices for which claims for a timely fee payment or waiver was not received.

The BLM estimates the cost of approximately $400,000 annually to implement the provisions of S. 303.

(4) Why does the BLM feel that the language which says that miners should have the ability to cure any "defect for any reason" doesn't apply to the primary potential defect, that of not having the application recorded as being timely received?

The Omnibus Consolidated and Emergency Supplemental Appropriations Act of October 21, 1998 (Pub. L. No. 105-277, 112 Stat. 2681-235) that created the 60-day cure period, codified the Department's existing regulatory practice of providing a cure period for timely filed but defective maintenance fee waivers. There is no evidence that Congress intended to alter the Department's regulatory interpretation that allowed a claimant to cure a defective maintenance fee waiver only if the waiver was filed on time[delete extra space]. Rather, the history of the Act indicates that the purpose of amending the United States Code was simply to extend the cure period from 30 days under BLM's regulations to 60 days. The Interior Board of Land Appeals (IBLA) has repeatedly affirmed this regulatory interpretation that allows a mining claimant to avoid forfeiture only where a timely, but defective waiver certification is filed, and the claimant thereafter cures the defect or pays the maintenance fee. The IBLA's reasoning is that the Secretary has no discretion to allow a cure because the claim becomes forfeited by operation of law when the deadline passes and the BLM has not received payment or a valid waiver. The IBLA's decisions on this issue represent the final decision of the Department, and have never been overturned in Federal Court.

(5) Can the Department suggest any changes in the allowable grounds for appeals that would solve the current issue that applicants have no effective appeals process to overcome the burden of "presumed administrative regularity" in the processing of small miner waiver applications by the government when they believe that the Department, by clerical error, did not credit arrival of their mining waiver request

forms on time?

The Department's regulations at 43 CFR Part 4 allow any party adversely affected by a decision of the BLM to appeal to the IBLA. Mining claimants who believe that their mining claims were improperly declared void can appeal a decision under the Department's appeal regulations, and all decisions made by the BLM include specific instructions telling mining claimants about their appeal rights. If the mining claimant receives an adverse decision on appeal, the mining claimant can challenge the Department's decision in the U.S. District Courts. The BLM mining law adjudicators remind claimants that when they mail their documents, they should always send the documents by certified mail, return receipt requested, keeping a copy of what they sent. Additionally, BLM offices also remind claimants they should send duplicate copies to the BLM so the copies can be date stamped and returned to the claimant. The claimant should also make their filing well in advance of the September 1 filing date so that should a document not be received, there would be ample time to re-file the document if necessary.

From Senator Murkowski

Questions for Mike Pool, Bureau of Land Management

S. 1788, a bill to designate the Pine Forest Range Wilderness area in Humboldt County, Nevada;

This bill includes language that takes away a President's authority to declare water or power emergencies to build reservoirs, pipelines, or power lines through this proposed wilderness.

(6) Given this Administration's beliefs about global warming and the drying of the Intermountain West, does the BLM think it wise to impose these restrictions on water development in this bill?

These restrictions only apply to BLM-managed lands within the proposed wilderness area and there are extensive BLM-managed lands in the surrounding area on which there are no restrictions on water developments. Similar language has been included in many wilderness designation bills.

(7) Is the Bureau of Land Management willing to forgo the opportunity to develop wildlife stock ponds or guzzlers within this Wilderness if climate change does result in seasonal drying in this area?

Section 10(d) of the bill specifically gives the BLM the authority to authorize new wildlife water developments including guzzlers (where appropriate) within the Pine Forest wilderness area.

S. 1559, a bill to establish the San Juan Islands National Conservation Area in the San Juan Islands, Washington;

(8) At this point in time, what is the Bureau's land management plan for these lighthouse reserves?

Of the approximately 1,000 acres of islands and rocks, most are currently withdrawn from mining. The lands are currently managed for their scenic, recreational, historic, cultural, and natural resource values. There is currently no land use plan covering the lands proposed for the San Juan Islands NCA; however, BLM would prepare a land use plan as directed by S.1559, if it is enacted.

(9) How would the designation called for in this legislation change the day-to-day management and use that is occurring on these lighthouse reserves?

While there would be very little change in the day-to-day management, the designation would provide a permanent, consistent management scheme allowing for the continued protection of the important natural, scientific, cultural and historic values of the public lands within the San Juan Islands. The bill adds a consistent overlay of permanent management protections of these resources while continuing to allow the current recreational uses.

(10) Can you assure me that recreational users such as people walking their dogs will not be harassed by DOI law enforcement personnel if this legislation is passed?

We have not had, nor do we anticipate having, any problems with dog walkers within the proposed San Juan Island National Conservation Area.

(11) Should we expect any new restrictions will be placed on access or use of these areas if this legislation is passed?

We do not anticipate any new restrictions on access.

S. 2001, a bill to expand the Wild Rogue Wilderness Area in the State of Oregon, to make additional wild and scenic river designations in the Rogue River area, to provide additional protections for Rogue River tributaries;

(12) How many acres of suitable timber base will be lost if this bill is signed into law?

The BLM has not identified any "suitable timber" in the proposed areas. There is currently one past sale (sold, awaiting protest resolution) potentially affected by S. 2001 which covers 16 acres. There are four additional sales planned for future years. The total for all of these possible sales is less than 1,100 acres. The timing of the passage of this bill may preclude all of these timber sales.

(13) Approximately how much revenue could have been generated over the next five decades from this timber base on an annual basis assuming 2012 stumpage rates in the area?

Of the total nearly 60,000 acres being proposed for wilderness designation less than 1,100 acres, or 1.8 percent contain planned timber sales.

(14) There are several miles of wild and scenic river designations in this bill; do those designations cut off areas of suitable timber base from access?

Most of the wild and scenic river designations in S. 2001 are within the designated wilderness, therefore the wild and scenic overlay would have no additional affect. For those parts of the corridor outside of the designated wilderness, it would depend upon the specific designation (wild, scenic, or recreational). In "wild" segments the cutting of trees is generally not permitted except for protective purposes such as wildfire suppression. On "scenic" or "recreational" segments, designation is not likely to significantly affect timber harvesting or logging practices beyond existing limitations to protect riparian zones and wetlands which are guided by other legal mandates and planning direction.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 13 2012

The Honorable Don Young
Chairman
Subcommittee on Indian and Alaska Affairs
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Indian Affairs to questions submitted following the August 2, 2012, oversight hearing on **"Indian Lands: Exploring Resolutions to Disputes Concerning Indian Tribes, State and Local Governments, and Private Land Owners Over Land Use and Development."**

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 Dan Boren
Ranking Member

1) Please confirm whether BIA and its antecedent agencies have historically recognized the Confederated Tribes of Siletz Indians as the tribal governing body for the Siletz Coast Reservation. Can you identify when the BIA or its antecedent agencies first acknowledged the Confederated Tribes of Siletz Indians as the Indian tribe that exercised tribal authority over the original Siletz Coast Reservation or any part thereof?

Response to Question #1:
The Coast or Siletz Reservation was set aside for Indians in western Oregon in an executive order dated November 9, 1855. The original boundaries of the reservation were set forth on a map and extended approximately from Cape Lookout on Pacific Coast south to a point south of Cape Perpetua, and east to the Coast Range of mountains. Indians from many tribes and bands living in western Oregon were directed to move to the reservation. At first this reservation was known as the Coast Reservation. In 1865 a middle portion of the reservation was released and restored to the public domain. E.O. December 21, 1865. The remaining northern portion was known as the Siletz part of the reservation and the southern part as the Alsea part. In 1875, Congress directed that all the Indians on the "Alsea and Siletz" Indian Reservation were to be removed to the south half of the northern portion. Act of March 3, 1875, 18 Stat. 446. The remainder was opened to settlement. Thereafter, in 1894, Congress confirmed and ratified an 1892 agreement entered into between the "chiefs, headmen, and other male adults of the Alsea and other bands of Indians residing upon the Siletz Reservation" and the United States. Act of August 15, 1894. Per that agreement, the Indians ceded all unallotted lands within the Reservation with the exception of 5 sections for a sum certain. The remainder of the reservation was opened to homesteading.

BIA was aware that the Indians residing upon the Coast or Siletz Reservation originated from many different bands and tribes from all over what is now western Oregon, which is likely why the 1859 license authorized trading with the "Confederated Tribes of Indians" on the reservation. The 1892 agreement reflects that all the adult male residents were considered to be among the decision makers for the resident Indians. Thus, BIA considered the tribal governing entity to be a confederation of all the Indians residing on the reservation. By the time Congress enacted the Western Oregon Termination Act in 1954, 25 U.S.C. § 691, et seq., the governing entity was known as the Confederated Tribes of Siletz Indians. 21 Fed. Reg. 5453 (July 20, 1956).

2) Has the federal government recognized any other tribal government as having sovereign authority over the original Siletz Coast Reservation? Please explain.

Response to Question #2:
No. The federal government did not recognize any other tribal government as having sovereign authority over the original Siletz Coast Reservation during its existence.

3) The Confederated Tribes of the Grand Ronde Communtity assert in testimony that the Confederated Tribes of Siletz Indians are limited to take land into trust within Lincoln County, Oregon. In response, the Siletz Tribe refers to Interior Department Solicitor's opinions in 1978 and 1979 that conclude there is no such restriction beyond the initial restoration of land from the federal government after the tribe's restoration. Has the Department of the Interior changed its opinion on those decisions?

Response to Question #3:
The Department has not changed its opinion from the 1978 and 1979 Solicitor's opinions referred to by the Siletz Tribe on whether Siletz Tribe could take land into trust outside of Lincoln County, Oregon. In fact, the Department has taken land into trust for the Siletz Tribe outside of Lincoln County, near Salem, Oregon back in 2000.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 1 8 2012

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

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Ocean Energy Management to written questions submitted following the May 9, 2012, oversight hearing on BOEM's 5 year 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 Edward J. Markey
Ranking Member

Questions for the Record
Committee on Natural Resources

Oversight Hearing entitled: "Evaluating President Obama's Offshore Drilling Plan and Impacts on Our Future"
May 9, 2012

Questions to BOEM Director, Tommy Beaudreau

Questions from Chairman Hastings:

1. In your testimony, you alluded to a solicitor's opinion supporting the ability of Bureau of Ocean Energy Management to issue a Notice of Sale and take other steps to move forward with lease sale plans prior to the final enactment (under Section 18 of OCSLA) of the upcoming 5-Year Plan, which as you clarified in testimony will not complete its 60 day Congressional review prior to July 1, 2012. Please provide the Committee with the full documentation of that opinion and any other support for the Bureau's opinion that moving forward with a sale without having a final plan in place can occur.

Response: On February 10, 1986, then-Solicitor Tarr issued Solicitor's Opinion M-36954, 93 I.D. 125; 1986 LEXIS 10, which concludes that the Department of the Interior may engage in pre-sale procedures for a lease sale before the approval of the five-year schedule on which it is listed. Therefore the Department can notice this fall's Western Gulf of Mexico lease sale before the Five Year Outer Continental Shelf Oil and Gas Program has been finalized. We have routinely issued the proposed notices of sale for a program's first sales prior to the finalization of a program, going back to the first Five Year Program issued in 1980 and this practice is consistent with the requirements of the OCS Lands Act. I also want to clarify a statement made during the hearing that this would be the first time the July 1 date has not been met for finalizing a program. The Five Year Program for 1987 - 1992 was finalized after July 1, 1987. As will be the case with the upcoming Five Year Program, this had no effect on the lease sale schedule.

2. In testimony, you mentioned a letter that you had received from the Department of Defense expressing significant concern over offshore drilling in certain areas of our nation's OCS. Please furnish the Committee with a copy of that letter. In addition, can you update the Committee steps you have taken to address the concerns raised by the Department?

Response: Attachment 1 is an April 30, 2010, letter from the Department of Defense to the Director of the then-Minerals Management Service. The letter provided DoD's review of the Preliminary Revised Five Year Program for 2007-2012.

The Proposed Final Five Year Program for 2012-2017 does not include areas off the Atlantic coast for leasing. The Bureau of Ocean Energy Management is pursuing a specific strategy for the Atlantic that is focused on expediting efforts to facilitate updated resource evaluation to support future leasing decisions. This includes completing an environmental review that could support approval of new seismic and other survey activity in the Mid- and South Atlantic as early

as 2013. BOEM continues to work with DoD and others to identify and resolve potential conflicts that have been identified in this region.

3. Can you define for the Committee the differences between the position of the Department of Defense with regards to lease sale 220 as expressed in the question above and the responses that the Bureau received from the Department of Defense during the development of the 2007-2012 OCS plan that included the Virginia sale area in the 2007 plan when the Defense Department agreed to the sale inclusion in the plan?

Response: There is no difference between the position of the DoD with regard to Sale 220 and its comments concerning the Mid-Atlantic area. DoD expressed concerns over the lease sales in the Mid-Atlantic throughout the preparation of the 2007-2012 Five Year Program, as indicated in Attachments 2 (April 10, 2006, letter on the February 2006 Draft Proposed Five Year Program) and 3 (November 27, 2006, letter on the August 2006 Proposed Five Year Program). As noted in the response to the previous question, DoD's April 30, 2010, letter on the Preliminary Revised Five Year Program for 2007-2012 presented its analysis of possible oil and gas activities in the area.

4. Can BOEM provide to the Committee an estimate of the amount of undiscovered technically recoverable resources in the Southern California OCS Planning Area in lease blocks that currently remain undeveloped, but are accessible from existing developed lease blocks using modern technological advances?

Response: The longest reach well in the Pacific OCS Region is slightly greater than six miles, therefore BOEM estimated resources within six miles of existing platforms. BOEM estimates of potential oil and gas resources located within 6 miles of existing Santa Maria Basin and Santa Barbara Channel OCS platforms range from about 146 million barrels of oil and 130 billion cubic feet of natural gas for Contingent Resources (defined below), to about 650 million barrels of oil and 1,090 billion cubic feet of natural gas for Undiscovered Resources (also defined below).

To add perspective to these numbers, BOEM expects the production of the remaining reserves of the producing Pacific OCS fields to be about 307 million barrels of oil and 667 billion cubic feet of natural gas.

As noted above, two categories of resources were identified and assessed: Contingent Resources, and Undiscovered Resources. These categories are distinguished by the level of uncertainty of both the existence and volume of recoverable oil and gas of the postulated accumulations.

Contingent Resources consist of accumulations that have been discovered by drilling, but where certain factors prevented commercial development of the accumulation. Based on our level of knowledge, this category can be considered informally as "probable resources."

Undiscovered Resources consist of resources postulated to exist on the basis of geological and geophysical information, but not yet drilled and discovered. This category can be considered

informally as "possible resources." The estimated volume of Undiscovered Resources is less certain than the volume of Contingent Resources.

Questions from Rep. Hanabusa:

1. Several of the official reports on the Deepwater Horizon spill noted the need for increased understanding of our oceans, including assessments of baseline environmental conditions. The Gulf Coast Ecosystem Restoration Task Force report specifically noted the need for a robust data collection regimen. In light of the budget pressures facing your agency, how does the FY 2013 budget baseline support environmental data collection activities? Is the Department of the Interior considering persistent, unmanned vehicles to enhance these data collection efforts?

Response: The increases requested in BOEM's Fiscal Year (FY) 2013 Budget consist of $700,000 for Environmental Studies.

In each fiscal year, the majority of the Environmental Studies Program's budget supports data collection activities and generates the scientific information needed to support decision making for the Bureau. A list and description of all environmental studies proposed for consideration in FY 2013 are contained in the BOEM Environmental Studies Development Plan, which is available on the BOEM website at http://www.boem.gov/uploadedFiles/2013-2015_Studies_Development_Plan.pdf. The approved studies list for FY 2013 will be available on the BOEM website in the near future. BOEM has requested an additional $700,000 for high-priority baseline characterization and monitoring studies.

The use of autonomous underwater vehicles is a topic of much discussion within the federal and academic research communities, and BOEM is a highly active participant in these discussions.

2. At the recent Offshore Technology Conference, Dr. Watson discussed the importance of the offshore oil and gas industry adopting innovative technologies to improve spill response capabilities.

What role does your agency play in the development and adoption of these technologies?

Response: The Bureau of Safety and Environmental Enforcement, through the Oil Spill Response Research Program, evaluates industry innovations in spill response technology and uses these evaluations in the Oil Spill Response Plan review process. Frequently, these evaluations are conducted at Ohmsett - the National Oil Spill Response and Renewable Energy Test Facility (www.ohmsett.com). Ohmsett is a unique oil spill response research test facility located at the U.S. Naval Weapons Station Earle, Leonardo, New Jersey which is managed by BSEE and operated by a contractor.

With an increased budget allocation for oil spill response since FY 2011, BSEE has initiated a development project to utilize ultrasound technology to determine the effectiveness of subsea dispersant applications by measuring oil droplet size in the immediate vicinity of the subsea release. Additionally, BSEE is examining possibilities for modifying conventional dispersants to accommodate the dispersion of emulsified oil. In FY 2012, BSEE awarded funding for research and development projects geared toward advancing technology to enable detection and mapping of oil under ice, as well as subsea containment systems.

All research that is not deemed proprietary is published on the BSEE web site and is thus publicly available to inform science and promote innovations in mechanical and alternative response technologies.

BSEE cannot endorse specific products, but requires operators to show that they have under contract the appropriate response equipment to respond to a worst case discharge scenario from one of their facilities. BSEE has recently funded a research project to assess planning standards for offshore operations and will use the data to establish new policies that will promote the use of the best available technology, thus incentivizing the development, acquisition, and use of newer technologies that promise greater recovery or treatment efficiencies in offshore environments.

BSEE and BOEM are members of the Interagency Coordinating Committee on Oil Pollution Research, a committee mandated by the Oil Pollution Act of 1990 in order to coordinate research activities, disseminate research findings, prepare National research priorities, and report to Congress on completed research as well as plans. BSEE staff also participate in the National Response Team Scientific and Technical Subcommittee, providing yet another venue for sharing information on research, coordinating interagency research programs, and establishing policies on the use of new technologies.

Is the Department of the Interior considering the use of unmanned maritime platforms to allow immediate detection of and response to oil spills?

Response: Offshore facilities are already equipped with safety devices that can detect drops or spikes in pressure, changes in flow rates, and other variables that can be indicators of system upsets or leaks, and, based upon these variables, are equipped to shut down affected production systems or pipelines as needed. These safety systems are subject to routine inspection by BSEE staff and are effective in immediately activating block valves and/or subsurface safety valves to stop oil flow at the source. Immediate detection and abatement is thus already built into offshore safety systems.

BSEE has participated in a pilot program with the National Oceanic and Atmospheric Administration on the use of satellite imagery for the detection and delineation of oil spills in offshore waters and has also funded research on other remote sensing devices that can be deployed on fixed wing aircraft.

Questions from Rep. Tonko:

1. Mr. Beaudreau, I have several follow-up questions regarding the time and investment required to develop oil and gas resources in the Arctic, and the potential challenges and risks associated with expanded development of oil and gas resources in the region. Is the current infrastructure, including facilities the Trans-Alaskan pipeline, that supports production and distribution of oil from Prudhoe Bay sufficient to support additional safe oil and gas production and distribution from leases in the Beaufort and Chukchi Seas?

Are the potential environmental impacts of any additional infrastructure that may be needed to support development and distribution of oil and gas resources from these two areas included in the impact evaluation done by the Bureau?

What are the estimated amounts of private and government investment in additional infrastructure that would be required to support development of these resources and to ensure that it is done safely including the infrastructure required to support additional personnel working the industry who would be based in the area?

You indicated in your testimony before the Committee that there is a significant inventory of existing offshore leases in Beaufort and Chukchi Seas. How many of these are currently being development?

Response: BOEM does not have jurisdiction over onshore pipelines, and it would be difficult to project future infrastructure needs at this time – given significant uncertainty regarding future activity levels and the need to account for findings from any near-term exploration. However, BOEM actively coordinates with agencies across the Federal government with jurisdiction over issues related to long-term infrastructure planning. This is an important area of focus for the Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska, established by executive order in July 2011 and chaired by the Deputy Secretary of the Interior. BOEM will continue to factor new information and projections into the environmental and economic analyses that support leasing decisions.

There are 670 current leases offshore Alaska. A complete list of current leases is available on BOEM's website at: http://www.boem.gov/uploadedFiles/BOEM/Oil_and_Gas_Energy_Program/Leasing/Regional_Leasing/Alaska_Region/detailed_active_leases.pdf. Of the 670 current leases, 19 are currently active – including those covered by proposed or conditionally approved exploration plans. Current information regarding the status of current exploration plans on existing leases is also available on BOEM's website at: http://www.boem.gov/About-BOEM/BOEM-Regions/Alaska-Region/Leasing-and-Plans/Plans/Index.aspx.

2. The U.S. is not the only country interested in expanding oil and gas production in the Arctic. A recent report by the largest insurance company, Lloyd's of London, "Arctic Opening: Opportunity and Risk in the High North", predicts the Arctic region is likely attract significant investment over the next decade especially in the oil and gas, mining, and shipping industries. The report also points out unique risks and challenges associated with

expansion of these activities in the Arctic region, and the need to develop strategies to address them. The report also notes there are major differences between regulatory regimes, standards and governance across the Arctic states, and that some spills or accidents that may occur will impact more than one nation's resources.

As the Bureau is developing its policies to govern oil and gas exploration in the OCS, are we also working with other nations through the Arctic Council to ensure that exploration and development occurring in other Arctic nations will not place communities and resources in Alaska at undue risk?

Response: The Department, acting through BSEE, is a leader in the work of the Arctic Council on spill prevention, preparedness and response, including development of the Arctic Offshore Oil and Gas Guidelines and Guidelines for In-Situ Burning, an Arctic-wide instrument for Emergency Prevention, Preparedness and Response, and other projects. Examples of work with other Arctic nations include shared research between the U.S. and Canada in spill response in the U.S.-Canada Northern Oil and Gas Research Forum. Results of these studies, assessments, programs, as well as our experience in offshore Arctic operations, are valuable to Arctic nations. Our active participation in the Arctic Council and communications with other northern nations complement efforts within the Federal government to ensure readiness to respond in the event of an oil spill.

Questions from Rep. Markey:

1. Mr. Beaudreau, the Department recently reached an agreement on the exploration and development of oil and natural gas reservoirs along the maritime boundary between the United States and Mexico in the Gulf of Mexico to remove uncertainties regarding the development of oil and gas resources in the area. This agreement will allow for the development of nearly 1.5 million acres of the Gulf containing as much as 172 million barrels of oil and 304 billion cubic feet of natural gas, according to the Department. The Department will soon be submitting legislation to Congress relating to the Transboundary Agreement. Why is legislation action needed by Congress and what would happen to the possibility of developing these substantial resources should Congress not act? When does the Department anticipate leasing and development would occur in these areas?

Response: On Monday, February 20, 2012, the Agreement between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico was signed by U.S. Secretary of State Hillary Clinton and Mexico's Foreign Minister Patricia Espinosa at a meeting of the Group of 20 nations in Los Cabos, Mexico. The Agreement was approved by the Mexican Senate on April 12th. Legislation is needed to enable the United States to fully comply with the agreement and the Administration looks forward to working with Congress.

The main area of interest is in the Perdido Fold Belt area of the Alaminos Canyon Protraction Area, in the Western Gulf of Mexico Planning Area about 225 statute miles off the coast of Galveston Texas. To date, no transboundary reservoir has been discovered by drilling, but there are 8 active U.S. leases adjacent to the maritime boundary and a few dozen additional leases within 10 miles of the boundary. Shell operates the Perdido Hub production facility 7 to 8 miles from the maritime boundary, with the capacity to produce 100,000 barrels of oil per day and 200,000 cubic feet of gas per day.

2. Director Beaudreau, how does the fact that the United States has not yet ratified the Law of the Sea treaty affect our ability to lay claim to oil and gas resources in areas such as the Arctic or the Gulf of Mexico where we share maritime boundaries with other nations? Is industry less willing to make investments to access oil and gas resources unless a Nation has had their territorial claim approved by the Law of the Sea Commission on the Outer Continental Shelf, as evidenced by the fact that the American Petroleum Institute, the International Association of Drilling Contractors, and the National Ocean Industries Association, along with many other industry trade groups support ratifying the Law of the Sea? Does the Department have estimates for the amount of oil and natural gas that could be accessed if the United States ratified the Law of the Sea treaty and was able to resolve territorial claims in the Arctic or in the Gulf of Mexico?

Response: The U.S. has the world's second longest coastline, so we benefit greatly from the Convention's favorable provisions on offshore natural resources. Only as a Party to the Convention can the United States fully secure its sovereign rights to the vast resources of our continental shelf beyond 200 miles from shore (the "extended continental shelf"), an area likely to be at least 385,000 square miles and potentially extending beyond 600 nautical miles off the coast of Alaska. The Convention provides the needed international recognition and legal

certainly regarding shelf areas beyond 200 nautical miles that will allow oil and gas companies to attract the substantial investments needed to extract these far-offshore resources. The energy resources contained in the U.S. extended continental shelf are believed by many to be significant, potentially equaling billions of barrels of oil and trillions of cubic feet of natural gas.

3. In explaining the decision to keep the Atlantic off the table in the proposed 2012-2017 OCS Oil and Gas Leasing Program, BOEM cited "lack of infrastructure to support oil and gas exploration and development, as well as spill preparedness and response." Drilling in the Arctic comes with these same challenges on an even greater scale. Please explain the Department's decision to include new lease sales in the Arctic Ocean in the new plan despite the clear lack of infrastructure and spill response capabilities.

Response: The region-specific strategies reflected in the Proposed Final Five Year Program's approach to offshore areas across the OCS are designed to take into account current and developing information about resource potential, the status of resource development and emergency response infrastructure to support oil and gas activities, recognition of regional interest and concerns, and the need for a balanced approach to our use of the Nation's shared natural resources.

In the Arctic, current spill response planning is focused on certain, limited near-term proposed drilling operations. Longer term planning and infrastructure development are also necessary, particularly if major oil resources are found and producers seek to engage in year-round production activities. As offshore oil and natural gas exploration under existing leases moves forward, so too must near- and long-term planning with respect to infrastructure, including spill response preparedness. Potential, single sales in the Beaufort and Chukchi Seas are deliberately set late in the program, in part to provide time for the contingency planning and infrastructure development needed to address these issues.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 26 2012

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 Bureau of Indian Affairs to written questions submitted following the August 2, 2012, oversight hearing titled *Indian Lands: Exploring Resolutions to Disputes Concerning Indian Tribes, State and Local Governments, and Private Landowners Over Land Use and Development.*

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 Dan Boren
Ranking Member

Questions by Mr. Lujan
Oversight hearing on "Indian Lands: Exploring Resolutions to Disputes Concerning Indian Tribes, State and Local Governments, and Private Land Owners Over Land Use and Development."

August 2, 2012

Question 1: With regard to the Ft. Wingate transfer, would the Department of Interior ever support a bill to transfer lands into trust between two tribes if the two tribes did not have a collective agreement over the lands in question?

I guess what I'm getting at is - if a bill were to pass Congress the legislative proposal, reflected in Mr. Pearce's bill - Would the Department take issue with it, or would you recommend to the President to sign the bill into law even if the tribes were in disagreement.

Response: The Department of the Interior reserves its discretion to provide its position on Congressman Pearce's legislative proposal until such time as the legislative proposal is brought before the Subcommittee for a legislative hearing.

Question 2: Does the Department of the Interior know, or have you been briefed on the status of the cleanup on the Ft. Wingate lands (Costs, timeline, remaining parcels that need Cleanup); and do you have an agreement with the DOD or Army on how these lands are to be cleaned up?

Response: The Ft. Wingate Depot Activity is currently undergoing cleanup regulated by the New Mexico Environmental Department (NMED). The lands are withdrawn Public Domain lands assigned to the Department of Defense-Army (DoD-A) and consequently are under the regulatory compliance of the State of New Mexico and United States Environmental Protection Agency (EPA), Region 6. The DoD-A has a (RCRA) permit issued by the NMED and cleanup activities have been conducted under the terms of the State issued permit.

The cost is provided by parcel following the award of contracts issued by DoD-A. The Bureau of Indian Affairs (BIA) has not received the total dollar amount for the restoration costs for the remaining parcels. Such information would be provided by DoD-A.

Since the intent of the Department of the Interior is to transfer administration of the public domain lands to the BIA, and on to the Navajo Nation and Pueblo of Zuni as trust lands if Congress enacts legislation to accomplish that goal, NMED has reviewed the regulatory standards under 25 C.F.R. and found that there are no provisions for institutional or engineering controls. As a result, NMED has determined with EPA's concurrence, that the lands must be cleaned to residential standards under the RCRA permit. A schedule has been provided by DoD-A to the stakeholders (BIA, Navajo Nation, Pueblo of Zuni, NMED and USEPA). The schedule is attached.

Currently, the BIA Southwest Regional Office (SWRO) has awarded a contract to conduct an Environmental Site Assessment on a total of three (3) parcels. The BIA Navajo Regional Office

(NRO) contributed $15,000.00 toward this contract award.

Question 3: Once the lands are cleaned up - and I understand in 2001, the Army transferred three uncontaminated parcels to BLM, which in tum transferred control for a 20 year period to the BIA. The BIA acknowledges that it has the authority under the Self-Determination Act to transfer ownership of BIA controlled land to Tribes but says it cannot transfer the three parcels because all it has is a 20 year use right from BLM. Can you please elaborate on that? I think our tribal leaders here would like to understand a little more about the BIA's authority to transfer the lands.

Response: Since the Department of Defense – Army decided it no longer has use for the Ft. Wingate withdrawn/reserved lands, it informed the Department of the Interior of its intent to relinquish its withdrawal/reservation and return administration of the lands to the Department of the Interior.

In 2000 and 2001, the Department of the Interior accepted the Army's return of 5,429 of the 20,706 acres (3 parcels) of withdrawn public domain lands at Ft. Wingate and reserved the lands for the BIA to administer for the benefit of the Navajo Nation and the Pueblo of Zuni. The term of the withdrawals for the BIA is 20 years; withdrawals may be renewed.

- Public Land Order (PLO) 7457 (June 20, 2000) reserved 4,526 acres (Parcel 1) for use and administration of the BIA.
- PLO 7495 (August 24, 2001) reserved 903 acres (Parcel 15 and Parcel 17) for the use and administration of the BIA.

Public domain lands cannot be placed into trust by a Federal agency such as the BIA. The withdrawals issued to the BIA in 2000 and 2001 mean that the BIA will administer its programs on the withdrawn lands for the exclusive benefit of the Navajo Nation and Pueblo of Zuni for the 20 year-term of the withdrawal (and subsequent renewals, if any). The BIA does not have the authority to take public domain lands into trust – only Congress and the President, through enactment of a law, can take public domain lands into trust for the benefit of a particular tribe. The withdrawals issued to BIA do not affect this basic requirement.

As of November 30, 2012, the Army's withdrawal and reservation remains in place on 15,277 acres at Ft. Wingate; environmental restoration is underway at various stages on approximately 8,812 acres that the Army wishes to relinquish to the Department of the Interior. The remaining 6,465 contain ordnance/contamination that cannot be remediated and will remain withdrawn to the Army.

The BIA, generally, can transfer ownership of certain non-public domain lands under the Indian Self-Determination and Education Assistance Act when the General Services Administration (GSA) identifies federal excess property. In that process, the GSA issues a "Notice of Availability of Excess Property" (NOA). The BIA will then have 30 days to respond with an interest letter (as would any other Federal Agency). Within 60 days after the GSA's NOA, the BIA (not the Tribe) must submit its Request for Transfer of Real and Related Personal Property (GSA F1334) on behalf of a BIA program or a Tribal P.L. 93-638 contractor to GSA or other

Federal Agency having disposal authority.

The Ft. Wingate public domain lands cannot be transferred out of federal ownership under the GSA excess federal property program. The public domain lands, when returned to the jurisdiction of the Department of the Interior, do not become "excess" property whereby BIA could express an interest in it and request such property using a F1334 process.

Follow up: The Army has informed the Department of Interior that there are five other non-contaminated parcels that New Mexico Environment Department (NMED) has approved and thus are ready for transfer to BLM. These are the parcels that border on I-40. Can you please inform us on the parcels of land the Department of Interior has been notified are ready for transfer to BLM?

Response: Currently the BIA's Southwest Regional Environmental office is in receipt of the completed Phase 1 Environmental Site Assessment on Parcels 4B, 5B, 8, 10A and 25. These five parcels total 1103 acres. The Phase 1 Environmental report is being reviewed and a recommendation from the BIA's Southwest Regional Environmental office will be forthcoming shortly.

Question 4: Have there been any sacred sites assessments done on the already transferred lands the Department of the Interior controls to verify each tribes' claims to the lands in question? Would you be willing to share those studies with the committee?

Response: The BIA Navajo Regional Office (NRO) has not conducted any sacred site assessments on the lands (Parcel 17, 15, or 1) currently held by BIA. However, the Navajo Nation and the Department of Defense – Army (DoD-A) independently have conducted sacred site assessments to document any claims and conducted archeological surveys of the entire property. The Navajo Nation has not shared any assessments or independent studies they have conducted. A request can be submitted to DoD-A to share any studies they have conducted for sacred sites on parcel 17, 15 and 1, which are currently held by BIA.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 26 2012

The Honorable Paul Broun, M.D.
Chairman, Subcommittee on
Investigations and Oversight
Committee on Science, Space, and Technology
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 by the Subcommittee following the June 19, 2012, oversight hearing titled *The Science of How Hunting Assists Species Conservation and Management.*

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 Paul D. Tonko
Ranking Member

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY
Subcommittee on Investigations & Oversight
June 19, 2012, Hearing Entitled "The Science of How Hunting Assists Species Conservation and Management"

U.S. Fish and Wildlife Service

Questions from Dr. Paul Broun, Chairman

1. **On a recent 60 Minutes story concerning domestic managed hunts in Texas, an anti-hunting activist stated that she would rather see an animal go extinct, rather than be hunted. Do you agree with her statement? What are you and your agency doing to educate the public about the benefits of the legal and responsible hunting for species recovery?**

   Response: Hunting and fishing plays an important role in wildlife conservation and management. For more than a century, hunters and anglers have worked tirelessly to ensure an abundance of game and the enforcement of laws to protect wildlife populations. They have taken the lead to promote a use-pay system, willingly paying fees to sustain populations of common species like bison, wood duck, and wild turkeys that were nearly decimated by the excesses of commercial hunting. Sportsmen and women have consistently and willingly supported funding wildlife conservation and management efforts through license fees and excise taxes on the equipment they use in the field. Since the establishment of the Wildlife and Sport Fish Restoration Program, hunters and anglers have paid more than $11 billion in user fees on purchases of firearms, ammunition, archery, fishing and boating equipment. Those funds have in turn been used by state wildlife agencies to maintain and restore fish and wildlife resources, educate hunters, and fund sport shooting ranges nationwide.

   The U.S. Fish and Wildlife Service (Service) supports hunting in many ways. We recognize the key role hunting plays in the long term conservation of wildlife resources in the United States, maintaining an important culture of the Nation, and connecting people with nature in a unique way. The Service also supports species recovery and is charged by law to seek to prevent extinction of species. The Service has not been confronted with a choice between hunting of a species and extinction of a species.

   The Service has consistently supported scientifically based hunting programs that facilitate sustainable harvest levels. Hunting may benefit the survival of a species if the hunting program and other activities are carried out in a manner that contributes to potential reintroduction or to increasing or sustaining the number of animals in captivity. For example, the Texas ranches that maintain three African antelope species—scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*) and dama gazelle (*Gazella dama*)—provide a benefit to the survival of those species. Ranches and large captive wildlife parks for non-native populations offer tracts of land that simulate the species' native habitat and can accommodate a larger number of animals than most urban zoos. These facilities also help to maintain a genetically diverse breeding population. However, it must be pointed out that the ranching operations are not essential to the survival of the three antelope species.

The zoological community and other captive breeding facilities maintain a robust population of these species.

On national wildlife refuges, the Service supports hunting as a priority public wildlife dependent use. More than 360 units of the National Wildlife Refuge System have hunting programs that support more than 2,500,000 hunting visits each year. These programs are promoted in local communities and are a large reason that national wildlife refuges are important to local economies.

2. **With the continuing need for funds to operate private game ranches, actions that make hunting more difficult threaten not only the operation of a private game ranch, but also the recovery of the species that inhabit those ranches. What is the current average time for a permit to be issued for the taking of an endangered species on one of these private game ranches? What is the longest time it has taken to issue a permit? Has the FWS attempted to identify permitting processes that would ensure both species recovery and hunting?**

Response: Game ranches in the United States have successfully maintained populations of threatened and endangered non-native species such as the red lechwe (*Kobus leche*, threatened), Arabian oryx (*Oryx leucoryx*, endangered), barasingha (*Cervus duvauceli*, endangered), and Eld's deer (*Cervus eldi*, endangered) under the same permitting requirements of the ESA that we are now applying to the three African antelopes. The Service is confident that this same permitting process will allow game ranches with the three African antelope species to continue their activities, including hunting, and contribute to the conservation of these endangered species under the ESA.

To date, the Service has issued permits to 91 ranches that maintain one or more of the three African antelope species. The average processing time, including the mandatory 30-day comment period established under the Endangered Species Act (ESA), has been 68 days. In one case where an applicant submitted an incomplete application, it took the Service 129 days to complete its review because we had to go back to the applicant twice to obtain the additional information needed to complete our review and meet the requirements of the ESA.

The Service continually monitors and adapts our permit application process to expedite the review that ensures permits issued meet the issuance criteria established in the ESA and our regulations with a minimal burden on the applicant. In the case of Texas game ranches, we have participated in several meetings to understand how the ranching industry works and how our permitting process can best be adapted to fit their operations. We also conducted a day-long workshop in Kerrville, Texas, in early 2012 to discuss the permitting process with representatives from over 75 game ranches. The purpose behind our permitting process is to ensure that activities involving endangered and threatened species on game ranches fulfill the purposes of the ESA and provide a direct benefit to the species in the wild.

3. **What is the Administration's position on the importation of trophies legally collected overseas? What about trophies that were legally collected prior to a species being declared endangered? How long is the backlog of such trophies waiting to be approved**

for importation and what steps would you support to reduce it? How much money would be generated for conservation and species protection if those permits were approved? Finally, what is a reasonable amount of time that a hunter should be expected to wait to import any trophy that was legally acquired?

Response: The Service does not oppose the importation of legally hunted trophies that meet the standards established under the various laws and treaties that regulate imports of wildlife specimens, particularly the ESA and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This includes trophies of currently listed endangered or threatened species that were hunted before the listing occurred.

In the last year, the Service has authorized the importation of 107 bonteboks (endangered under the ESA) from South Africa, 602 leopards (threatened), 84 African elephants (threatened), and 160 argali sheep (threatened), as well as a large number of lion and antelope trophies that do not require U.S. import permits.

A small number of applications for importation of sport-hunted trophies are currently pending. The Service has two applications for the import of black rhinoceros and 11 for the import of sport-hunted elephants taken in Zambia during the 2012 hunting season. All of these applications have been pending until additional information is received from the countries from which the specimen was taken from the wild. Assuming the material received provides the necessary information on the use of hunting proceeds, we anticipate issuing these permits by the end of the year.

The amount of money that can be generated through well-managed hunting programs depends heavily on the value of the species being hunted. If U.S. hunters are willing to pay a sufficient amount to obtain a trophy, the harvest of that individual animal can make a meaningful contribution to the conservation and management of the species, and thus allows us to find that the import will enhance the survival of the species, as required by the ESA (16 U.S.C. 1539). There does appear to be clear evidence, however, that a well-managed hunting program for a highly valued species can generate significant amounts of funding for conservation programs. This is one factor the Service considers when reviewing applications for the import of threatened and endangered species.

The Service strives to process applications as quickly as possible. On average, considering all applications received for the importation of a sport-hunted trophy, the Service issues import permits within 37 days of the receipt of an application. The Service continues its efforts to minimize the processing time for applications while still meeting the requirements of the laws that regulate the import of trophies. For example, we are currently working toward electronic permit applications so that hunters can apply online for their permits. Once implemented, processing times for obtaining permits for most elephant, leopard, argali, and bontebok trophies should be greatly reduced.

4. **Why has FWS not acted on the black rhino permit discussed in Dr. Maki's testimony? If necessary documents are missing, which ones are they? Once all of the paperwork has been submitted, how long will it take for the permit to be issued?**

Response: The application to import a black rhinoceros from Namibia was received on September 30, 2009. The Service's review is almost complete. The Service is currently awaiting clarification from Namibia regarding the amount of rhinoceros conservation funding that is generated from these hunts, which will help determine if the import enhances the survival of the species in the wild as required by the ESA. While we have received anecdotal accounts of how much money is generated by a single black rhinoceros hunt (upwards of N$200,000 [equivalent to US$24,000]), the Service has not received official confirmation of how much of this money or other funds generated from a hunt are used for rhinoceros conservation. Once this information is received, the Service can make a final decision on the application.

5. **Once this initial black rhino permit is issued, will future black rhino permits be handled more quickly since many of the issues will be similar?**

Response: If this permit is issued, the review of Namibia's program that the Service has carried out will greatly reduce processing time for future applications to import a black rhinoceros trophy from Namibia. We anticipate that a review of a subsequent application would not exceed 60 to 90 days, including the mandatory 30-day public comment period. However, the processing time may vary if factors, such as a change in the status of the species or to Namibia's black rhinoceros management program (including hunting), compel the Service to revisit the situation in Namibia to ensure that the legal requirements for the import of trophies continue to be met.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

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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 Tuesday, March 6, 2012, oversight hearing on the *"U.S. Fish and Wildlife Service's FY 2013 Budget Request."*

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

COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON FISHERIES, WILDLIFE, OCEANS AND INSULAR AFFAIRS
QUESTIONS FOR THE RECORD
U.S. FISH AND WILDLIFE SERVICE'S FY 2013 BUDGET REQUEST

Chairman Doc Hastings (WA)

1. **On February 28th, the U.S. Fish and Wildlife Service (FWS) released a proposed critical habitat designation that would encompass more than 10.2 million acres in three states – including 1.2 million acres of private land -- for the Northern Spotted Owl. This announcement will likely to exacerbate the impact of the 24.5 million acres of federal forests in the Northwest that have already largely been shut down due to federal spotted owl requirements over the past 20 years. Meanwhile, the rapidly expanding, more dominant barred owl population has become the greatest threat to the continued existence of the Northern Spotted owl. I am most concerned that FWS is pushing forward with this massive critical habitat designation, while taking no immediate concrete actions to stem barred owl populations. While the need to control barred owl populations was recognized by the FWS years ago, the agency has spent the last three years working on an Environmental Impact Statement (EIS) that merely explores the feasibility of doing experimental control on only a handful of sites of barred owl populations. Your agency's fact sheet on the draft EIS suggests that it is possible that no action may be taken, or if action is taken, it couldn't start until next year and no further decisions would be made for several years after the "experiment" ends. Why isn't the FWS expediting measures for an effective barred owl control program that moves forward now to stem the continued decline in spotted owl populations? Is this a priority for FWS? How does the FWS propose to implement a barred owl control program across tens of millions of acres of federal, state and private ownerships? What legal authority does it have to implement this type of program on state and private lands? What would the cost of such a program be? Please outline FWS' specific requested funds in the Fiscal Year 2013 budget request to implement a barred owl control program.**

Why isn't the FWS expediting measures for an effective barred owl control program that moves forward now to stem the continued decline in spotted owl populations? Is this a priority for FWS?

Response: Yes, recovering the spotted owl is a priority for the U.S. Fish and Wildlife Service (Service). The spotted owl recovery plan includes 34 recovery actions and makes three overarching recommendations, i.e.: 1) protect the best of the spotted owl's remaining habitat; 2) revitalize forest ecosystems through active management, and 3) reduce competition from the encroaching barred owl. Consequently, both habitat protection and barred owl management are key components of spotted owl recovery and should be conducted simultaneously. We have recently taken steps to issue a draft Environmental Impact Statement for barred owl removal

experiment and proposed critical habitat for the northern spotted owl for public review and comment. Due to the interest in these actions, we are expediting recovery efforts to the extent possible while maintaining adequate time for public review and comment.

While the evidence of threat is strong and persuasive, it is not yet sufficient for the Service to undertake a wider removal effort. We need data on the effectiveness of barred owl removal in improving spotted owl population trends as well as the efficiency of removal as a management tool. Conducting these studies will allow us to develop a better understanding of the correlation between barred and spotted owl populations. It will also allow us to determine our ability to reduce barred owl populations at a landscape level and keep them low enough to permit spotted owl population growth. Finally, it would allow us to estimate the cost of barred owl removal.

How does the FWS propose to implement a barred owl control program across tens of millions of acres of federal, state and private ownerships?

Response: No policy decision will be decided by the draft Environmental Impact Statement (EIS). If the Service moves forward with the proposed barred owl removal experiment to support northern spotted owl recovery, the soonest we would expect to implement the experimental removal would likely be late Fiscal Year 2013 or early FY 2014. Depending on the alternative chosen, results may not be conclusive for several years. Once the results of the removal experiment have been assessed, the Service will evaluate how to best manage barred owl impacts to spotted owls. At this time, we anticipate consideration of a number of options, including the possible expansion of removal efforts throughout the range of the spotted owl. However, any future decision would require additional permitting and National Environmental Policy Act compliance.

What legal authority does it have to implement this type of program on state and private lands?

Response: Interspersed state and private land occurs within the boundaries of many study areas but would only be included in the experiment with landowner permission. Incentives, or easily implemented agreements, may be offered to encourage participation.

For the Service to proceed with the removal experiment, it will require a permit under the Migratory Bird Treaty Act for scientific collection of barred owls. As a component of the issuance of that permit we are conducting a National Environmental Policy Act (NEPA) review. We will also conduct a consultation under section 7 of the Endangered Species Act (ESA). Depending on the study area and land management agency involved, the study may require additional Federal and State permits. Any study on National Parks or Recreation Areas will require a research permit. Study areas on National Forests will require a special use permit. Most proposed study areas for the experiment are focused on federal lands (U.S. Forest Service, Bureau of Land Management, and National Park Service). One proposed study area includes the Hoopa Valley Indian Reservation in California.

If a decision is made to implement the experimental removal, barred owl populations will likely be reduced if removal activities take place only on federal lands. Federal lands comprise the

majority of land ownership within the range of the spotted owl. Any effort to reduce or remove barred owls from the spotted owls' range is likely to be beneficial based on information collected to date from Green Diamond Resource Company lands in coastal northern California and efforts in British Columbia. In these cases, spotted owls returned to all sites after barred owls were removed. Successful spotted owl breeding in Canada was observed following barred owl removal.

What would the cost of such a program be?

Response: The draft EIS includes eight alternatives of targeted barred owl removal for public consideration and does not propose a widespread or range-wide removal program. Each alternative includes information on the experiment location(s), the estimated cost and duration, the approximate number of barred owls removed, the potential effect on other species, and any potential social, economic, cultural, and recreational effects. If it proceeds, the experiment would take place over a period of 3-10 years (the duration varies in the different alternatives). The cost of the targeted experiment will depend on the alternative chosen, but we estimate a range from $1.2 million to $17 million.

Please outline FWS' specific requested funds in the Fiscal Year 2013 budget request to implement a barred owl control program.

Response: The amount of funding required will depend on the alternative selected. There is no money specifically in our budget for this; however several sources of appropriated dollars could be used for it. Additionally, the Service anticipates working with partners to identify funding options appropriate for the selected alternative.

2. **On February 28th, President Obama issued a "memorandum" directing the Secretary of Interior to publish by the end of May a "full analysis of the economic impacts" of the proposed spotted owl critical habitat rule, including job impacts, and directed that the analysis be made available for public comment. I understand that despite federal court rulings to the contrary, the FWS has for years, not done cumulative and quantitative economic analyses for its Critical Habitat designations even though at least one federal court held it must do so. Instead, FWS has typically considered only "baseline" incremental economic impacts, a method of analyses that significantly undercounts the true impacts of critical habitat designations. Can you please assure me that FWS, in response to the President's Memo to the Interior Secretary, that the "full economic analysis" directed by the President will be a cumulative and quantitative economic analysis? Can FWS summarize for the Committee all Critical Habitat designations issued by FWS since 2001 that have included a quantitative economic analysis, including cumulative impacts?**

Response: The economic analysis for the northern spotted owl will assess the direct impacts of the revised proposed critical habitat in a quantitative fashion; it will not evaluate any cumulative effects because the analysis only evaluates the direct effects from the regulation being proposed and no additional regulations.

Since 2001, in general, critical habitat designations have included a quantitative economic analysis of probable impacts. However, none have included an evaluation of cumulative effects, as the analysis only evaluates the probable impacts of the proposed and final critical habitat designation.

3. **I am concerned about increasing reports that FWS is issuing "warning letters" to private landowners asserting that protected species are being threatened by the landowner's use of his or her private land (such as for farming, clearing, grading, harvesting or development), and that such letters warn that failure to stop the activity may subject the landowner to civil and/or criminal liability under the ESA. Many of these letters are based on mere suspicion, and provide no proof of violation nor an opportunity for the landowner to contest the FWS's claims. The effect of the threat is to intimidate and stop all productive use of the land for an indefinite period of time. This practice not only interferes with fundamental rights, it quite literally can and does rob some landowners of their very livelihood. What are you doing to ensure that ordinary landowners are not harassed by overzealous agency officials?**

Response: Landowners who receive letters advising them that their activities may be causing take of endangered or threatened species are encouraged to work with their local Service office to discuss the basis for the letter and options that would avoid or ameliorate adverse effects to listed species.

4. **Under the ESA, Critical Habitat is defined as those areas "essential to the conservation of the species." However, the FWS is routinely designating large areas of "potential" habitat as Critical Habitat, beyond that which is "essential." For example, I am aware that the FWS is currently proposing Critical Habitat for the Mississippi gopher frog in Mississippi and Louisiana that covers "potential" habitat to include private lands. Why is FWS designating areas as "potential" habitat beyond what is required by law—i.e. what is "essential" habitat? What is being done to ensure that the FWS is including only areas in its Critical Habitat designations limited to "essential" habitat, particularly on private property? I understand that at least two federal courts have ruled that Critical Habitat designations should be subject to NEPA requirements, but that FWS is not doing NEPA reviews for any of their Critical Habitat designations. Please explain FWS rationale for not doing NEPA reviews for its Critical Habitat designations.**

Response: All areas that have been proposed as critical habitat for the Mississippi gopher frog conform to the definition of critical habitat in the ESA and specifically meet the definition of critical habitat for the species. These specific areas include one unit that is currently occupied and other areas that are not occupied but that have been determined to be essential to the conservation of the species. Those areas that are essential for the conservation of the species were described in the proposed rule as providing potential habitat for the species meaning they may need management or possible restoration.

It is Service's position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National

Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the ESA. We published a notice outlining our reasons for this determination in the Federal Register on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft NEPA document for the proposed designation when it is finished.

5. **Director Ashe, the FWS staff recommended that the valley elderberry longhorn beetle be delisted from the ESA list in 2006 because the species had been recovered. However, in 2009, FWS announced that a delisting rule was being reviewed. Now, nearly three years later, nothing has been done: the valley elderberry longhorn beetle remains a threatened species that imposes significant costs for flood control agencies and private property owners in California. Can you please explain the FWS' delay in acting on its own scientific recommendations to delist this species and what you personally will do to ensure that the delisting moves forward? How many species has the FWS delisted, either on its own initiative or in response to lawsuit, in the past 10 years? Please provide the Committee with a summary of this information.**

Response: The Service began work on a proposed rule to delist the species as a result of our 2006 5-year review of the status of the valley elderberry longhorn beetle. Work to complete actions to comply with court orders, settlement agreements, and other statutory deadlines has delayed completion of our delisting proposal. Moreover, new information on the beetle's status has become available in the last several years, which needed to be analyzed and incorporated into our decision-making process to ensure our decision is based on the best available information and is scientifically sound. I have asked our Pacific Southwest Regional Office to expedite completion of the proposed rule. I anticipate it will be published in the Federal Register by late summer.

The Endangered Species Act (ESA) was enacted in 1973 to prevent the loss or harm of endangered and threatened species and to preserve the ecosystems upon which these species depend. As one of our Nation's most important conservation statutes, the ESA has prevented hundreds of species from becoming extinct, stabilized the populations of many others, and set many species on the track to recovery. Each of these outcomes is a measure of success in achieving the purposes of the ESA. That said, delisting recovered species is also a measure of success, and the following species have been removed from the list of threatened and endangered species due to recovery:

American alligator
Robbins' cinquefoil
Tennessee purple coneflower
Maguire daisy
Columbia white-tailed deer, Douglas County DPS

Palau ground dove
Bald eagle
American peregrine falcon
Arctic peregrine falcon
Palau fantail flycatcher
Aleutian Canada goose
Tinian monarch
Palau owl
Brown pelican, Gulf coast DPS
Brown pelican, range-wide
Concho watersnake
Lake Erie watersnake
Eggert's sunflower
Gray whale
Gray wolf, Northern Rocky Mountain DPS
Gray wolf, Western Great Lakes DPS
Hoover's wooly-star

6. **On February 29th, the FWS released a status review report for the Gray Wolf that casts some doubt on whether the "lower 48 states" gray wolf population is legitimately listed. I am deeply concerned with the situation of the Gray Wolf in the eastern Washington district that I represent. Currently, the Gray Wolf is federally listed on the eastern side of Highway 395 and not listed on the other. This nonsensical, arbitrary approach to determining a population of wolves undermines the credibility that your agency is serious about meeting its responsibilities under ESA. It also is affecting my constituents directly. Wolves in the Pacific Northwest are not a discrete or significant separate population—they are members of the Northern Rocky Mountain distinct population segment that was already delisted in Idaho, Montana, Wyoming and other areas to the east. Please provide me with an explanation of FWS' plans and any data relating to the gray wolf found in the Pacific Northwest supporting that are in any way different from than wolves that have been deemed recovered in the Northern Rocky Mountain distinct population segment.**

Response: We understand your concern with the western boundary of the Northern Rocky Mountain distinct population segment (DPS) of the gray wolf. Our DPS boundary was based on the best available science at that time and included consideration of a number of factors including distribution of known wolf packs, dispersal distance, and habitat.

You are correct that we recently completed a status review for the gray wolf which found that the current listing status of wolves in the coterminous U.S. was in need of revision. We also found that further review of the wolf's listing status in the Pacific Northwest was warranted. We are currently working on completing this status review for Pacific Northwest wolves, which will include a DPS analysis, with an evaluation of whether or not they are discrete from recovered wolves in the Northern Rocky Mountain DPS. We expect to complete this status review by September 2012 and will provide you with a copy of this review and any relevant supporting data upon completion.

We assure you that we are serious about meeting our responsibilities under the ESA. The Service has worked closely with the Washington Department of Fish and Wildlife (WDFW) to monitor and manage wolves in a responsible manner, using the best available science. We have supported WDFW's Wolf Conservation and Management Plan and recently (FY 2012) provided WDFW with financial assistance to monitor and manage wolves in the state.

7. **In the FWS and NOAA's recently released draft policy interpreting the ESA phrase "significant portion of range," any species that is "threatened" across its entire range but "endangered" in a smaller portion of the range would be treated as "endangered" for the agency's regulatory purposes. Under what legal authority is FWS basing its decision to use the more restrictive "endangered" status when using "threatened" would provide more administrative flexibility?**

Response: In the situation described by the question, (i.e., a species is threatened throughout all of its range, but endangered in a significant portion of its range), the basic principles of statutory construction compel us to list the entire species as endangered. To do otherwise would fail to give meaning to all elements of the definition of "endangered species."

8. **In 2010, the Fish and Wildlife Service released a document titled, "Rising to the Urgent Challenge: a Strategic Plan for Responding to Accelerating Climate Change," that described the FWS' vision to mandate consideration of climate change impacts in all major Endangered Species Act program activities, including listing decisions, recovery plans, habitat conservation plans, and section 7 consultations and biological opinions." The document states that FWS will "prepare guidance that can be used by FWS program offices in their assessment of climate change impacts." Can you please provide the Committee with a copy of any federally-funded guidance distributed to FWS program offices for these purposes? Also, could you please detail in the FWS' proposed FY 2013 budget the amount allocated specifically for climate change adaptation, implementation and other activities relating to this strategic plan? I note that you have requested a $3 million increase for climate change "inventory and monitoring" for the National Wildlife Refuge System.**

Response: America's landscapes, and the fish, wildlife, plants, and cultural resources they support are increasingly impacted by a variety of conservation challenges. These challenges transcend agency and geopolitical boundaries and require the development and implementation of a new, more collaborative approach such as the effort to develop a National Climate Adaptation Strategy for Fish, Wildlife and Plants which the Service is part of. Information on that work can be found on the Service website at:
http://www.fws.gov/home/climatechange/adaptation.html

The Service also entered into an interagency agreement with the National Park Service and United States Geological Survey to work with the National Wildlife Federation to develop guidance on climate change vulnerability assessments for species, habitats and ecosystems. The expert workgroup convened by the National Wildlife Federation developed the document, "Scanning the Conservation Horizon: A Guide to Climate Change Vulnerability Assessment."

The Guide describes various scientific methods that are available and in use for assessing the vulnerability of species and habitats to climate change; it does not prescribe the use of any particular method. This document can be obtained at: http://www.habitat.noaa.gov/pdf/scanning_the_conservation_horizon.pdf

While climate change has been identified as a key factor contributing to landscape change, all the work the Service does considers the implications of changes in the environment. Refuge Inventory and Monitoring funding is not specific to climate change. The National Wildlife Refuge System invests in Inventory and Monitoring activities in order to efficiently target our management actions to achieve the System's mission in the face of environmental change. Investments in understanding species distributions and responses to management actions and environmental stressors allow us to continually refine our management actions for specific outcomes.

The Service is developing the long-term monitoring efforts of the Refuge System in close coordination with other DOI Bureaus, other Agencies and key conservation partners (Tribes, States, and NGOs) to reduce duplication, minimize costs, and leverage information from multiple sources for the greatest conservation benefit.

The $3 million increase for FY 2013, when coordinated with our key partners, will generate necessary information that will contribute to the efficiency of the conservation actions of our partners and the Service.

9. **In the Fish & Wildlife Service's FY 2012 budget request last year for endangered species, FWS requested a cap on the amount of species listing petitions the Department would be required to handle, noting that between 1994 to 2006 an average of 20 petitions to list species was filed with FWS, but from 2006 until last year, petitions for listing more than 1,200 separate species were filed. In this year's budget request, the FWS requests $22.4 million for ESA listing activities—an increase of $1.5 million. How is that $1.5 million allocated, and how is it connected with the settlements the Department of Interior signed last year with two plaintiffs? What is the total FY 2013 FWS budget associated with implementation of this settlement? How many employees, man hours and financial resources do you estimate will be dedicated within FWS solely to implement the agreement with the Center for Biological Diversity and WildEarth Guardians?**

Response: The Service requests $22.431 million for the Listing and Critical Habitat program in FY 2013. Of these funds, $14.887 million, including the $1.5 million increase, is requested to implement the court-approved settlements such as the agreements with the Center for Biological Diversity and Wild Earth Guardians. The Service estimates that 80 FTEs will be supported with these funds to implement the agreements. If the cap language within the appropriations language continues, no additional Service funding can be used to implement the agreements. The Service requests that the appropriations language limiting funding for petition findings to $1.5 million continue in FY 2013 to allow the Service to balance the statutory requirements of the ESA while addressing the highest biological priorities of the Listing program.

10. **On page 11 of the FWS budget justification for Endangered Species Program states that in this fiscal year, the Service anticipates publishing 10 final and 2 proposed critical habitat rules for 112 species, and will make 53 final and proposed listings and critical habitat determinations for 135 species, and 8 determinations for 44 foreign species. Can you please identify each of the species mentioned and your estimated timeframe to complete each? Are these determinations all connected to FWS' multi-species settlement with the Center of Biological Diversity and the WildEarth Guardians signed in 2011? Does that multi-species settlement set deadlines that require FWS to act within this fiscal year? Please summarize each species action that FWS intends to take in FY 2013 broken down by state, date, and action.**

Response: The settlement agreements require that we complete final rules within the statutory timeframes. The agreements leave the timing of most of the actions to the discretion of the Service as long as all are proposed by FY 2016 and the agreement with Wild Earth Guardians requires that we meet cumulative targets.

For the domestic species, the following list includes the candidate species for which we anticipate making a proposed listing determination or not warranted finding in FY 2013. Several of these determinations are due in FY 2013 as set forth in the settlement agreements, however, many are due by FY 2016, but are scheduled in 2013 to balance our workload.

Fiscal Year 2013 expected and required species proposed listing determinations

Species common name	Scientific name	States or Territories within the historical range	Specific due date in FY2013 from settlement agreements?
Bat, eastern small-footed	*Myotis leibii*	AR, CT, DE, GA, IL, IN, KY, MD, ME, MA, MO, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, VT, VA, WV	Yes
Bat, northern long-eared	*Myotis septentrianalis*	AL, AR, CT, DE, DC, FL, GA, IL, IA, IN, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, VA, VT, WV, WI	Yes
Brickell-bush, Florida	*Brickellia mosieri*	FL	
Buckwheat, Churchill Narrows	*Eriogonum diatomaceum*	NV	
Buckwheat, Las Vegas	*Eriogonum corymbosum* var. *nilesii*	NV	
Buckwheat, Red Mountain	*Eriogonum kelloggii*	CA	
Butterfly, Bartram's hairstreak	*Strymon acis bartrami*	FL	
Butterfly, Florida leafwing	*Anaea troglodyta*	FL	

	floridalis		
Cinquefoil, Soldier Meadow	*Potentilla basaltica*	NV	
Cuckoo, yellow-billed (Western U.S. DPS)	*Coccyzus americanus*	AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA, WY	
Flax, Carter's small-flowered	*Linum carteri* var. *carteri*	FL	
Frog, mountain yellow-legged (Sierra Nevada DPS)	*Rana muscosa*	CA	Yes
Frog, Oregon spotted	*Rana pretiosa*	CA , WA	Yes
Gartersnake, northern Mexican	*Thamnophis eques megalops*	AZ, NM	Yes
Goldenrod, Yadkin River	*Solidago plumosa*	NC	
Ivesia, Webber	*Ivesia webberi*	CA, NV	
Knot, red	*Calidris canutus rufa*	CT, DE, FL, GA, MA, MD, ME, NC, NH, NJ, RI, SC, VA	Yes
Loon, yellow-billed	*Gavia adamsii*	AK	
Massasauga (=rattlesnake), eastern	*Sistrurus catenatus catenatus*	IA, IL, IN, MI, MN, MO, NY, OH, PA, WI	
Milkvetch, Goose Creek	*Astragalus anserinus*	ID, NV, UT	
Milkvetch, Packard's	*Astragalus cusickii* var. *packardiae*	ID	
Mouse, New Mexico meadow jumping	*Zapus hudsonius luteus*	AZ, CO, NM	Yes
Murrelet, Kittlitz's	*Brachyramphus brevirostris*	AK	Yes
No common name	*Cordia rupicola*	PR	
No common name	*Gonocalyx concolor*	PR	
No common name	*Agave eggersiana*	VI	
Orcutt's hazardia	*Hazardia orcuttii*	CA	
Phacelia, Brand's	*Phacelia stellaris*	CA	
Pipit, Sprague's	*Anthus spragueii*	AL, AR, AZ, CA, GA, LA, MI, MN, MT, ND, OH, OK, SC, SD, TX	
Prairie dog, Gunnison's (central and south-central Colorado, north-central New Mexico SPR)	*Cynomys gunnisoni*	CO, NM	
Redhorse, sicklefin	*Moxostoma sp.*	GA, NC, TN	
Sage-grouse, greater (Bi-State DPS)	*Centrocercus urophasianus*	CA, NV	Yes
Shiner, sharpnose	*Notropis oxyrhynchus*	TX	
Shiner, smalleye	*Notropis buccula*	TX	
Skipper, Dakota	*Hesperia dacotae*	IA, IL, MN, ND, SD	Yes

Springsnail, elongate mud meadows	*Pyrgulopsis notidicola*	NV	
Squirrel, Washington ground	*Spermophilus washingtoni*	OR, WA	
Stonecrop, Red Mountain	*Sedum eastwoodiae*	CA	
Storm-Petrel, ashy	*Oceanodroma homochroa*	CA	Yes
Sucker, Zuni bluehead	*Catostomus discobolus yarrowi*	AZ, NM	
Talussnail, Rosemont	*Sonorella rosemontensis*	AZ	Yes
Toad, Yosemite	*Bufo canorus*	CA	Yes
Treefrog, Arizona (Huachuca/Canelo DPS)	*Hyla wrightorum*	AZ	
Turtle, Sonoyta mud	*Kinosternon sonoriense longifemorale*	AZ	
Wolverine, North American	*Gulo gulo luscus*	CA, CO, ID, MT, OR, UT, WA, WY	Yes
Wormwood, northern	*Artemisia campestris* var. *wormskioldii*	OR, WA	

Consistent with the listing work plan settlement agreements, we will complete final listing determinations in accordance with statutory deadlines; therefore, in FY 2013 we will finalize listing determinations that were proposed in FY 2012.

Fiscal Year 2013 expected and required species final listing determinations

Species common name	**Scientific name**	**States or Territories within the historical range**
`Aku	*Cyanea tritomantha*	HI
`Ala `ala wai nui	*Peperomia subpetiolata*	HI
`Anunu	*Sicyos macrophyllus*	HI
Amphipod, diminutive	*Gammarus hyalleloides*	TX
Bat, Florida bonneted	*Eumops floridanus*	FL
Bladderpod, White Bluffs	*Physaria douglasii tuplashensis*	WA
Butterfly, Mt. Charleston blue	*Plebejus shasta ssp. charlestonensis*	NV
Buckwheat, Umtanum Desert	*Eriogonum codium*	WA
Cactus, Acuna	*Echinomastus erectocentrus* var. *acunensis*	AZ

Cactus, Fickeisen plains	*Pediocactus peeblesianus* var. *fickeiseniae*	AZ
Cactus, Florida semaphore	*Consolea corallicola*	FL
Checkerspot butterfly, Taylor's (= Whulge)	*Euphydryas editha taylori*	WA, OR
Darter, diamond	*Crystallaria cincotta*	KY, OH, TN, WV
Fleabane, Lemmon	*Erigeron lemmonii*	AZ
fly, Hawaiian Picture-wing	*Drosophila digressa*	HI
Gladecress, Texas golden	*Leavenworthia texana*	TX
Ha`iwale	*Cyrtandra oxybapha*	HI
Haha	*Cyanea asplenifolia*	HI
Haha	*Cyanea kunthiana*	HI
Haha	*Cyanea obtusa*	HI
Hala pepe	*Pleomele fernaldii*	HI
Horned lark, streaked	*Eremophila alpestris strigata*	OR, WA
Ko`oko`olau	*Bidens campylotheca pentamera*	HI
Ko`oko`olau	*Bidens campylotheca waihoiensis*	HI
Ko`oko`olau	*Bidens micrantha ctenophylla*	HI
Ko`oko`olau	*Bidens conjuncta*	HI
Kolea	*Myrsine vaccinioides*	HI
Mallow, Gierisch	*Sphaeralcea gierischii*	AZ, UT
Mucket, Neosho	*Lampsilis rafinesqueana*	AR, KS, MO, OK
No common name	*Schiedea salicaria*	HI
No common name	*Platydesma remyi*	HI
No common name	*Stenogyne cranwelliae*	HI
No common name	*Phyllostegia bracteata*	HI

No common name	*Phyllostegia floribunda*	HI
Nohoanu	*Geranium hanaense*	HI
Nohoanu	*Geranium hillebrandii*	HI
Pearlymussel, slabside	*Lexingtonia dolabelloides*	AL, KY, TN, VA
Pocket gopher, Brush Prairie	*Thomomys mazama douglasii*	WA
Pocket gopher, Cathlamet (Louie's Western)	*Thomomys mazama louiei*	WA
Pocket gopher, Olympia	*Thomomys mazama pugetensis*	WA
Pocket gopher, Olympic	*Thomomys mazama melanops*	WA
Pocket gopher, Roy Prairie	*Thomomys mazama glacialis*	WA
Pocket gopher, Shelton	*Thomomys mazama couchi*	WA
Pocket gopher, Tacoma	*Thomomys mazama tacomensis*	WA
Pocket gopher, Tenino	*Thomomys mazama tumuli*	WA
Pocket gopher, Yelm	*Thomomys mazama yelmensis*	WA
Prairie-chicken, lesser	*Tympanuchus pallidicinctus*	CO, KS, NM, OK, TX
Pricklyapple, aboriginal (shellmound applecactus)	*Harrisia aboriginum*	FL
Rabbitsfoot	*Quadrula cylindrica cylindrica*	AL, AR, GA, IL, IN, KS,KY,LA, MO,MS,OH, OK, PA, TN
Reedgrass, Hillebrand's	*Calamagrostis hillebrandii*	HI
Rose-mallow, Neches River	*Hibiscus dasycalyx*	TX
Sage-grouse, Gunnison	*Centrocercus minimus*	AZ, CO, NM, UT
Salamander, Austin blind	*Eurycea waterlooensis*	TX
Salamander, Georgetown	*Eurycea naufragia*	TX
Salamander, Jemez Mountains	*Plethodon neomexicanus*	NM
Salamander, Jollyville Plateau	*Eurycea tonkawae*	TX
Salamander, Salado	*Eurycea chisholmensis*	TX
Sculpin, grotto	*Cottus sp.*	MO

Shrimp, anchialine pool	*Vetericaris chaceorum*	HI
Skipper, Mardon	*Polites mardon*	CA, OR, CA
Snail, Diamond Y Spring	*Pseudotryonia adamantina*	TX
Snail, Lanai tree	*Partulina semicarinata*	HI
Snail, Lanai tree	*Partulina variabilis*	HI
Snail, Newcomb's tree	*Newcombia cumingi*	HI
Snail, Phantom cave	*Cochliopa texana*	TX
Springsnail (=Tryonia), Phantom	*Tryonia cheatumi*	TX
Springsnail, Gonzales	*Tryonia circumstriata (=stocktonensis)*	TX
Sunfish, spring pygmy	*Elassoma alabamae*	AL
Thoroughwort, Cape Sable	*Chromolaena frustrata*	FL
Tiger beetle, Coral Pink Sand Dunes	*Cicindela albissima*	UT

We have court-ordered or settlement agreement obligations for FY2013 other than those described in the listing work plan agreements with WildEarth Guardians and Center for Biological Diversity.

Other Fiscal Year 2013 listing program obligations

Species common name	**Scientific name**	**States or Territories within the historical range**	**Action**	**Specific due date in FY2013 from court orders or settlement agreements?**
Salt Creek tiger beetle			Revised proposed critical habitat	Yes
Woodland caribou (Southern Selkirk Mtn caribou)		ID, WA	Final critical habitat	Yes
Northern spotted owl		CA, OR, WA	Revised final critical habitat	Yes
Riverside fairy shrimp		CA	Revised final critical habitat	Yes
Tidewater goby		CA	Revised final critical habitat	Yes
Lost River and shortnose sucker		CA	Revised final critical habitat	Yes
Comal spring invertebrates		TX	Revised proposed critical habitat	Yes
Polar bear		AK	Revised final	Yes

			special rule and NEPA	

11. **What is the status of the Sand Dune Lizard listing, which I understand the FWS extended until later this year for a final listing decision? Was the extension agreed upon under the terms of the Settlement Agreement with Center for Biological Diversity and WildEarth Guardians?**

Response: On June 13, 2012, the Service announced that the dunes sagebrush lizard does not need the protection of the Endangered Species Act because unprecedented voluntary conservation agreements now in place in New Mexico and Texas will ensure the long-term protection and recovery of the species. The Service has withdrawn its proposal to add the lizard to the list of species protected under the Endangered Species Act.

Based on public comments the FWS received on the proposed listing determination for dunes sagebrush lizard (sand dune lizard), we determined there was substantial disagreement regarding the species status and trends and pursuant to section 4(b)(6)(B)(i) of the ESA, we invoked the extension of the deadline to finalize the listing determination for not more than 6 months. On December 5, 2011, we published a Federal Register notice to reopen the comment period on the proposed rule to list the dunes sagebrush lizard (sand dune lizard) and solicit additional information to clarify this issue. Invoking the statutory extension pursuant to section 4(b)(6)(B)(i) of the ESA did not require an extension of the settlement agreements.

12. **Please provide the statutory and regulatory authority that FWS is relying on to accept and make determinations on petitions to list multiple species by single petition.**

Response: There is no statutory or regulatory authority that limits petitions for multiple species, nor is there any statutory or regulatory authority that limits the Service from responding to multiple species in a single petition finding. The Service, where appropriate, has attempted to combine findings for multiple species resulting from a single petition.

13. **In the months since the two multi-species settlements were signed by the Department of Interior, how many listing and critical habitat determinations has the FWS completed that are related to the settlement or petitions filed by the plaintiffs that signed the settlement? Does FWS contemplate doing any species listings that are not related to the multi-species settlement? If so, please identify those species.**

Response: The Service has completed eighteen listing and critical habitat determinations associated with the Multi-District Litigation ("MDL") Settlement Agreements. As budget and resources allow, the Service does plan to make listing and critical habitat determinations on species that are not part of the MDL settlement agreement. 36 species have been added to list of candidate species since the MDL settlement agreement was signed. Proposed listing and critical habitat determinations for these species will be made concurrently with MDL packages as budget and resources allow, or they will be completed following the commitments under the MDL.

14. **I have requested repeatedly for FWS and the Interior Department to provide the Committee with current information relating to ESA-related litigation and settlements. I understand similar requests have been made by other Senators and Members. What is the status of that information? Has FWS or Interior agreed to an amount for attorney's fees to each of the two plaintiffs in the multi-species settlements (Center for Biological Diversity and WildEarth Guardians)?If so, please provide the amount of attorney's fees agreed upon. Did the Justice Department consult with FWS with regard to payment of attorney's fees resulting from these settlements? Please quantify how much the FWS (through the Judgment Fund or the Equal Access to Justice Act) has paid to litigants that have successfully sued the Department for endangered species program activities?**

Response: Dan Ashe, Director, testified before the House Natural Resources Committee on December 6, 2011, to discuss and answer questions from Members related to ESA litigation. Additionally, in a letter dated November 30, 2011, the Service responded to a series of questions from Senator Inhofe regarding attorneys' fees and other costs associated with the Multi-District Litigation ("MDL") Settlement Agreements and provided detailed information on the Service's work plan. In a letter dated March 23, 2012, the Service responded to a request from Senators Inhofe and Sessions for copies of communications between the Service and the Center for Biological Diversity ("CBD") and WildEarth Guardians ("WEG") related to the MDL Settlement Agreements. Under local rule 84.9(a) of the District Court's local rules governing the court's mediation program, we are prohibited from disclosing "any written or oral communication made in connection with or during any mediation session." Nevertheless, we identified and included in our response communications that were not made in connection with any mediation session.

The Department of Justice ("DOJ") has primary authority for negotiating fees claims. DOJ has reached agreement regarding attorneys' fees to be paid to CBD and WEG in association with the MDL Settlement Agreements. Pursuant to a Stipulation between the two parties entered in the District Court for the District of Columbia ("DDC") on February 2, 2012, DOJ agreed to settle CBD's claims for attorneys' fees and costs related to the MDL Agreement for a total of $128,158. Pursuant to a separate Stipulation entered in DDC on February 2, 2012, DOJ and WEG agreed to settle their claims for attorneys' fees and costs related to the MDL Agreement for a total of $167,602. Attorneys' fees were paid from the Judgment Fund, which does not involve Service funds. We defer all questions related to payments from the Judgment Fund to DOJ. However, the Endangered Species program maintains an Excel file that captures the fees paid by our program through the Equal Access to Justice Act ("EAJA") from fiscal years 2002 through the present. According to our file, since 2002 the amount paid by the Service under EAJA to litigants for claims related to endangered species activities is approximately $2,034,000.

15. **WildEarth Guardians' 2010 annual report lists the U.S. Fish and Wildlife Service as a source of grants it has used for its programs. Can you please provide a complete accounting of all grants and assistance provided to WildEarth Guardians, the Center for Biological Diversity, the National Wildlife Federation and Defenders of Wildlife?**

Response: The table below shows the grants provided to the WildEarth Guardians, the National Wildlife Federation, and the Defenders of Wildlife. The Service has not provided any grants to the Center for Biological Diversity.

Acceptance Date	Fiscal year	Vendor Name	FWS Region	State	Amount
04/08/09	2009	Defenders of Wildlife	6	MT	$ 9,000.00
04/21/09	2009	Defenders of Wildlife	8	CA	$ 15,000.00
09/17/09	2009	Defenders of Wildlife	9	DC	$ 10,000.00
02/24/10	2010	National Wildlife Federation	7	AK	$ 2,000.00
02/24/10	2010	National Wildlife Federation	7	AK	$ 2,000.00
04/09/10	2010	National Wildlife Federation	7	AK	$ 9,998.00
08/03/10	2010	National Wildlife Federation	9	WV	$ 102,000.00
08/31/10	2010	National Wildlife Federation	1	HI	$ 73,000.00
02/17/11	2011	Wildearth Guardians	2	NM	$ 25,000.00
03/02/11	2010	National Wildlife Federation	9	DC	$ 50,000.00
06/15/11	2010	National Wildlife Federation	9	WV	$ 24,000.00
07/15/11	2010	National Wildlife Federation	9	DC	$ 25,000.00
07/20/11	2011	Wildearth Guardians	9	VA	$ 75,000.00
08/12/11	2011	National Wildlife Federation	4	GA	$ 16,000.00
08/12/11	2011	National Wildlife Federation	4	GA	$ 4,000.00
09/19/11	2011	National Wildlife Federation	1	WA	$ 68,108.00

16. **Paragraph 17 of the multi-species listing settlement signed by FWS attorneys and the plaintiffs calls for FWS and the plaintiffs to annually "confer" on progress in the review of candidate species and pending listing petitions. What is intended with these annual meetings with two plaintiffs? Will members of the public be permitted to participate? Will FWS be providing work plans or other documents to these plaintiffs at any such meeting?**

Response: The Service's Agreement with CBD does not provide for annual meetings. Paragraph 17 of the MDL Agreement with WEG filed on May 10, 2011, requires the parties to meet at least once each fiscal year to confer regarding the Agreement and the status of the parties' compliance. The intent of the meeting is to minimize the potential for disputes regarding compliance with this agreement and establish a non-litigation structure for resolving any disputes that do arise. Therefore, since the purpose of these meetings is to discuss the status of compliance with their Agreement, these meetings will not be open to the public. We did not provide any additional documentation during the first annual meeting with WEG and we do not anticipate providing any particular documents in future meetings. Depending on the circumstances at the time, however, it is possible that we may find it helpful to provide WEG with information, including certain documents. If so, any information we share in these status conferences will be publicly available.

17. **Regarding candidate reviews included in the multi-species settlement agreements with Center for Biological Diversity and WildEarth Guardians, is FWS intending to provide public guidance or other information on how it expects to conduct these with respect to timing, information sought or other elements of its review?**

Response: The annually updated candidate assessments of individual species are the basis for the Candidate Notice of Review (CNOR) which is published in the Federal Register to provide the public and our partners with an updated list of candidate species. In the CNOR, we provide guidance to the public on how they can provide information on current candidate species and solicit information on other species should be considered as candidates. Additionally, our work plan and stipulated timing by fiscal year for each of the species associated with the MDL is posted online at:
http://www.fws.gov/endangered/improving_ESA/listing_workplan.html

18. **What is the status of FWS providing reasonable access to Rattlesnake Mountain in the Hanford Reach Monument in Washington State?**

Response: The Service has been working to resolve a variety of cultural resource and Tribal consultation issues in an effort to open the Rattlesnake Mountain area of the Hanford Reach National Monument to a variety of public uses, including elk hunting. Rattlesnake Mountain (a.k.a. Laliik) is of spiritual importance to American Indian groups of the Mid-Columbia plateau region and a site listed on the National Register of Historic Places as the "Laliik Traditional Cultural Property." Public access and use at Rattlesnake Mountain constitutes an undertaking under Section 106 of the National Historic Preservation Act and the Service is currently working with affected Tribes to identify ways to mitigate adverse effects on the Laliik Traditional Cultural Property prior to allowing public use at Rattlesnake Mountain.

19. **Please summarize all federal expenditures and grants made by the Department of Interior in connection with the removal of Condit Dam on the White Salmon River in south central Washington.**

Response: From FY 2006 through 2009, the U.S. Geological Survey (USGS) conducted two projects in support of salmon restoration efforts in the White Salmon River associated with the

removal of Condit Dam, and produced a final report entitled: *Composition and Relative Abundance of Fish Species in the Lower White Salmon River Prior to the Removal of Condit Dam* (USGS Open Report 2011-1087). The two projects were:

- Project 1584- Assessment of current use and productivity of fish in the lower White Salmon River prior to the removal of Condit Dam. Cost of project in FY2006=$16,246, in FY2007=$43,371.
- Project 1943- Develop a profile of species composition, out-migration timing, and population abundance for the Lower White Salmon River. Cost of Project in FY2009=$47,555.

From FY 2007 through 2011, the Service conducted adult and juvenile fish (Chinook, Coho, steelhead, rainbow trout) population assessments in the White Salmon River. (Assessment information contributed to Smith, C.T. and R. Engle. 2011. Persistent Reproductive Isolation between sympatric lineages of fall Chinook salmon in White Salmon River, Washington. Transactions of the American Fisheries Society 140:699-715.) The cost of the assessment work from FY 2007 through 2011 was $65,590.

In FY 2011, the Service and other partners in the White Salmon Working Group, such as Washington Department of Fish and Wildlife, Yakama Nation, NOAA Fisheries, U.S. Geological Survey, U.S. Forest Service, Underwood Conservation District, and PacifiCorp participated in a joint effort to capture and transport Lower Columbia River fall Chinook salmon upstream of Condit Dam. A total of 679 adult fall Chinook salmon were relocated above the structure and monitored for spawning activity. This project was largely funded through cost sharing among the various agencies. The funded portion was $25,000.

In FY 2009 and 2010, a fish passage removal project (above Condit Dam) was funded through cooperative efforts of federal, Tribal, county, and non-governmental organizations. A two-culvert barrier on Indian Creek was removed and replaced with a bridge. Federal funding for this project was provided through the National Fish Passage Program funds in the amount of $76,000 to the Underwood Conservation District (UCD).

In FY 2007 and FY 2008, the Service conducted a project to determine the genetic structure of Chinook salmon, steelhead and Coho salmon in the Big White Salmon River. The data collected in the genetic analysis would be used to support salmon and steelhead recolonization, and future fisheries management of ESA listed and non-listed salmon stocks into the Big White Salmon River following removal of Condit Dam. The cost of project in FY 2007 was $47,196, and the cost in FY 2008 was $46,227. Information contributed to a final published paper: Smith, C.T. and R. Engle. 2011. Persistent Reproductive Isolation between sympatric lineages of fall Chinook salmon in White Salmon River, Washington. Transactions of the American Fisheries Society 140:699-715.

20. **A recent study showed that an estimated 25 million of the 120 million juvenile salmon smolts that travel up the Columbia River each year are consumed by cormorants, which are protected under the Migratory Bird Treaty Act. I understand that the Army Corps of Engineers is developing a report recommending actions relating to the control of these predatory birds. What is the USFWS doing**

under its own authorities to control these growing numbers of birds that migrate inland into the Northwest? Can you please outline the activities and FY 2013 of FWS' migratory bird control program for Region 1 that includes Washington, Oregon and Idaho?

Response: The Service is participating in a multi-agency working group (composed of Federal and State agencies and the Bonneville Power Administration) charged with developing a management strategy to address the predation of salmonids by cormorants in the Columbia River. Additionally, the Service is providing the Army Corps of Engineers with technical assistance associated with compliance with the Migratory Bird Treaty Act (MBTA) and associated Service regulations to develop and implement a management plan for cormorants in the Columbia River. If any take of Double-crested cormorants are recommended in the management plan, the Army Corps of Engineers would need to obtain a MBTA permit from the Service to conduct the control efforts. The Service will review the permit application to ensure that the level of take will not impact the overall conservation of the cormorants.

The Service is also working with numerous Flyway Councils and States in developing Flyway Management Plans for the Double-crested Cormorant and in preparation of a Supplemental Environmental Impact Statement or Environmental Assessment related to the development of revised regulations governing the management of Double-crested Cormorants on a national scale.

21. **Should the decision in the Center for Biological Diversity and Pesticide Action Network North America v. Environmental Protection Agency lawsuit filed on January 19, 2011 require the U.S. Fish and Wildlife Service to determine the potential impacts of pesticide products on endangered species, would USFWS use the same modeling as has been used by the NOAA for four biological opinions for pesticide products that has been strongly criticized by the Environmental Protection Agency, and are pending review by the National Research Council on the feasibility and validity of these methods? Please describe FWS' plans to meet any requirements to consult on the 380 chemicals impact on 214 species listed in this lawsuit.**

Response: In accordance with the statutory language of the ESA, the Service will utilize the best scientific and commercial data available to determine the potential impacts of pesticide products on endangered species when consulting with the Environmental Protection Agency on the registration of these pesticides. We anticipate that this analysis will be informed by the ongoing review currently being conducted by the National Research Council.

22. **Pacific Lamprey is important to tribes in the Columbia Basin tribes, who do not want lamprey listed under ESA. I understand that FWS has proposed a conservation initiative for lamprey and has suggested states, tribes, and other federal agencies sign on to the commitments in the initiative, but it is unclear how this would be funded. Please describe FWS' plans to implement the lamprey conservation initiative in this year's FWS budget.**

Response: The Lamprey Conservation Initiative is a voluntary agreement that does not commit the Service to any additional funding beyond that allocated in FY 2011 or 2012. It is a mechanism to coordinate lamprey restoration activities from the numerous federal, state agencies, and tribes in the west.

23. **Director Ashe, the states of Washington, Oregon, Idaho and various Columbia River Tribes are concerned about quagga and zebra mussels that originate from Lake Mead, Nevada, an invasive species that could wreak havoc in the Columbia River basin. What is your agency doing, in conjunction with the National Park Service, to prevent the spread of these mussels?**

Response: This is a complex issue involving inter-jurisdictional waters where both State and Federal laws and policies apply. The Service's Southwest Region is working with the Lake Mead National Recreation Area, which the National Park Service manages. The U.S. Fish and Wildlife Service, National Park Service and other Federal and State partners from the lower Colorado River are developing a plan, which is expected to be implemented this spring. Potential actions to be incorporated into this plan include improving the currently mandatory cleaning procedures for moored vessels and increasing outreach and education to all boaters in the lower Colorado River through updates to websites and signage at launches and marinas. We will improve communication between Federal and State partners, including the rate of timeliness of reporting to State partners when moored boats have left Lake Mead. With these actions, the Department of the Interior hopes to significantly decrease the risk of invasive species coming from the lower Colorado River, especially Lake Mead.

24. **I understand that FWS has drafted a "Desert Tortoise Conservation Plan" for a landscape-level "reserve" on some 4.5 million acres in California and Nevada. What is the status of that plan and has the FWS budgeted for its implementation in the FY 2013 budget?**

Response: In June 2011, the Service developed a draft desert tortoise conservation network concept based largely on a U.S. Geological Survey (USGS) habitat model that identifies land important for connectivity between existing tortoise conservation areas. This draft concept was intended to be an initial step at considering the needs of the tortoise given multiple resource development projects on BLM lands. The Service and BLM in California and Nevada continue working towards desert tortoise conservation using this draft network concept of existing federal lands as a resource for discussions. BLM and the Service agreed that in California, desert tortoise habitat needs outside of existing conservation areas should be considered within the context of the Reserve Design of the Desert Renewable Energy Conservation Plan (DRECP). In Nevada, the Service is working with BLM to address tortoise conservation as part of the revision of the Southern Nevada District's Resource Management Plan. The outcomes of these discussions will be incorporated into the development of a renewable energy chapter that will be added to the Final Desert Tortoise Recovery Plan Revision. We anticipate that Service staff time needed to continue these collaborative discussions can be accomplished using funding requested in the President's Budget.

Chairman John Fleming, M.D. (LA)

25. **In 2009, the Congress appropriated $91.6 million to construct 14 Visitor Centers at national wildlife refuges throughout this country. How many of the 14 Visitor Centers are open to the public? What is the status of the each of the proposed centers?**

Response: Of the 14 Refuge Visitor Centers, nine are in-service and the statuses of the other Visitor Centers are detailed in the table below. The completion percentage listed in the table is based on the percent of the project that has been outlayed (paid) as of March 31, 2012. Contractor invoices are typically issued once a month and payments are only made for work actually completed and accepted by the government inspector. Given the time required to issue the invoice, inspect the work, and process the payment, on-the-ground progress typically exceeds payment progress by 30-60 days.

Facility	State	Project Funding	Status
San Luis NWR	CA	$ 10,125,410	In Service
Long Island NWR	NY	$ 9,765,080	In Service
Texas Chenier Plain Refuge Complex	TX	$ 6,439,018	In Service
Audubon NWR	ND	$ 6,314,924	In Service
San Diego Bay NWR	CA	$ 6,000,000	In Service
Arrowwood NWR	ND	$ 5,600,758	In Service
Rocky Mountain Arsenal NWR	CO	$ 3,241,820	In Service
Kealia Pond NWR	HI	$ 7,378,089	In Service
Hagerman NWR	TX	$ 3,931,234	In Service
Upper Mississippi River NWFR LaCrosse District	WI	$ 6,023,720	88% Complete
Mammoth Spring NFH	AR	$ 2,711,092	78% Complete
Pea Island NWR and Alligator River NWR	NC	$ 6,945,843	46% Complete
Mingo NWR	MO	$ 4,311,828	40% Complete
Tennessee NWR	TN	$ 6,854,014	32% Complete
Total		**$ 85,642,831**	

26. **What is the final price tag to complete these new visitor centers?**

Response: We expect the final cost to be approximately $91.6 million (appropriated dollars).

27. **How many private sector jobs were created with the planning and construction of these facilities?**

Response: For the headquarters/visitor building projects, recipients (contractors) reported numerous types of jobs created/retained including: project managers, superintendents, engineers (e.g., civil, structural, mechanical, electrical design), construction administration personnel, construction cost estimators, exhibit fabricators, architects, construction general inspectors, iron

workers, carpenters, sheet metal workers, project controls analysis, project accountants, construction workers, field technicians, and contract specialists. Because these facilities are still under construction, recipient reporting through December 31, 2011 (the most recent reporting period) provides only a partial estimate of the jobs created or retained. The Council of Economic Advisors did provide a metric of 1 job per $92,136 of Recovery Act funds spent. Using this metric with a combined total cost of over $85 million for the projects, it is estimated that the construction of these facilities will create or retain 930 jobs.

28. **What is the current deferred operations and maintenance backlog for the National Wildlife Refuge System in terms of facilities and the value of the projects?**

Response: We do not maintain information on a deferred operations backlog for facilities but we do track deferred maintenance cost estimates on an ongoing basis. The latest deferred maintenance backlog for the Refuge System as of the end of FY 2011 was $2,544,518,000. This is $161,482,000 below the backlog at the end of FY 2010. A summary of facility types and their associated deferred maintenance backlog is in the table below.

Refuge System Deferred Maintenance (DM) Summary (cost in millions of dollars)

Asset type	% with DM	# DM Projects	Cost	% of Total Cost
Buildings	36%	1,874	408	16%
Water Management Structures	25%	1,836	409	16%
Roads/Bridges/Trails	45%	5,467	1,430	56%
Other Structures	21%	1,426	297	12%
TOTAL	**34%**	**10,603**	**2,545**	**100%**

29. **What is the backlog in terms of invasive species? How many refuge acres are now overrun and what would be the cost to eliminate these foreign invaders?**

Response: In FY 2011, the Refuge System had 1,147 unfunded invasive species projects totaling $147,159,764. The FY 2011 numbers are an improvement from FY 2009 when the Refuge System had 1,408 unfunded invasives projects totaling $180,209,152. The reduction is a result of a thorough update of the Refuge Operating Needs System (RONS) in 2010 which eliminated operations projects that were funded and completed. Approximately 2.5 million acres of Refuge System lands are infested with non-native, invasive plants, and 3,889 invasive animal populations are found within refuges. Complete elimination of these species from refuges is unlikely because of the risk of re-infestation from neighboring lands. However, we estimate that the Refuge System would require approximately $25 million annually to treat about a third of its infested plant acreage, prevent new infestations, and begin low level control of harmful invasive animal populations.

30. **How much money has the Service requested to eradicate invasive species within the refuge system? What are the targeted species and refuge units?**

Response: For FY 2013, the Refuge System requested $9.742 million in Wildlife and Habitat base funds to address invasive species. This funding will pay for Service personnel and supplies to fight invasive species on refuge lands including the efforts of the Service's Invasive Species Strike Teams and the Invasives with Friends program which trains volunteers to help combat

invasive species. In addition to this funding, each year Refuge Maintenance staff typically expends approximately $2 million in maintenance funds for activities to control invasive species. Currently we are targeting the invasive plant, Verbesina encelioides, on both Sand and Eastern Islands at Midway Atoll in the Pacific. On Desecheo NWR in the Caribbean and Palymra Atoll in the Pacific, we are focusing on the eradication of rats.

31. **How much money has been requested to control and eradicate nutria?**

Response: The Refuge System has not had a budget line dedicated to nutria eradication since FY 2007. Therefore, Regions use Invasive Species base funding for nutria eradication as needed. Our best estimate is that we are investing roughly the same amount per year on nutria eradication as we did when we had a dedicated funding line of $770,000 per year.

32. **What is the backlog in terms of refuge roads? What is the scope of the problem and how much money is allocated in your budget request to address this problem?**

Response: The deferred maintenance backlog for roads, bridges and trails is $1.43 Billion, including public and non-public use roads, as of the end of FY 2011. The condition of high priority public use Service roads, omitting bridges and trails, has improved from 25% in good condition at the end of 2002 to 60% in good condition at the end of FY 2011, per FHWA inspection reports. In FY 2011, the Service expended $38.2 million ($9.2 million in operations and maintenance and $29 million in FHWA appropriations) on maintaining and improving the condition of our roads, bridges and trails.

33. **How many refuges are now closed to the public? How many are unstaffed?**

Response: A total of 127 of the 556 national wildlife refuges and 38 wetland management districts are closed to the public, in most cases because of resource management concerns such as fragile habitat.

While we do not have a formal definition of 'staffed' or 'unstaffed' refuges, there are approximately 216 refuge units (including both national wildlife refuges and wetland management districts) that are unstaffed. 'Unstaffed' in this case does not mean that Service staff never work on the unit, but it does indicate that no Service employee is permanently assigned there.

34. **How many refuge complexes and satellite units have been created throughout the National Wildlife Refuge System?**

Response: The National Wildlife Refuge System includes 52 stand-alone stations and 127 refuge complexes. The 127 complexes include 504 refuges, not including wetland management districts.

35. **Does the Service intend to administratively create any new National Wildlife Refuge units in FY'13? Please describe.**

Response: In FY 2013, the Service may establish up to nine National Wildlife Refuge System units. They are: Bear River Watershed Conservation Area, California Foothills Legacy Area, Hackmatack NWR, Mora River NWR, Middle Rio Grande NWR, Mountain Bogs NWR, Paint Rock NWR, San Luis Valley Conservation Area, and Swan Valley Conservation Area.

Each of these potential new refuges is currently undergoing the extensive and transparent scientific selection and public planning process that underpins the administrative establishment of a new unit of the National Wildlife Refuge System. These potential new units reflect circumstances where priority conservation needs and values, public support, and the presence of willing sellers have aligned to allow for the establishment of a new refuge that fulfills the directive of Section 4(4)(C) of the National Wildlife Refuge System Administration Act of 1966 to, "plan and direct the continued growth of the System in a manner that is best designed to accomplish the mission of the System, to contribute to the conservation of the ecosystem of the United States, to complement efforts of States and other Federal agencies to conserve fish and wildlife and their habitats, and to increase support for the System and participation from conservation partners and the public." Pursuant to Service policy, new units of the National Wildlife Refuge System are not officially established until the first authorized acre(s) is acquired by the Service. With the exception of donations, which the Secretary may accept, most land acquisitions for the National Wildlife Refuge System, including for new units, are accomplished through line-item Land and Water Conservation funds appropriated by Congress or funded by the Migratory Bird Conservation Fund.

36. **How many refuge "Friends Groups" now exist within the National Wildlife Refuge System? Please provide a list of these groups.**

Response: Please see Attachment 1 which includes a list of Friends organizations which serve over 230 national wildlife refuges and wetland management districts.

37. **What is the current number of full-time employees within the refuge system?**

Response: The Refuge System currently has 3,203 Full Time Equivalent (FTE) employees. In addition to the FTEs, the Service also has seasonal or part time employees such as summer youth hires in the Youth Conservation Corps (YCC) program or fire fighters as needed.

38. **In 1999, the boundaries of the Brandon Marsh National Wildlife Refuge in Oregon were expanded by 577 acres. A year later, the Service acquired the 408-acre Dave Philpott Ranch and incorporated this property as the Ni-Les'tun Unit within the refuge. Prior to the acquisition, apparently assurances were made by the Service that this land would be open to hunting. Were such assurances made to the public and why is the vast majority of this unit now closed?**

Response: The Conceptual Management Plan (CMP) for the Ni-les'tun Unit of Bandon Marsh National Wildlife Refuge, published in 1999 in conjunction with a Land Protection Plan/Environmental Assessment, stated that the primary goal for this unit is "to maximize restoration of historic intertidal marsh, riparian habitat, and freshwater wetland." The CMP also contained an interim (i.e., pre-acquisition) Compatibility Determination (CD) for hunting

covering the period of time between Service acquisition of lands and formal adoption of the Refuge's Comprehensive Conservation Plan (CCP). The interim CD found that hunting within the unit would be compatible with, and thus would not materially interfere with or detract from, the Refuge's establishing purposes and the mission of the National Wildlife Refuge System. While compatible, a hunting program has not yet been authorized on the Ni-les'tun Unit since it would conflict with restoration and other habitat management activities. The tidal marsh restoration project was completed in September 2011. Consequently, the Service will be proposing to allow hunting on approximately 300 acres of the Ni-les'tun Unit in the Draft CCP scheduled to be released in June 2012. If approved with the Final CCP, a step-down hunt plan and NEPA document would be developed and hunting could be open by fall 2014 on the unit. Since 1999, a considerable amount of effort in acquisition, planning, and restoration has been implemented to ensure that the Refuge was being soundly developed to conserve wildlife and to meet the community's and the nation's long-term expectation for quality wildlife management and public use programs.

39. **Does the Service intend to further expand the boundaries of the Brandon Marsh National Wildlife Refuge? Why should the public believe they will be given access to this land for wildlife-dependent recreational opportunities?**

Response: In September 2011, the Service's Director granted approval to conduct a detailed Land Protection Planning (LPP) study to investigate the possibility of expanding the approved refuge boundary of Bandon Marsh National Wildlife Refuge. The Service has not made any final decisions regarding the outcome of this study or refuge boundary expansion. We plan to request public comments on our Draft LPP and environmental assessment in fall 2012, and make a decision in winter 2012-2013.

If the refuge boundary is expanded and enough land or interests therein, are acquired from willing sellers to form a manageable land base, the Service would initiate a planning and public involvement process to consider opening the Refuge lands for recreational uses. Refuge uses must be compatible with the purpose of the individual refuge and the mission of the National Wildlife Refuge System. The Refuge System's priority wildlife-dependent public uses are hunting, fishing, wildlife observation and photography, and interpretation and environmental education. All of these activities are currently provided on the Refuge's Bandon Marsh Unit, and are currently being proposed for the Ni-les'tun Unit through the Refuge's Comprehensive Conservation Planning effort.

Land Acquisition

40. **Please provide the details of the proposed 576 acre land exchange at the Red River National Wildlife Refuge in Louisiana?**

Response: Currently, there are no plans for any land exchanges at Red River National Wildlife Refuge. Over the last seven years, the Service has completed three land exchanges at Red River NWR acquiring 2,074 acres in 2004; 32 acres in 2007; and, 68 acres in 2011.

41. **Who are the current owners of the 750 acres that the Service proposes to acquire for inclusion within the Everglades Headwaters National Wildlife Refuge?**

Response: Interested and willing landowners include Adams Ranch, Inc., Latt Maxcy Corporation, Lost Oaks Ranch, Montsdeoca Ranch, and Triple Diamond Ranch.

42. **Why is property being purchased for the St. Vincent National Wildlife Refuge that will cost the Service $250,000 per acre, when property in Central Florida is selling for $4,000 an acre? What did the Trust for Public Land pay to acquire this property and who were the previous owners?**

Response: Coastal property generally sells for a higher price per acre than inland property. Additionally, the four-acre tract being acquired at St. Vincent NWR has a dock, pier, 10 boat slips, deep water boat basin, access easement and one acre of undeveloped land which will be used for parking boats, trailers and equipment. Acquiring this site is important because it provides permanent deep water boat and barge access from the mainland to St. Vincent Island, the main unit of the refuge allowing staff to manage refuge activities including the federally-endangered red wolf captive breeding program. Currently, the refuge is paying $1,000 per month through a lease for boat and barge access at a campground 10 miles west of the marina. The lease must be renewed and negotiated annually. If the current lease is not extended or if this property is not acquired, refuge staff will have to travel 20 miles to Apalachicola to access the nearest public deep water marina.

The Trust for Public Land purchased this property in December 2010, for $1.2 million from the Schoelles family to assist the Service in securing permanent deep water access.

43. **Since this property is currently owned by The Trust for Public Land, what are the development pressures on this property?**

Response: There are no known development pressures at this time. The four-acre tract has existing boat slips, dock, pier and deep water boat basin. One acre of the property remains undeveloped.

44. **Did the Service ask The Trust for Public Land to donate this property to the National Wildlife Refuge System? What was their response?**

Response: Yes, the Service inquired about the potential donation of this property. The Trust for Public Land (TPL) currently is not in a position to do this and originally purchased the property with the intent of reselling it to the Service as soon as funding was available. TPL is a valuable partner and has worked in good faith with the Service on this project. TPL is selling the property for the same amount as the purchase price and is not seeking reimbursement for any associated costs involved in its purchase of the property including surveys and closing fees.

Everglades Headwaters National Wildlife Refuge

45. **On November 3, 2011, this Subcommittee conducted an Oversight Hearing on the proposed Everglades Headwaters National Wildlife Refuge. At that time, the Service indicated that it would cost our taxpayers about $700 million to acquire 150,000 acres of private land through fee title and conservation easements. It is now four months later and remarkably the price tag for these same 150,000 acres has dramatically declined to $398 million. What is the basis for this significant drop in cost?**

Response: During the initial planning phase, the estimate for fee and conservation easement values were based upon the sales agreement between the State of Florida and U.S. Sugar for lands surrounding Lake Okeechobee and the Natural Resources Conservation Service's Wetland Reserve Program easements in the Fisheating Creek drainage. Average costs were estimated to be approximately $7,000 per acre for fee acquisition and $3,500 per acre for conservation easements. The real estate market has been in steady decline. That trend continued over the last year as the planning process progressed. The Service reviewed county sales records and consulted with several realtors, and this research indicated the cost for large ranches averaged roughly $4,000 per acre with conservation easement values at $2,000 per acre by the end of 2011. Properties donated or transferred will lower the cost bringing the total estimated cost to $398 million. At this time, the Service is aware of potential donations and transfers totaling approximately 500 acres. As funds are made available for land acquisition or easements, appraisals will be done and real estate values can be expected to change over time given the status of the real estate market.

46. **On January 18, 2012, the Everglades Headwaters National Wildlife Refuge was administratively established with the donation of ten acres of property from The Nature Conservancy. Who were the previous owners of this property and why didn't TNC simply donate the land to the Fish and Wildlife Service?**

Response: In November 2008, The Nature Conservancy (TNC) acquired a 10-acre property from Hatchineha Ranch, LLC. In January 2012, TNC donated the 10- acre property to the Service after the Everglades Headwaters National Wildlife Refuge and Conservation Area was authorized. The Service cannot accept land donations until a national wildlife refuge is authorized.

47. **How much money is the Service requesting in FY'13 for conservation easements and fee title acquisitions for the Everglades Headwaters National Wildlife Refuge?**

Response: The Service is requesting $3 million in FY 2013 to acquire approximately 750 acres of ranchland in fee title for the Everglades Headwaters NWR. If funding is available, the Service will consider priority conservation easements as well.

48. **What federal tax benefits did The Nature Conservancy receive by donating the original 10 acres that established the Everglades Headwaters National Wildlife Refuge?**

Response: The Service does not know what, if any, tax benefits TNC will receive from the donation of the 10 acres that established the Everglades Headwaters NWR.

49. **Please provide to the Subcommittee a complete list of all property donated to the Fish and Wildlife Service in 2011 including the name of the individual or organization donating the land and the financial value of this property?**

Response: Attachment 2 contains is the Service list of donated tracts and the landowner names for FY 2011. The donation value column is incomplete, as the Regions are not required to record that information in the Lands Record System (LRS).

50. **What is the Service's estimate of how many individuals are going to visit and spend money to visit the Everglades Headwaters National Wildlife Refuge? Clearly, you must have done that calculation when you decided that it would cost $2.2 million to build a new office and visitor center at the refuge to accommodate them?**

Response: The Service estimated the cost of constructing a new office and visitor center based on a standardized national average construction cost of $443 per square foot for a 5,000 square foot building, thus providing a total cost estimate of $2.2 million. During the planning process, the Service examined the socioeconomic conditions of the project area as part of the Final Environmental Assessment for the Establishment of the Everglades Headwaters National Wildlife Refuge and Conservation Area. In 2008, tourism in Florida accounted for more than $65 billion in revenue. Collectively more than two million people visit the Arthur R. Marshall Loxahatchee (350,000), Merritt Island (700,000) and J. N. Ding Darling (1million) National Wildlife Refuges each year. These refuges offer recreational and educational programs similar to those envisioned for the Everglades Headwaters NWR. The Service anticipates annual visitation to the Everglades Headwaters NWR will grow to comparable numbers as recreational opportunities are put in place to complement those at surrounding refuges and state wildlife management areas.

51. **The Service continues to argue that the "vast majority of the comments express support for the proposal" to create the refuge. Please provide the Subcommittee with a complete copy of each of those comments.**

Response: The Service received more than 40,000 comments during the process to establish the Everglades Headwaters NWR. The transcripts from both public meetings held on the draft plan as well as a summary of comments from Appendix G in the final environmental assessment are included electronically as Attachments 3, 4, and 5. Comments submitted during the public review and comment period are summarized in five main categories (i.e., Wildlife and Habitat, Resource Protection, Recreation, Administration, and General).

52. **Has the Service finalized the conservation easement document for Central Florida? Please provide the Subcommittee with a copy.**

Response: Attached is a template for conservation easement negotiations with landowners within this project area that has been reviewed by the Department of the Interior's Office of the

Regional Solicitor. This template will be customized to address the specific needs of individual landowners. It provides the Service with the flexibility to ensure that specific landowner interests are considered appropriately.

Fisheries/National Fish Hatcheries

53. **In your FY'13 budget request, you propose to further cut the operations and maintenance budget for the National Fish Hatchery System by almost $3 million. What is the current operations and maintenance backlog?**

Response: The deferred maintenance backlog for the National Fish Hatchery System, which is based on continuously updated deferred maintenance projects in the Service's Asset and Maintenance Management System, is $162 million. The operational needs backlog, which includes projects identified in the Fisheries Operational Needs System, totals $198 million.

54. **How would you describe the condition of the Federal Hatchery System?**

Response: The average National Fish Hatchery System (NFHS) field station is 67 years old. The NFHS deferred maintenance backlog consists of projects totaling $162 million. The Current Replace Value (CRV) for NFHS field stations is $1.75 billion. The Facility Condition Index (FCI) for the NFHS is 0.096, which equates to a "fair" condition.

55. **Does the Service intend to recommend that any national fish hatchery should be transferred to a State in FY'13?**

Response: The only national fish hatchery the Service supports transferring to a state is the McKinney Lake Fish Hatchery in North Carolina. The McKinney Lake National Fish Hatchery was established in 1937 to produce largemouth bass, channel catfish, and sunfish, to support the Service's farm pond distribution program, which was aimed at providing native fingerling fish species to people who requested assistance with private ponds. The Service transferred that program to state agencies and, as a result, the McKinney Lake hatchery began to raise other species, including striped bass, to restore populations along the Atlantic Coast. Within a relatively short period of time, these efforts were quite successful.

In 1996, the Service offered the McKinney Lake facility to the State of North Carolina. Since that time, the North Carolina Wildlife Resources Commission has operated the hatchery under a Memorandum of Understanding with the Service, primarily for the purpose of raising catchable size channel catfish for the Commission's Community Fishing Program. Under this agreement, the Commission assumes full responsibility for all costs and expenses related to operation of hatchery facilities.

The Service supports the conveyance of the McKinney Lake National Fish Hatchery and its operations to the North Carolina Wildlife Resources Commission for the purposes of fish and wildlife management. This would allow for the continued operation of the hatchery and the

important role it plays in the State's urban fishing program and in addressing the specific restoration or recovery needs of aquatic resources held in public trust.

56. **How many "Friends Groups" have now been established within the National Fish Hatchery System? Please provide the Subcommittee with a complete list of these groups.**

Response: There are 27 Fisheries Friends Groups associated with 37 Fisheries facilities. One of these groups, Friends of the Western New York Great Lakes, is associated with a Fish and Wildlife Conservation Office and one other, the Tishomingo Refuge Ecology and Education Society, is a National Wildlife Refuge group that works jointly with Tishomingo National Fish Hatchery. All others are associated with specific National Fish Hatcheries. The list by Region is below:

Region 1

- Friends of Northwest Hatcheries: Leavenworth, WA 98826, It includes 9 facilities: Leavenworth NFH; Winthrop NFH; Entiat NFH; Mid-Columbia FRO; Spring Creek NFH; and Carson NFH: all in Washington; and Dworshak NFH; Kooskia NFH; and Hagerman NFH: all in Idaho.

Region 2

- Inks Dam NFH Friends Group: Marble Falls, TX.
- Friends of Alligator Snapping Turtles (FAST): Tishomingo, OK
- Tishomingo Refuge Ecology and Education Society (TREES): Tishomingo National Fish Hatchery friends (shared with Tishomingo National Wildlife Refuge): Tishomingo, OK
- Uvalde NFH Friends Group: Uvalde, TX

Region 3

- Friends of Jordan River NFH: Elmira, MI
- Friends of Pendills Creek NFH: Brimley, MI
- Friends of the Iron River NFH: Iron River, WI
- Friends of the Neosho NFH: Neosho, MO
- Friends of Upper Mississippi Fisheries Service: La Crosse WI 54601. It includes 3 facilities: Genoa NFH, LaCrosse FHC, and LaCrosse FRO

Region 4

- Friends of the Norfork National Fish Hatchery: Norfolk, AR
- Friends of Dale Hollow National Fish Hatchery: Celina, TN
- Friends of Mammoth Springs National Fish Hatchery: Mammoth Spring, AR
- Friends of Chattahoochee Forest National Fish Hatchery: Suches, GA
- F.I.S.H. – Friends in Support of the Hatchery (Natchitoches NFH): Natchitoches, LA
- Friends of Warm Springs Hatchery, Inc: Warm Springs, GA
- Friends of Wolf Creek National Fish Hatchery, Inc.: Jamestown, KY

Region 5

- Friends of Craig Brook NFH: East Orland, ME
- Friends of White Sulphur Springs NFH: White Sulphur Springs, WV
- Friends of the Western New York Great Lakes, Buffalo, NY
- Friends of Green Lake NFH: Ellsworth, ME
- Berkshire Hatchery Foundation: New Marlborough, MA

Region 6
- The Booth Society (DC Booth Historic National Fish Hatchery): Spearfish, SD
- Friends of Leadville NFH: Leadville, CO
- Friends of Gavins Point NFH: Yankton, SD
- Creston Hatchery Partners: Creston, MO

Region 8
- Friends of Coleman NFH Complex: Anderson, CA

57. **Please describe the jobs being performed by volunteers at these facilities and quantify the value of their labors in terms of volunteer hours and financial value of their work?**

Response: In FY 2011, the National Fish Hatchery System logged 110,913 volunteer hours valued at $2,480,015. Fish and Wildlife Conservation Offices logged 18,571 volunteer hours valued at $415,247. In total, 4,416 people (3,230 adults and 1,186 children) volunteered at Fisheries facilities and offices.

Volunteers at Fisheries Program field stations, including National Fish Hatcheries, Fish Technology Centers, Fish Health Centers, and Fish and Wildlife Conservation Offices contribute approximately 130,000 hours annually. The activities associated with their volunteer work include maintenance (e.g., mowing, weeding flower beds, painting, and cleaning raceways), assisting with special events such as fishing derbies and Project Healing Waters, assisting with spawning operations, field sampling (population and habitat assessments), running facility tours, trail maintenance, noxious weed control, and constructing predator barriers to name a few.

58. **How much money does the Service intend to allocate for the conservation of Atlantic striped bass in FY'13?**

Response: The Fisheries Program intends to allocate approximately $85,000 in the Northeast and Southeast Regions towards Atlantic striped bass conservation in Fiscal Year 2013.

59. **Two economic reports were recently issued about USFWS activities that described economic benefits and job creation for the US economy. The Southwick Report indicated that the Refuge System contributes about $4.2 Billion in economic activity and over 32,000 jobs through management of 553 national wildlife refuges. For every $1 of taxpayer money spent, the Refuge Program generates $14. The USFWS Economic Report, released by Secretary Salazar, indicated that the Fisheries Program contributes about $3.6 Billion in economic activity and over 68,000 jobs through contributions of only 150 fish hatcheries and conservation offices. For every**

$1 of taxpayer money spent, the Fisheries Program generates $28.In a time period where the President and Secretary of the Interior are proposing efforts to generate outdoor tourism and outdoor economy, the FY2013 President's Budget proposes significant increases for the Refuge Program but proposes significant decreases for the Fisheries Program. Please explain to the Committee the rationale for requesting reductions in a program that does more for the US economy than the rest of the agency.

Response: The multi-faceted nature of the Service's Fisheries program lends itself to contributing to the American economy. Direct (i.e., return on investment, economic output, and job maintenance and creation) and indirect (i.e., species preservation, recreational opportunities, and clean water and healthy habitats for both wildlife and the American people) benefits are attributable to the Fisheries program's activities.

The total economic contribution (direct, indirect and induced) attributable to dollars invested into the Service's Fisheries program amount to $3.6 billion per year with an additional $456 million dollars in consumer surplus for species held in refugia and $301 million dollars in equivalent value for subsistence activities. The total number of jobs associated with this economic output is over 68,000 jobs.

The Service's aquatic habitat conservation and management activities have an estimated economic contribution of $1.96 billion, and are associated with 44,500 jobs when projects achieve their full potential. The Service recognizes this and in an effort to offset the proposed $1.1 million reduction from Fish and Wildlife Conservation Offices (aquatic habitat general activities), the Service is requesting an additional $1.5 million increase for fish passage, $1.61 million for Klamath Basin Restoration Agreement, and $800,000 for the Fisheries Program to participate in a cooperative recovery initiative focusing on the recovery of endangered species located on and near National Wildlife Refuge lands.

The primary function of the National Fish Hatchery System is to propagate aquatic species to fulfill objectives of fishery management plans including restoration, recovery, mitigation, and recreational fishing. A key role is stocking of Tribal lands, fishery mitigation of Federal water development projects, and providing recreational opportunities on Service lands, military lands, and other lands where the service has a role. Just over five years ago, the estimate of the stocking of 123.1 million fish generated over 13 million angling days, $554,000 in retail sales, $903,000 of industrial output, $256,000 of job income and 8,000 jobs. The Service recognizes the benefits that mitigation hatcheries provide for recreational opportunities across the country. However, for decades the Service has absorbed the cost that the responsible federal agencies should be paying for. Mitigating for federal dam projects is not a high conservation priority for the Service when budgets are tight and our priority is to focus resources on native species and habitat protection. The Service has had experience obtaining reimbursement for mitigation hatcheries for years and believes that if we continue to provide good mitigation work to the responsible parties, they will continue to seek funding to reimburse us for that work.

60. **The USFWS has requested significant funding increases in science and LCCs for several years in a row and again in the FY2013 President's Budget. From what we**

can tell, these programs have not resulted in any economic benefit nor any job creation other than hiring high salaried bureaucrats. Please explain to the Committee what benefits the US economy has received from the USFWS science and LCC programs?

Response: As a natural resource management bureau, the Service is a science-based organization and requires trained scientists and basic science capability in order to apply scientific findings to resource management decisions. In FY 2010, the Service and its Federal and non-Federal partners began establishing the Landscape Conservation Cooperatives, a seamless national network of landscape-scale conservation partnerships that produce and disseminate applied science products for resource management decisions, and that lay the foundation for a collaborative interdisciplinary approach to landscape management. The FY 2012 Joint Statement of the Managers accompanying P.L. 112-74 recognizes the Service continues to face complex ecological and fiscal challenges that require resource threats to be addressed in a more efficient and effective way and supports the LCCs and their collaboration with partners to better leverage conservation resources and better prioritize and coordinate research and program delivery. To further the Service's collaborative approach to addressing threats to resources, the FY 2013 President's Budget request includes $770,000 for Cooperative Recovery. This new Service initiative focuses on endangered species recovery on and around wildlife refuges and is the only science program change from the FY 2012 enacted level.

Economic benefits of science conducted by LCCs will primarily be realized in the long term. LCC science will help improve water and air quality, maintain the viability of recreational areas, and recover listed and at-risk species. In the mid-term, science developed by LCCs will make it easier to site new energy development.

61. **The proposed increase to the science and LCC programs, appear to be based on reductions from other programs, such as fisheries funding, in the USFWS. Can you explain why the science and LCC programs are more important than on the ground conservation?**

Response: To further the Service's collaborative approach to addressing threats to resources, the FY 2013 President's Budget request includes an additional $770,000 in Science for Cooperative Recovery. This new Service initiative focuses on endangered species recovery on and around wildlife refuges and is the only program change from the FY 2012 enacted level. In tough budget times, the Service must make strategic choices to provide budget increases where they can serve the organizations goals. These choices reflect the best balancing we are able to do with the resources available.

62. **The USFWS receives significant amounts of funding through the U.S. Environmental Protection Agency for the Great Lakes Restoration Initiative. This funding is set to end in FY2013. Does the Service plan on continuing this important work and significant resource outcomes supported by the Initiative beyond FY2013. Will the USFWS submit a budget request for their activities after FY2013?**

Response: The Service continues diligent coordination of Great Lakes activities with fifteen other federal agencies, including the U.S. EPA Great Lakes National Program Office, and myriad State and non-governmental partners in order to implement the Great Lakes Restoration Initiative Action Plan (Plan). The Plan lays out a strategy through FY2014 to operationalize protection and restoration in the Great Lakes Basin.

The Service appreciates the Congressional support of Great Lakes restoration efforts. Funding allocated to the Great Lakes Restoration Initiative since FY 2010 has enhanced conservation momentum in the region and allowed the Service and partnering agencies to implement a number of coordinated, on-the-ground projects that address high priority Great Lakes environmental issues, including species and habitat, invasive species, and toxics. Funds provided through GLRI to the Service have allowed us to supplement our base-funded fish and wildlife conservation efforts, accelerating progress on high priority issues. The Service plans to continue working with our partners to analyze future Great Lakes conservation needs and associated budget. Should GLRI funding be discontinued after FY2013, the Service will continue to pursue conservation in the Great Lakes but at levels supported by base funding.

63. **The Department of the Interior and the USFWS have always supported recreational fishing as a core priority. This is represented in the organic legislation for the Refuge Program. Given your proposed reductions in the FY2013 Budget for Fisheries Program, does the USFWS plans to close or transfer facilities to State agencies as well as reduce the number of Fisheries employees?**

Response: In the past decade, our many partners, Congress, the Office of Management and Budget, and the Department of the Interior have asked us to intensify our efforts to obtain reimbursement for fish mitigation production from federal water development agencies.

Over the past three years, we have successfully negotiated with the Army Corps of Engineers to secure partial reimbursement, and negotiations to secure full reimbursement are on-going. We anticipate receiving partial reimbursement from the Bureau of Reclamation in FY 2013. We have met with the Tennessee Valley Authority, but have not reached a reimbursement agreement. In the absence of full mitigation reimbursement, we will look within the Service to keep staff employed. If we are unable to obtain full reimbursement, the Service will have to explore options that reflect our needs and priorities as a conservation agency. At this point, we do not anticipate the need to close or transfer facilities to State agencies or reduce the number of Fisheries employees.

64. **President Obama has recently proposed transferring NOAA out of the Department of Commerce and into the Department of the Interior. This seems to offer the country an opportunity to have the vast majority of fisheries research, management, and science under the Department and have the U.S. speak with one voice, both nationally and internationally. What are the USFWS thoughts on this proposal, and given the FY2013 budget reductions for Fisheries, how do the Director and the Secretary propose to implement this bold action?**

Response: The 2013 budget request does not propose any funding or FTEs relating to a consolidation of NOAA and the Department of the Interior. The President has requested that Congress reinstate the reorganization authority afforded to Presidents for almost 50 years. In general, the authority would allow the President to present, for expedited review by Congress, proposals to reorganize and consolidate Executive Branch agencies to streamline the government and improve operations. Efforts to begin planning will begin once Congress provides authority to the President to reorganize.

North American Wetlands Conservation Act

65. **What happened to Secretary Salazar's promise to fully fund the North American Wetlands Conservation Program at $75 million per year? Is it fair to say that this program is a much lower priority than land acquisition?**

Response: The President's 2010 budget requested over $52 million for the North American Wetlands Conservation Act (NAWCA), a $10 million increase from the previous year's request, and proposed fully funding the program at the authorized level of $75 million by 2012. The Administration requested $10 million less for NAWCA in 2011, but again increased the request to $50 million in 2012. None of these requests were fully funded by Congress. The FY 2013 request of over $39 million request reflects budgetary restrictions that necessitate careful allocation of agency funds to meet program priorities.

66. **How much of last year's $37.5 million was spent to acquire wetland habitat across Canada, Mexico and the United States?**

Response: Based on grant and match costs for activities proposed for 2011 NAWCA projects, an estimated $23.7 million of the $37.425 million appropriation would be used for habitat protection.

67. **How much of the proposed $39 million will be spent on acquiring wetland habitat in FY'13? What is the normal percentage spent on land acquisition?**

Response: Based on average activity costs proposed in NAWCA projects for the last five years, habitat protection accounts for approximately 66% of all grant and match costs. An estimated $24.7 million of a $39 million appropriation would be spent protecting wetland habitat through acquisition.

Endangered Species Act

68. **How many domestic species are now listed as either threatened or endangered?**

Response: As of April 11, 2012, the Service has listed 1,392 plants and animals as threatened or endangered. For more current information, please see our "Summary of Listed Species" available at: http://ecos.fws.gov/tess_public/pub/Boxscore.do

69. **In the history of the ESA Program, how many domestic species have recovered to the point where they were removed from protection under the Act? Please provide the Subcommittee with an updated recovery list?**

Response: The ESA was enacted in 1973 to prevent the loss or harm of endangered and threatened species and to preserve the ecosystems upon which these species depend. As one of our Nation's most important conservation statutes, the ESA has prevented hundreds of species from becoming extinct, stabilized the populations of many others, and set many species on the track to recovery. Each of these outcomes is a measure of success in achieving the purposes of the ESA.

The following species have been removed from the list of threatened and endangered species due to recovery:

American alligator
Robbins' cinquefoil
Tennessee purple coneflower
Maguire daisy
Columbia white-tailed deer, Douglas County DPS
Palau ground dove
Bald eagle
American peregrine falcon
Arctic peregrine falcon
Palau fantail flycatcher
Aleutian Canada goose
Tinian monarch
Palau owl
Brown pelican, Gulf coast DPS
Brown pelican, range-wide
Concho watersnake
Lake Erie watersnake
Eggert's sunflower
Gray whale
Gray wolf, Northern Rocky Mountain DPS
Gray wolf, Western Great Lakes DPS
Hoover's wooly-star

70. **For over 30 years, there was no regulation or binding policy defining the term "significant portion of its range". What was the net effect of the absence of this definition in the Endangered Species Act Program?**

Response: The net effect of no definition has been unclear and inconsistent application of the phrase as the Service has made determinations about whether particular species are endangered or threatened. This has manifested in litigation (as summarized on pp. 76989-90 of the Federal Register notice), a Memorandum Opinion by the Solicitor of the Department of the Interior, and now, the proposed policy.

71. **Is it not true that the terms "critical habitat", "endangered species", "threatened species" and "species" have all been defined by the Congress? What is your statutory authority for now administratively defining "significant portion of its range"?**

Response: The Endangered Species Act does include definitions of the terms "critical habitat," "endangered species," "threatened species," and "species". It does not include a definition of the phrase "significant portion of its range," which is found within the statutory definitions of "endangered species" and "threatened species".

Congress expressly gave the Secretary rule-making authority in sections 4(h) and 11(f) of the Act. In addition, "[i]t is well established that an agency charged with a duty to enforce or administer a statute has inherent authority to issue interpretive rules informing the public of the procedures and standards it intends to apply in exercising its discretion." Production Tool Corp. v. Employment & Training Admin., United States Dep't of Labor, 688 F.2d 1161, 1166 (7th Cir. Ill. 1982). The ESA requires that the Secretary, "... must determine whether any species is an endangered species or a threatened species" (section 4(a)(1)) and we must interpret those terms, both of which include the phrase in question, in a clear and consistent fashion.

72. **On Page 3 of your Federal Register Notice, the Service states that "the legislative history is somewhat contradictory and is not particularly conclusive as to the role Congress intended the SPR phrase to play." If that is the case, why has the Obama Administration not asked the Congress to clarify this term?**

Response: The Service considers promulgation of an interpretive rule as the most efficient and effective approach for clarifying this important phrase. Doing so is fully within the rule-making authority given to the Secretary by the Act.

73. **Is the basis of your regulatory effort the decision made by the 9th Circuit in the Defenders of Wildlife v Norton case in 2001? Why has this decision become the last word on this issue and does the philosophy of this court reflect the views of the Obama Administration?**

Response: As described in the preamble of the Federal Register notice, that particular decision is one element of our basis for the proposed policy but it does not constitute "the last word" on this issue. As explained in detail in the preamble of the Federal Register notice, the Service has considered a wide array of alternative interpretations of the phrase and our proposed policy represents our best judgment of how the phrase can be best aligned with the purposes of the Act and the various legal decisions that have addressed this matter.

74. **In your Federal Register notice, the Service stated that "Application of the Draft Policy would result in the Services listing and protecting throughout their ranges species that previously we either would not have listed, or would have listed in only portions of their ranges". How many additional species are you referring and please provide examples of specific species that would have been listed?**

Response: Any estimate of the particular number of species that would be listed based on the proposed policy would be speculative, but we do not expect the number to be large. To date, we have no examples to offer where a species was listed because it was endangered or threatened in only a significant portion of its range.

75. **What is the total number of acres that the Fish and Wildlife Service has designated as "critical habitat" to protect listed species throughout the United States?**

Response: The Service has designated approximately 314,510,142 acres as critical habitat to protect listed species throughout the United States. A few critical habitat designations were

established without clear boundaries so those are not included in this total. This total only counts an acre once, even though many critical habitat designations overlap.

76. **How many formal and informal Section 7 consultations did the Service undertake in 2011?**

Response: In 2011, the Service completed 626 formal consultations and 9,869 informal consultations.

77. **What are the values of Candidate Conservation Agreements? How many were approved by the Service last year?**

Response: Early conservation efforts for declining species can be greatly expanded through collaborative approaches that foster cooperation and exchange of ideas among multiple parties. One of the principal ways of identifying appropriate conservation efforts is through the development of candidate conservation agreements. There are two types of candidate agreements – Candidate Conservation Agreements (CCA) and Candidate Conservation Agreements with Assurances (CCAA). These voluntary agreements are designed to reduce or remove identified threats to a species. Several candidate agreements have resulted in alleviating the need to list species, for example the Camp Shelby burrowing crayfish and the Greater and Lesser Adams Cave beetles.

Since 1994, over 110 CCAs for over 160 candidate and at-risk species on Federal and State land have been signed with multiple Federal and State agencies. Currently, 25 CCAAs are in place for 40 species in 17 states with more than 1.1 million acres of non-Federal land enrolled by 70 landowners. Twelve of these CCAAs are programmatic agreements held by cooperating groups, such as State agencies or conservation groups, under which new landowners continue to enroll. Two CCAAs were approved in 2011; one new CCAA has been approved so far in 2012.

78. **How much money does the Service spend each year to recover the 590 foreign listed species?**

Response: For Fiscal Year 2011, Service programs reported spending $10,828,976 on the conservation of foreign-listed species. The great majority ($10,446,915) of these expenses were incurred by our International Affairs program, particularly the Multinational Species Conservation Funds. These included:

- Multinational Species Conservation Funds: $9,980,000
- Wildlife Without Borders Amphibians in Decline and Critically Endangered Animals funds: $325,237
- International Wildlife Trade—support for a Giant Panda Reintroduction Workshop: $141,678

The Multinational Species Conservation Funds (MSCF) support projects that provide for the conservation of rhinoceroses, tigers, great apes (including gibbons), marine turtles, and African and Asian elephants, all of which are foreign species listed under the ESA. While most of our Wildlife Without Borders grants support education and capacity building for biodiversity conservation in and around protected areas in developing countries, the Amphibians in Decline

and Critically Endangered Animals funds help support the conservation of individual species, including in FY 2011 the foreign listed African wild dog, great Indian bustard, snow leopard, markhor, Tonkin snub-nosed monkey, Bali starling, Andean tapir, ploughshare tortoise, Grevy's zebra, Panamanian golden frog, and Chinese giant salamander.

The remainder of these expenditures was largely incurred by the Endangered Species Program working on listings of foreign species. Our total does not include permit costs for foreign listed species, as we do not track expenditures for the 16,000 to 20,000 permits we issue each year on a per-permit or per-species basis. However, much of our permitting workload addresses domestic species in international trade, and most of the approximately 35,000 species listed on the CITES appendices are not also listed under the ESA.

79. **What is the value of listing foreign species which are already protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora?**

Response: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) only deals with species that occur in international trade. Listing foreign species under the Endangered Species Act (Act) is not limited to species found in international trade. The Act makes it unlawful for persons subject to U.S. law to import, export, and conduct interstate or foreign commerce in protected animal species unless authorized by a permit. The value of listing foreign species is that it encourages species conservation in foreign countries through incentives such as permitting for certain approved activities, provides education and outreach, and can provide an enhancement benefit to wild populations by providing funding for in-situ conservation in foreign countries.

80. **What is the annual cost to list and maintain the current 590 foreign listed species?**

Response: The Service spent $645,439 in FY 2011 to support the workload associated with rulemakings and petition findings for listing foreign species under the ESA. The Service also supports approximately one FTE for addressing the reclassification and delisting of foreign species under the ESA through ESA Recovery funding.

81. **Is the Service required to complete a 5-year review of each foreign species? What is the cost in terms of money and staff time to complete these reviews?**

Response: Section 4 (c)(2)(A) of the ESA, as amended, requires the Service to evaluate the status of listed species, domestic or foreign, at least once every 5 years. Within the Service, priority is given to prepare and implement recovery plans for domestic listed species, so the Service has only allocated one FTE of funding for downlisting, delisting, and 5-year reviews for foreign species.

82. **Of the 590 foreign listed species, how many have distinct population segments have been established by the Service?**

Response: Thirteen species have distinct population segments that includes portions outside the United States: American crocodile, saltwater crocodile, dugong, southern rockhopper penguin, margay, musk deer, argali, leopard, thick-billed parrot, Cat-island turtle, Mexican grizzly, brown bear, and northern swift fox.

National Wildlife Refuge Fund

83. **Last year, the Service was asked to describe the basis of your statement that "National Wildlife Refuges have been found to generate far in excess of tax losses from federal acquisition of the land." In your response, you note the 2006 economic analysis conducted by the Service. What I am looking for are peer reviewed studies by organizations, outside of the Department of the Interior, who can substantiate those claims? Please provide to the Subcommittee, a comprehensive list of those studies and their Executive Summaries.**

Response: The articles referenced below are just a few of the studies available to the public concerning economic analysis conducted on the value of public lands.

- The Trust for Public Land. 2010. Return on the Investment from the Land and Water Conservation Fund. The Trust for Public Land conducted an analysis of the return on the investment of LWCF dollars for federal land acquisition by the Bureau of Land Management, Fish and Wildlife Service, Forest Service and National Park Service for a sample of 16 federal units that received LWCF funding between 1998 and 2009. TPL analyzed the past (1998 to 2009) and likely future (over the next 10 years) economic returns generated from LWCF spending on the sample federal units and found that every $1 invested returns $4 in economic value over this time period from natural resource goods and services alone. In addition to providing natural goods and services, these federal lands are key to local recreation and tourism industries
- Land for Tomorrow. 2009. Economic Benefits of Land Conservation: North Carolina 2009. North Carolina's wide range of natural resources and scenic beauty enhance a North Carolinian's quality of life and provide multiple economic benefits. This brief report summarizes the economic benefits of land conservation into the categories of tourism, hunting and fishing, outdoor recreation, military readiness, agriculture and forestry, retirees, storm damage protection and health.
- The Trust for Public Land. 2011. North Carolina's Return on the Investment in Land Conservation. The Trust for Public Land conducted an analysis of the return on North Carolina's investment in land conservation through the Agricultural Development and Farmland Preservation Trust Fund, Clean Water Management Trust Fund, Natural Heritage Trust Fund and Parks and Recreation Trust Fund (the "Conservation Trust Funds"). The Trust for Public Land analyzed the past and likely future economic returns generated from Conservation Trust Funds land acquisition spending and found that every $1 invested returns $4 in economic value over this time period from natural resource goods and services alone.
- Headwaters Economics. 2009. The Economic Benefits of the Land and Water Conservation Fund. This short paper summarizes the important economic role that LWCF funding plays for local communities. The three-page paper includes a short bibliography.
- Active Living Research. 2010. The Economic Benefits of Open Space, Recreation Facilities and Walkable Community Design. This research synthesis reviews the sizable body of peer-

reviewed and independent reports on the economic value of outdoor recreation facilities, open spaces and walkable community design. It focuses on private benefits that accrue to nearby homeowners and to other users of open space. It concludes that in addition to providing opportunities for physical activity, recreation areas and parks located in metropolitan areas provide economic benefits to residents, municipal governments and private real estate developers.

- American Farmland Trust. 2010. Cost of Community Services Studies Fact Sheet. This short report surveyed Cost of Community Services studies conducted in at least 125 communities in the United States. These studies, conducted over the last 20 years, show that working lands generate more public revenues than they demand in public services. Their impact on community coffers is similar to that of other commercial and industrial land uses.
- McConnell, Virginia and Margaret Walls. 2005. The Value of Open Space: Evidence from Studies of Nonmarket Benefits. Resources for the Future. Open space provides a range of benefits to citizens of a community beyond the benefits that accrue to private landowners. Parks and natural areas can be used for recreation; wetlands and forests supply stormwater drainage and wildlife habitat; farms and forests provide aesthetic benefits to surrounding residents. This study reviews more than 60 published articles that have attempted to estimate the value of different types of open space.

84. **Are representatives of the Service still advising local counties that they will be compensated under the Refuge Revenue Sharing Program for lost tax revenues when private property in their communities are purchased by the federal government and incorporated within the National Wildlife Refuge System?**

Response: As an agency of the United States Government, the Service is exempt from taxation. There is a possibility that the local governments may receive a full revenue sharing payment based on 25 percent of the net receipts, ¾ of 1 percent of the appraised value of the refuge land, or 75 cents per acre. In addition, Congress has the authority to appropriate funds to make up any shortfall in the revenue sharing fund.

85. **Prior to last year budget request of no appropriated funds for the National Wildlife Refuge Fund, had any Administration, Republican or Democrat, in the past 75 years suggested zero appropriated dollars? Please identify those requests by year and Administration.**

Response: FY 1980 is the first year appropriations were authorized to offset the difference between the receipts available for payment and the amount due local governments (16 U.S.C. 715s). Appropriated funds have been requested for the National Wildlife Refuge Fund from 1980 through 2011.

86. **Please provide a breakdown of the projected FY'12 refuge revenue payments for each Member of this Subcommittee which has a National Wildlife Refuge?**

Response: Payments are typically made to local governments by the end of June of the following year. The Refuge appraisal, acreage, and revenue receipt information is currently being updated to calculate the total funds available to make payments.

Lacey Act Listing of Constrictor Snakes

87. **Secretary of the Interior Ken Salazar was quoted as saying that the decision to list the Burmese python, the yellow Anaconda, the Northern African python and the Southern African python on the Lacey Act was an effort to "strike a balance" between economic and environmental concerns. Please elaborate on statement?**

Response: Under Title 18 of the Lacey Act, the Secretary has discretion to list a species if it is injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States. The Service evaluates a number of criteria in making injurious wildlife determinations, such as the likelihood for harm, as just defined, if a species is introduced into the environment, and various measures for mitigation that may exist. In addition, the Service completed the required determinations under EO 12866, which included an economic analysis. The Secretary considered various aspects of these evaluations in making the determination to list these four species on the Lacey Act. The Service is continuing to consider the status of the other five species and will publish final determinations for those species when that process is completed. Please see response to Question 94 for additional details.

88. **How will listing these four nonnative constrictor snake species impact the wild population of Burmese pythons in the Florida Everglades?**

Response: The rule alone will not reduce the population of Burmese pythons in Florida. Similarly, the rule will not reduce or eliminate the populations of northern African pythons in Florida. However, the importation and interstate transport prohibitions should reduce the populations of those species in conjunction with control programs, including an early detection and rapid response interagency team, public awareness about the snake's potential threats, and the reporting of sightings in the wild. Furthermore, we believe the rule will be effective in other ways. The prohibitions should prevent future introductions of pathogens or parasites associated with these snakes. We believe that prohibiting the interstate trade of these constrictor species, along with prohibitions of further importations, will reduce the risk of them spreading to new areas of the United States, including the territories and insular possessions. The most likely way for the injurious listing provisions to be successful is if they are applied before a species is present in the United States or in vulnerable parts of the United States. The two other constrictor snake species (yellow anaconda and southern African python) that were listed as injurious are not yet established in this country and may be prevented from becoming established in Florida, as well as other vulnerable areas of the country. Furthermore, the purpose of listing the four species in all areas of the country is to prevent establishment in any areas of the country that do not currently have the four species. If the rule can prevent introductions to any vulnerable parts of the country, it will be effective.

89. **Is there any language in your Final Rule or your FY'13 budget request that provides money to eradicate Burmese pythons in the Florida Everglades?**

Response: The Service has not requested funding to specifically control Burmese pythons in Florida for FY 2013. The final rule listing the four nonnative large constrictor snakes only

includes language to amend the implementing regulations of the Lacey Act to list the snakes as injurious wildlife, along with the justification and required determinations.

In the 2013 budget, the Department of the Interior has requested an additional $1 million to support the U.S. Geological Survey in its efforts to conduct scientific investigations to assist in the sustainable use, protection, and restoration of the South Florida ecosystem. Funding will support high priority invasive species research needs identified by interagency groups, such as the South Florida Ecosystem Restoration Task Force's Working Group and Science Coordination Group including: quantifying ecosystem effects of invasive species; filling key biological and ecological information gaps of invasive species to better inform early detection efforts of partnering agencies; and to improve methods that can be used to better detect and control such species as Burmese pythons for which ecosystem effects have been documented.

90. **In the last Congress, Representative Tom Rooney introduced H. R. 3215 to authorize the Secretary of the Interior to allow individuals to hunt and kill Burmese pythons within the boundaries of that Park. Does the Service support the goals of this legislation?**

Response: The Service does not have a policy on hunting within national park lands and would support the decision of the National Park Service. The National Park Service has previously prepared extensive responses to and addressed this proposed legislation (H.R. 3215) to authorize the hunting and killing of Burmese pythons within the boundaries of the Park.

91. **By listing these species on the Lacey Act, the interstate transport and importation of live individuals, gametes, viable eggs, or hybrids of these snakes is prohibited. Is that correct? If that is the case, how is it that the Department of the Interior's Press Release on their listing states that "Many people who own any of these four species will not be affected." What is the economic value of these snakes after their listing? What happens to the breeder who has legally obtained their Burmese pythons and now has a stock of hybrids worth thousands of dollars?**

Response: Yes, by listing these species under the Lacey Act, the interstate transport and importation of live individuals, gametes, viable eggs, or hybrids of these snakes is prohibited.

The majority of people who own these species of snakes are pet owners, rather than dealers. They will still be able to keep their snakes and buy supplies as they could before the listing. No permits are needed or fees imposed on any snake that stays within its home State as a result of this listing. While some owners will want to take their pets to another State, not all of them will, and therefore, those people will not be affected.

The value of these snakes varies among individuals because of size, colors, skin patterns, source, and other factors. We do not know whether their value will decrease because it will be harder to sell to a limited market or whether their value will increase within-state and for exports due to the decreased availability of these constrictors in certain areas. Furthermore, other factors play a role in the value of these snakes, such as the national economic situation and individual States' regulations that may be in place regarding these species.

Breeders of the listed snakes can still sell their stock within-State and export them under certain conditions from designated ports (please see Questions 96 and 97 below regarding exports). In addition, the breeders had 60 days' notice to sell their stocks before the rule took effect. The breeders also had some indication that such a regulation was being considered since the Service published its Notice of Inquiry in January 2008. During that time, they could have switched to other species. Breeders also have the option to sell animal skins, which are valuable and are not regulated under this listing.

92. **Does the Service intend to compensate those breeders?**

Response: The Service does not have a mechanism for compensating the breeders affected by the listing of the four non-native constrictor snakes as injurious under the Lacey Act. Those breeders may still sell their stock within their State, and breeders in States with designated ports may still export those snakes under certain conditions (please see Questions 96 and 97 below regarding exports).

93. **Included within your Final Rule was the statement that "We realize that hybrids often are worth significantly more money than the parent species separately. Allowing hybrids would preserve more of the income of some breeders". Since you have listed all "hybrids" on the Lacey Act, has does this statement square with the comment that "Many people who own any of these four species will not be affected"?**

Response: The Service made the statement about hybrids in the final rule in our explanation of one of the alternatives we considered (exempting hybrids). In our explanation of why we did not exempt hybrids, we explained that they pose at least the same risk as their parent species as determined by our injurious wildlife evaluation. The statement that many people who own these species will not be affected refers to the pet owners as well as hobbyist breeders who sell locally. Please see responses to Question 91 below for additional details.

94. **What is your analysis of the economic impact of listing these four nonnative snake species? (8). Director Dan Ashe was quoted in the January 17th Department of the Interior Press Release as saying "The Service will continue to consider listing as injurious the five other species of nonnative snakes that the agency also proposed in 2010". When will you publish a determination of whether these species should be listed as injurious?**

Response: Our final economic analysis shows that listing the four species would cause total annual decreases in retail value of $3.7 – $7.6 million and an economic output of $10.7 – 21.8 million, estimates that are based on the conservative assumption that consumers who would have bought one of the prohibited species will not buy another species of snake or other pet instead. However, the Federal government, State governments, and other entities have spent, and will continue to spend, millions of dollars controlling and preventing the spread of constrictor snakes already in the United States. The Service and its partners have spent more than $6 million since 2005 finding and applying solutions to the growing problem of Burmese pythons and other large invasive constrictor snakes in Florida. Therefore, the listing of these four species should help

keep these costs from increasing. The Service's full economic report can be found at: http://www.fws.gov/fisheries/ANS/pdf_files/Final_Economic_Analysis_for_4%20species.pdf

The four species designated as injurious at this time (the Burmese python, northern and southern African pythons and yellow anaconda) were all judged to have a "high" overall risk in a scientific evaluation undertaken by the United States Geological Survey. Based on that evaluation and the other information set forth in the final rule, the Service determined that it was appropriate to proceed to designate these four species as injurious now, rather than deferring action on these species until the status of the other five species (reticulated python, DeSchauensee's anaconda, green anaconda, Beni anaconda and the boa constrictor) is resolved. The Service is continuing to consider the status of the other five species and will publish final determinations for those species when that process is completed.

95. **Is there a viable reproducing population of Boa constrictors in the Florida Everglades?**

Response: Although the boa constrictor has been introduced in many areas in Florida, the species is known to be established as a self-sustaining, reproducing population only in and around the 444-acre environmental preserve located on the edge of Biscayne Bay known as the Charles Deering Estate in Miami-Dade County. The Deering Estate is a sub-region within the Biscayne Bay Coastal Wetlands Project, a component of the Comprehensive Everglades Restoration Plan. There have been multiple single-snake sightings throughout the Everglades geographic area and in nearby areas north and west of the Everglades. Our biological and management profile of the large constrictor snakes also revealed that the boa constrictor has been introduced and has established breeding populations in the Commonwealth of Puerto Rico.

96. **Why is it legal to export any of the four listed species of snakes from various "Designated Ports" throughout the United States?**

Response: The injurious wildlife provisions of the Lacey Act prohibit import and interstate transport of listed species. They do not restrict direct export to another country from a U.S. state.

97. **Why is the export of these species limited to "Designated Ports" in 16 U. S. states? If the goal is to remove these snakes from the United States, why wouldn't we want to encourage their export?**

Response: Each of these snakes is also protected under the CITES treaty. Exporters by regulation must use a designated port or obtain a designated port exception permit from the Service authorizing export from another location for CITES-listed wildlife. The Service has no position with respect to encouraging or discouraging export of these snakes.

98. **How does an individual obtain a designated port exception permit? How many have been issued during the past five years?**

Response: The individual must complete and submit an application (Form 3-200-2) to the Service and pay a $100 permit application fee. Information that must be provided includes a

written statement showing how the shipment meets Service criteria for permit issuance. Designated port exception permits are issued only to accommodate imports/exports for scientific purposes; minimize or prevent deterioration or loss of the wildlife; or alleviate undue economic hardship for the importer/exporter. Over the period 2007 through 2012, the Service issued 2,282 designated port exception permits.

Lacey Act of Timber Products

99. **How many shipments have been seized under the Legal Timber Protection Act? What kind of wood or timber products were seized and what was the origin of these imports?**

Response: The Service's responsibilities under the Legal Timber Protection Act involve the criminal investigation of plant trafficking. We do not inspect shipments for admissibility at the Nation's ports of entry. The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) and Customs and Border Protection (CBP) in the Department of Homeland Security share responsibility for the inspection and seizure of plant and plant product shipments entering the United States in violation of this Act.

100. **Would the Service support legislation to grandfather all plants harvested or products manufactured before May 22, 2008?**

Response: We understand the desire of the concerned public for a grandfather clause for plants harvested or products manufactured before the enactment of the plant amendments to the Lacey Act. However, we would ask that Congress exercise great care in considering such a grandfather clause. We note that an overly broad grandfather clause can provide a tool for criminals. They could utilize an overly broad clause to launder illegally obtained or harvested plants or plant products that were taken, imported, purchased, or sold in violation of U.S. or foreign law.

We do not believe that the track record of seizures since the 2008 Plant Amendments demonstrates a need for a grandfather clause. The Service has not seized any instruments from individual owners. The Service has completed only one forfeiture action under the Plant Amendments involving three pallets of tropical hardwoods unlawfully imported from Peru worth approximately $7,000.

We are happy to meet with the subcommittee and any Members of Congress to discuss how we implement the Plant Amendments and whether there is a need for a grandfather clause and if so, how it might be structured.

101. **As the Lacey Act is enforced, I have been informed that some importers find it difficult to determine which foreign laws will be relevant and how the federal government may interpret them. Would the Service support the development and upkeep of a federal database of all foreign forestry and timber laws so that American customers can fully understand the implications of these statutes?**

Response: The Service is not in a position to create a comprehensive database of foreign laws and keep it up to date. We would defer to the U.S. Departments of Agriculture and Homeland Security, which are responsible for reviewing declarations, and inspecting shipments, of plants and plant products imported into the United States, to comment on the feasibility and value of such a database. We note, however, that just as we expect foreigners to abide by U.S. laws when obtaining products from our country, it is incumbent upon U.S. citizens and companies doing business abroad to be familiar with the laws of the countries with which they are doing business.

102. **Would the Service support a standard certification process for plant and plant products?**

Response: The Service would defer to the U.S. Departments of Agriculture and Homeland Security, which are responsible for reviewing declarations, and inspecting shipments, of plants and plant products imported into the United States, to comment on the feasibility and value of a standard certification process. If these agencies were mandated to develop a standard certification process, the Service would support our Federal partners in its development.

103. **Would the Service support an amendment to the Lacey Act which stipulated that it would not apply to a de minims amount of plant material? As an example, a saxophone with cork bumpers or a synthetic blouse with wooden buttons.**

Response: The 2008 amendments to the Lacey Act made it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported or sold in violation of the laws of the United States, a state, an Indian tribe, or any foreign law that protects plants. These amendments also made it unlawful to make or submit any false record, account or label for, or any false identification of, any plant covered by the Act and require declarations to be filed on import for certain plant products.

The Service shares responsibility for implementing and enforcing these Lacey Act provisions with APHIS and CBP. The Service, therefore, cannot comment on proposed changes without interagency consultation and development of a unified Executive Branch position.

104. **There has been a great deal of discussion about the need for a so-called "innocent owner" provision within Section 8204 of P. L. 110-234. What does the Service define as an "innocent owner"? Does the Service believe this law should contain such a provision and how should this language be crafted?**

Response: The term "innocent owner" was used by Congress in the Civil Asset Forfeiture Reform Act to refer to those who own property (such as a motel) that is used without their knowledge or consent in the commission of a crime (e.g., drug trafficking). Individuals and companies that import wildlife or plants are responsible for complying with the laws and regulations that govern that activity (in the same way, for example, that we are all responsible for knowing how laws regulate drug possession, motor vehicle operation, and personal and business income taxes).

The Lacey Act already contains criteria for criminal and civil charges and for forfeiture that accommodate different levels of culpability. Investigators must prove that violations were knowingly committed to support a criminal charge or that the importer "should have known" the activity was illegal in "the exercise of due care" to pursue civil penalties. Forfeiture is authorized on a strict liability basis, and courts that have considered this issue have held that wildlife or plants that have been illegally imported in violation of conservation laws and regulations are contraband and thus subject to forfeiture.

Cooperative Endangered Species Conservation Fund

105. **In FY'12, Congress appropriated $47.6 million for the Cooperative Endangered Species Conservation Fund. How much of this money will be spent on habitat acquisition?**

Response: For FY 2012, the Service has $9,984,000 to support the Recovery Land Acquisition Grant Program, and $14,976,000 to support the Habitat Conservation Plan Land Acquisition Grant Program. Therefore, of the $47.6 million appropriated for the Cooperative Endangered Species Conservation fund in FY 2012, $24,960,000 has been identified to support habitat acquisition.

106. **How much of the $60 million proposed in FY'13 will be spent on habitat acquisition next year?**

Response: For FY 2013, the President's budget request is for $15,487,000 in support of Recovery Land Acquisition Grants, and $21,938,000 in support of Habitat Conservation Plan Land Acquisition Grants. Therefore, of the $60 million in the President's FY 2013 budget request for the Cooperative Endangered Species Conservation Fund, $37,416,000 is proposed to support habitat acquisition.

107. **How many habitat conservation plans were finalized in 2011?**

Response: In calendar year 2011, ten habitat conservation plans were finalized and issued a permit.

Law Enforcement

108. **What is the number of Fish and Wildlife Service special agents, wildlife inspectors and wildlife forensic scientists? How many of these agents do you anticipate retiring in FY'13?**

Response: The Service currently has 226 special agents (including managers and supervisors) and 142 wildlife inspectors. Staff at the National Fish and Wildlife Forensics Laboratory includes 20 forensic scientists and 5 laboratory technicians. Eight Service special agents will retire between now and the end of FY 2013. This number includes four scheduled elective retirements and four mandatory retirements.

Of the current force of 226 agents, 30 additional agents could elect to retire at any time. Factors such as a change in retirement benefits, continued pay freezes, increasing workload, or the need to reassign positions to high priority locations could result in additional attrition.

109. **How many agents are currently going through training and will join the Service next year?**

Response: None.

110. **How many big cats have been seized under the Captive Wildlife Safety Act? What happens to these cats upon the completion of forfeiture proceedings?**

Response: The Service has not seized big cats under the Captive Wildlife Safety Act. Most of the species covered by this Act were already protected under the Endangered Species Act, and violations involving import or interstate commerce would typically be pursued under that statute.

Attempts are made to find suitable placements for live wildlife forfeited to the Service; examples include licensed zoos and animal sanctuaries.

111. **Does the Service support amending the Lacey Act to prohibit the possession and breeding of those species already listed as "injurious wildlife"?**

Response: The Service is reviewing the full range of activities needed to improve the injurious wildlife provisions of the Lacey Act. These activities include how regulations, voluntary efforts, and enforcement can be improved, and ways to ensure that the latest scientific methods are transparently incorporated into the evaluation and screening processes.

The issue of whether to prohibit the breeding and possession of species already listed as injurious is also under review. We look forward to working with Congress and interested stakeholders, constituents, and partners as this effort moves forward, as a constructive dialogue will be critical to ensuring how we can all more effectively achieve invasive species prevention goals and mitigate the significant economic and natural resource damages such species cause our nation each year.

112. **How much money will the Service dedicate to enforcing the Lacey Act in FY'13 with emphasis on the four nonnative constrictor snakes that were recently listed as "injurious wildlife"?**

Response: Enforcement of the injurious wildlife provisions of the Lacey Act will remain a core enforcement responsibility for the Service. The Service, however, does not allocate enforcement resources by statute.

113. **Is it still possible for an individual to visit a traditional Chinese medicine pharmacy in the United States and find products whose label indicates they contain components of highly endangered tigers and rhinoceros?**

Response: In all likelihood, such products can still be found for sale in the United States. Product labeling prohibitions making such sales illegal were added to the Rhino Tiger Conservation Act without resources to support site-by-site compliance monitoring.

Captively-Bred African Antelopes

114. **What are the population estimates for scimitar-horned Oryx, Dama gazelle and addax antelopes in their native range states in Africa?**

Response: According to the International Union for Conservation of Nature, the most current estimates for the wild populations of these species are:

- Scimitar-horned oryx – 0
- Dama gazelle – fewer than 500
- Addax – fewer than 300.

115. **What are the estimates of the populations of these three species held in captivity in the United States? Hasn't the Service stated that these captive populations are important to the survival of the species?**

Response: There is not a definitive estimate of the number of individuals of these three species held in captivity in the United States. According to estimates made by the Exotic Wildlife Association in 2010, their members then held 11,032 oryx, 5,112 addax, and 894 dama gazelle.

The Service has consistently recognized that captive breeding has contributed to the survival of these species. We acknowledged the contribution of captive breeding at the time these species were listed under the ESA in 2005. The scimitar-horned oryx would not exist at all if it were not for captive populations, and the other two species exist in captivity in greater numbers than in the wild; further, their wild populations continue to decline. Captive-breeding programs have also assisted in the re-establishment of some small populations of these species in the wild.

116. **How will the loss of the Fish and Wildlife Service's "special rule" exempting U. S. herds from certain prohibited activities under the Endangered Species Act affect captive populations of these antelope species?**

Response: The Service has been working diligently to reach out to ranches and zoos that hold these animals and assist them in obtaining the necessary permits to continue the activities that were authorized under the special rule. We have streamlined the permit process, provided written guidance to applicants to assist them in filling out the application forms, given expedited treatment to these applications to help prevent any lapse in authority for them to continue their activities when the special rule was repealed on April 4, 2012, and extended the validity of the captive-bred wildlife (CBW) registration from 3 to 5 years. Anyone lawfully conducting their management activities with these species, including hunting, under the special rule, will continue to be able to do so under the permitting system we have in place, which has already been in use for years for other similar exotic hoof stock under the same type of management.

117. **Unless these ranchers can obtain all necessary permits in an expedited manner, what incentives do these Americans have to conserve these species that have largely disappeared from their native lands?**

Response: The Service has made every effort to inform ranchers about the permitting process and to process applications in a timely manner to ensure that the ranchers can continue their activities. We have given these applications the highest priority, and as of April, 12, 2012, 33 ranches have received the necessary permits to continue their activities with these antelopes.

118. **Does the Fish and Wildlife Service care whether these species continues to exist in the United States?**

Response: Yes. The Service appreciates the efforts that have been made to preserve these species in captivity, and for the efforts of individuals and institutions to ensure that stock is available for potential release when secure habitat and conditions becomes available in their native ranges.

119. **According to your new final rule, it is a violation of federal law to take any of these antelope species after April 4, 2012. Since there may be no incentive to have these animals after that date, what happens to those individuals who decided to significantly reduce the size of their herds prior to the effective date?**

Response: A financial incentive for maintaining these herds will continue to exist since ranchers can obtain permits to conduct the same culling activity that had previously been authorized without a permit. The original listing authorized take of these antelopes without a permit only as part of a management activity "that contributes to increasing or sustaining captive numbers...." (i.e., culling part of a herd for the purpose of herd management). Take to "significantly reduce the size of ...herds" has never been lawful. Simply killing animals to get rid of them or to avoid regulation would have been a violation of the ESA. With the repeal of the management rule, this prohibition has not changed.

120. **Are there exceptions to the "take" prohibition after April 4, 2012? If there are, please describe them?**

Response: As explained above, "take" can be authorized under Service issued permits. It is through these permits that ranchers and hunters will be able to cull captive herds of the three antelope species. There are some very limited exceptions to ESA permit requirements for take (50 CFR 17.21(c)). These exceptions deal with such circumstances as taking an endangered species in defense of your own life or the lives of others (i.e., an attacking grizzly bear) and the "take" by Federal and State officers in the performance of their official duties (i.e., take of an injured animal or an animal that poses a demonstrable risk to human safety).

The Service has determined that normal husbandry procedures and veterinary care for captive ESA-listed wildlife does not constitute take. This would include terminating the life of a sick or severely injured animal. Authorization can be granted by the Service for the deliberate killing of a healthy animal through the captive-bred wildlife registration program, if the taking is necessary

for proper management of the herd. Such take or culling of animals must be done by the rancher and employees of the ranch. If the ranch wants to allow hunters (non-employees) on to their ranch to assist in the management of the herd, the ranch would need an interstate commerce/take permit authorizing the removal of excess animals for the purpose of herd management.

121. **The Service has indicated that it was working to "streamline the permitting process and minimize any burden on the public." If a rancher applies for a permit on April 1st, when can they expect to get that permit? Will ranchers be required to get a permit for each animal? What is the proposed cost of these permits?**

Response: It should be noted that the permits that are now required to continue activities with these antelopes on ranches are the same permits many of these same ranches, or other ranches in Texas and elsewhere, have obtained to conduct the same activities with other ESA-listed exotic hoofstock, including red lechwe, barasingha (swamp deer), and Eld's deer.
If a rancher applies for a permit on April 1, it would take between 45 and 60 days to obtain (assuming they qualify). After initial processing of a few days, a notice of receipt of the application must be published in the Federal Register with a 30-day public comment period. Following the comment period, we must review and evaluate any comments received, complete our evaluation of the application, and issue the permit. Most of the time it takes to process and issue a permit is taken up by the public comment period required by the ESA.

Ranchers are not required to get a separate permit for each animal. The captive-bred wildlife registration covers the entire breeding operation. The take permit (to cover take of animals by outside hunters) is issued for a year and covers any number of animals taken on the ranch during that year. It is renewed annually, but only subject to a public comment period once every 5 years. The captive-bred wildlife registration is good for 5 years and covers take by the rancher or his/her employees for the purpose of herd management, sales of animals between registered operations, and export.

There is a $200 application fee for the captive-bred wildlife application and a $100 application fee for the take permit. Therefore, in a 5-year period, the total cost of a captive-bred wildlife registration and authorization to take animals under the take permits would be $700, or an average of $140 each year.

Miscellaneous

122. **Why is the Obama Administration requesting a cancellation of $200 million to Gulf Coast states under the Coastal Impact Assistance Program?**

Response: $540 million of the $1 billion provided in FY 2007 – 2010 still remains available under the Coastal Impact Assistance Program (CIAP). CIAP gives states broad flexibility to use the funds, so there is little accountability for achieving specific results. Given the billions of dollars soon to be available to the Gulf Coast states from responsible parties, including from fines and penalties, and from other programs better targeted at ecosystem restoration, the Administration plans on using this reduction in CIAP balances to fund higher priorities elsewhere.

123. **Why have these funds not been distributed to those states impacted by oil and gas development in the Gulf of Mexico as directed by Section 384 of the Energy Policy Act of 2005?**

Response: In 2005, the Secretary of Interior delegated Federal authority and responsibility for Coastal Impact Assistance Program (CIAP) to the Minerals Management Service (MMS – which was later reorganized as the Bureau of Ocean Energy Management Regulation and Enforcement (BOEMRE)). The MMS/BOEMRE approved State CIAP Plans for each of the six States for FY 2007 – 2010 funds, with the exception of Texas that has an approved Plan for 2007-08 funds, and a proposed Plan for 2009-10 funds. Additionally, there have been subsequent amendments to approved plans submitted by States, for example, Louisiana submitted a fourth revision to its plan in November 2011.

There are a number of factors that have contributed to the relatively slow obligation rates for CIAP. A primary factor is that CIAP requires a substantive public planning process that is coordinated through a designated State lead agency with a great degree of information and planning provided by local Coastal Political Subdivisions (CPS). In addition to the 6 eligible states, there are 70 CPSs, which are the County, Parish and Borough governments eligible to receive CIAP funds directly. A multi-level CIAP Plan review process at the federal level also contributed to the delayed Plan implementation and slow obligation rates. Further, the proposed projects are all located in sensitive coastal habitats that often involve a high degree of time-consuming activities, such as permitting and appraisals, prior to the full obligation of funds as part of the grant review process. The complexity of the MMS/BOEMRE administrative process was a recognized factor in the slow obligations, which led to the transfer of the program to the Fish and Wildlife Service (Service) in October 2011.

Through the end of FY 2011, approximately $403 million of the total available CIAP grant funds had been awarded by MMS/BOEMRE. In FY 2012, the Secretary of Interior re-delegated CIAP administration authority to the Service, under its Wildlife and Sport Fish Restoration Program. The Service is in the process of awarding the balance of CIAP funds, with the goal of completing the obligations by December 2013 for projects to be completed by December 31, 2016.

124. **What is your request for the Coastal Barrier Resources System?**

Response: Funding to support to the Service's administration of the Coastal Barrier Resources Act (CBRA) Program is provided through the National Wetlands Inventory (NWI) annual appropriation. The President's FY 2013 budget request for NWI includes $890,000 specifically for the CBRA Program, a $500,000 increase from the FY 2012 funding amount. The increase will be targeted at increasing capacity for the implementation of the CBRA, including: (1) reviewing potential Coastal Barrier Resources System (CBRS) mapping errors and producing comprehensively revised draft maps for approximately two percent of the total area within the CBRS (about 13 CBRS units) for Congressional consideration, per the directive of Section 4 of Public Law 109-226; (2) producing "five-year review" maps for approximately 15% of the total area within the CBRS to account for erosion and accretion, per the directive of Section 4(c) of Public Law 101-591; and, (3) improving efficiencies and timeliness in responding to requests to

determine whether properties and project sites are located within the CBRS. The map modernization efforts described under (1) and (2) above will facilitate moving away from the outdated CBRS maps toward modernized digital maps that are more accurate and user friendly. The property determination efficiencies will result in a reduced wait time for property owners, developers, Federal agencies, and others who seek a determination as to whether a particular property or project site is located within the CBRS.

125. **In 2006, the Congress enacted legislation mandating the establishment of digital maps for the Coastal Barrier Resources System. What is the status of that digital effort and what is the likelihood the Service's recommendations will be submitting to Congress this year?**

Response: The Coastal Barrier Resources Reauthorization Act of 2006 (P.L. 109-226) directed the Secretary of the Interior to: (1) finalize a digital mapping pilot project that includes draft revised maps for approximately 10% of the entire CBRS and an accompanying report to Congress, and (2) create draft revised maps for the remainder of the CBRS. The Service anticipates the final recommended pilot project maps and accompanying report will be transmitted to Congress by the end of FY 2012. The Service is making adjustments to the pilot project maps based on public comments, updated aerial imagery, CBRA criteria, and objective mapping protocols. The Service's report to Congress will contain the final recommended pilot project maps and the Service's official response to the public comments received during the 2009 comment period.

The Service has made limited progress towards fulfilling the Congressional mandate in P.L. 109-226 to modernize the remaining 90% of the CBRS maps due to limited resources available for this effort and competing program priorities. Since 1999, the Service has created draft digital maps for about 12% of the entire CBRS (including the draft pilot project maps) and Congress has enacted into law comprehensive modernized maps for about 2% of the entire CBRS. In addition, over the past several years the Service has worked with Congress, and this Subcommittee in particular, to address technical corrections and modernize individual CBRS maps on a case-by-case basis as mapping errors have been brought to our attention. The Service has a large backlog of requests from members of Congress and their constituents who seek technical correction revisions to CBRS maps. However, the rate at which we modernize the remainder of the CBRS maps will depend on the availability of resources for this effort. At the current rate, it will be many years before the maps of the entire CBRS are comprehensively modernized. In comprehensively remapping the entire CBRS, the Service could realize efficiencies and cost savings if we remapped several contiguous units or certain geographic areas at the same time (e.g., on a state-by-state basis).

126. **What is the budget request for the Junior Duck Stamp Program in FY'13?**

Response: The FY 2013 budget request for Junior Duck Stamp is included in the Service's overall request of $847,000 for the Federal Duck Stamp Program. In FY 2012 approximately $250,000 will be used to support this component of the overall Duck Stamp Program.

127. **How much money do the 141 refuges enrolled in the Recreation Fee Program collect each year? How about the 28 National Fish Hatcheries, Ecological Services or other sites?**

Response: No facilities in the National Fish Hatchery System or in Ecological Services participate in the Recreation Fee Program.

In Fiscal Year 2011, the Service collected over $5.1 million and expects to collect approximately $5 million in both FY 2012 and FY 2013. Currently, the Service has over 141 refuges enrolled in the Recreation Fee Program. An additional 28 hatchery, ecological services, or other refuge sites only sell passes. The Federal Lands Recreation Enhancement Act (FLREA) authorized the Recreation Fee Program that allows the collection of entrance and expanded amenity fees on Federal lands and waters. The FLREA authorized the program for 10 years, through FY 2014. The Service returns at least 80 percent of the collections to the specific refuge site of collection, to offset program costs and to enhance visitor facilities and programs.

128. **How much is the Service requesting to address the serious ongoing problem of white-nose syndrome? Where are those funds detailed in your budget request?**

Response: In FY 2012, the Service committed to spending $3.375 million in base Recovery program funding on white-nose syndrome (WNS), with an additional commitment of approximately $485,000 by the National Wildlife Refuge System. In addition, we anticipate receiving proposals this year for WNS projects through various competitive grant programs. In FY 2013 we anticipate that our spending will reflect the high priority we place on the WNS response and our critical role as the lead agency for the national response effort. As in FY 2012, our FY 2013 commitment for WNS is included in various general program requests.

129. **A recent Los Angeles Times article highlighted efforts by the Service to seize 20 illegally obtained rhino horns and arrest a major poacher who ran an import-export business. According to the article, some 150 federal agents were involved in this investigation. While this was an important law enforcement effort, did it really take 150 agents to seize 20 rhino horns and what was the cost of this operation?**

Response: Officers assigned to this nationwide enforcement operation arrested six individuals in New York, California, Texas, and New Jersey; executed 12 search warrants at business premises and residences throughout the country; and conducted interviews of potential suspects and witnesses in 12 States. Standard law enforcement procedures that address operational security, officer and public safety, and efficiency require that activities of this type be conducted by teams of officers working simultaneously.

130. **What is the current state of rhinoceros poaching in Africa, what is the price of these horns and how has this increasing poaching affected the populations of the various subspecies of rhinoceros?**

Response: In the past 3 years, the poaching of rhinos for their horn surged upward, probably in response to increased consumption and/or purchasing power in Vietnam and China. Rhino

poaching has also shifted from opportunistic poaching done by locals to coordinated, targeted poaching commissioned by well-armed, well-equipped organized networks or syndicates who are believed to be moving most of the horn, and are involved in the trafficking of other illegal substances as well.
Rhinos had previously been heavily poached for their horn for use in ceremonial dagger handles in the Middle East, but this trade had largely curtailed by the late 1990s, and historic documents indicate rhino horn has been an ingredient in Traditional Chinese Medicine (TCM) for centuries, although it has not been proven to be effective for medicinal uses.

Some sources cite a new belief in popular culture in Vietnam that rhino horn is a cure-all, for ailments ranging from the minor (hangover, headache) to terminal illnesses (including cancer), however, some argue that these uses were always there, but that Vietnamese did not previously have the means to source or purchase rhino horns.

In 2008 and 2009, rhinos in Zimbabwe suffered heavy poaching as political instability led to a breakdown in wildlife protection resulting in opportunistic poaching. However, by 2010, the poaching in Zimbabwe was becoming more organized and commercialized, done by well-equipped, well-informed outsiders who specifically entered properties to kill rhinos and remove their horns and quickly move them overseas, mostly through South Africa. These organized poachers also began to hit rhinos in South Africa, poaching a large number of rhinos in South Africa's flagship national park, Kruger National Park, and on small private game farms throughout northern and northeastern South Africa. South Africa is home to almost 19,000 white rhinos (96% of the world population) and to 1,915 black rhinos (39%). In 2009, the rhino poaching level in South Africa escalated dramatically from fewer than 20 rhinos poached per year to 122 in 2009, 333 in 2010 and 448 rhinos poached in 2011 in South Africa alone. This year, 210 animals have already been poached in South Africa. At this rate, one rhino is poached every 14 hours, and the total number of rhinos poached in South Africa is projected to exceed 600 animals by the end of 2012. Other countries (Zimbabwe and Kenya) are also reporting increased poaching intensity in 2011 and 2012, but fortunately the number of rhinos killed is much lower than in South Africa.

Conservationists discourage the media from quoting estimated prices of rhino horn as quoted prices seem to drive the price higher. Therefore only unofficial figures are available, from the media rather than from rhino experts, but these quote the price as being higher per ounce than gold, and higher per ounce than cocaine. One estimate is $50,000 per kilogram (=$1,428 per ounce).

The southern white subspecies rhino, Ceratotherium simum simum, is the most numerous of the extant rhinos with 20,170 individuals surviving. 93% of these are in South Africa, with reintroduced populations in Namibia and Zimbabwe.

The other subspecies of white rhino (C. simum cottoni), which previously occurred in northern central Africa (DRC, CAR, Chad, Sudan, Uganda) is believed to have been poached to extinction in the wild in the last five years. Fewer than 10 captive individuals survive and they have not successfully bred in recent years, so the outlook for survival of the subspecies is grim.

Black rhinos total only 4,880 in Africa but they belong to three different subspecies that do not interbreed, therefore the effective population sizes of each subspecies is much smaller. The eastern black rhino (*D.B. michaeli)* is the most imperiled with fewer than 650 individuals (most of which are in Kenya), the southwestern or desert black, (*D.B. bicornis*) has 1900 (most of which occur in Namibia) and the southern black rhino, *D.B. minor*, declined last year (for the first time since the poaching surges of the 20th century) to 1,750 animals due to poaching in Zimbabwe and South Africa.

Of the 448 rhinos killed in South Africa last year, 429 were white rhinos and only 19 were black rhinos. If poaching continues to escalate, white rhinos could be extinct by 2025.

Marine Mammals

131. **Please provide the Subcommittee with a budget chart showing how Alaska Marine Mammal Commissions covered under Section 119 of the Marine Mammal Protection Act have been funded in 2010, 2011 and 2012 and how they will be funded in 2013?**

Response: The table below shows how much funding has been provided to the Alaska Marine Mammal Commissions from FY 2010 – 2013.

Funding provided to:	FY 2010	FY 2011	FY 2012*	FY 2013**
The Eskimo Walrus Commission	$200,000.00	$176,000.00	$176,000.00	$176,000.00
The Qayassiq Walrus Commission		$24,000.00	$26,000.00	$26,000.00
The Alaska Nanuuq (polar bear) Commission	$510,600.00	$775,000.00	$732,410.00	$732,410.00
Central Council Tlingit and Indian Tribes of Alaska	$26,323.00			
Alaska Native Sea Otter Co-management Committee	$1,240.00	$4,413.00		
Indigenous People's Council for Marine Mammals			$80,000.00	$80,000.00
Total	$738,163.00	$979,413.00	$1,010,410.00	$1,010,410.00

*** The Service is currently developing Cooperative Agreements under section 119 of the MMPA with Alaska Native stakeholders and therefore funds for FY 2012 are anticipated.**

**** Based on the President's FY 2013 budget and expected cooperative projects, the Service anticipates funding Cooperative Agreements under Section 119 of the MMPA at substantially the same as it did in FY 2012.**

132. **Concerns were raised at the October 25, 2011, Subcommittee hearing on H.R. 2714 regarding the term "significantly altered" and how FWS law enforcement were enforcing this undefined term in FWS regulations. What actions have been taken to date to resolve the concerns of Alaska Native hunters?**

Response: The Service has consistently implemented our regulations relating to the creation and sale of Alaska Native handicrafts containing marine mammal parts. Very little public concern had been expressed until recently when questions have been posed to the Service concerning the sale of "unaltered" or slightly altered parts (tanned only or two or more tanned hides sown

together). In our opinion, the vast majority of handicraft being produced and sold meets the interpretation of significantly altered. We recognize that clarity regarding the definition of marine mammal handicrafts benefits all subsistence users and we are currently working on several initiatives to meet this goal. The Service is participating in a joint NOAA Fisheries/ Indigenous People's Council for Marine Mammals/Service working group to provide clarity. We believe that inclusion of stakeholders in the Alaska Native community in these discussions will benefit not only the marine mammal resource, but also provide greater understanding to the Alaska Native subsistence hunting community. The Service has drafted and released written guidance requesting input and comments on the interpretation of significantly altered. We have requested review by the Alaska Native community, the State of Alaska, and NOAA/Fisheries. Additionally, the Service is working with the Indigenous People's Council for Marine Mammals to host a workshop for sea otter hunters and handicraft producers to give input on the guidance for significantly altered.

133. **The Subcommittee is concerned that FWS law enforcement officials may be promoting a culture of fear and in so deterring the rights of Alaska Natives to harvest marine mammals. Does the FWS support the Alaska Native right to take marine mammals under the Marine Mammal Protection Act? If so, how is the agency working to ensure Alaska Native rights are upheld?**

Response: The Service has consistently enforced all provision of the MMPA as written. The MMPA provides for a specific exemption which allows for the take of marine mammals by Indians, Aleuts, and Eskimos for subsistence or for the creation and sale of handicrafts. Our recent investigations have not focused on the issue of "significantly altered" handicraft sales but rather the illegal harvest by non-eligible individuals, the failure to report harvest to the Service, and the sale of whole, unaltered hides to non-Natives. Outreach efforts by the Service to increase understanding and compliance with the MMPA and regulations have occurred simultaneously and are outlined in our response to question 132.

134. **Is the FWS requiring Alaska Native Marine Mammal Commissions to pay subsistence hunters for data collected during Commission marine mammal surveys? If yes, when did this become FWS policy?**

Response: No, the Service does not require Alaska Native Marine Mammal Commissions to pay subsistence hunters.

Ranking Member Gregorio Sablan

135. **The 15 million dollar increase in funding to the Bureau of Land Management (BLM) to implement Sage Grouse restoration measures demonstrates the Administration's commitment to proactive conservation. How will BLM work with the Fish and Wildlife Service to stop the decline of the Sage Grouse so they don't have to be listed under the Endangered Species Act which could impede, for example, renewable energy development? Is there a corresponding increase in funding for the Fish and Wildlife Service or other Collaborative Conservation initiatives to ensure all agencies can work together efficiently to protect the Sage Grouse?**

Response: The Service is closely coordinating with the BLM in their efforts to revise their Resource Management Plans. We have signed an MOU with BLM and USFS to complete this effort and are working closely with these land management agencies at all levels of our organization to ensure their success. The Service has not received any increase in funding for this involvement. The NRCS has received financial support to implement their progressive Sage-grouse Initiative, including additional funding for their traditional programs and funding to increase field capacity in key sage-grouse habitat areas.

136. **There has been a decrease in the Fish and Wildlife Service Construction budget, and it was mentioned that there would be no new construction projects funded. Can you explain the reason for this cut, the impact of on FWS operations, and future plans to make up for the loss?**

Response: The Service is focusing attention on maintaining the buildings and structures that we currently have in our real property inventory rather than adding new facilities to our portfolio. Ongoing efforts in the Construction appropriations will be focused on maintaining structures (such as impoundment water control structures) that provide essential habitat, reducing the deferred maintenance backlog, and improving existing facilities by increasing energy efficiency and installing renewable resources.

137. **There is a reduction of 3.1 million dollars in the conservation planning activity for the National Wildlife Refuge System. What functions will be lost due to this reduction? How will the Service be able to adequately plan for future conservation?**

Response: The requested reduction of $3.189 million in Conservation Planning in FY 2013 reflects a proposed internal reprogramming. The President's Budget requests a transfer of Land Protection Planning responsibilities from Conservation Planning to Land Acquisition. We do not anticipate losses in function due to this reduction, but rather a gain in efficiencies. The President's Budget also requests an increase of $189,000 for Refuge Planning under the Conservation Planning subactivity. The modest increase requested in Refuge Planning will help adequately plan for future conservation by offsetting increased expenses related to preparation of refuge planning documents such as comprehensive conservation plans, habitat management plans, and visitor services plans developed by conservation planners with extensive input from the public, states, tribes, and other partners.