United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

SEP - 6 2022

The Honorable Ron Wyden
Chairman, Energy and Natural Resources
Subcommittee on Water and Power
United States Senate
Washington, DC 20510

Dear Chairman Wyden:

Enclosed are responses prepared by the Department of the Interior to the questions for the record submitted following the May 25, 2022, legislative hearing on multiple bills.

Thank you for the opportunity to respond to you on this matter.

Sincerely,

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

Enclosure
cc: The Honorable Cindy Hyde-Smith
Ranking Member

Questions for the Record
Subcommittee on Water and Power
U.S. Senate Committee on Energy and Natural Resources
Legislative Hearing on Multiple Bills
May 25, 2022

Questions from Senator James E. Risch

Question 1: One of my bills, S. 4175, would authorize extraordinary operation and maintenance work for our aging agricultural canals located in urbanized areas of the West. As our communities have grown around these canals, the risk to life and property from a potential failure of these aging canals has also increased. In your testimony, you agree that these canals pose a risk to populated areas but are concerned that S. 4175 would re-categorize any extraordinary maintenance work on an urban canal of concern as emergency extraordinary maintenance work. You also expressed concern about allowing reimbursable funding provided by Reclamation from the aging infrastructure account to be used as a nonfederal match for federal grant programs – even though these funds would be repaid from nonfederal funding sources.

a. **Could an extraordinary maintenance (XM) project financed through the aging infrastructure account that also includes components for water and energy efficiency improvements qualify for a WaterSMART grant as well?**

b. **Will you commit to working with my office to work on our differences with the provisions in S. 4175, and to get this and other technical assistance offered completed in a timely manner?**

Response to a: The Department understands the intent of the bill. However, it may be challenging for the Bureau of Reclamation (Reclamation) to implement section 1(e). Section 1(e) would allow any reimbursable funds provided pursuant to the extended repayment authority of Section 9603 of Public Law (P.L.) 111-11 to serve as a non-federal source of funds for the purposes of any cost-sharing requirement for a separate federal grant provided under separate authority. Extraordinary maintenance (XM) funding made available under Section 9603 of P.L. 111-11 is intended to carry out extraordinary operations and maintenance work to ensure the reliability of federally owned facilities. Reclamation's WaterSMART grant programs have their own separate specific statutory requirements, primarily found in Section 9504(a)(3)(E) of P.L. 111-11. This statute explicitly calls for a non-federal cost share for these grants. Enabling federal XM funding to provide the non-federal cost share for a federal grant is inconsistent with the existing requirements. Introducing this change to the funding made available under both the extended repayment authorities of Section 9603, as well as the grant and cost sharing authorities found in Section 9504(a)(3)(E) of P.L. 111-11, poses implementation challenges and public policy questions about the full extent of federal funding for both federally owned assets that benefits from the extended repayment authority, and non-federally owned infrastructure that benefits from grants.

Response to b: Yes, Reclamation looks forward to working with the bill sponsor and the Committee to address any concerns and technical corrections.

Question 2: In your testimony on my bill, S. 4176, which reduces the minimum size of small storage projects for the IIJA grants program from 2,000AF to 2AF, you suggest that Reclamation's WaterSMART program can cover these smaller projects. Most of the projects sized below 2,000AF are regulating reservoirs on canal systems in the West that make water delivery much more efficient and can conserve amounts of water many times their actual capacity. However, these

projects can be more expensive to build than a typical WaterSMART project. WaterSMART grants are limited to $5 million at 50-50 cost share, whereas the IIJA Small Storage grants are 25% of the total cost, with a maximum allowed grant of $30 million. This program may match up better with some of the larger regulating reservoirs currently being planned. For example, one regulating reservoir in the Pacific Northwest was a 1,600AF reservoir that cost $31 million to plan, design and build. This reservoir, if it was eligible for the Small Storage grant program, could have received $7.75 million in cost share.

a. **What consideration have you given for these small water supply projects like regulating reservoirs that, even though they qualify for WaterSMART, are ineligible for IIJA Small Storage grants that could provide more federal assistance than WaterSMART?**

b. **Will you commit to work with my office to alleviate your concerns with this legislation?**

Response to a: The reduction in project minimums, from 2,000 acre-feet down to 2 acre-feet would significantly alter the types of applications submitted for this specifically tailored program. It would also be challenging to apply the feasibility standards set forth for that program, for which Reclamation issued guidance in January, to such small projects. In August 2022, Reclamation plans to publish the first funding opportunity for the Small Storage Program with the planned distribution of $20,000,000 in FY 2023. If the bill were enacted, Reclamation believes it would be important to retain the flexibility to use other existing authorities (e.g., Sec. 9504 of the SECURE Water Act) for some projects that would technically qualify for the Small Storage Program but that are more effectively carried out without needing to meet the additional requirements of that program. For example, many projects are currently funded through the WaterSMART Drought Response Program without needing to prepare or submit feasibility studies are expected to result in storage of more than 2 acre-feet.

Response to b: Yes, Reclamation and the Department look forward to working with the sponsor and committee to address specific needs associated with the proposed amendments.

Questions for the Record
Subcommittee on Water and Power
U.S. Senate Committee on Energy and Natural Resources
Legislative Hearing on Multiple Bills
May 25, 2022

Questions from Senator John Hoeven

Question 1: Congress has provided lower power rates for irrigation, known as Project Use Power (PUP) rates, to compensate farmers for the loss of lands flooded by Pick-Sloan Missouri Basin federal projects.

Because farmers had to relocate to higher ground, Project Use Power is a critical benefit to ensure farmers are able to afford the additional costs to irrigate lands uphill from the hundreds of thousands of acres lost to these federal projects. In line with benefits promised under the Pick-Sloan program, the Dakota Water Resources Act of 2000 (DWRA) authorized the development of up to 28,000 acres of affordable irrigation along the Missouri River.

Do you agree that Project Use Power for irrigation has been a successful tool to help mitigate the impacts of federal water control projects on local users, and will you work with the North Dakota delegation to advance S. 1554 so that our state's farmers and communities are made whole?

Response: Project use power is part of many Reclamation projects, and not unique to the Pick-Sloan Missouri Basin Project (P-SMBP). Under S. 1554, power generated within the P-SMBP would be allocated to new non-Reclamation Project uses at a project use power rate. This requirement will limit the amount of power surplus available to existing power customers who are responsible for covering a share of the operating expenses and, in some cases, construction expenses for the P-SMBP. This could result in a rate increase to power customers to sufficiently meet statutory requirements for cost-recovery.

Should Congress determine to extend the benefit of project-use power to the North Dakota districts by enacting S. 1554, Reclamation will implement its provisions and seek to integrate with existing P-SMBP power demands.

Question 2: The Garrison Diversion Unit was initially designed and intended to serve irrigation purposes. Since the project was first authorized in 1965, the focus and mission of the project has changed multiple times, most recently under the Dakota Water Resources Act of 2000.

Garrison Diversion and the Bureau of Reclamation (BOR) are currently conducting a basis of negotiation for the cost of water to make good use of the McClusky Canal for the Eastern North Dakota Alternate Water Supply Project (ENDAWS), which will help secure an affordable and reliable water supply for half of North Dakota's population. As part of this process, BOR is determining repayment costs for use of federal facilities which currently remain under-utilized.

Will BOR share actual proof of costs prior to claiming they are legitimate costs?

Response: Yes, and Reclamation has had several months of discussions with the Garrison Diversion Conservancy District (Garrison Diversion) on the origination and basis for facility construction, operation and maintenance costs up through this summer. These discussions have been productive, and

Reclamation will continue to work with Garrison Diversion towards final resolution of applicable water use costs for deliveries from the McClusky Canal.

Question 3: Will you work with my office and our state to approve a cost of water for ENDAWS that is fair to water users, while taking into account that this would otherwise be a stranded federal asset providing no benefit to U.S. taxpayers?

Response: Yes, Reclamation will continue to work with your office and the State of North Dakota on a solution for ENDAWS.

Questions for the Record
Subcommittee on Water and Power
U.S. Senate Committee on Energy and Natural Resources
Legislative Hearing on Multiple Bills
May 25, 2022

Question from Senator Mark Kelly

Question: Please provide an estimate for the increase in the price of electricity that federal preference power customers will likely pay if they are unable to purchase hydropower from Glen Canyon Dam.

Response: Reclamation is currently undergoing an impact analysis to assess the potential impact of the loss of hydropower generation at Glen Canyon Dam, and will continue to work with the Western Area Power Administration, who sets the rates and markets the power generated at Glen Canyon Dam, on near-term solutions for loss of power generation. As we continue our analysis to determine impacts, including impacts on the price of electricity for federal preference power customers, Reclamation will continue working with the Western Area Power Administration and with your office to address your concerns with the loss of hydropower generation at Glen Canyon Dam.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

SEP 23 2022

The Honorable Raúl Grijalva
Chair, Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Chair Grijalva:

Enclosed are responses to the follow-up questions received by Jonathan Dunn, Budget Officer, Office of Insular Affairs, after his appearance before your Committee at the May 18, 2022, hearing on the Fiscal Year 2023 Budget Request of the Department of the Interior's Office of Insular Affairs. These responses were prepared by the Office of Insular Affairs.

Thank you for the opportunity to respond to you on this matter.

Sincerely,

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

Enclosure
cc: The Honorable Bruce Westerman
Ranking Member

Questions for the Record
House Committee on Natural Resources
Oversight Hearing on the Fiscal Year 2023
Budget Request of the Department of the Interior's
Office of Insular Affairs
May 18, 2022

Questions from Representative Sablan

Question 1: Mr. Dunn, P.L. 113-235 enacted in 2014 mandated Interior create energy action plans for all the insular areas developed by teams of technical, policy, and financial experts. These plans were required to provide recommendations on ways to reduce reliance and expenditures on imported fuel; develop and utilize domestic energy sources; and establish benchmarks for measuring progress. Besides awarding annual grants, how has OIA used funding for the Energizing Insular Communities program to meet the requirements of the law?

Response: The Office of Insular Affairs (OIA) has indeed provided funding through the Energizing Insular Communities (EIC) program in the form of grants, but EIC funding has also been used to implement interagency agreements with the U.S. Department of Energy (USDOE) wherein USDOE serves as a technical member of the team supporting the development, update, and implementation of energy action plans. Additionally, USDOE is to provide technical assistance to the Insular Areas, which may include participation in jurisdiction-led working groups responsible for developing energy action plans and implementation support.

Question 2: Do each of the Insular Areas have a developed energy action plan, approved by the Secretary, complete with a schedule for implementation of recommendations and specific projects?

Response: Each territory is in the process of updating their energy action plans or has plans in place that their respective governments have affirmed are still in use. The U.S. Virgin Islands (USVI) has adhered to its USVI Energy Road Map, developed in 2011, and has updated its Integrated Resource Plan for the local utility, the Virgin Islands Water and Power Authority. American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam are all in the process of updating their plans with EIC funding. While these updated plans are being developed, each area has affirmed that their previous plans are still guiding project proposals.

Question 3: The law also requires annual reports be submitted to Congress detailing progress on implementation of each approved energy action plan. Will OIA commit to providing annual reports to this Committee including information on insular area energy usage and the progress of each team of experts as required by law?

Response: OIA will provide a report to the Committee annually, detailing the status of insular area energy usage and progress of plan and project implementation.

Question 4: Each year, territory delegates and other Members urge our colleagues on the Appropriations Committee to increase funding for OIA's Technical Assistance Program Account because the needs of the Insular Areas, as mentioned by the Governors, significantly outweigh the available amount of funding. Can you provide the total dollar amount of Technical Assistance requests OIA received from the Insular Areas last fiscal year?

Response: In 2021, OIA received $71 million of grant requests for the Technical Assistance Program. In 2022, OIA has received requests totaling $90.5 million.

Question 5: How did that compare to amount of funds available to award?

Response: In 2021, OIA had $21.8 million of funds available to award, which covered 31% of grant funding requested. In 2022, OIA has $22.3 million of grant funds available through the Technical Assistance Program, which covers 24.6% of grant funding requested.

Question 6: Why doesn't the Administration request increased funding for the Technical Assistance Program if the funding doesn't come close to addressing the Insular Areas' needs?

Response: OIA supports funding for the Technical Assistance Program in line with the President's Budget Request.

Question 7: According to your statement and OIA's budget documents, the Biden Administration plans to request that the necessary mandatory funding for financial agreements approved in the renewed Compacts of Free Association be appropriated to the Department of State. Implementation of the new COFA agreements, however, would continue to be undertaken by OIA. Could you describe how such an arrangement would work between the two departments?

Response: The Administration intends for the Department of the Interior (DOI) to remain the primary agency for implementing economic assistance to the FAS. We look forward to working with Congress once the negotiation process has concluded to address any unresolved technical issues.

Question 8: The Capital Improvement Project (CIP) funds which originated as Northern Marianas Covenant funds, address a variety of infrastructure needs in the U.S. territories, including for critical infrastructure such as hospitals, schools, wastewater, and solid waste systems. The total amount of these funds has been fixed at $27.7 million since its inception

even though the infrastructure needs of the island continue to expand. Given the enormous infrastructure needs of the islands, have there been discussions within OIA to propose increasing CIP funds?

Response: As CIP funding levels are statutorily determined by a mandatory authorization, OIA has proposed increases that can support infrastructure in other OIA programs such as Energizing Insular Communities and Maintenance Assistance.

Questions for the Record
House Committee on Natural Resources
Oversight Hearing on the Fiscal Year 2023
Budget Request of the Department of the Interior's
Office of Insular Affairs
May 18, 2022

Questions from Representative Porter

Question 1: The Compact of Free Association between the U.S. and the Republic of the Marshall Islands established several programs to meet the human needs of those harmed by U.S. nuclear testing. These programs were authorized for a period of 15 years beginning in 1986 and funded from the $150 million settlement under the Section 177 agreement. The U.S. accepted the request of the RMI to continue these programs under the 2003 Compact Amendments Act (PL108-188). Section 103(f) extends the Enewetak agricultural planting program and food program for dislocated people of Bikini and Enewetak, in accordance with Article II, Section (d)(1) of the Section 177 agreement, funded from mandatory and discretionary grants, at the rate of $1.3 million annually. Section 103(h) provides annual discretionary grant funding to continue non-reimbursable federal compensation funding assistance in accordance with the purposes of Article II, Section 1(a) Four Atoll Health Care Program under the Section 177 settlement for the Bikini, Enewetak, Rongelap and Utirik communities. These extensions of compensation and benefits under the Section 177 Agreement expire at the end of FY 2023. Does the OIA budget provide funding and staff capacity to competently and efficiently conclude these programs that have been operating by agreement of the U.S. and RMI governments since 1986? Do you have other plans for the disposition of these programs?

Response: As noted in this question, under the original Section 177 of the Compacts of Free Association, the Section 103(f) and Section 103(h) programs that assist communities still impacted by the nuclear testing program were scheduled to expire under the terms of the Section 177 Agreement 15 years after the 1986 effective date of that agreement. However, the COFA Amendments Act of 2003 extended those programs for 20 years at the request and upon acceptance of the RMI government, for the specific purposes of continued implementation of Article II, Section (1)(d) and Article II, Section 1(a) of the Section 177 Agreement. Section 103(f) authorized and appropriated $1.3 million annually to fund that program, adjusted for inflation, totaling $41.8 million between 2004 and the final payment being proposed under the 2023 OIA budget. The Section 103(h) four atoll health care programs has been funded under the OIA budget under the OIA Technical Assistance Program from 2004 to 2023 with a total cost of $22.3 million.

As you also noted, continuation of those programs within the framework of the Section 177 Agreement, Article II, was agreed upon bilaterally in 2003. This has been consistent with the provisions of Section 103(e) of the COFA Amendments Act of 2003.

OIA has requested sufficient funding to address these programs in FY 2023. Given the status of the ongoing negotiations with the RMI to renew and extend the Compact with Special

Presidential Envoy Joseph Yun, it would be premature to comment on the ultimate disposition of the programs at this time.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

SEP 23 2022

The Honorable Jared Huffman
Chair, Natural Resources Subcommittee
on Water, Oceans, and Wildlife
U.S. House of Representatives
Washington, DC 20515

Dear Chair Huffman:

Enclosed are responses prepared by the Department of the Interior to the questions for the record received following the June 16, 2022, legislative hearing on H.R. 6936, Stamp Out Invasive Species Act, H.R. 7398, Prohibit Wildlife Killing Contests Act of 2022, H.R. 6949, To amend the Water Infrastructure Improvements for the Nation Act to reauthorize Delaware River Basin conservation programs, H.R. 7792, To provide for a national water data framework, and H.R. 7793, To provide for the water security of the Rio Grande Basin, to reauthorize irrigation infrastructure grants.

Thank you for the opportunity to respond to you on this matter.

Sincerely,

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

Enclosure
cc: The Honorable Cliff Bentz
Ranking Member

Questions for the Record
Subcommittee on Water, Oceans, and Wildlife
House Natural Resources Committee
Legislative Hearing on H.R. 6936, H.R. 6949, H.R. 7398, H.R. 7792, and H.R. 7793
June 16, 2022

Questions from Rep. Graves

Question 1: Invasive species cause havoc on our coast and natural systems, costing U.S. taxpayers hundreds of millions of dollars every year. In Louisiana, nutria is one of these invasive species that is damaging our marsh and hampering efforts to restore Louisiana's coast. If left unchecked, nutria overgraze root systems of marsh plants—accelerating the destabilization, erosion, and eventual destruction of shoreline—without revegetation, these areas quickly become open water and leave our coast more flood prone and less resilient. Nutria rodeos are an important tool for combatting this harmful invasive species and for protecting our coastal environment and way of life.

Department of Interior testimony suggests a clarification may be needed to ensure the exceptions for contests that target invasive and injurious species—please explain how the bill can better clarify this exception to ensure that harmful invasive species—like nutria—are excluded from this prohibition?

Response: H.R. 7398 currently exempts lethal control actions by State or Federal agencies that target wildlife classified as invasive by the National Invasive Species Information Center (NISIC). This includes species like nutria, which have caused substantial damage to coastal ecosystems in Louisiana and the mid-Atlantic. The U.S. Fish and Wildlife Service (FWS) suggests several changes to this exception to ensure that it fully exempts lethal control actions of both invasive species and injurious wildlife on public lands. First, the FWS suggests that the exception allow for the control of invasive species, as they are defined in Executive Order 13751, rather than targeting only those species classified as invasive by NISIC. NISIC's invasive species profiles are designed primarily for public outreach and information sharing and are not inclusive of all invasive species. Using the definition of "invasive species" found in Executive Order 13751 would ensure that the exception captures a broader list of species currently considered invasive at the national, regional, and local levels. Second, the FWS recommends including injurious wildlife, as defined in the Lacey Act (18 U.S.C. § 42(a)-(c)), in the exception as these species also cause harm to wildlife, ecosystems, and people. Finally, the FWS recommends exempting lethal control actions of invasive species and injurious wildlife by District of Columbia, Territorial, and Tribal agencies, in addition to those conducted by State and Federal agencies.

Question 2: Second, please define and explain the definition and difference between an invasive and an injurious species? Do the two types of species overlap? And is the Department supportive of excluding both invasive species and injurious species from the bill's intent, or just species that are both?

Response: While there is overlap between the terms, and both "invasive species" and "injurious wildlife" address species that cause harm to wildlife, ecosystems, and people, they have different definitions and are used in different contexts.

Executive Order 13751 defines "invasive species" to mean, "with regard to a particular ecosystem, a non-native organism whose introduction causes or is likely to cause economic or environmental harm, or harm to human, animal, or plant health." "Injurious wildlife" is specified by statute or by regulation under the authority of the Lacey Act, 18 U.S.C. § 42(a)-(c). In addition to injurious wildlife listed by Congress in 18 U.S.C. § 42(a), the Secretary of the Interior may prescribe by regulation that species of wild mammals, wild birds, fish (including mollusks and crustacea), amphibians, reptiles, brown tree snakes, or the offspring or eggs of any of the foregoing are injurious wildlife, if they are "injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States." Under 18 U.S.C. § 42(a)(2), the term "wild" relates to any creatures that, whether or not raised in captivity, normally are found in a wild state; and the terms "wildlife" and "wildlife resources" include those resources that comprise wild mammals, wild birds, fish (including mollusks and crustacea), and all other classes of wild creatures whatsoever, and all types of aquatic and land vegetation upon which such wildlife resources are dependent. The FWS has always applied the term "injurious wildlife" to a wildlife species that causes harm to the interests protected by 18 U.S.C. § 42(a). That harm could be direct, such as a highly venomous, non-native snake that could kill humans and wildlife. That harm could also be indirect, such as a species becoming so widespread and numerous that it outcompetes native wildlife for food and habitat or a species that carries a pathogen that could cause devastating impacts to native wildlife species or humans.

There is overlap between invasive species and injurious wildlife with both having the ability to cause significant damage to wildlife, ecosystems, and people. The most significant differences between invasive species and injurious wildlife are 1) that an injurious wildlife species must be listed by the Secretary of the Interior by rulemaking or by Congress through statute, under 18 U.S.C. § 42(a); 2) injurious wildlife prescribed by regulation may not include plants, pathogens, or certain animals; and 3) 18 U.S.C. § 42(a) prohibits certain activities with injurious wildlife, including importation and transport between the jurisdictions enumerated in the statute.

FWS supports excluding both invasive species and injurious wildlife from the bill's intent.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

SEP 12 2022

The Honorable Katie Porter
Chair, Subcommittee on
Oversight and Investigations
Natural Resources Committee
United States House of Representatives
Washington, DC 20515

Dear Chair Porter:

Enclosed are responses to the follow-up questions from the October 21, 2021, oversight hearing on the *Runit Dome and the U.S. Nuclear Legacy in the Marshall Islands*. These responses were prepared by the Office of International Affairs. We apologize for the delay in our response.

Thank you for the opportunity to respond to you on this matter.

Sincerely,

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

Enclosure
cc: The Honorable Blake Moore
Ranking Member

Questions for the Record
House Committee on Natural Resources
Subcommittee on Oversight and Investigations
Oversight Hearing on the *Runit Dome and the U.S. Nuclear Legacy in the Marshall Islands*
October 21, 2021

Questions from Chair Porter

Question 1. Do you believe the United States should make a formal apology to the people of the Marshall Islands?

Response: Any formal apology to the RMI on behalf of the United States would require close inter-agency coordination, including the Departments of State and Defense, and the National Security Council (NSC) to ensure compatibility with U.S. policy and practices regarding United States apologies relating to historical events.

Question 2. Did you sign-off on the letter from the Department of Energy (DOE) to the RMI, dated May 14, 2021, from the Deputy Associate Under Secretary for the Office of Environment, Health, Safety, and Security? If not, why not?

Response: The Department was not involved with the referenced letter from DOE to the RMI, dated May 14, 2021, and to the best of my knowledge, DOE did not solicit input on the letter from the Department or the Office of Insular Affairs.

Question 3. Does DOE's Special Medical Care program constitute a "comprehensive health care program including primary, secondary, and tertiary care" that meets the requirements of Section 103 of PL 108-188?

Response: The Department does not administer DOE's Special Medical Care Program, and therefore, must defer to DOE for a response to this question.

Question 4. How would you characterize the differences between the Biden and Trump administration's approach to Runit Dome and the U.S. nuclear legacy in the Marshall Islands more broadly?

Response: The Biden Administration has been open to listening to all issues presented by the people of the Republic of the Marshall Islands. During in-person meetings from June 14-16, 2022, Special Presidential Envoy for Compact Negotiations (SPECN) Ambassador Joseph Yun, Foreign Minister Kitlang Kabua, and their respective teams, met on Kwajalein Atoll and discussed a wide range of issues, including the nuclear legacy, recognizing that the issues are complex.

Question 5. How much funding has OIA requested of the Secretary of the Interior for inclusion in annual budget requests for the purposes of groundwater monitoring at Runit Dome pursuant to the Insular Areas Act of 2011? How much of this funding has been requested from Congress?

Response: In accordance with the Insular Areas Act of 2011, the Department has provided DOE with $2,119,400 from Office of Insular Affairs Technical Assistance Program funding to perform groundwater monitoring at Runit Dome. This money was provided by the Department to DOE through an interagency agreement, and the Department has not requested additional funding from Congress for groundwater monitoring at Runit Dome.

Question 6. The RMI government has asked the U.S. negotiating team for an indication of the topics that would be covered in negotiations, but it claims that the U.S. refuses to address nuclear and other issues as part of COFA talks. It also claims that the U.S. has not responded to its request to discuss the nuclear issue. During your testimony, you claimed that COFA negotiation meetings were scheduled within the next two weeks.

a. As of Thursday, October 21, were any formal meetings scheduled between the U.S. and the RMI?

Response: Since the hearing on October 21, 2021, the U.S. COFA Negotiations Team met with their Marshallese counterparts for the first in-person meetings from June 14-16, 2022, at the U.S. Army Garrison on Kwajalein Atoll. Additional in-person meetings occurred on July 29, 2022 and August 1, 2022 in Washington, D.C.

b. If so, did the agenda include discussion of the nuclear issue?

Response: Details regarding agenda items are sensitive and non-public, though the Department would be happy to brief members of Congress in another setting. The RMI set the agenda for our meeting in Kwajalein, and a range of topics were discussed, including various bilateral matters.

Question 7. In your testimony, you stated that there are ongoing talks with the RMI to extend COFA. The RMI government claims that there have not been meetings on COFA extension in the last 10 months. Have there been meetings in the last 10 months? If not, what were you referring to when you said there are "ongoing talks?"

Response: Please see the response to Question 6, above.

Question 8. Talking points for U.S. negotiators from December 2020 for technical discussions between U.S. and the RMI, state that "We want you to understand if the RMI raises the matter of compensation for claims, our answer must be that the Section 177 agreement constitutes a full settlement of all claims, past, present and future."

a. **Why "must" this be the U.S. position?**

b. **Is this currently the U.S. position?**

c. **Is/was this position limited to legal claims, or does/did it include other forms of compensation provided for political reasons and/or on an ex-gratia basis?**

d. **Article XIII of the Section 177 Agreement commits the U.S. to "consult at the request of" the Marshall Islands "on matters relating to the provisions of" that Agreement." What does the U.S. consider to constitute "consultation?" Can the U.S. meet its obligations under the Section 177 Agreement without discussing additional compensation of any kind related to the nuclear program?**

Response: The Compact of Free Association and the 177 Agreement constitute a full settlement of all claims, past, present, and future of the government, citizens, and nationals of the Marshall Islands in any way related to the nuclear testing program. In 1986, as well as in the Compact Amendments Act of 2003, Congress reiterated that the Section 177 Agreement constituted a full and final settlement between the United States and the Marshall Islands of all claims in any way related to the U.S. nuclear testing program. See Public Law 99-239, 99 Stat. 1770, 1781 (Jan. 14, 1986).

However, the Biden Administration has been open to listening to all issues presented by the people of the Republic of the Marshall Islands.

Question 9. You were asked if the full and final settlement of legal claims prevents the U.S. and the Marshall Islands "from proposing additional compensation, and the U.S. agreeing in mutually approved terms, to additional compensation or assistance without reopening the claims covered by the full and final settlement?" You responded "There have been, as you've mentioned, ex gratia payments that were authorized by Congress and appropriated...after Section 177. Basically, it's a sensitive matter, it involves other agencies including the State Department, or even the Justice Department, so I would defer to those Departments on that matter. But as far as the Department of Interior is concerned, we execute whatever Congress asks us to do."

a. Who are the relevant officials at the State Department and at the Justice Department?

b. What is your current understanding of their views as to whether COFA prevents the RMI from "proposing additional compensation, and the U.S. agreeing in mutually approved terms, to additional compensation or assistance without reopening the claims covered by the full and final settlement?"

c. Were Congress to ask Interior to provide "additional compensation or assistance" related to the U.S. nuclear legacy in the Marshall Islands, would it defer to "the State Department, or even the Justice Department" or would it "execute whatever Congress asks us to do?"

Response: At this time the Department of the Interior participates in an NSC coordinated inter-agency process under the cognizance of SPECN Yun and senior NSC principals. The Department of State's Bureau of East Asian and Pacific Affairs is involved in this process along with officials from the Department of Justice.

To respond to Question 9.b., which requests the views of agency officials outside of the Department, the Department refers the Committee to the U.S. Department of State and Department of Justice.

To respond to Question 9.c., the Department carries out its congressionally directed responsibilities in the RMI to the best of its abilities and in accordance with all applicable federal law. We do so in coordination with the Interior's Office of the Solicitor and other federal agencies, including the Department of Justice and Department of State, as noted above.

Questions from Rep. Sablan

Question 1. The devastating nuclear tests in the Marshall Islands and additional radioactive waste imported from other U.S. test sites gravely harmed the Marshallese people, their lands, and their waters. Do you believe Section 177 of the RMI Compact and the original $150 million trust fund provide a "just and adequate" settlement for the people of the Marshall Islands – our trusted Pacific allies? Should discussions to settle new claims of additional damages related to nuclear testing be a part of the compact renewal?

Response: As U.S. statute states and U.S. federal courts have held in various cases concerning this matter over the last 35 years, the Compact and the Section 177 Agreement constitutes a full and final settlement of all claims, past, present, and future of the government, citizens and nationals of the RMI which are based upon, arise out of, or are in any way related to the Nuclear Testing Program. U.S. federal courts have addressed and consistently upheld the provisions of the Compact of Free Association and the Section 177 Agreement. The Department of the Interior defers to the Department of Justice, and the courts, for any remaining legal issues.

OIA is working closely with the Department of State and other federal agencies on a path to strengthen the unique and close relationship between the RMI and the United States through the COFA negotiations. The Department welcomes the opportunity to work with this Committee on addressing any issues with regard to the RMI and the Nuclear Testing Program legacy.

Question 2. Last year, former lead negotiators for the renewals of the Compacts of Free Association with the Freely Associated States, Mr. Doug Domenech and Ambassador Karen Stewart, told Members of this Committee that they expected to wrap up negotiations by the end of the year. Obviously, that never happened, and it seems little progress was made. Ten months in, the Biden Administration has yet to appoint new lead negotiators which is clearly stalling the process. Members of this Committee have asked President Biden to prioritize negotiations towards renewing the compacts, and that he appoints his representative to coordinate an interagency effort to renew the COFAs. When will the Administration appoint an envoy to lead the U.S. in these important negotiations?

Response: Recognizing the urgency of completing these negotiations, the Administration announced the appointment of Ambassador (retired) Joseph Yun as the Special Presidential Envoy for Compact Negotiations on March 22, 2022. In coordination with the Executive Office of the President (NSC, Office of Management and Budget) the Special Presidential Envoy for Compact Negotiations is leading the negotiations, with the continuing support of a team composed of representatives of relevant agencies.

Question 3. Could you provide an accounting of meetings held between the U.S. and the RMI to negotiate the renewal of the compact? Are there negotiation sessions currently scheduled, whether virtual or in-person? When will the U.S. be ready to discuss, as the RMI has repeatedly requested, the agenda and scope of the negotiations?

Response: The U.S. COFA Negotiations Team met with their Marshallese counterparts for the first in-person meetings from June 14-16, 2022, at the U.S. Army Garrison on Kwajalein Atoll. Additional in-person meetings occurred on July 29, 2022, and August 1, 2022, in Washington, D.C.

Question 4. Although, as you testified, Section 177 of the Compact included a "full settlement of all claims, past, present, and future arising from or in any way related to the U.S. testing program," referring to judicial claims, doesn't Article XIII of the Agreement commit the U.S. to "consult at the request of" the Marshall Islands "on matters relating to the provisions of" that Agreement and provide that the Agreement can be amended "at any time"? Hasn't the RMI asked to consult on matters relating to nuclear testing activities?

Response: Article XIII, Section 3 requires the U.S. to consult with the RMI at its request on implementation of the Section 177 Agreement. The Department participates in the inter-agency process through which decisions on how to conduct such consultations are made. We support a consistent practice and policy with respect to such consultations.

Question 5. We need to prevent a repeat of what happened with the previous Palau Compact renewal which took seven years to approve the agreement reached in 2010 due to differences between our executive and legislative branches on the source of funding. The Administration must work with the Congress on the substance of these negotiations to ensure swift approval of the agreements. Would you not agree? What else should occur to ensure we avoid another lengthy delay in approving and funding COFA renewals?

Response: The Department welcomes the opportunity to work with Congress on this and other issues relating to Compact negotiations.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

SEP 30 2022

The Honorable Alan Lowenthal
Chair, House Natural Resources
Subcommittee on Energy and Mineral Resources
U.S. House of Representatives
Washington, DC 20515

Dear Chair Lowenthal:

Enclosed are responses prepared by the Department of the Interior to the questions for the record submitted following the September 8, 2022, oversight hearing entitled, "Power in the Pacific: Unlocking Offshore Wind Energy for the American West."

Thank you for the opportunity to respond to you on this matter.

Sincerely,

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

Enclosure
cc: The Honorable Pete Stauber
Ranking Member

Questions for the Record
Subcommittee on Energy and Mineral Resources
House Natural Resources Committee
September 8, 2022

Questions from Ranking Member Stauber

Question 1: Given your experience with timelines for wind energy development off the East Coast, what concerns do you have about achieving offshore wind deployment in the Pacific prior to 2030 to meet the wind energy goals of the Biden administration?

Response: The Bureau of Ocean Energy Management (BOEM) expects to proceed with the California Final Sale Notice and offshore wind lease sale later this year, putting us in a good position to help meet the wind energy goals set by the Administration as well as the goals set by the State of California.

Transmission continues to be a challenge in achieving these goals in the Pacific. BOEM is currently engaged with the U.S. Department of Energy to study and make recommendations for transmission planning to allow for 30 gigawatts of offshore wind by 2030 and increased capacity beyond that. This includes the investigation of options such as grid upgrades, regional transmission backbones, meshed systems, and other shared infrastructure that could help minimize conflict while optimizing transmission solutions.

Question 1a: To meet the administration's deadlines, how long do you anticipate the interagency review process will take? Will there be any efforts to expedite permitting to enable faster leasing and construction of wind farms in the region?

Response: Interagency review is an indispensable part of the leasing and development process. We work with our partner agencies throughout the planning, leasing, and review processes to identify potential conflicts and develop sensible mitigations. The thorough and diligent review process for an offshore wind project's Construction and Operation Plan generally takes two years, and BOEM expects that will be the case for projects offshore California. Recent MOUs between BOEM and the National Oceanic and Atmospheric Administration (NOAA) should also help keep the review process timely. For all offshore wind projects, BOEM is committed to a transparent and inclusive review process that uses the best available science, knowledge, and information for decision-making.

Question 2: In response to one of my questions during the hearing, you said that BOEM does not have primary responsibility for onshore wind energy transmission infrastructure or infrastructure through state waters. You went on to say that decisions regarding where, and under what circumstances, transmission siting is allowed will be left to the states.

a. What does BOEM propose to enable the buildout of wind energy transmission, should a state decline construction in areas necessary to connect to the energy grid?

Response: The successful build-out of offshore wind energy transmission will require a collaborative approach between state and federal agencies. BOEM works closely with other Federal partners and states to ensure there is a smart approach to transmission. For example, on the east coast, BOEM has partnered with the U.S. Department of Energy to convene states, industry representatives, Regional Transmission Organizations (RTOs), Tribes, and stakeholders to build towards a planned approach to transmission. On the west coast, BOEM is engaged with

the State of California, the National Renewable Energy Laboratory (NREL), and other entities to ensure there is coordination on how to best approach these issues.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

SEP 12 2022

The Honorable Brian Schatz
Chairman, Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Chairman Schatz:

Enclosed are responses to the follow-up questions from the March 23, 2022, legislative hearing to receive testimony on S. 1397, S. 3168, S. 3308, S. 3443, S. 3773, and S. 3789. These responses were prepared by the Office of the Assistant Secretary of Indian Affairs.

Thank you for the opportunity to respond to you on this matter.

Sincerely,

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

Enclosure
cc: The Honorable Lisa Murkowski
Vice Chairman

Questions for the Record
Senate Committee on Indian Affairs
Legislative Hearing on S. 1397, S. 3168,
S. 3308, S. 3443, S. 3773, and S. 3789
March 23, 2022

Question from Chairman Schatz

Question 1. Assistant Secretary Newland, you testified that the Department previously denied the MOWA Band's petition for federal recognition. Please describe in detail the bases for the Department's decision.

Response: On May 19, 1983, the MOWA Band submitted a letter of intent to the Department of the Interior (Department) petitioning for federal recognition under 25 C.F.R. Part 83 (Part 83). The Department evaluated the MOWA Band's petition under the prior regulations at 25 C.F.R. 83.10(e) which provided for an expedited finding on a single criterion when the documented petition and response to the technical assistance letter indicates that there is little or no evidence that the petitioner can meet the mandatory criteria.

On January 5, 1995, the Department issued a proposed finding that MOWA failed to meet the criteria for Federal acknowledgment as an Indian Tribe (*see* 60 Fed. Reg. 1,874 (January 5, 1995)). The Department found that MOWA was able to show only one percent of its members descended from a historical Indian Tribe (meaning 99 percent could not show descent from a historical Indian Tribe) and therefore, was not able to satisfy the criteria under §83.7(e), requiring demonstrated descent "from a historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity" 25 CFR §83.7(e) (1994).After reviewing comments on the proposed finding, the Department issued a final determination that MOWA did not meet the mandatory criteria for Federal acknowledgment (*see* 62 Fed. Reg. 67,398 (December 24, 1997)).

In April 1998, MOWA appealed for reconsideration before the Interior Board of Indian Appeals (IBIA). In August 1999, the IBIA upheld the negative final determination and referred one issue outside IBIA's jurisdiction to the Secretary of the Interior for reconsideration. The Secretary of the Interior declined to order further reconsideration to the Assistant Secretary – Indian Affairs, making the negative decision final and effective for the Department on November 26, 1999. The MOWA thoroughly exhausted its administrative remedies before the Department.

In 2007, MOWA sought remedies through an Administrative Procedure Act complaint filed in the United States District Court for the Southern District of Alabama. In July 2008, the District Court found that MOWA's "claims were filed beyond the six-year statute of limitations and are therefore barred." The District Court ordered that the case be dismissed. The MOWA made no further appeal.

Having exhausted both administrative and judicial remedies, Congress is the only route available for MOWA to seek Federal recognition.

The Department's decisions and associated documents regarding MOWA are available on the Office of Federal Acknowledgement's website at https://www.bia.gov/as-ia/ofa/086-mowach-al,

and provides greater detail for the bases of the Department's negative decisions regarding MOWA.

Questions for the Record
Senate Committee on Indian Affairs
Legislative Hearing on S. 1397, S. 3168,
S. 3308, S. 3443, S. 3773, and S. 3789
March 23, 2022

Questions from Senator Hoeven

In 2016, Congress enacted the Native American Tourism and Improving Visitor Experience (NATIVE) Act.

Question 1. Can you discuss the implementation of the NATIVE Act, including whether it is helping promote tourism in Indian Country?

Response: The Office of Indian Economic Development (OIED) has implemented the NATIVE Act's guidance and support for Tribal tourism efforts as directed in Section 2 of the Act.

Starting in 2019, OIED supported Tribes across Montana, Virginia, South Dakota and North Dakota. OIED NATIVE Act efforts have also supported Tribal organizations and Native Hawaiian Organizations (NHO) through our tourism grant opportunities and through our NHO cooperative agreements. The following efforts supported diverse tourism strategies throughout 2019 - 2022:

- Cooperative Agreement between the Bureau of Indian Affairs Division of Transportation and the American Indian Alaska Native Tourism Association;
- Contract with George Washington University to promote tourism to Native locations in North Dakota and South Dakota;
- Cooperative agreement with Virginia Tech to promote inter-Tribal tourism projects in Montana and Virginia;
- Cooperative agreement with the Native American Food Sovereignty Alliance formerly Taos Community Economic Development Corporation;
- Cooperative agreement with Strongbow Strategies (a Native vendor) for operation of the Sheep Ranch and Woolen Mill Projects to promote cultural tourism at Navajo Nation;
- Two Native Hawaiian Cooperative Agreements;
- Technical Assistance – NATIVE Act; and
- Indigenous Tourism Collaboration of the Americas.

In 2021, OIED implemented our Tribal Tourism Grant Program which provides low-risk feasibility study and business plan grant funds to entertain tourism options. OIED is now transitioning from regional approaches to comprehensive support across Indian Country expanding financial and technical assistance opportunities to reach more Tribes.

Question 2. Are there any additional adjustments that should be made to make the NATIVE Act as effective as possible?

Response: To gain more equitable economies for Native American Tribal Nations, OIED seeks to open/widen the process for Tribal tourism financial awards across all regions by posting a

four-zone designed solicitation on grants.gov for the Tourism Memorandum of Agreement (MOA) rather than awarding another five-year cooperative agreement with one entity. Announcing this zone-designed availability will more fairly allow Native American communities, Indian Tribes, Tribal organizations, and Native Hawaiian organizations, to submit proposals for how they can more fully engage in Native American and Native Hawaiian tourism technical assistance, ultimately increasing their economic growth. When awarded, the Native Act technical assistance funds will support regional jobs, build economies, and elevate living standards and more equitably provide opportunities for Economic Development technical assistance approaches that are culturally relevant and regionally specific across Indian Country. This process will enable OIED to provide Tribal entities an opportunity to apply for and implement the important Tribal tourism technical assistance more efficiently and effectively across Indian Country, with the expected emphasis on Tribal communities. To support more MOA expectation flexibility, OIED recommends the Native Act be modified to support the MOA broadened approach providing Tribal tourism technical assistance.

Question 3. What are some of the benefits that tourism can bring to tribes, including potential opportunities for economic development and job creation?

Response: Tribal tourism has the potential to provide long-lasting economic sustainability and empower communities to define the scope of tourism activities on Tribal lands and to tell their stories. Tourism can provide jobs and economic vitality, opportunities to protect and preserve natural resources and cultural history for generations to come.

Question 4. What are your recommendations on other ways that BIA and Congress can assist Tribes in promoting and growing tourism in Indian Country?

Response: Cross agency collaboration is imperative to successful efforts. This would prevent federal funding duplication and ensure programmatic efforts are jointly defined.

Questions from Senator Lujan

I can see that the S. 3308, Colorado River Indian Tribes Water Resiliency Act, is potentially a long-range tool for developing flexible water supplies in the future, but we are in the middle of a mega drought now, the crisis is on us.

Question 1. Mr. Newland, what do you think our most important focus should be in the short term?

Response: The Colorado River is experiencing prolonged drought, low runoff conditions, and depleted storage in the Basin's two largest reservoirs, Lake Powell and Lake Mead. These conditions are causing unprecedented challenges and the best available science indicates that the effects of climate change will continue to adversely impact the Basin. As requested in the 2021 Tribal letter, Secretary Haaland, along with senior Department of the Interior (Department) and Bureau of Reclamation (Reclamation) leadership, met in person on March 28, 2022 with Tribal leaders. The Secretary and the Tribal leaders had a detailed discussion regarding the risks and challenges facing the Colorado River Basin and committed to transparency and inclusivity for the Tribes when work begins on the post-2026 operational rules. There are a number of urgent issues facing the Basin and following the meeting with the Secretary, on April 8, 2022 Assistant Secretary for Water and Science Tanya Trujillo sent a letter to Tribal leaders of the 30 Colorado River Basin Tribes expressing concerns that should the hydrology continue to decline this year, it is possible that Lake Powell could drop below elevations at which hydropower can be generated, which would place the infrastructure to make deliveries to downstream users at risk. Reclamation has worked diligently to regularly communicate with Tribal leaders and their staff regarding these concerns and actions being proposed to mitigate these risks in the short-term. Indian Affairs is committed to working with Reclamation and other partners in the Department to work with the Basin Tribes who are impacted by the drought.

Question 2. Mr. Newland, what are the agency's plans over the next two to three years to engage Basin Tribes in the development of the post-2026 rules?

Response: It is essential that meaningful Tribal engagement inform the development of the successor operational rules to the 2007 Colorado River Interim Guidelines, which expire in 2026. These operational rules will be developed through an extensive, multi-year public process pursuant to the National Environmental Policy Act (NEPA) that is anticipated to begin in early 2023. Staff at Reclamation are currently working with Tribal representatives to develop a structure for engagement in the process that will have broad Tribal acceptance and on a plan to build Tribal technical capacity and provide technical assistance to support their participation in

the process. Additionally, Reclamation, in coordination with other offices and bureaus in the Department, including Indian Affairs, intends to meet with each of the 30 Basin Tribes to further understand each Tribe's particularized interest in the process, their desire to be engaged, and how they would like that engagement to occur.

Question 3. Mr. Newland, after the March roundtable with Tribal leaders that took place in Albuquerque, when will the Department begin formal government-to-government consultations with Basin Tribes on the next framework for the long-term management of the Colorado River system?

Response: The process to develop the post-2026 operational rules is anticipated to begin in early 2023. The Department communicates regularly with the Basin Tribes with respect to the timing of this process and is actively working with Tribal representatives to develop a structure for Tribal engagement in the process. Formal government-to-government consultation can occur at any point depending on the Tribe's request, but will also take place at the appropriate NEPA milestones throughout the process.