



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 23 2020

The Honorable John Hoeven
Chairman, Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Chairman Hoeven:

Enclosed are responses prepared by the Bureau of Indian Education to the questions for the record submitted following the July 29, 2020, oversight hearing entitled, "Preparing to Head Back to Class: Addressing How to Safely Reopen BIE Schools" before your Committee.

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

Sincerely,

Cole Rojewski
Director
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Tom Udall
Vice Chairman

Questions for the Record
Senate Committee on Indian Affairs
Oversight Hearing entitled, "Preparing to Head Back to Class:
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Questions from Vice-Chairman Udall

Several news reports suggest that confusion about BIE campus closure policies caused a number of Bureau-funded schools on the Navajo reservation to remain open for weeks after the BIE sent its March 14th school closure letter. These schools experienced COVID-19 related outbreaks and, potentially, even deaths.

Question 1a: Across the BIE system, how many students and staff are known to have contracted COVID-19? Is the Department aware of any BIE students or staff infected with COVID-19 on school campuses?

Response: The BIE has no reported student infections of COVID-19. Due to the unique nature of COVID-19 and high community transmission in areas such as the Navajo Reservation, tracing COVID-19 exposure to school locations is highly challenging.

The BIE Human Resources Office does not have a definitive number of employees who contracted COVID-19 due to personal decisions regarding providing such information.

Question 1b: Across the BIE system, how many BIE students and staff are known to have died from COVID-19? Is the Department assessing whether any of these deaths may have been related to transmission of the coronavirus on BIE school campuses?

Response: Identifying the exact point of transmission of COVID-19 is highly challenging. However, the BIE is taking a number of steps to reduce the likelihood of COVID-19 transmission at BIE school locations by implementing mitigation measures outlined in an initial version of the BIE's school reopening plan, *Return to Learn!*, which will be updated as appropriate and can be found at BIE's school reopening webpage, <https://returntolearn.bie.edu/>.

Question 1c: Does the Bureau have any reason to believe that the failure to close BIE campuses promptly in mid-March may have contributed to community spread of COVID-19 on the Navajo Reservation?

Response: During the spring 2020, BIE closed schools promptly and in many cases were aligned with the actions states were taking in their public schools.

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During the hearing, you confirmed that the Occupational Safety and Health Administration (OSHA) is conducting an investigation into BIE.

Question 2a: Is this investigation related to spread of COVID-19 on a BIE school campus or BIE facility? And, is it related to any BIE employee deaths from COVID-19?

Response: An OSHA investigation is initiated when a Federal employee passes to assess whether any OSHA violations occurred. This remains true for deaths related to COVID-19, so OSHA has been investigating such instances throughout 2020.

Question 2b: Please provide any additional information regarding the circumstances that triggered this investigation.

Response: When a Federal employee in the BIE passes, the BIE School Operations team reports Bureau operated school related deaths to OSHA within the required eight (8) hours of the reported death. Federal OSHA then determines if it's warranted to do an investigation into the matter depending on case matter information. This is inclusive of Federal employee deaths related to COVID-19.

On April 6, 2020, my staff requested the Department provide information detailing which distance learning delivery methods each BIE school was using following the closure of BIE campuses in March. Department staff and my staff continued discussion about collection.

Has DOI or the Department of Education collected any data on-

Question 3a(i): Which Bureau-funded schools and TCUs offered distance learning opportunities to their students following COVID-19-related campus closures?

Response: The Bureau worked throughout the spring of 2020 to track continuity of education data at the local level, and once school sites closed for on-site instruction due to COVID, all Bureau operated schools were instructed to provide distance learning resources to support continuity of education. BIE schools provided a variety of distance learning models to support students in their continuity of education through the end of the 2019-2020 school year. Through verbal requests and field staff calls with their respective schools, it was determined that gaps existed in the spring, so BIE staff worked throughout

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the summer to improve its supports and resources to schools to improve distance learning at the school level.

Question 3a(ii): Which method(s) each school used to deliver instruction during this period, if so how are your Departments assessing the success of that instructional delivery?

Response: Upon school site closures implemented at the end of the 2019-2020 school year the method of educational opportunities varied based on capacity at the local level, including through online platforms and academic instruction to take-home paper packets. BIE Education Program Administrators are working directly with their respective schools to support school leadership in their implementation of distance learning models as schools work to provide academic continuity to their students.

Using information collected at the end of the last school year, BIE Associate Deputy Directors, Education Program Administrators and the Chief Academic Office worked over the summer of 2020 to build a more sustainable infrastructure and system of school support for distance learning. This includes identifying local intranet and cell service carriers to address device connectivity and establishing a learning management system (LMS) that provides teachers and students a structured remote learning environment.

Schools were provided training on LMS use, setup and navigation for both students and teachers. The LMS utilizes BIE’s new Standards, Assessment and Accountability System for improving student academic success under the amended Elementary and Secondary Education Act of 1965. Lessons provided to students will include standards-based instruction utilizing aligned online assessments for measuring student progress/success. Where gaps exist in access, BIE staff are working with staff in Indian Affairs to identify such gaps and provide supports to improve access. Further, BIE is working to provide technical assistance, as needed, to support local learning affected by a lack of access.

Question 3a(iii): The percentage of BIE and TCU students that have consistent access to computer equipment and broadband internet for participating in online learning opportunities?

Response: Based on information provided by TCUs, BIE postsecondary institutions, and the 638 contract schools, 94 percent of TCU college students have varying access to online learning. The majority report using hybrid models with an array of

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online learning management systems, use of Zoom, in-person classes and strategies to deliver education for BIE college students.

During a summer survey to the field, BIE asked parents of students, “If remote learning becomes necessary, does your family have adequate internet service to support online learning?” Approximately 67 percent of parents responded they do have adequate internet service and approximately 33 percent responded they did not. Parents were also asked if there was a computer at home for their child to use. Fifty-six percent of parents responded yes and 44 percent responded no.

Question 3b: If neither Department has collected any of the data listed above, please provide a timeline for providing a data collection plan to Congress.

Response: See the responses above.

Question 3c: How has DOI ensured that BIE peripheral dormitory residents are able to access distance learning opportunities offered by the non-BIE schools they attend?

Response: BIE will provide those enrolled students a distance learning option to continue their education as outlined in the BIE’s initial version of the reopening plan. Please see page 38 of the BIE’s initial version of the school reopening plan, *Return to Learn!*, which can be found at BIE’s school reopening webpage, <https://returntolearn.bie.edu/>.

Question 3d: How has DOI ensured that BIE students with disabilities have equal access to educational opportunities and the services identified in their individual education programs during COVID-19-related campus closures?

Response: Distance learning is available to all students including those students with disabilities who are, or may be, eligible for either an Individualized Education Programs (IEP) or Individualized Accommodation Plans (IAP). For students seeking distance learning instruction who are or may be eligible for an IEP, their regularly assigned IEP team will convene to develop, review or revise, as necessary, their IEP to ensure that they receive a free and appropriate public education (FAPE). For students seeking distance learning instruction who are, or may be, eligible for an IAP, the regularly assigned Section 504-Team will convene to develop, review and revise, as necessary, the student’s 504 IAP. For more information, please see page 43 of the BIE’s initial version of the school reopening plan, *Return to Learn!*, which can be found at BIE’s school reopening webpage, <https://returntolearn.bie.edu/>.

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Question 3e: What distance learning guidance and technical assistance has DOI provided to Tribes, BIE-funded schools, and TCUs?

Response: Schools were provided training on learning management system (LMS) use, setup and navigation for both students and teachers. Please see page 41 of the BIE’s initial version of the school reopening plan, *Return to Learn!*, which can be found at BIE’s school reopening webpage, <https://returntolearn.bie.edu/>.

Question 3f: What distance learning resources has DOI offered BIE and TCU administrators, educators, parents, and students?

Response: A learning management system (LMS) was developed which provides teachers and students a structured remote learning environment. Please see page 41 of the BIE’s initial version of the school reopening plan, *Return to Learn!*, which can be found at BIE’s school reopening webpage, <https://returntolearn.bie.edu/>.

Question 3g: What steps has DOI undertaken to ensure BIE schools and TCUs are prepared to continue distance learning or modify their instructional plans for the 2020 - 2021 school year?

Response: Throughout the summer of 2020, BIE staff worked directly with schools on the development of their individual, school-level reopening plans. In early August, the Assistant Secretary – Indian Affairs, in coordination with the BIE Director, delayed the start date of Bureau-operated schools until September 16, 2020 to allow additional time for school leaders to prepare for the 2020-2021 school year. After the release of the initial version of BIE’s reopening plan, staff worked with schools to provide clarification directly to school leaders as needed.

While the goal for in-person learning remains the priority of BIE, flexibility is provided to local school leaders to ensure continuity of education through distance learning where necessary.

On July 24, 2020, I sent you and other Administration officials a letter describing growing concern for the wellbeing of Native youth during the COVID-19 pandemic. The letter contained five questions related to Administration’s responsibility to provide Native youth with accessible, comprehensive, and culturally competent mental health care services. We asked that you respond to

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these questions by August 12, 2020, but we did receive a response by that deadline. Please answer those questions, reproduced below, for the record.

Question 4a: Has DOI conducted any consultations or outreach to Tribal leaders, public health officials, school boards, teachers, families, or students to gather feedback on COVID-19 related mental and behavioral health Native youth needs and best practices?

Response: The Department's response to your July 24, 2020 letter is attached hereto.

Question 4b: What steps has DOI taken to address the mental and behavioral health needs of Native students since the beginning of this public health emergency, and how do you plan to address these issues going forward?

Response: The Department's response to your July 24, 2020 letter is attached hereto.

Question 4c: How is BIE with other federal agencies (e.g., the Department of Education, IHS, the Centers for Disease Control and Prevention (CDC), Administration for Children and Families, and SAMHSA) to ensure that Native students can and will continue to receive the mental health services they rely on when the school year starts this fall?

Response: The Department's response to your July 24, 2020 letter is attached hereto.

Question 4d: Do BIE or other agencies need further funding or statutory authority to support school capacity to address the mental health needs of Native students?

Response: The Department's response to your July 24, 2020 letter is attached hereto.

Question 4e: Given that Native communities prefer to utilize culturally-informed mental health services, how is DOI working to increase access to culturally competent mental health care during the COVID-19 pandemic?

Response: The Department's response to your July 24, 2020 letter is attached hereto.

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BIE conducted online staff and parent surveys to collect input about returning to in-person instruction for the 2020-2021 school year. The survey response window closed on July 17, 2020. During a bicameral Congressional briefing on July 20, 2020, you informed Congressional staff that the Department had received several thousand responses to the surveys and, while the Department was still reviewing responses, an initial review suggested that not many respondents wanted to resume in-person instruction. However, since then, I am not aware of any materials published by the Department that summarize the survey results.

Question 5a: What are the Department’s plans to share the results of these surveys? Will the Department publish them publicly or on the Bureau’s website?

Response: We do not plan to release the survey results at this time.

Question 5b: Why did the Department decide to deploy these surveys from late June through mid-July? Did the Department discuss the possibility that the results of these surveys would return too late to inform policy and resource decisions prior to the anticipated start date in early August for many Bureau-funded schools?

Response: The surveys were meant to be used by BIE staff to obtain a better understanding of how parents and staff felt about school reopening.

Question 5c: How many responses did the Department receive to the referenced staff and parent surveys, respectively.

Response: We do not plan to release the survey results at this time.

Question 5d: How many responses indicated that respondents had concerns with resuming in-person instruction for the 2020-2021 schoolyear?

Response: We do not plan to release the survey results at this time.

Question 5e: How many respondents indicated they did not have access to the broadband or IT equipment necessary to participate in online distance learning?

Response: We do not plan to release the survey results at this time.

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On June 23, 2020, Assistant Secretary Sweeney sent a letter to Tribal leaders sharing a draft BIE School Reopening Plan and soliciting feedback on the same. This draft plan states, "Any action taken to reopen a school should be done in coordination with a school's respective BIE Education Program Administrator (EPA) and should utilize guidance from pertinent local, state, and Tribal officials as well as local public health officials." It further states that school administrators "should consider state, Tribal, local emergency orders, level of community transmission" and "when local infection rates have slowed significantly." Additionally, it states:

"School administrators are responsible for the development of their individual reopening plans for the 2020-2021 School Year with approval from the respective BIE EPA... EPAs hold the authority to reopen and/or close school sites. The decision should be made in consultation with BIE Associate Deputy Directors (ADD), school leadership, Tribal leadership, local Public Health Officials and Local Incident Commands, if applicable."

However, on August 6, 2020, Assistant Secretary Sweeney sent another letter to Tribal leaders indicating that the Department's preference to resume in-person instruction "to the maximum extent possible" at Bureau-operated schools, and encouraging Tribally-operated schools to "take the recommendations included as guidance to inform their general operations and to prepare each learning environment for the 2020-2021 school year."

These communications from the Department appear to send conflicting messages about who will determine when to resume in-person instruction at Bureau-funded schools and what factors decision-makers will use to make these decisions.

Question 6a: For Tribally-controlled grant and contract schools, can the Department, Bureau, or EPA override these schools' decision to resume in-person instruction or to continue utilizing distance learning?

Response: The BIE's initial version of the reopening plan, *Return to Learn!*, provides BIE leaders and school personnel with general guidelines and protocols. The guidance specifically pertains to Bureau-operated schools and residential settings. However, the Department recommends Tribally-controlled schools operating pursuant to a grant under the Tribally Controlled Schools Act of 1988 (25 U.S.C. § 2501, et seq.) or pursuant to a contract under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 5301, et seq.) take the recommendations included as guidance to inform their general operations. Tribally-controlled school grantees that may wish to deviate from this guidance, or decide not to reopen, should consult immediately with BIE leaders to ensure the school grantee does not risk violating the terms of its grant.

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Question 6b: Will the Department resume in-person instruction at all Bureau-operated schools on September 16th, including schools where resuming in-person instruction would conflict with state, Tribal, local emergency orders; state, Tribal, or local public health guidance; Tribal leader preferences; and school community preferences?

Response: All BIE-operated schools opened with distance learning models in place on September 16, 2020 and did not open for on-site, in-person learning based on feedback and requests from tribes. BIE continues to work with tribes on an individual school operating status as conditions change on the ground with the goal for on-site, in-person instruction.

Question 6c: What metrics, if any, will the Department use to monitor and determine whether levels of community transmission and infection rates have slowed sufficiently to make return to in-person instruction safe for students, staff, and the communities where the each school is located?

Response: Local decisions about scheduling students will be made in coordination with tribes, states and local health authorities. Please see "BIE School General Opening Guidelines" starting on page 37 of the BIE's initial version of the school reopening plan, *Return to Learn!*, which can be found at BIE's school reopening webpage, <https://returntolearn.bie.edu/>.

Given what is known about coronavirus's spread through airborne transmission in enclosed spaces with poor ventilation, there is legitimate concern that BIE's aging school infrastructure is ill-equipped to safely house students.

Question 7a: How does BIE plan to ensure the health and safety conditions of BIE school facilities during the pandemic prior to resuming in-person instruction?

Response: BIE School Operations developed a facility reopening checklist, which ensures that facilities are suited to reopen. Schools are to enter deficiencies into the Indian Affairs Facilities Management System (MAXIMO) and annotate as "COVID-19 related" to ensure issues are prioritized and promptly addressed.

The BIE distributed CARES Act funding to all Tribally-controlled and Bureau-Operated locations so school locations have the resources necessary to ensure a safe and healthful reopening. Additionally, Indian Affairs Division of Facilities Management and Construction (DFMC) has conducted an assessment of all school location HVAC systems.

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Question 7b: Has the Bureau conducted any assessments of the ventilation systems in BIE facilities to determine what risks they might pose to coronavirus containment and mitigation strategies developed to ensure in-person instruction is safe for students and staff?

Response: DFMC has conducted an assessment of all school location HVAC systems.

The Department's decision to delay to the start of the 2020-2021 school year for Bureau- operated schools has caused confusion for BIE staff who work under contract with the Bureau. My staff has heard from a number of such staff who are now concerned about their pay and benefits, including housing for those who reside in Bureau-owned residences. It is my understanding that many BIE staff have not received direct communications from the Department regarding these matters. Additionally, I understand that deployment of a new BIE email and online portal system in April has left many BIE staff without the required Personal Identification Verification (PIV) credential cards necessary to access the online BIE systems.

Question 8a: Has the Department communicated with BIE staff about the impacts of the school year start delay on pay and benefits? If so, please indicate the date and manner of these communications. Additionally, please provide a copy of any official communications sent to BIE staff by you, the ADD for Bureau-operated Schools, or the ADD for Navajo on this topic.

Response: BIE Human Resources continually works with its teachers' union, the Federation of Indian Service Employees (FISE). FISE was notified the start date of the school year was delayed to September 16, 2020. Schools were provided with templates on July 29, 2020 to notify each employee of this change due to the COVID-19 pandemic.

Question 8b: Will the Department continue benefits, including health insurance coverage, life insurance coverage, and housing without interruption for BIE staff impacted by the school year start delay?

Response: Yes.

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Question 8c: Is the Department aware that the changeover in BIE email systems left many BIE staff members unable to access these systems?

Response: Yes, and the BIE Human Resources tracked which BIE employees did not have an active identification card required for computer access to assist with remediation efforts.

Question 8d: What impacts did the inability of many BIE staff members to access the Bureau's email system and other online portals have on delivery of distance learning instruction during the Spring 2020 term and on the ability of these employees to successfully telework?

Response: As the transition to the new email system happened after the end of 2019-2020 school year, there was no impact on the provision of distance learning.

Numerous education policy experts, economists, and news outlets are discussing the impacts that the COVID-19 pandemic might have on the teacher workforce, including the possibility that many retirement-age educators will opt to leave the workforce rather than risk returning to unsafe school environments. Prior to the pandemic, the Bureau's vacancy rates were already high over several years; the Government Accountability Office stated in its 2019 High Risk Report that lack of staff capacity continues to be a challenge for the Bureau. Additionally, I understand that the Bureau's human resources department estimates that 30 percent of BIE staff are retirement-eligible.

Question 9a: What were the teacher and staff vacancy rates at BIE immediately prior to campus closures in March, 2020?

Response: The BIE had a 3.10 percent vacancy rate for teachers and staff at Bureau operated schools.

Question 9b: Has the Bureau seen an increase in teacher and staff vacancies since March, 2020?

Response: No, the BIE currently has a 2.5 percent vacancy rate but understands that conditions may change during the current environment and is working to provide resources to the local level to assist with staffing.

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Question 9c: Has the Bureau seen an increased rate of retirements compared to the previous three years?

Response: No.

Question 9d: To what extent is BIE’s response to the pandemic affected by its lack of staff capacity?

Response: As an organization, BIE has bolstered its staffing capacity in recent years to provide improved services to the field. As such, BIE does not consider its current capacity to have been a hindrance to the COVID-19 response.

Question 9e: What is the Bureau currently doing to fill vacancies?

Response: BIE continues normal operations of recruiting to fill positions. The hiring percentage has risen in the last three months as it normally does toward the beginning of an academic year.

The Bureau’s plan for spending CARES Act funds includes investments in schools’ IT systems, internet connectivity, sanitation equipment, personal protective equipment, and other virus spread mitigation-related infrastructure and equipment.

Question 10a: Has BIE solicited any no-bid or limited bid procurement contracts for COVID- 19 related supplies?

Response: The BIE entered into seven contracts that limited bids. Six of these contracts were for iPads with awards to Apple, Inc. Apple’s sole provider notice indicates they are the only provider able to support K – 12 students using direct procurements. The seventh contract was for personal protective equipment (PPE) for urgent supplies for a BIE school.

Question 10b: Has the Bureau entered into a procurement contract for COVID-19 related supplies with any new vendors with whom the Bureau, Department, or federal government had limited to no prior federal contracting experience?

Response: The BIE entered into two contracts with vendors that had limited federal contracting experience but met the necessary contractual requirements.

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Question 10c: Has the Bureau entered into any procurement contracts for COVID-19 related supplies with any companies incorporated within the last year?

Response: The BIE entered into two contracts with vendors that had limited federal contracting experience that had incorporated within the last year but met the necessary contractual requirements.

Question 10d: How many staff does BIE have in its Acquisitions Office to handle the increase in schools’ procurement demands?

Response: The Indian Affairs Deputy Assistant Secretary – Management (DAS-M), Office of Chief Financial Officer (OCFO), is overseeing the transition process of BIE acquisitions through the newly formed BIE Business Support Center (BSC). The OCFO is leveraging the existing BSC to provide pre-award contract support to Indian Affairs entities. As such, BIA regions are no longer providing these services to BIE. The BSC is now providing full acquisitions support for all BIE contracts.

In FY2020, the OCFO transferred four Contracting Officers (COs) to exclusively focus on BIE acquisitions. The OCFO will continue to provide oversight and management to all staff and contractors until BIE acquisition leadership is in place. BIE is in the process of recruiting additional Contracting Officers (CO) and a supervisory CO position.

Question 10e: Do these staff have sufficient expertise in IT issues to assist school?

Response: As part of DAS-M, the OCFO and Indian Affairs IT coordinate as necessary to support the contractual needs of BIE and other Indian Affairs entities.

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Questions from Senator Martha McSally

Question 1: Within the BIE school system there are both BIE run and tribally run schools. We understand that the Department will put out school re-opening and operation guidance after reviewing comments received from tribal leaders, teachers and administrators and parents. After local leaders have had an opportunity to review guidance from the Department and assess local conditions, can you confirm that tribally run schools will be able to make operational decisions based on what is best for their schools at the local level? How will the BIE resolve issues that may arise from conflicting guidance between BIE, tribal, state, and local guidelines?

Response: The BIE's initial version of the reopening plan, *Return to Learn!*, provides BIE leaders and school personnel with general guidelines and protocols. The guidance specifically pertains to Bureau-operated schools and residential settings. However, the Department recommends Tribally-controlled schools operating pursuant to a grant under the Tribally Controlled Schools Act of 1988 (25 U.S.C. § 2501, et seq.) or pursuant to a contract under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 5301, et seq.) take the recommendations included as guidance to inform their general operations. Tribally-controlled school grantees that may wish to deviate from this guidance, or decide not to reopen, should consult immediately with BIE leaders to ensure the school grantee does not risk violating the terms of its grant.

As highlighted in the initial version of the reopening plan, BIE schools should consult with their local partners, including states, Tribal governments, and public health officials, in determining how best to meet their local needs. When issues arise or clarification is needed, BIE Education Program Administrators (EPAs) will work directly with their respective schools and school leadership to provide technical assistance and provide guidance regarding reopening.

Question 2: Does the BIE plan to direct schools to re-open their residential programs? If so, what type of support from BIE will be available to help schools and residential programs with the increased costs of mitigating the potential spread of COVID-19? How will funding be affected if residential programs must delay their re-opening due to local health guidelines?

Response: Please see page 38 of the BIE's initial version of the school reopening plan, *Return to Learn!*, which can be found at BIE's school reopening webpage, <https://returntolearn.bie.edu/> regarding residential program reopening. BIE Off-Reservation Boarding Schools have not opened for on-site instruction in the 2020-2021 school year. But, as local situations improve, school leaders will work with their public health officials and BIE chain of command to make determinations on amending the academic model, as warranted. When

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facilities do open for on-site learning, BIE does not anticipate mitigation costs to exceed that of its traditional K-12 schools operating during this time. The BIE provided a number of resources to school locations to ensure the recommended PPE was in place prior to the start of school. BIE School Operations coordinated a mass purchase of PPE for all Tribally-controlled and BIE-Operated school locations. The purchase was intended to provide students and staff with the CDC-recommended PPE for the reopening of schools.

Further, each school location has been provided with CARES Act funding, acquisitions support, technical assistance, and vendor information, among other supports to fulfill PPE needs and projections for the school year. BIE divisional EPAs are responsible for monitoring school-level PPE needs and communicating any immediate needs to the BIE Emergency Management (EM) team and BIE School Operations. In the event of an immediate need, BIE School Operations has coordinated with the Bureau of Indian Affairs (BIA) Office of Justice Services (OJS) to fulfill requests until the school-level and/or School Operations fulfills the need.

PPE funding and purchase needs of these supplies will follow Tribally-controlled schools' procurement procedures. BIE School Operations staff have also assisted schools with central or consolidated purchases and delivery of PPE supplies. Upon BIE receiving CARES Act funding, all available resources were distributed to Tribally-controlled schools without delay. BIE School Operations Budget Division is also monitoring funding balances to assist schools with immediate and long-term needs.

Question 3: I worked with my colleagues to secure significant funding in the CARES Act specifically for BIE to aid schools as they sight to finish the spring semester of 2019. I have heard some frustration from tribes in Arizona about delays associated with the disbursement of CARES Act education funding. Congress is currently debating potential additional funding to aid BIE schools with the many costs they will incur for distance learning and to prepare for a resumption of in-person learning.

What steps has the BIE taken to improve communications about COVID Education funding, disbursement and permissible uses since CARES Act was passed? If additional funding is approved by Congress, does BIE you have the mechanisms in place to disburse that funding to the schools in a timely manner? Does BIE plan to place restrictions on funding based on distance or in person learning? Will transportation funding be impacted if schools must utilize virtual learning for at least part of the year?

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Response: BIE continues to hold daily and bi-weekly calls with its field staff to ensure the accuracy of information disseminated through its chain of command and consistency in school-level data tracking to improve supports locally. BIE also improved its formal distribution protocol, in coordination with its existing reopening communications plan, to include an intake form to more effectively track formal correspondence to the local school level.

BIE understands fully that expediency is critical for our schools, so BIE staff will continue to work with their Indian Affairs partners and Department leadership to ensure any funding provided by Congress is distributed as fairly, quickly, and efficiently as possible while making sure the plans and safeguards are in place to reduce the risk of waste, fraud, and abuse.

Question 4: As you know, broadband and internet access remains a challenge in tribal communities in Arizona. How can the BIE and BIA assist tribes and schools with accessibility for a virtual and face-to-face hybrid type instruction?

Response: At the end of the last school year BIE collected information which BIE Associate Deputy Directors, Education Program Administrators and the Chief Academic Office used to build a more sustainable infrastructure and system of school support for distance learning. This included identifying local intranet and cell service carriers to address device connectivity and establishing a learning management system (LMS) that provides teachers and students a structured remote learning environment. Schools were provided training on LMS use, setup and navigation for both students and teachers. However, gaps persisted at the beginning of 2020-2021 school year due to high demand nationwide and delays in the delivery of procured hardware to support distance learning. As of October 28, 2020, 18 orders for 2,234 computers were shipped to schools with additional deliveries expected in the next 60 days as additional hardware becomes available. Where inadequate access has persisted, schools are expected to provide alternative means for academic instruction to support continuity of education.

For training and technical assistance to ensure students and families are able to access the internet to engage in other learning opportunities, a Technology Package with a toolkit was also provided separately from the initial version of the reopening plan and is available at https://returntolearn.bie.edu/sites/default/files/TECHNOLOGY_AND_STUDENT_USE.pdf.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 23 2020

The Honorable Tina Smith
United States Senate
Washington, DC 20510

Dear Senator Smith:

Thank you for your letter dated July 24, 2020, regarding the wellbeing of American Indian and Alaska Native (AI/AN) youth during the Coronavirus Disease 2019 (COVID-19) pandemic. Since the onset of the COVID-19 pandemic, it has been the Bureau of Indian Education's (BIE) goal to provide continuity of education and support for all BIE students who depend on us.

Early on, BIE leadership established a School Reopening Task Force (Task Force) comprised of members from BIE's Associate Deputy Director divisions, Division for Performance and Accountability, led by the Chief Academic Office. Through formal tribal consultations held on July 9, 10, and 14, 2020, with tribal leaders and education stakeholders, the Task Force actively worked with Indian Country to garner input to strengthen its support for schools as they safely reopened school sites, to the maximum extent possible, on September 16, 2020.

Prior to the school start date, BIE released its *Return to Learn!* school reopening plan, which provides BIE school leaders and personnel with general guidelines and protocols for establishing and maintaining safe school environments that reduce the risk of COVID-19 spread. You may find the plan at: <https://returntolearn.bie.edu/sites/default/files/2020-08/Return-To-Learn-Plan.pdf>. The webpage also includes supplemental material for BIE schools. The BIE's reopening support incorporates the latest guidelines from the Centers for Disease Control and Prevention to provide high-level recommendations to BIE schools while highlighting the continued need for our schools to coordinate and consult with their local Indian tribes and communities they serve, public health officials, and the states in which they are located.

The BIE staff across the organization are actively working with their schools, communities, states and tribal leaders to support school-level needs, including support for mental and behavioral health services. Also, the BIE continues to partner with states with high Native populations through our Department of Education (ED) funded comprehensive center to exchange best practices, including mental and behavioral health supports.

Additionally, the Coronavirus Aid, Relief, and Economic Security (CARES) Act funding provided to the BIE (DOI CARES funding) equips individual schools with the necessary resources to provide customized solutions to locality-specific reopening challenges. For example, the DOI CARES funding equipped school leaders with the ability to provide returning students critical mental health support through contract services. At the national level, BIE is using CARES Act funding for its first-ever Behavioral Health and Wellness contract, which will provide 24/7 counseling/crisis support services for students, families, and staff from all bureau-funded schools, colleges, and universities.

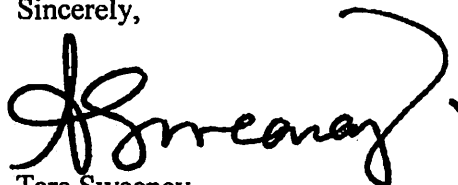
The mission of the BIE prioritizes the creation of positive, safe, and culturally relevant learning environments where students gain the knowledge, skills, and behaviors necessary for physical, mental, and emotional well-being. Due to the importance of our students' mental health needs, BIE established a goal under its five-year Strategic Direction that specifically focuses on the areas of wellness, behavioral health, and physical health and safety for all students in bureau-funded schools. This goal includes several action items recommended through tribal consultation that specifically focuses on bolstering trauma-informed teaching practices, curricula, and professional development.

At the onset of the COVID-19 pandemic, BIE worked quickly to provide professional development opportunities for our diverse staff across the country. Through a partnership with the National Indian Education Association, BIE staff collaborated on a webinar series designed for teachers, residential staff, and school administrators that focused on the principles of self-care and wellness. The course also recognized the impacts of trauma and stress and offered participants skills in learning how to use various tools and coping strategies.

Further, BIE certified more than 300 staff members in Youth Mental Health First Aid (YMHFA) to improve local support in our schools. The YMHFA is an eight hour public education program that introduces participants to the unique risk factors and warning signs of mental health problems in adolescents, builds understanding of the importance of early intervention, and teaches individuals how to help an adolescent in crisis or experiencing a mental health challenge. The YMHFA uses role-playing and simulations to demonstrate how to assess a mental health crisis; select interventions and provide initial help; and connect young people to professional, peer, social, and self-help care.

We appreciate your interest in Indian Affairs. A similar letter is being sent to the co-signers of your letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tara Sweeney". The signature is fluid and cursive, with a large initial "T" and a long, sweeping underline that extends to the right.

Tara Sweeney
Assistant Secretary – Indian Affairs



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 17 2020

The Honorable Deb Haaland
Chair
Subcommittee on National Parks, Forests, and Public Lands
Committee on Natural Resources
United States House of Representatives
Washington, D.C. 20515

Dear Madam Chair:

Enclosed are responses prepared by the Bureau of Land Management to the questions for the record submitted following the March 10, 2020, hearing concerning the FY 2021 Budget.

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

Sincerely,

Cole Rojewski
Director
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Don Young, Ranking Member
Committee on Natural Resources,
Subcommittee on National Parks, Forests, and Public Lands

Questions from Chair Deb Haaland

Question 1: While I recognize that the Department of the Interior is attempting to strategically rename the Bureau of Land Management’s reorganization and transfer of headquarters staff to various locations across the western United States as a “commonsense relocation,” the Committee maintains that the efforts undertaken by BLM constitute a reorganization. This position is supported by internal documents and communications provided to the Committee as well as the Department of the Interior’s July 16, 2019, letter to Senator Tom Udall where the Department repeatedly used the word “reorganization” to define the BLM’s current efforts. In order for the Committee to gain a better understanding of the impacts of the BLM reorganization, and as a follow up to information you indicated you’d provide on the record, we request the following documentation and information:

- a. The number of staff that have physically relocated to BLM offices in western states or to the new BLM headquarters in Grand Junction, Colorado.**
- b. The number of staff that have chosen to leave the BLM rather than accept their relocation assignments.**
- c. The number of staff that were located at the BLM headquarters at the beginning of this administration, prior to the hiring freeze and before the BLM reorganization.**
- d. The number of employees that left the agency as a result of the BLM reorganization that were persons of color.**
- e. The impact that the BLM reorganization has had on workforce diversity at the agency.**
- f. Any and all documentation of analysis done by the DOI Solicitor’s office to consider potential legal liabilities associated with the reorganization.**
- g. All documentation and information related to the formal tribal consultation performed by the Department of the Interior or the BLM on the BLM specific reorganization.**

Response: The Department provided information to the Committee through the congressional document request on the BLM’s relocation, which the Department completed on April 1, 2020.

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Question 2: Mr. Nedd, over the past 18 months, the Bureau of Land Management in Alaska has begun to open up lands to industry that have been withdrawn from mining and leasing for nearly 50 years, pursuant to sec. 17(d)(1) of the Alaska Native Claims Settlement Act (ANCSA). Many of these lands are heavily used by Alaska Natives for subsistence resources. However, BLM is using outdated rationales from 15-year-old resource management plans to make decisions on opening lands without any meaningful tribal consultation or consideration of adverse impacts. To assist the Committee's understanding of the BLM's decisions to lift these "d-1" public land orders (PLOs), please provide the following information and documentation:

- a. Documentation detailing the environmental processes the BLM is undertaking when evaluating lifting d-1 PLOs in Alaska, as stated by Secretary Bernhardt when testifying before the U.S. Senate Committee on Energy and Natural Resources on March 10, 2020.**

Response: The BLM's land use planning process is the mechanism the agency uses to analyze lands withdrawn by ANCSA as required by the Federal Land Policy and Management Act and the National Environmental Policy Act (NEPA). In keeping with NEPA, impacts associated with the recommended revocations were analyzed in the Environmental Impact Statement associated with the respective Resource Management Plans (RMPs). The RMPs are designed to guide land management for decades, although occasionally amendments occur. The documentation requested is publicly available on the BLM's e-planning website – including the Bay Resource Management Plan, Eastern Interior Resource Management Plan, East Alaska Resource Management Plan, and Kobuk-Seward Plan, Ring of Fire Plan.

- b. Documentation and information related to the public outreach, tribal consultation, and stakeholder engagement that occurred regarding the BLM's efforts to lift d-1 PLOs in Alaska, including formal documentation of the BLM's consultation with affected sovereign tribal nations.**

Response: As part of the RMP process, public outreach, including government-to-government consultation with affected tribes, was conducted and documented within the Final RMP/Record of Decision. The documentation requested is publicly available on the BLM's e-planning website – including the Bay Resource Management Plan, Eastern Interior Resource Management Plan, East Alaska Resource Management Plan, and Kobuk-Seward Plan, Ring of Fire Plan.

- c. Any impact analyses conducted prior to lifting the withdrawals. If no analyses were done to consider impacts, please provide a justification for such a lack of analysis.**

Response: The documentation requested is publicly available on the BLM's e-planning website – including the Bay Resource Management Plan, Eastern Interior Resource Management Plan, East Alaska Resource Management Plan, and Kobuk-Seward Plan, Ring of Fire Plan.

- d. Documentation that outlines the BLM's decision-making process and rationale for lifting individual d-1 PLOs.**

Response: In December 2004, Congress directed the BLM in Sec. 207 of the Alaska Land Transfer Acceleration Act (PL 108-452) to review existing ANCSA 17(d)(1) withdrawals, and determine and report to Congress if any portion of the lands withdrawn could be made available for multiple use consistent with

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the protection of the public interest in these lands. The BLM conducted extensive outreach to Alaska Native entities and ANSCA corporations which is documented in Chapter 3 of the 2006 Alaska Land Transfer Acceleration Act Report to Congress. The report recommended that the BLM use the land use planning process to make recommendations to the Secretary on revoking withdrawals.

As of March 2020, there are 6.1 million acres of withdrawals impacting the State's ability to have its highest priority selections become valid. To date, the Secretary of the Interior has authorized the revocation of about 1.6 million acres of 17(d)(1) withdrawals based upon recommendations made in approved BLM Alaska Resource Management Plans.

Revoking these withdrawals allows the State of Alaska's top priority selections to move forward and for the BLM to fulfill its responsibilities under the Alaska Statehood Act. Also, revoking these withdrawals allows more land to become available to Alaska Native Veterans under the Alaska Native Vietnam-Era Veterans allotment program established by the John D. Dingell, Jr. Conservation, Management, and Recreation Act (PL 116-9).

Question 3: Mr. Nedd, on January 21, 2020, the BLM published a Notice of Intent to prepare an Environmental Impact Statement to consider proposed revisions to “update, modernize, and streamline” the agency’s grazing regulations.

a. Mr. Nedd, what is the BLM’s timeline for proposing updates to its grazing regulations?

Response: The BLM received over 1,500 individual comments during the scoping period that closed on March 6, 2020, and is in the process of identifying issues for analysis, developing alternatives for the Draft Environmental Impact Statement (EIS), and incorporating suggested changes into its proposed revisions, as appropriate.

There will be opportunities for the public to participate in the process of revising the livestock grazing regulations in the coming months. Upon release of the Draft EIS and the Proposed Rule, there will be a 60-day comment period. Information will continue to be available online through the [BLM’s e-planning project website](#).

b. Why is the BLM only holding public meetings in four of the 11 states where the agency permits livestock grazing? How will the agency ensure that stakeholders in Utah, Arizona, Colorado, Idaho, California, Oregon, and Washington have a meaningful opportunity to provide input on the agency’s proposed updates?

Response: The BLM selected the public open house sites based on the proportion of livestock grazing permits located in various states in an effort to make the meetings accessible to affected stakeholders. Materials presented at the meetings were also made available online through the [BLM’s e-planning project website](#). The public was able to review materials and provide comment through the website. Written comments were also received through the mail, email, and at the meetings.

The BLM intends to hold public sessions upon the release of the Draft EIS and Proposed Rule during a 60-day comment period.

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- c. **Is the BLM considering exempting the agency's livestock grazing program from the NEPA process?**

Response: The BLM is seeking to achieve improvements to its regulations through updates and modernization. The effort includes exploring opportunities to create NEPA and administrative process efficiencies. Information will continue to be available online through the [BLM's e-planning project website](#).

Question 4: Since March 2019, the BLM has released six draft resource management plans (RMPs) for the Bering Sea-Western Interior, Eastern Colorado, Missoula, Lewistown, Four Rivers, and Southeast Oregon planning areas. These draft RMPs appear to represent a significant departure from conventions established under past presidential administrations and would eliminate more than 1.93 million acres of existing areas of critical environmental concern (ACEC) across the six planning areas. These draft RMPs and the BLM's "preferred alternative" for each raise significant concerns that the BLM is prepared to implement land use decisions that fail to provide for the responsible balance between development, conservation, and recreation that Congress intended under the Federal Land Policy and Management Act of 1976 (FLPMA).

- a. **How does the BLM's proposal to eliminate 1.93 million acres of existing ACECs while protecting only 2.1 percent of the nearly 4.5 million acres that meet the BLM's own criteria for identifying ACECs in these six planning areas fulfill the agency's mandate under FLPMA to prioritize protections for ACECs?**

Response: The Resource Management Plans (RMPs) have not been finalized by the BLM and as such no final determination has been made regarding the ACECs. The BLM continues to work with local stakeholders and will review new information it receives before making any final decisions.

- b. **What was the BLM's rationale for selecting a preferred alternative for the draft Bering Sea-Western Interior RMP that included zero acres of ACECs and ignored the more than 4.2 million acres of tribally nominated land that met the agency's criteria for creating ACECs?**

Response: The Bering Sea Western Interior Resource Management Plan is still under development. The Draft EIS, which was released March 2019 for public comment, included a range of alternatives that are publicly available on the [BLM's e-planning website](#).

- c. **Given the BLM's multiple-use mandate, what is the agency's justification for opening 99 percent of BLM-managed land in the Bering Sea-Western Interior planning area to mineral development, as proposed in the draft RMP?**

Response: As noted above, the Bering Sea Western Interior Resource Management Plan is still under development. The Draft EIS was released March 2019 for public comment and included a range of alternatives that are publicly available on the [BLM's e-planning website](#).

Question 5: Mr. Nedd, it is our understanding that, to fulfill some headquarters functions in Washington, D.C. after the loss of career staff, the BLM is detailing staff from the field to Washington, D.C. offices.

- a. **Can you please provide the number of BLM staff who have been detailed from the field to Washington, D.C., either to BLM or to DOI, since August 2019? Please include with this information each detailee's title, permanent duty station, assignment while in Washington, D.C., and length of stay in Washington, D.C.**
- b. **What has been the total cost of detailing field staff to Washington, D.C. since August 2019? Please keep in mind that cost estimates should include but not be limited to increased rates of pay, travel costs, costs for housing and any per diem paid while in D.C., any other incentives paid, and the cost of work foregone while on detail.**

Response: Response (a & b): The Department provided information to the Committee through the congressional document request on the BLM's relocation, which the Department completed on April 1, 2020.

Question 6: In July of 2019, the Department of the Interior issued a Flight Test and Technical Evaluation Report that outlined the 15-month review process it underwent, in conjunction with NASA, DHS CISA, Idaho National Laboratory and a private-sector company, to test and validate two versions of drones made by DJI. The public report from DOI verified that these drones met the established requirements and standards – including permanent disconnection from the internet – for the DOI's certified use, but on January 29, 2020, the Secretary signed Secretarial Order 3379 and effectively grounded the Department's entire drone program due to concerns about drones manufactured in China or drones with components from China, pending further review. This Order suspended emergency missions unless granted a waiver and indefinitely suspended all non-emergency missions, including wildfire prevention via prescribed burns, wildlife monitoring, and ecological missions.

- a. **How does BLM use drones?**

Response: The BLM's UAS program has used drones for mapping; imagery; wildlife, cultural, recreation, and paleontological surveys; prescribed burn operations; wildland firefighter situational awareness; search and rescue operations; and volcano research.

- b. **How many outstanding acquisitions for drones for BLM specifically are still pending approval due to Secretarial Order 3379?**

Response: The BLM has budgeted for 14 aircraft systems and associated items.

- c. **Politico recently reported that the DOI's UAS trainings as well as prescribed burn missions are being cancelled as a result of Secretarial Order 3379. What impact will this have on the Department's and state and local agencies' ability to prepare for the upcoming fire season, since many of them rely on that DOI training?**

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Response: UAS use for wildfire and prescribed fire operations, as well as training flights to maintain pilot qualifications and proficiency, are not cancelled.

Department of the Interior employees who want to participate in UAS training for emergency operations and for training that meets or maintains FAA-approved certification requirements can complete a waiver form and may continue to receive training, if approved.

- d. In the July 2019 DOI report, the Department estimated that the use of drones “saved an estimated \$14.8M over the cost of traditional ground-based methods of accomplishing these projects” in 2018. With the late-2019 grounding of the DOI’s drone fleet and the projected growth of the fleet since 2018, what are the projected financial losses we should expect for 2020 or the losses for BLM specifically?**

Response: That information is not available at this time.

Questions from Representative Steven Horsford

Question 1: Mr. Nedd, BLM is responsible for managing 67 percent of my state. The decisions your agency makes impact my constituents' daily lives, so it is critical that they have a voice in land use decisions. Unfortunately, it is my understanding that, behind the scenes, the BLM is beginning to rewrite its planning regulations in a way that would cut out the public from the agency's planning process. Doing so would prevent my constituents from reviewing and providing input on agency decisions that affect their communities and lives.

- a. Mr. Nedd, can you confirm that the BLM is considering exempting agency resource management (RMP) planning from the NEPA process?**

Response: The BLM has not started any formal rulemaking regarding our land use planning regulations. Should that change, we will notify the public.

- b. What is the agency's timeline for proposing updates to its planning processes?**

Response: The BLM is not currently engaged in a formal rulemaking process for updating its land use planning regulations, and there is currently no timeline for any potential change.

- c. Mr. Nedd, can you commit to providing a briefing to this Committee and staff regarding the BLM's intended updates to agency planning regulations, including information on desired outcomes, timelines, and policy goals?**

Response: The BLM is not currently engaged in a formal rulemaking process for updating its land use planning regulations, and there is currently no timeline for any potential change.

- d. Can you guarantee that the agency will not exempt RMPs from public comment processes?**

Response: The BLM is not currently engaged in a formal rulemaking process for updating its land use planning regulations, and there is currently no timeline for any potential change.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 17 2020

The Honorable Alan Lowenthal
Chairman
Committee on Natural Resources
Subcommittee on Energy & Mineral Resources
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Management to the questions for the record submitted following the March 10, 2020, hearing concerning the FY 2021 Budget.

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

Sincerely,

Cole Rojewski
Director
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Paul Gosar, Ranking Member
Committee on Natural Resources,
Subcommittee on Energy & Mineral Resources

Questions from Chairman Alan Lowenthal (D-CA):

Question 1: Deputy Director Pendley, a recent news story reported that documents obtained by Public Employees for Environmental Responsibility under the Freedom Of Information Act showed that officials in D.C. overruled its own field staff and ignored concerns from local communities, local governments, and local stakeholders in the development of the Uncompahgre Field Office Resource Management Plan.¹

Can you help us understand how overriding your own staff on the ground and the overwhelming weight of public, local government, and stakeholder comment to mandate a decision from DC is consistent with your stated desire to bring decision-making closer to the communities you serve?

Response: All of the BLM's land use planning decisions, including the Record of Decision for the Uncompahgre Resource Management Plan and Final Environmental Impact Statement in Colorado, are conducted lawfully and in compliance with NEPA and current policy, and with input from the public, local government, and stakeholders.

Question 2: Deputy Director Pendley, please provide information on each incident of noncompliance issued by BLM for safety, environmental, or drilling violations from March 2019 and March 2020. For each incident identified, provide the operator name, the nature of the violation, the location of the incident, the date of the incident, and information about any monetary penalty levied against the operator.

Response: The BLM notes that the Department has a process in place for responding to congressional document requests, which would apply to the specific information you are requesting in this question. We are able to provide the total number of inspections conducted, incidents of noncompliance (INCs) issued, and penalties assessed from March 1, 2019, through March 26, 2020 in this response. During the specified timeframe, the BLM performed 44,009 inspections, and issued 7,063 INCs with an associated \$175 million in assessments and civil penalties.

Question 3: Deputy Director Pendley, last November you wrote an op-ed in the Las Vegas Review- Journal declaring that BLM law enforcement personnel will maintain deference to local law enforcement.

- a. Can you briefly explain the rationale behind your assertion that maintaining “deference is essential to making BLM a truly productive and valued partner to Western communities”?**
- b. How does deference to local law enforcement when enforcing law on federal lands comport with the BLM’s mission?**
- c. Please provide any and all guidance and documentation provided to BLM law enforcement personnel demonstrating updates to BLM law enforcement policy in line with your unofficial policy of local deference.**

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House Committee on Natural Resources
FY 2021 Budget
March 10, 2020

- d. Has BLM consulted with BLM or DOI law enforcement personnel regarding impacts this policy of deference might have on BLM staff or the BLM mission? If so, please provide any and all documentation of that consultation.**
- e. What are the existing authorities or statutory mandates that justify BLM's position of maintaining deference to local law enforcement?**
- f. Has the DOI Solicitor's office performed any analysis to determine the appropriateness of this deference to local law enforcement on federal lands? If so, please provide it to the Committee.**

¹ S. Streater, "BLM HQ overruled Colo. Staff to promote energy – docs," E&E Publishing, February 6, 2020.

Response: The BLM's diverse mission creates unique challenges for our agency's law enforcement personnel, who work diligently to provide a safe environment for the public and employees and who deter, detect, and investigate illegal activities on our Nation's public lands. Acknowledging these challenges, BLM law enforcement works cooperatively with local and state law enforcement authorities in order to maximize the protection of the public lands and resources. This is consistent with the Secretary's priority of restoring full collaboration and coordination with local communities and making the Department of the Interior a better neighbor. As such, the BLM is committed to strengthening our law enforcement partnerships throughout the West, and to working with State, county, and local officials in the most productive ways possible.

Regarding the question of deference, the BLM defers to our local partners when the issue or situation is outside the purview of BLM's federal law enforcement role or capacity. The BLM will continue to carry out its responsibility for the management and safety of federal lands under our jurisdiction, as required by law, while allowing our state and local partners to do the same on lands or issues for which they are responsible. When there is overlap between the two, BLM will collaborate and cooperate to achieve mutually beneficial public safety outcomes. These concepts have long been pillars of effective, collaborative law enforcement efforts between BLM and our state and local partners and will continue to be going forward.

Question 4: Deputy Director Pendley, is the BLM planning to make significant change to the Desert Renewable Energy Conservation Plan?

Response: As stated in the Notice of Intent, comments were being sought to consider challenges that arose with implementation of the 2016 Desert Renewable Energy Conservation Plan (DRECP) Land Use Plan Amendment as well as the contemplation of Executive Order 13783, *Promoting Energy Independence and Economic Growth*, Executive Order 13821 on *Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America*, and other recent DOI and BLM policies.

Question 5: Deputy Director Pendley, what is the timeline for completion of the review and for

the proposed Desert Plan Amendment to be shared with the public?

Response: Internal review remains ongoing.

Question 6: Deputy Director Pendley, BLM's FY 2021 budget justification confirmed that BLM failed to collect approximately \$20 million in fees from wind and solar developers in 2019. Why didn't BLM collect those fees?

Response: Over the course of several years, the solar and wind industries have raised questions relating to the BLM's methodology to identify rents and fees for renewable energy projects sited on the public lands. In response, the BLM temporarily suspended billing on wind and solar energy projects in order to engage with industry over their concerns; appropriately review and assess the methodology by which rents and fees were developed; and explore what alternative options might be available to determine fair market value for these uses.

Question 7: Deputy Director Pendley, what steps is BLM taking to ensure that fees are collected in FY20?

Response: The BLM plans to bill solar and wind energy projects once our internal review of the rental options is completed. Entities holding wind and solar authorizations with the BLM will be billed for their use of the public lands in FY 2019 and FY 2020. Once the bills are issued, the authorization holders will have 30 days to pay the bills.

Question 8: Deputy Director Pendley, can you explain why the renewable energy budget is essentially flat, but you are seeking to increase the coal budget by nearly 20 percent? Do you think that market demand for coal is higher than renewable energy?

Response: The BLM implements an "all-of-the-above" energy approach to meet the nation's needs for energy security and affordable energy. As part of this "all-of-the-above" strategy, the BLM manages both traditional and renewable energy resources. These diverse energy resources incorporate vastly different programs that have varying complexities and workloads.

Over the past decade, the BLM's renewable energy program established and refined processes relating to the authorization of wind and solar projects on public lands. The completion of the BLM's 2016 rulemaking, *Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections for 43 CFR Parts 2800 and 2880*, along with the use of cost recovery authority for solar and wind applications, and declining industry interest to develop solar on public land have resulted in the need for only modest increases to the renewable energy program budget request.

Traditional energy resources such as oil, natural gas, and coal remain key components in advancing American energy independence and economic growth. Federal coal provided approximately 35 percent of U.S. electrical energy, and the President's FY 2021 budget request for the BLM's coal program reflects the important contribution this resource makes toward America's energy independence. As part of the budget request for the coal program, the BLM will be working to streamline program activities,

Questions for the Record
Subcommittee on Energy and Mineral Resources
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March 10, 2020

implement more timely inspection and enforcement actions, and to make more efficient the processing of applications.

Question 9: The American taxpayers were told that the BLM headquarters was moving to Grand Junction to save them money. Why then, are fixed costs for office space rental going up in the president's 2021 budget proposal? In fact, BLM's budget is being cut by around \$144 million overall. So, BLM is taking big cuts across the board, but not in office space rental, is that right?

Response: Relocating staff from Washington, D.C., to Grand Junction, Colorado, will lead to a more efficient operation and substantial cost savings for the Bureau. The budget request reflects the nationwide cost of office space rental.

Question 10: When the lease was signed for the new BLM office space in Grand Junction, were you aware that the office is located in the same building as several oil and gas interests including Chevron, Laramie Energy, and the Colorado Oil and Gas Association?

Response: The General Services Administration handles the lease acquisition process for the federal government, and this includes the BLM's office space in Grand Junction, Colorado. Any questions regarding the selection process should be directed to the GSA.

Question 11: Can you please explain why BLM is reducing money allocated for sage grouse conservation by \$27.4 million from last year?

Response: William Perry Pendley, BLM's Deputy Director for Policy and Programs, is recused from this matter.

Question 12: The Trump administration asked Congress for \$1.5 billion over 10 years to create a new national stockpile of U.S.-mined uranium. Energy Fuels, Inc., has been one of the main mining companies seeking government subsidies for domestic uranium mining. In response to the 2020 budget, the company announced it was selling stock and putting the nearly \$17 million in proceeds into its mining operations in Utah, Wyoming, Arizona, Texas and elsewhere. Company spokesman Curtis Moore said they plan on opening a mine about 15 miles from the Grand Canyon's South Rim entrance. Can you commit to upholding the mining withdrawal and protecting the Greater Grand Canyon Area from uranium mining?

Response: William Perry Pendley, BLM's Deputy Director for Policy and Programs, is recused from this matter.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 03 2020

The Honorable Alan Lowenthal
Chairman
Committee on Natural Resources
Subcommittee on Energy & Mineral Resources
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Management to the questions for the record submitted following the Subcommittee's June 20, 2019, legislative hearing.

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

Sincerely,

Cole Rojewski
Director
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Paul Gosar, Ranking Member
Committee on Natural Resources,
Subcommittee on Energy & Mineral Resources

Questions for the Record
Subcommittee on Energy and Mineral Resources
House Natural Resources Committee
Legislative Hearing on H.R. 3225, the Restoring Community Input and Public Protections in Oil
and Gas Leasing Act
June 20, 2019

Questions from Chairman Alan Lowenthal

Question 1: Mr. Nedd, please provide the Committee the BLM enforcement data from February 2011 through March 2019, that Chairman Grijalva and I requested in a March 11, 2019, letter addressed to Secretary Bernhardt.

Response: The Department of the Interior (DOI) and the Bureau of Land Management (BLM) remain committed to improving the oversight of BLM's Oil and Gas Inspection and Enforcement program. The DOI is working to respond to your request.

Question 2: Mr. Nedd, please provide the Committee the number of BLM Approved but Unused APDs for fiscal year 2018.

Response: The BLM estimates that as of September 30, 2018, there were 6,511 approved APDs that had not been drilled.

a. Why was the number of Approved but Unused APDs not published on the BLM's website on May 1, 2019, when BLM released its 2018 fiscal year oil and gas statistics?

Response: Onshore oil and gas production on BLM-managed lands is a significant part of an "America First" energy agenda that contributes to the Nation's energy supply. The BLM recognizes that operators make drilling decisions based on ongoing data analysis of resource potential and on individualized business models. The BLM does not directly control these business decisions. As such, we prioritized the May 1, 2019, website update to represent what the BLM directly controls, including parcels offered and permits issued.

Question 3: Mr. Nedd, since President Trump reduced the size of the Bears Ears National Monument in December 2017, has BLM received any oil and gas lease nominations for lands within the original boundaries of the Bears Ears Monument?

Response: As of October 2019, the BLM has received two expressions of interest (EOIs) within the lands excluded from the boundaries of Bears Ears National Monument. One EOI is entirely within a Wilderness Study Area, which is not available for leasing, and that parcel will not be offered for sale. The other EOI, on lands excluded from the monument boundary, only includes about 240 acres that are open for leasing, and are subject to a no surface occupancy leasing stipulation.

Submission of an EOI does not necessitate that the BLM offer the lands for leasing. The BLM is

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required by law to consider EOIs, however, the BLM analyzes a number of factors before deciding whether or not it is appropriate to offer a parcel for lease, including compliance with the applicable resource management plan.

- a. **If so, please provide copies of these lease nominations to the Committee.**

Response: Not Applicable.

- b. **Does BLM plan to offer parcels within the original boundaries of the Bears Ears Monument for lease during any upcoming quarterly lease sales?**

Response: The BLM has offered parcels for lease in Southern Utah and plans to continue to offer parcels in upcoming quarterly lease sales as required by the Mineral Leasing Act. Currently, none of those parcels are within the original boundaries of Bears Ears National Monument.

Question 4: Mr. Nedd, in response to a question from Representative Westerman, you stated that companies have a "right" to nominate parcels for oil and gas leasing anonymously and claimed that BLM discloses who nominated these parcels after the lease is issued. Is this still your contention, or do acknowledge that BLM accepts anonymous expressions of interest and does not disclose the anonymous nominator's identity even after the sale?

Response: To clarify, there is a distinction between a nominator who submits an expression of interest (EOI) and an actual bidder who participates in a specific lease sale. As a matter of policy, the BLM allows for EOIs to be submitted anonymously, while disclosing bidders' identities after a lease sale.

Question 5: Mr. Nedd, how many anonymous nominations or expressions of interest for oil and gas leases has BLM received since January 2017 through the present, and how many acres do these anonymous nominations comprise?

Response: From January 2017 to June 27, 2019, the BLM received 3,491 anonymous EOIs for oil and gas leasing. The BLM estimates these comprise 3,409,537 acres; however, the acreage is not required when the nomination is submitted to the BLM. If those lands are parcelized and prepared for an oil and gas lease sale, then BLM will verify the acreage available for leasing.

Question 6: Mr. Nedd, Ms. Kathleen Sgamma acknowledged that some oil and gas lease nominations are made by "bad actors." Why does BLM maintain a policy of allowing companies to nominate land anonymously when there are known bad actors that can and do abuse the system?

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Response: The BLM believes the vast majority of EOIs are submitted in good faith. The BLM reviews each EOI for compliance with the area's Resource Management Plan and other factors such as resource conflicts that might make the lands ineligible. In many cases, nominators have invested time and money on geophysical and other pre-leasing research. Identifying each nominator would potentially give competitors additional information on which parcels are most prospective without incurring the same costs for geophysical work and pre-leasing activity. Based on practical experience, if EOIs were no longer anonymous, we believe the number of EOIs would likely increase as some nominators may seek to conceal the lands of most interest to them in order to protect business decisions regarding potential leasing activity.

Question 7: Mr. Nedd, Mr. Pete Kolbenschlag testified that his local town council only meets every two weeks, so BLM's use of shortened comment periods "basically cuts out that grassroots governance because the town council can't comment." Yet at the hearing, you repeatedly asserted BLM consistently ensures adequate opportunities for public participation. How do you reconcile these?

Response: The BLM is committed to providing the public ample opportunity to participate in the Federal decision-making process. Throughout the BLM's oil and gas leasing process, there are multiple opportunities for public comment. For example, when the BLM is developing the land use plan that initially identifies where oil and gas leasing can occur and under which conditions, the public has an opportunity to comment during the scoping period and again for a 60-day period between the draft proposal and the final Resource Management Plans (RMP) implementation. Further, many BLM state offices conduct an environmental assessment (EA) with opportunities for public comment before the lease sale notice is issued.

- a. **Doesn't Mr. Kolbenschlag's testimony reveal a legitimate constraint - one that many communities likely face - that necessitates at minimum a 30-day comment period?**

Response: The BLM encourages stakeholder input, including input from local town councils, early and often during the RMP planning stage and the leasing EA stage.

Question 8: Mr. Nedd, the Trump administration has offered an immense quantity of public land for oil and gas leasing since 2017 - over 18.1 million acres and counting. The frequency and sheer size of these lease sales make it difficult for the public to adequately monitor and weigh in on the sale of its resources. One particularly extreme example of this challenge is BLM Nevada's plan, according to its website, to hold competitive lease sales in four successive months beginning this September. Having so many sales stacked back to back will necessarily involve overlapping comment and protest periods, making it even more difficult for the public to adequately review the sales. Can you please lay out BLM's plan for ensuring that the public comment periods for these upcoming Nevada sales are spaced appropriately to allow meaningful public engagement, and to allow BLM personnel

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to adequately consider and respond to comments?

Response: In regard to the upcoming lease sales in Nevada, the BLM will act in accordance with all applicable Federal requirements for public involvement. Specifically, the BLM will provide opportunity for public comment for 45 days prior to the start of the sale. The BLM will also provide a 10-day protest period for the public to submit a protest on parcels included in the lease sale. This 10-day protest period starts when the Sale Notice is posted.

Question 9: Mr. Nedd, as Ms. Sgamma stated at the hearing, leases become available noncompetitively only after "the market has spoken" to show that the land is low-value and "unlikely to be developed." According to a recent report, BLM is forced to cancel nearly two-thirds of noncompetitive leases because the owners simply stop paying the rent that is owed to American taxpayers.¹ Furthermore, examples abound of BLM opting not to manage land for a particular high-value use like wilderness or Areas of Critical Environmental Concern (ACECs) when there are existing leases on the ground.² Given that noncompetitive leases rarely produce, tie up public land with private property rights, and hamper management for certain other uses like recreation and wildlife habitat, can you please explain how BLM and taxpayers, and not just the oil and gas industry, benefit from noncompetitive leasing?

Response: The Federal Onshore Oil and Gas Leasing Reform Act of 1987 requires that all public lands available for oil and gas leasing be offered first by competitive leasing. The BLM may issue noncompetitive leases only after the agency has offered the lands competitively at an auction in which the lands do not receive a bid. However, the vast majority of parcels leased are done competitively. Noncompetitive leasing, in the right circumstances, can benefit the American taxpayers by allowing for additional revenue generating activities on public lands consistent with the BLM's multiple use and sustained yield mandate.

As with any lease, competitive or noncompetitive, there could be a circumstance in which the lessee does not develop the lease or pay the rental on the lease. If a lease is not developed or the rent payment ceases, then the lease is terminated.

Question 10: Mr. Nedd, when the Mineral Leasing Act was amended in 1987, Congress established a national minimum bid for oil and gas leases of \$2 per acre. Congress explicitly authorized BLM, beginning December 23, 1989, to increase the national minimum bid, presumably in recognition of the basic fact that the value of a dollar decreases over time. And yet, BLM has never raised the minimum bid since 1987. With a particular focus on how the national minimum bid affects taxpayers specifically, please elucidate BLM's

¹ Center for American Progress, *Backroom Deals: The Hidden World of Noncompetitive leasing* (May 23, 2019).

² See, e.g., Bighorn Basin Resource Management Plan and Final Environmental Impact Statement, Appendix S- 12, Table S-1 Rationale for Not Managing Lands with Wilderness Characteristics (May 2015).

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current thinking on this issue and explain why BLM is not currently working to increase this rate.

Response: The BLM's oil and gas lease sales are very competitive, with over \$1.1 billion in lease sale revenue in FY 2018. Across the BLM, most parcels that receive bids are well above the minimum bid requirement because of robust competition. The few parcels that are sold at the minimum bid requirement are generally low-valued marginal prospects. For example, the competitive nature of the lease sales results in many parcels receiving far more than the two dollar per acre minimum. For FY 2018, the highest bid received for an acre was \$95,001 per acre (resulting in a bonus bid of \$102,086,520 for one parcel) and the overall average bid per acre was \$849 per acre. For FY 2017 the highest bid received for an acre was \$37,559 per acre (resulting in a bonus bid of \$130,888,485 for one parcel) and the overall average bid per acre was \$293 per acre. Both of the highest bids per acre were for the BLM New Mexico September sale.

Based on a review of recent leases sales in New Mexico and Wyoming – two of our highest producing oil and gas states – over 99 percent of parcels sold in New Mexico and 89 percent of parcels sold in Wyoming received more than the two dollar per acre minimum bid. In the BLM New Mexico March 2019 sale, of the 45 parcels sold only two parcels received the minimum bids. Similarly, for the BLM Wyoming March 2019 lease sale, of the 114 parcels sold only 13 parcels received the minimum bids.

Question 11: Mr. Nedd, BLM established the current minimum amounts for statewide and nationwide bonds in 1951 and for lease-specific bonds in 1960. ³In 2011, the Government Accountability Office (GAO) found that BLM does "not always regularly review bonds and increase bond amounts."⁴ A 2018 follow-up report found that despite issuing new well and bond adequacy review policies, implementation across field offices was inconsistent and the agency has failed to systematically track data on potential liabilities and bond adequacy and does not maintain any information on actual reclamation costs incurred.⁵ As a result, BLM rarely requires more than the minimum bond amount, leading to a widening gap between the amount BLM holds in reclamation bonds, which totaled about \$164 million in 2008,⁶ and potential reclamation costs for all producing oil and gas wells on America's public lands - \$6.1 billion, according to a recent estimate.⁷ In light of these remarkable shortcomings, private landowners are entirely justified in being concerned about oil and gas developers drilling on their land - an issue H.R. 3225 seeks to address. Considering the

³GAO, *BLM Needs a Comprehensive Strategy to Better Manage Potential Oil and Gas Well liability* p. 11 (Feb. 2011).

⁴ *Id.* at 21.

⁵ GAO, *Bureau of Land Management Needs to Improve Its Data and Oversight of Its Potential liabilities* (May 2018).

⁶ GAO, *Bonding Requirements and BLM Expenditures to Reclaim Orphaned Wells* p. 11 (Jan. 2010).

⁷ Center for Western Priorities, *Reclaiming Oil and Gas Wells on Federal lands: Estimate of Costs* p. 1 (Feb. 2018).

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risk landowners face due to BLM's woefully inadequate bonding and reclamation funds and policies, is there any justification for deliberately restraining landowners' right to determine how their land is used, other than making it easier and cheaper for oil and gas companies to drill on the land?

Response: The BLM has continued to take steps to review and update its policy on performance bonds to determine whether the bond amount appropriately reflects the level of potential risk (liability) posed by the operators. The BLM recently revised and updated its policy through IM 2019-014, *Oil and Gas Bond Adequacy Reviews*, to clearly define terms and conditions that warrant a bond increase and require all BLM state offices to submit semi-annual reports to the Washington Office for oversight. While the bonds may be used for reclamation, the bond amounts are based on the operator's performance and consider the operator's compliance, royalty payment history, and potential well liability as reflected by the number of associated active/inactive wells. The BLM's bond review policy is consistent with the Administration's priorities in encouraging environmentally responsible development of energy and minerals on public lands. Finally, the BLM works to encourage coordination and cooperation among all parties that have rights and responsibilities in split estate situations.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 03 2020

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

Dear Chairman Lee:

Enclosed are responses prepared by the Bureau of Land Management to questions for the record submitted following the September 16, 2020, legislative hearing on pending legislation including: S. 180, *a bill to streamline the oil and gas permitting process and to recognize fee ownership for certain oil and gas drilling or spacing units, and for other purposes*; S. 1295, the *Federal Land Asset Inventory Reform Act*; S. 2828, the *Malheur Community Empowerment for the Owyhee Act*; S. 2890, the *Douglas County Economic Development and Conservation Act*; S. 3247, the *Modernizing Access to Our Public Lands Act*; S. 3366, the *Gold Star Families Parks Pass Act*; and S. 3485, the *OFFSHORE Act*.

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

Sincerely,

Cole Rojewski
Director
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Ron Wyden, Ranking Member
Subcommittee on Public Lands, Forests and Mining
Committee on Energy and Natural Resources

Questions from Chairman Lisa Murkowski

Question 1: Will usage of or access to federal lands be affected if Bureau of Land Management lands are taken into trust by the Secretary of the Interior for the Burns Paiute Tribe under S. 2828, the Malheur Community Empowerment for the Owyhee Act?

Response: Yes. Currently, the public has access to the lands that would be taken into trust by the Secretary of the Interior for the Burns Paiute Tribe. Technical modifications to the bill would be needed to ensure continued public access for hunting and outdoor recreation. As mentioned in our testimony, facilitating continued public access to adjacent Federal parcels would be critically important.

Question 2: With respect to S. 3485 OFFSHORE Act, is the Administration concerned that offshore wind energy development may pose substantial harm to state resources?

Response: The Department strives to determine suitable wind energy areas that would avoid substantial harm to state or other resources. The earliest phase of the Department's renewable energy program seeks to identify suitable areas for wind energy leasing consideration through collaborative, consultative, and analytical processes that engage stakeholders, tribes, and State and Federal government agencies. This is the phase when the Department conducts environmental compliance reviews and consultations with Tribes, States, and natural resource agencies to identify wind lease areas and reduce any potential impact offshore wind energy development may have.

The Department has worked diligently to involve State and local stakeholders by ensuring a very robust outreach effort that seeks to coordinate and deconflict any issues that may arise between the Federal government and states proximate to potential offshore wind energy leasing and development. A primary tool in these efforts are the 18 Intergovernmental Renewable Energy Task Forces that BOEM has established. These Task Forces have proven very useful in facilitating the quick and efficient sharing of information between the Federal government and State, local, and tribal entities to identify and avoid resources where there could be potential substantial harm as a result of any renewable energy development project. The Department also engages commercial and recreational fishermen, the marine transportation sector, and military stakeholders through meetings and workshops, while also participating in meetings and workshops hosted by other groups, including fishery management council meetings and state-level fishery advisory groups.

Question 3: How many families would be eligible for passes under S. 3366, Gold Star Families Parks Pass Act?

Response: In support of America's military members and families, on October 28, 2020, Secretary Bernhardt announced that Gold Star Families and U.S. military veterans will be granted free access to national parks, wildlife refuges and other Federal lands managed by the Department of the Interior starting on Veterans Day (Nov. 11) this year and every day onward. Entrance fees for the National Park

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Service and the U.S. Fish and Wildlife Service and standard amenity recreation fees for the Bureau of Land Management and the Bureau of Reclamation sites will be waived for veterans and Gold Star Families. They will have free access to approximately 2,000 public locations spread out across more than 400 million acres of public lands, which host activities to fit any lifestyle, from serene to high octane, including hiking, fishing, paddling, biking, hunting, stargazing and climbing.

For purposes of this program, a veteran is identified as an individual who has served in the United States Armed Forces, including the National Guard and Reserves, and is able to present one of the following forms of identification:

- Department of Defense Identification Card
- Veteran Health Identification Card (VHIC)
- Veteran ID Card
- Veterans designation on a state-issued U.S. driver's license or identification card

Gold Star Families are next of kin of a member of the United States Armed Forces who lost his or her life in a "qualifying situation," such as a war, an international terrorist attack, or a military operation outside of the United States while serving with the United States Armed Forces.

In similar fashion, S. 3366 would require the Secretaries of the Interior and Agriculture to make the National Parks and Federal Recreational Lands Pass available, at no cost, to members of Gold Star families. The Department defers to the Department of Defense and the Department of Veteran's Affairs to provide estimates of the number of individuals who would be considered members of Gold Star families.

Question 4: Please provide a general cost estimate and notional timeline for developing the databases proposed under S. 3247, the Modernizing Access to Our Public Lands Act, and S. 1295, the Federal Land Asset Inventory Reform Act, should these bills be signed into law as introduced.

Response: The Department defers to the Congressional Budget Office for official cost estimates of legislation. Providing information to develop such a cost estimate, as well as a notional timeline, will require aggregation of data from multiple federal agencies. It would require extensive review and analysis of each agency's corporate data and database schema to provide a general cost and time estimate for the development of the proposed databases.

Question 5: Have water users and state and local water regulators been consulted about the proposed wilderness designation in S. 2890, the Douglas County Economic Development and Conservation Act? Are there any existing water rights or water projects that could be impacted by the designation?

Response: S. 2890 would create a new wilderness from an existing wilderness study area that has been pending congressional action since 1991. S. 2890 explicitly forgoes the creation of a new federal reserved water right, but allows for the acquisition, if needed, of a state issued water right. Any such state issued water right would be junior to existing water rights, and so would not impact an existing water right.

As part of a wilderness or wilderness study area, no new water development projects would be allowed but existing water development projects under an existing right-of-way would be unaffected.

Questions from Senator Joe Manchin III

Questions: There is a serious shortage in the number of firefighters currently available, and I would like to make sure that you are currently using every tool available to you to offer the protection needed by these communities.

Is there a way to utilize ranchers and loggers that have experience with wildfires to help protect and ready communities with respect to the current wildfires and those that are being predicted in California next month? For example, there are dozens of Rangeland Fire Protection Associations located throughout Idaho, Oregon, and Nevada. Is there a way to mobilize these volunteer, nonprofit groups of landowners trained and authorized to respond to wildfires? Have they been contacted to gauge their availability and willingness to help out with the current wildfires and perhaps help prepare for California's October fire season?

Response: The Department uses every available resource during above-normal wildfire activity, when wildland fire suppression resources are typically stretched to maximum capacity. Cooperative partnerships between the Bureau of Land Management (BLM) and local, volunteer, and rural fire departments can be critical when responding to wildfires in remote areas. The BLM's Rural Fire Readiness (RFR) program enhances firefighting capabilities and serves as a mechanism to transfer excess firefighting equipment and provide funding to partners to increase safety and reduce response time to wildland fires. Through the RFR program, the BLM works closely with rural and volunteer fire departments and Rangeland Fire Protection Associations (RFPA) to mobilize volunteer, nonprofit groups who are trained and authorized to respond to wildfires.

In 2019, the BLM transferred 35 wildland fire engines and one command vehicle to several volunteer fire departments, rural fire departments, and RFPAs. The donated fire vehicles were equipped with \$3,000 worth of firefighting tools, hose, and appliances. The BLM also provided training to more than 10,250 rural and volunteer firefighters in 2019 – a 25 percent increase from 2018. The Bureau maintained this

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training program throughout 2020 to continue reinforcing partnerships with rural, local, and volunteer partners.

The BLM has worked with states and partners to establish 24 RFPAs in Oregon, nine in Idaho, and one in Nevada. RFPAs are created, authorized, supported and, in some cases, funded by state legislation. Once they become a legal firefighting entity within the state, the BLM can then enter into a cooperative fire response agreement, though each cooperator is responsible for its own equipment and liabilities. RFPAs and local fire departments that have received equipment and training from the BLM responded to numerous wildfires this past year in Oregon, Nevada, Idaho, and several other western states.

Local cooperators play a substantial role in the suppression of wildland fires on Federal lands. Many times, due to their remote location, these cooperative partners arrive on scene and begin suppression efforts before BLM resources are able to arrive. RFPAs are only authorized to suppress wildfires within their approved operating jurisdiction, however, so they cannot be mobilized to California or other states to fight fire. RFPAs do not have legal authority or established legal agreements that allow them to respond to wildfires outside of their local jurisdictions. RFA members are typically landowners and ranchers who respond to wildfires threatening their local area, but they do not request additional wildland firefighting assignments because they are volunteers who hold other professions.

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Question from Senator Ron Wyden

Question: In your testimony you highlight that the Bureau of Land Management (BLM) manages 4.4 million acres in Malheur County and the agency is committed to ensuring the long-term sustainability of healthy and productive lands in the area.

Can you provide by October 1, 2020, the amount of funding the agency would need for the Vale District to execute the jobs outlined in S. 2828 for the Bureau of Land Management?

Response: The Department defers to the Congressional Budget Office for providing official cost estimates of legislation. S.2828 would create a substantial new workload for the BLM, requiring staff and funding dedicated to planning, implementation, reporting, and oversight. The BLM roughly estimates that these new costs would be in the tens of millions of dollars annually.

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Questions from Senator Steve Daines

Question 1: S. 3366, The Gold Star Families Park Pass Act, is a bipartisan, common sense bill that extends free admission to national parks to families who have lost a loved one who was actively serving our country in an armed conflict. I have been proud to work with Senator King, the Ranking Member of the National Parks Subcommittee, which I have the honor of chairing on this bill and others that expand access to and maintain our national parks. The bill is supported by dozens of veterans and conservation groups and according to CBO it will not cost the taxpayer. Do you know how many families would now have free access to our national parks if this bill was signed into law? How would the Service get the word out to affected families?

Response: In support of America's military members and families, on October 28, 2020, Secretary Bernhardt announced that Gold Star Families and U.S. military veterans will be granted free access to national parks, wildlife refuges and other Federal lands managed by the Department of the Interior starting on Veterans Day (Nov. 11) this year and every day onward. Entrance fees for the National Park Service and the U.S. Fish and Wildlife Service and standard amenity recreation fees for the Bureau of Land Management and the Bureau of Reclamation sites will be waived for veterans and Gold Star Families. They will have free access to approximately 2,000 public locations spread out across more than 400 million acres of public lands, which host activities to fit any lifestyle, from serene to high octane, including hiking, fishing, paddling, biking, hunting, stargazing and climbing.

For purposes of this program, a veteran is identified as an individual who has served in the United States Armed Forces, including the National Guard and Reserves, and is able to present one of the following forms of identification:

- Department of Defense Identification Card
- Veteran Health Identification Card (VHIC)
- Veteran ID Card
- Veterans designation on a state-issued U.S. driver's license or identification card

Gold Star Families are next of kin of a member of the United States Armed Forces who lost his or her life in a "qualifying situation," such as a war, an international terrorist attack, or a military operation outside of the United States while serving with the United States Armed Forces.

Secretary Bernhardt announced the program at an event held at the Iowa Gold Star Museum on October 28, 2020, and the Department has actively promoted this program through all of its available communication platforms. The Department will actively promote the program in all the wonderful places where it is available as a way to honor our Veterans and Gold Star Families.

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In similar fashion, S. 3366 would require the Secretaries of the Interior and Agriculture to make the National Parks and Federal Recreational Lands Pass available, at no cost, to members of Gold Star families. The Department defers to the Department of Defense and the Department of Veteran's Affairs to provide estimate of the number of individuals who would be considered members of Gold Star families.

Question 2: S. 180 seeks to streamline oil and gas permitting where ownership of subsurface rights in a particular oil and gas unit is mixed. In a checkerboard state like Montana we often run into issues where federal, state, private and tribal lands are enmeshed in the same small area. S. 180 is a sensible, straightforward way of managing this issue and could have positive impacts on Montana. How many leases do you believe this bill would affect in Montana and how do you see this increasing production on private leases?

Response: The BLM appreciates the goal of S. 180 to focus the BLM's review of Federal actions to Federal lands. These changes could help reduce burdens on industry and the BLM by making the planning and NEPA process more efficient and less expensive, and could allow the BLM to focus on surface and downhole implications where the mineral estate is more fully within the jurisdiction of the Government. Montana has experienced nominal permitting and drilling activity on Federal lands in recent years, so the bill may not have a large impact in Montana specifically. However, it could have notable impacts elsewhere – such as in neighboring North Dakota, where development on Federal lands is managed out of the BLM's State Office in Montana, and where there are approximately 2,500 spacing units with less than 50 percent of the minerals owned by the Federal Government and the BLM estimates that the bill could affect over 5,000 Federal leases within the state.

Questions from Senator Martha McSally

Question 1: In your written testimony, you mentioned that the “BLM uses a travel and transportation planning process to incorporate roads and trails into its transportation system.”

Please describe the BLM’s national Ground Transportation Linear Feature (GTLF) data set and the extent to which its existing attributes address the individual mapping requirements specified Sec. 5 (a)(2), Sec. 5 (a)(3), and Sec. 5 (a)(4) of S. 3427. If individual attributes necessary to complete these requirements are absent from the GTLF, what would be required to create them?

Response: The BLM’s National Ground Transportation Linear Feature (GTLF) data set is the spatial database of record for linear transportation assets and off highway vehicle (OHV) route designations made through a travel and transportation management planning and decision-making process, as required by 43 CFR 8340. BLM estimates approximately 400,000 miles of undesignated routes would require inventory, cultural resource clearance, environmental review and analysis to complete travel management planning before complete data could be obtained and published digitally. For the purpose of this response, it is assumed that questions in Sec. 5 (a) 2-4 are specific to motorized and mechanized public access and do not require information on pedestrian or livestock route access, and the questions are specific to BLM’s designated transportation system (designated roads and trails).

- Sec. 5 (a)(2) - Status information with respect to whether roads and trails on the Federal land are open or closed.
 - GTLF contains the current attributes “Planned Access Restriction” and “Planned OHV Route Designation” which can be used to identify whether a specific route has unrestricted public motorized access, has a public motorized use limitation, or is closed to public motorized access.
- Sec. 5 (a)(3) - The dates on which roads and trails on the Federal land are seasonally opened and closed.
 - The BLM does not currently have an attribute in the GTLF which collects specific closure dates; however, data indicating that a route is unavailable for use at some point in the year is collected. In many cases, BLM seasonal route opening and closure dates are dependent on local conditions which vary from year to year. Modification of the GTLF system would be required to accommodate real-time seasonal route status.
- Sec. 5 (a)(4) - The types of vehicles that are allowed on each segment of the roads and trails on the Federal land, including the permissibility of off-highway vehicles, motorcycles, bicycles and passenger vehicles.
 - BLM’s GTLF contains current attributes “Planned Mode of Transport” and “Planned OHV Route Designation” which show the types of vehicles allowed and the limitation of their use on a specific route. There is a third attribute, “Planned Allowed Mode of Transport”,

which further clarifies the specifics of the modes of transportation allowed on a specific road or trail.

Question 2: To what extent is geospatial mapping data from the BLM's GTLF available to the public in locations where travel management plans have already been completed? In other words, can the public currently get access to shapefiles of the GTLF in all locations where travel plans have been completed?

Response: In locations where travel management plans have been completed (currently 18% of BLM-managed lands), those travel management decisions which designate roads and trails are captured and stored in the corresponding BLM states office's GTLF database. This information is available via a map service or downloadable file geodatabase (e.g. shapefile) and displays roads and trails which are open and managed for public access.

Question 3: How can a completely digitized mapping data system improve land management practices and increase access to our public lands?

Response: A completely digitized mapping data system would increase the quality and effectiveness of BLM transportation systems by capturing the access needs of the public; by connecting larger transportation network and communities; and by providing improved opportunities for users to experience their public lands in a manner which complements the BLM's multiple use mission.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 21 2020

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

Dear Chairman Lee:

Enclosed are responses prepared by the Bureau of Land Management to questions for the record submitted following the November 18, 2020, legislative hearing on pending legislation.

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

Sincerely,

Cole Rojewski
Director
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Ron Wyden, Ranking Member
Subcommittee on Public Lands, Forests and Mining
Committee on Energy and Natural Resources

Questions from Senator Maria Cantwell

Question 1: LEASING ON ARCTIC NATIONAL WILDLIFE REFUGE

On Tuesday November 17, 2020, the Bureau of Land Management (BLM) issued a “call for nominations” to invite input on which land tracts should be available for leasing on the Arctic National Wildlife Refuge Coastal Plain (Coastal Plain). This request follows the release on August 17, 2020 of the Record of Decision, in which the Administration formalized its decision to open essentially the entire Coastal Plain for an oil and gas leasing program.

The Tax Cuts and Jobs Act of 2017 added an oil and gas program on the Coastal Plain as one of several purposes for the refuge, but did not waive the Refuge Act, the National Environmental Policy Act (NEPA), the Wilderness Act, or any other environmental law. It also specifically limited surface coverage by production and support facilities on federal land in the Coastal Plain to no more than 2,000 acres during the term of the leases under the Program.

Under the Refuge Act, 16 U.S.C. § 668dd(d)(3), the Secretary shall not initiate a new use of a refuge, unless the Secretary has determined that the use is a compatible use, that the determination was made in writing, and provided an opportunity for public comment.

Mr. Nedd, did the BLM make a compatibility determination before initiating the new oil and gas leasing program for the refuge? If, yes, please detail when that determination was made and on what evidence the determination was based on.

Mr. Nedd, did the BLM provide the legally required opportunity for public comment on the determination?

Response: When the Arctic National Wildlife Refuge was established with passage of the Alaska National Interest Lands Conservation Act in 1980, 1.56 million of its 19.3 million acres was set aside in the law for study of all the resources in recognition of the area’s potential for oil and gas resources. The Department’s 1987 Coastal Plain Resource Assessment and Final Legislative Environmental Impact Statement, published in accordance with Section 1002(h) of ANILCA, was the culmination of a 5-year scientific study, carried out in accordance with the National Environmental Policy Act and with the opportunity for public involvement, by the U.S. Fish and Wildlife Service (FWS), U.S. Geological Survey (USGS) and Bureau of Land Management (BLM), in which the Secretary of the Interior recommended that the entire coastal plain be made available by Congress for oil and gas leasing.

The Tax Cuts and Jobs Act of 2017 (P.L. 115-97) was Congresses response, mandating that the Department establish an oil and gas program on the coastal plain. Including oil and gas development on the coastal plain as a purpose of the refuge, Congress struck a balance between access to national important energy resources and the permanent preservation of vast areas of wilderness. Secretary Bernhardt has been clear that the Department and the Bureau of Land Management (BLM), tasked with implementing the law, will carry out the congressionally-mandated oil and gas program and all activities on the coastal plain associated with the program in full compliance with the relevant laws and regulations.

Under the approved plan, a majority of the Coastal Plain Oil and Gas Leasing Program area will be subject to no surface occupancy restrictions (359,400 acres) and operational timing limitations (585,400 acres) to protect habitat and wildlife. All permitted activities will incorporate required operating procedures and stipulated restrictions based on the best science and technology to ensure that energy development does not come at the expense of the environment.

The Department will continue to work diligently to meet its obligations under the law and to implement the program mandated by Congress in the best interests of the American public.

Question 2: IMPACT OF PROPOSED ARCTIC REFUGE DRILLING PROPOSAL

Mr. Nedd, did the Bureau of Land Management determine there would be any negative impacts to the other statutory purposes of the Arctic National Wildlife Refuge, including wildlife dependent recreation and conservation of species such as the polar bear, as a result of the proposed oil and gas leasing program within the Arctic National Wildlife Refuge? Please describe any identified impacts in detail.

Mr. Nedd, what evidence or information did the Administration rely on when identifying and quantifying the negative impacts of the proposed oil and gas leasing program within the Arctic National Wildlife Refuge?

Response: The Tax Cuts and Jobs Act of 2017 (P.L. 115-97) mandated that the Department of the Interior establish an oil and gas program on the coastal plain. From the beginning of this process, Secretary Bernhardt has been clear that the Department and the Bureau of Land Management (BLM), tasked with implementing the law, will carry out the congressionally-mandated oil and gas program and all activities on the coastal plain associated with the program in full compliance with the relevant laws and regulations.

The BLM relied upon the references listed in the Coastal Plain Oil and Gas Leasing Program Final EIS, published September 2019. Please see Volume 1, Chapters 1 – 3 for a complete list of references.

Question 3: THREAT TO POLAR BEARS FROM PROPOSED SEISMIC TESTING PLAN

Last month BLM released a plan to move forward with seismic testing throughout much of the Arctic Refuge using heavy-duty trucks and machinery that may kill threatened polar bears and damage the sensitive tundra that provides critical habitat for polar bears.

According to a February 27, 2020 study published in the journal PLOS One, the surveillance technology used by the petroleum industry to find polar bear dens is unreliable and shown to miss 55% of known dens, yet this unreliable technology is what the seismic testing plan exclusively relies on. Another article written by the Fish and Wildlife Service (FWS) regarding the impact of seismic testing on polar bears, published by Journal of Wildlife Management in December 2019, noted that

conducting seismic surveys after polar bears give birth (December – January) can lead to increased death of cubs. The report also highlighted how a disproportionately high portion of all Southern Beaufort Sea (SBS) polar bears den within the 1002 Area which is one reason why 77% of the Coastal Plain is designated as critical habitat for polar bears.

Mr. Nedd, what actions is the BLM taking to ensure that critically endangered polar bears are afforded the protection required under law before authorizing any seismic testing and before offering any lease sales?

Mr. Nedd, is the BLM undertaking a new consultation as required under section 7(a)(2) of the Endangered Species Act regarding the potential impact of seismic testing on the Southern Beaufort Sea (SBS) polar bear population?

Response: The BLM is consulting with the FWS as required by Section 7 of the Endangered Species Act (ESA), and will abide by any required measures that may result from that consultation.

Question 4: USE OF FISH AND WILDLIFE SERVICE ANALYSIS IN SEISMIC TESTING PLAN

Mr. Nedd, is the BLM relying on the Biological Opinion issued by the Fish and Wildlife Service (FWS) on March 13, 2020 that did not analyze the impact of seismic testing on polar bears?

Mr. Nedd, do you agree with the 2019 FWS report that seismic exploration could lead to den abandonment and the death of polar bear cubs?

Response: As indicated in the response to the previous question, the BLM is consulting with the FWS on its proposed authorization of seismic operations, as required by Section 7 of the ESA. The Department and the BLM are carrying out the congressionally-mandated oil and gas program and all activities on the coastal plain associated with the program in full compliance with the relevant laws and regulations.

Question 5: BUFFER AROUND POLAR BEAR DENS

Mr. Nedd, will you commit to suspending any seismic testing or other oil and gas leasing development within the Arctic Refuge until a technology or survey method is proven capable to successfully identify all polar bear den sites, and then require a one-mile buffer around those sites?

Response: The Department and the BLM are committed to carrying out the congressionally-mandated oil and gas program and all activities on the coastal plain associated with the program in full compliance with the relevant laws and regulations.

Question 6: COMPLIANCE WITH THE MARINE MAMMAL PROTECTION ACT

Under the Marine Mammal Protection Act (MMPA), the Secretary of the Interior can allow for the incidental taking of polar bears, but only if they can reach specific findings, one of which is that the take will have a negligible impact on the species or stock. One metric used to assess negligible impact is potential biological removal (PBR), or the number of bears that can be removed due to human activity while retaining a sustainable population. The 2019 FWS article in the Journal of Wildlife Management found that in addition to the critical importance of the Coastal Plain to denning polar bears, the article noted that subsistence hunting already exceeds the PRB for the Southern Beaufort Sea polar bear population.

Mr. Nedd, has the Secretary issued the necessary findings under the MMPA to support issuance of an incidental take permit for any seismic testing or other oil and gas leasing program activity?

Mr. Nedd, how does the Secretary justify issuing a finding that any taking of polar bears from seismic testing or any oil and gas leasing activity will have a “negligible impact” on polar bear if subsistence hunting already exceeds the sustainable PBR for Southern Beaufort Sea polar bears?

Response: On December 8, 2020, the FWS published and requested public comments on a proposed Incidental Harassment Authorization (IHA) and accompanying draft environmental assessment for authorization to take by harassment small numbers of polar bears incidental to seismic survey and associated activities. No take by injury or death to polar bears is likely and therefore such take is not included in this proposed authorization. To date, no Incidental Harassment Authorization (IHA) has been granted.

Question 7: NEPA COMPLIANCE

Last week, a Federal Court ruled, for a second time, that BLM failed to comply with NEPA requirements by neglecting to properly weigh the cumulative impacts of climate change before offering oil and gas leasing in Wyoming.

The NEPA analysis BLM released this summer for the Arctic Refuge also arguably failed to comply with NEPA requirements, by failing to adequately consider the cumulative impacts of climate change from developing oil and gas leases and relying on a legally deficient biological opinion regarding impacts to polar bears from the oil and gas leasing program.

Mr. Nedd, will the BLM commit to revising the current NEPA analysis to properly weigh the cumulative climate change impacts of the oil and gas leasing program in the Arctic Refuge before moving forward with any lease sales?

Response: The BLM completed a robust analysis in accordance with NEPA for the Coastal Plain Oil and Gas Leasing Program. There is a thorough discussion of climate change effects in the Leasing EIS in the Climate Change subsections of the Affected Environment, as well as under the Direct and Indirect Impacts and Cumulative Impacts for each resource, as applicable.

Question 8: OUTDOOR RECREATION

The Final EIS concluded that the leasing program has the potential to harm recreation throughout the entire Coastal Plain and cause the displacement or decline of sensitive species such as polar bears. D

Mr. Nedd, does BLM recognize or consider that this area has tremendous potential for outdoor travel and tourism as the northwest passage opens up, uses that are consistent with the specific purpose for which the refuge was created?

Response: The Final EIS considered all potential impacts to the Coastal Plain as a result of the leasing program. All alternatives considered were designed to meet the purpose and need of implementing the leasing program consistent with PL 115-97, as well as account for all purposes of the ANWR.

Question 9: IMPACTS TO THE ARCTIC REFUGE FROM THE CONVEYANCE PROPOSED IN S. 4889

Section 5 of Senate Bill 4889 would convey public lands in the Arctic National Wildlife Refuge out of public ownership to two ANCSA corporations. BLM is currently reviewing the Marsh Creek East Seismic Exploration application submitted by the Kaktovik Iñupiat Corporation, to conduct a seismic survey on close to one million acres of the Arctic National Wildlife Refuge Coastal Plain (Coastal Plain).

Mr. Nedd, with one of the corporations requesting a permit for seismic exploration on the Coastal Plain, and the other showing interest in oil and gas development, do you think this change make it easier for those corporations to pursue oil and gas extraction on the Coastal Plain?

Mr. Nedd, has the BLM determined this transfer to be in the public interest? If yes, what specific benefits did the BLM identify to justify the determination?

Response: The Native village of Kaktovik has an outstanding entitlement to approximately 2,300 acres of land under the Alaska Native Claims Settlement Act (ANCSA). S. 4889 resolves an unintended conflict between ANCSA and the 1988 Submerged Lands Act which has prohibited the BLM from fulfilling its statutory obligation under ANCSA to the village of Kaktovik, and allows the BLM to fulfill the statutory entitlement to Kaktovik by conveying the surface estate of approximately 2,300 acres to the Kaktovik Inupiat Corporation and the matching subsurface to the Arctic Slope Regional Corporation.

The opportunity to own lands for the benefit of the Alaska Native shareholders of the corporations formed pursuant to ANCSA was part of the intent of ANCSA.

Question from Senator Martin Heinrich

Question: Could the Bureau of Land Management please outline for the Committee the specific reasons why Native corporations were not formed for Ketchikan, Wrangell, Petersburg, Tenakee, and Haines at the same time as other ANCs? As part of your response, please note for the Committee whether these communities met the qualifications to form an ANC, including the population requirement.

Response: In early 1993, at the direction of Congress, the BLM, the U.S. Forest Service, and the Bureau of Indian Affairs contracted with the Institute of Social and Economic Research (ISER) at the University of Alaska-Anchorage to prepare a report presenting the available evidence on why the five study communities were omitted from ANCSA. The report also addressed how the historical circumstances and conditions of the study communities compared with other listed southeast Alaska communities. While the report was inconclusive, Congress may use the historical record in the report to determine whether the communities were inadvertently not recognized. The report is available at: <https://iseralaska.org/publications/?id=877>.

Questions from Senator John Hoeven

Question 1: As you are aware, the Bureau of Land Management (BLM) works collaboratively with the Forest Service as part of the Department of the Interior's Wildland Fire Management Program, which includes efforts to proactively manage fuels and establish a better federal wildfire workforce. What tools and/or partnerships does BLM utilize to reduce hazardous fuels?

Response: The BLM's Fuels Management Program conducts a wide variety of active management vegetation treatments using mechanical, biological and chemical tools, and prescribed fire. The program includes creating fuel breaks to provide safe access for firefighters, reducing fuel loads by removing pinon-juniper and invasive species, reducing fire risk near communities, targeted grazing, and herbicide followed with seeding to break the fire-cheatgrass cycle. Fuel reduction activities such as these lower the potential for severe wildfires and improve land health by restoring fire-adapted ecosystems and increasing wildfire resiliency.

Fuels treatments are planned and implemented in collaboration with other BLM programs with federal, state, local, tribal, non-governmental collaborators, and partners. Through contracts, use of the Good Neighbor Authority, financial assistance agreements, and firefighting partnerships, the BLM is maximizing the capacity to conduct fuels reduction projects across landscapes and help protect communities. In addition, the BLM's partnerships with wildlife organizations – such as the National Wild Turkey Federation and Rocky Mountain Elk Foundation – have funded fuels and vegetation management projects to improve wildlife habitat and the ability of ecosystems to recover after wildfire. The BLM further engages with community partners through wildfire management planning, public education, providing equipment, and wildland fire training.

Question 2: How has the administration worked to promote better fuel management and further reduce wildfire risk?

Response: The DOI and the BLM have made substantial progress to reduce the risk of catastrophic wildfire by working collaboratively with partners and significantly reducing hazardous fuels. These efforts are part of a larger wildfire reduction strategy guided by Executive Order 13855 – *Promoting Active Management of America's Forests, Rangelands, and Other Federal Lands to Improve Conditions and Reduce Wildfire Risk*, and Secretary's Order 3372 – *Reducing Wildfire Risks on Department of the Interior Land Through Active Management*. In accordance with these orders, the BLM's Fuels Management Program completed more than 780,000 acres of active management fuels treatments in fiscal year 2020 and in fiscal year 2019, the BLM accomplished over 840,000 acres of fuels treatments (70 percent) of the total 1.3 million acres accomplished by all DOI Bureaus.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 03 2020

The Honorable Alan Lowenthal
Chairman
Committee on Natural Resources
Subcommittee on Energy & Mineral Resources
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Ocean Energy Management to the questions for the record submitted following the March 10, 2020, hearing concerning the FY 2021 Budget.

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

Sincerely,

Cole Rojewski
Director
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Paul Gosar, Ranking Member
Committee on Natural Resources,
Subcommittee on Energy & Mineral Resources

**Questions for the Record
House Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
FY 2021 Budget
March 10, 2020**

Questions from Chairman Alan Lowenthal

Question 1: In 2016, BOEM sent out 112 so-called sole liability letters, covering 687 properties where there was only one party responsible for paying for decommissioning. Did Energy XXI receive a sole liability letter? If so, how many sole liability letters did Energy XXI receive, and what was the forecast decommissioning costs of these sole liability properties?

Response: Yes. Energy XXI received a demand order reflecting total decommissioning liabilities of \$8,383,840. The financial assurance in place was \$3,268,000, leaving \$5,115,840 in decommissioning liabilities that required financial assurance.

Question 2: In February 2017, BOEM announced that it was withdrawing the sole liability orders that were issued to Outer Continental Shelf oil and gas lease and grant holders in December 2016. You stated in your March 2019 testimony that by rescinding the letters, in some cases, the companies that first received the letters no longer had to cover the additional bonding requirements. Furthermore, you stated in your March 2019 testimony that BOEM had since re-issued certain sole liability orders. Did BOEM re-issue any sole liability letter to Energy XXI? If so, how many sole liability letters and for which properties did BOEM re-issue to Energy XXI?

Response: No, BOEM did not re-issue any sole liability letters to Energy XXI.

Question 3: As of October 2018, did Energy XXI own any sole liability properties in the Gulf of Mexico? If so, how many properties and what were the forecast decommissioning costs of these properties?

Response: Yes. The breakdown of properties and sole decommissioning liabilities was as follows:

Leases: Energy XXI had 26 leases. Total decommissioning liabilities were \$69,680,314. The financial assurance in place was \$8,813,709, leaving \$60,866,605 that required financial assurance.

Rights of Way (ROWs): Energy XXI had 4 ROWs. Total decommissioning liabilities were \$4,063,787. The financial assurance in place was \$3,090,000, leaving \$973,787 that required financial assurance.

**Questions for the Record
House Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
FY 2021 Budget
March 10, 2020**

Question 4: In October 2018, Cox Oil acquired Energy XXI. At the time of the sale, what were Energy XXI's asset retirement obligations in the Gulf of Mexico? What was BOEM's view of Energy XXI's financial strength before this sale?

Response: Per the June 2018 SEC Form 10-Q filing, Energy XXI's Asset Retirement Obligations (AROs) in the Gulf of Mexico were \$625M. This was the last public financial statement filing released prior to the Cox Oil/Energy XXI acquisition. (Please note that ARO data includes all related obligations of the company and therefore are not broken out into sole and non-sole liabilities. In determining the bond demand amount, BOEM refers to the sole decommissioning liability as determined by BSEE, rather than the ARO.)

Prior to the transaction with Cox Oil, the BSEE decommissioning liabilities were \$73,744,101, the financial assurance in place was \$11,903,709, leaving \$61,840,392 that required financial assurance.

On April 26, 2018, an evaluation of Energy XXI's financial strength was performed per 30 CFR 556.901(d). Based on this evaluation Energy XXI did not meet the criteria for Financial Capacity and Reliability.

Question 5: In October 2018, when Cox Oil acquired Energy XXI, did Cox Oil assume all the offshore decommissioning liabilities that were held by Energy XXI? If not, what company or companies are currently responsible for these decommissioning costs?

Response: Yes, Cox Oil assumed offshore decommissioning liabilities held by Energy XXI when it acquired the company.

Question 6: What role did Gulf Energy Alliance have in shaping the Risk Management, Financial Assurance and Loss Prevention proposed rule currently under review by the Office of Information and Regulatory Affairs?

Response: Prior to the decision to initiate the Risk Management, Financial Assurance and Loss Prevention rulemaking process, BOEM received numerous comments and papers regarding BOEM's financial assurance framework, reflecting a lack of consensus within the industry on what to recommend. BOEM's Risk Management Program reviewed and considered all comments and papers that were received.

Question 7: Dr. Cruickshank, is BOEM tracking the financial health of the companies operating on the OCS in the Gulf of Mexico? If so, if prices stay around \$30 per barrel, are any companies at imminent financial risk?

Response: BOEM tracks the financial health of companies through publicly available data and from sources such as S&P and Moody's. As of March 25, 2020, BOEM was not aware of any

**Questions for the Record
House Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
FY 2021 Budget
March 10, 2020**

companies active on the OCS that posed an imminent financial risk. We will continue monitoring, knowing that there has been a recent downward spike in the price of oil.

Question 8: Dr. Cruickshank, it is my understanding that Congressman Keating sent you a letter in late January regarding Vineyard Wind, but he hasn't received a response back. Can you make a commitment that you will respond to his letter, which is attached?

Response: A response to Congressman Keating's letter was signed and sent to the congressman's office on March 27, 2020.

Question 9: Dr. Cruickshank, what is the status of the Vineyard Wind project and can they count on your latest commitment that all environmental reviews will be completed by the end of this year?

Response: The Vineyard Wind 1 Project is an ongoing work with cooperating agencies since the Vineyard Wind 1 Final EIS will serve as a model for the environmental reviews of future offshore wind projects, including the analysis of the expanded reasonably foreseeable scenario for offshore wind energy development. Developing offshore infrastructure requires close coordination and input from multiple stakeholder groups including, among others, the coastal states, the wind industry, ocean users, utility companies and transmission regulators. While efficiency is an important factor, ensuring enough time is allocated to receive and evaluate stakeholders' views is a necessary part of our process. For the latest project timeline status please visit <https://www.permits.performance.gov/permitting-projects/vineyard-wind>

Question 10: Dr. Cruickshank, what is the Department's plan to ensure that delays in this one project's permitting process don't affect other wind projects up and down the East Coast, many of which are necessary to reach state-mandated renewable energy targets?

Response: BOEM is still accepting Construction and Operations Plans (COPs) from other offshore wind developers while the supplement to the Draft EIS for the Vineyard Wind project is being developed. As part of the supplement, BOEM is completing a cumulative assessment that will consider state renewable energy targets, as well as new technology being proposed by the developers. In the long term, the delays being experienced now will create a path moving forward so that permits may be processed in a timely manner.

Question 11: Dr. Cruickshank, how are you working to ensure that you have all the relevant data to make sure that the cumulative analysis is valuable for assessing the impacts of future offshore wind farms?

Response: The cumulative assessment will include data from several sources including public meetings, ocean use industries such as the fishing community, and collaboration with other federal, state, and tribal stakeholders.

**Questions for the Record
House Committee on Natural Resources
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FY 2021 Budget
March 10, 2020**

Question 12: Dr. Cruickshank, the Department announced in a June 2019 a press release that it planned to publish an offshore wind whitepaper and a hold a workshop on deep water development in “early 2020.” Can you provide an update on that white paper and workshop, do you know when those are happening?

Response: Following the June 2019 press release, BOEM developed a request for proposals to draft a white paper on floating offshore wind technology. The procurement process to hire a contractor to complete the white paper is underway. The white paper will provide an assessment of the technological, environmental, and financial issues related to the development of floating offshore wind turbines on the OCS, including best practices in design and use of standards and industry guidelines.

Question 13: Dr. Cruickshank, where do things stand with the Department of Defense so BOEM can move forward with offshore wind leasing in California?

Response: BOEM is continuing its dialogue with DoD and the State of California to find areas that are appropriate for leasing offshore California’s central coast. On August 21, 2019, Congressman Carbajal hosted a meeting with senior officials from DoD, BOEM, the National Oceanic and Atmospheric Administration (NOAA), the California Energy Commission (CEC), and state and locally elected representatives to discuss a path toward finding a solution that accommodates a viable offshore wind industry on the Central Coast and meets the mission of DoD to test, train and operate. At the August 21, 2019, meeting, Congressman Carbajal, Congressman Panetta, Assistant Secretary of Defense for Sustainment, BOEM, NOAA, and the State of California (State) agreed to participate in a series of meetings, which commenced in March 2019, to identify solutions off the Central Coast.

Questions from Congressman Jared Huffman

Question 1: The Gulf of Mexico Marine Assessment Program for Protected Species (GoMMAPPS) was created in 2015 to collect information on the abundance, distribution, habitat use, and behavior of marine mammals, sea turtles, and seabirds in the Gulf of Mexico. The information from GoMMAPPS is used by the Bureau of Ocean Energy Management (BOEM) to meet its obligations under the National Environmental Policy Act (NEPA), the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), and the Migratory Bird Treaty Act to monitor and reduce potential impacts of human activities, including those related to offshore energy development, on living marine resources. In November 2019 BOEM announced that funding for GoMMAPPS would not be available for a second five-year phase, due to funding expected to be available from other Deepwater Horizon oil spill restoration-related sources. How does BOEM intend to meet its management needs under the Outer Continental Shelf Lands Act (OCSLA), NEPA, ESA, and MMPA in the absence of reliable information on the abundance, distribution, and habitat use of marine mammals and other living marine resources in areas of the Gulf subject to oil and gas exploration, leasing, and development?

Questions for the Record
House Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
FY 2021 Budget
March 10, 2020

Response: BOEM continues to fund the Gulf of Mexico Marine Assessment Program for Protected Species (GoMMAPPS) in FY 2020, and the data collected through this program will be relevant and reliable for decades to come. As of March 24, 2020, BOEM was actively funding 11 research efforts in the Gulf of Mexico and had a total of 46 ongoing research efforts at various stages of development or completion across many scientific disciplines. GoMMAPPS is one of many studies BOEM uses to inform its activities and perform its environmental stewardship mission in the Gulf of Mexico. GoMMAPPS federal partners will continue to develop distribution and abundance models throughout the lifetime of each interagency agreement through FY 21. Upon delivery, BOEM will evaluate and then plan a strategy for complementary projects. This evaluation period is a fundamental step to inform the next iteration of projects in the Gulf of Mexico to inform BOEM's analysis and decision making under multiple applicable statutory requirements.

Question 2: Both the National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (FWS) consider data on marine mammal abundance that is more than eight years old to be outdated. Without continued funding for surveys and monitoring, data on marine mammal abundance will quickly become outdated. Some of the oil spill-related projects proposed for funding, or currently being funded, would contribute to a better understanding of the impacts of energy development and other human-caused stressors on marine mammals and other marine wildlife, but none are expected to be able to provide the long-term and broad-scale abundance and distribution data that BOEM needs for its NEPA documents and decision-making in the Gulf currently provided by GoMMAPPS. How does BOEM intend to meet its management needs under OCSLA, NEPA, ESA, and MMPA if marine mammal abundance data becomes out of date and new data sources are insufficient to meet BOEM's data needs for effective decisionmaking?

Response: GoMMAPPS provides unprecedented collaborative opportunities for federal and academic scientific communities, and BOEM expects that new and relevant scientific products will blossom from the project for years to come. BOEM has a proven record for developing strategic partnerships and utilizing new technologies to obtain the best available data and will continue to do so in order to meet its data needs. Ongoing BOEM studies and collaborative efforts with academia and other federal partners such as NOAA/NMFS are pushing the envelope to better enable scientists to determine the density and abundance of marine mammals. For example, one BOEM study is working with passive acoustic monitoring data to better enable scientists to determine the density of marine mammals, not just the number of calls. BOEM and NOAA are discussing how to obtain more meaningful data on species' density and distribution from the efforts of Protective Species Observers who are present on survey vessels. These efforts by BOEM will allow the best available science to be continuously applied to our decision-making process for balanced energy development projects on the Outer Continental Shelf moving forward.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 21 2020

The Honorable Lisa Murkowski
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Chairman Murkowski:

Enclosed are responses prepared by the Bureau of Ocean Energy Management to the questions for the record submitted following the September 22, 2020, oversight hearing entitled: *An Examination of Emerging Offshore and Marine Energy Technologies in the United States, including Offshore Wind, Marine and Hydrokinetic Energy, and Alternative Fuels for Maritime Shipping.*

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

Sincerely,

Cole Rojewski
Director
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Joe Manchin III, Ranking Member
Committee on Energy and Natural Resources

U.S. Senate Committee on Energy and Natural Resources
September 22, 2020 Hearing: *An Examination of Emerging Offshore and Marine Energy Technologies in the United States, including Offshore Wind, Marine and Hydrokinetic Energy, and Alternative Fuels for Maritime Shipping*

Questions from Chairman Lisa Murkowski

Question 1: There is a strong need for additional offshore wind projects to receive their notices of intent (NOI) so they can begin development in earnest. Do you plan to begin issuing additional NOIs prior to the Vineyard Wind Record of Decision (ROD), or only afterwards?

Response: A timeline for issuance of NOIs to prepare Environmental Impact Statements (EISs) for additional offshore wind projects is undetermined at this time. In order to issue NOIs, BOEM must first complete several steps, including the establishment of cooperative relationships with other Federal agencies to ensure high quality documents are prepared. In addition, BOEM would have to determine that enough information has been provided by lessees in their construction and operations plans.

Question 2: Do you plan to begin permitting additional wind farms as soon as the Vineyard Wind ROD has been issued, or will you wait until that facility's construction is complete, if granted the final license?

Response: BOEM does not have a schedule for initiating the permitting process for additional offshore wind projects, other than for the South Fork project for which the NEPA process is underway.

U.S. Senate Committee on Energy and Natural Resources
September 22, 2020 Hearing: *An Examination of Emerging Offshore and Marine Energy Technologies in the United States, including Offshore Wind, Marine and Hydrokinetic Energy, and Alternative Fuels for Maritime Shipping*

Questions from Ranking Member Joe Manchin III

Questions: Over the past decade, many have highlighted the need for an offshore grid to help deploy offshore wind turbines along the East Coast.

- a. **Do you view the current reality of individual projects developing their own transmission as a major barrier to the industry's expansion on the East Coast of the U.S.?**

Response: Under BOEM's regulations, a lease for offshore wind development allows the issuance of one or more noncompetitive easements to shore for grid connection.

To date, COPs have proposed direct radial connection to the land-based grid. However, if a lessee wished to use an ocean grid, it could propose an easement to such a system as part of its COP, and BOEM would evaluate such an easement as part of the COP review.

For any proposed ocean transmission grid, BOEM would have to issue a right-of-way grant for use of the Outer Continental Shelf. Subsequently, BOEM would evaluate the proposal under a General Activities Plan and associated NEPA process.

The costs and benefits of a proposed ocean transmission grid would be highly dependent on the proposed project and its geographic location. These factors include the availability of grid interconnection and associated land-based upgrades needed.

- b. **What would be needed to reinvigorate a more efficient approach to developing offshore transmission infrastructure?**

Response: Developing offshore transmission infrastructure will require close coordination and input from multiple stakeholder groups, including, among others, the coastal states, the wind industry, ocean users, utility companies and transmission regulators. While efficiency is an important factor, ensuring enough time is allocated to receive and evaluate stakeholders' views is a necessary part of the process.

Currently there does not appear to be a common solution among wind energy developers, coastal states, transmission developers, and transmission regulators. Identification of a common solution among these groups would provide greater clarity to BOEM on what course, if any, should be taken in the future.

U.S. Senate Committee on Energy and Natural Resources
September 22, 2020 Hearing: *An Examination of Emerging Offshore and Marine Energy Technologies in the United States, including Offshore Wind, Marine and Hydrokinetic Energy, and Alternative Fuels for Maritime Shipping*

Questions from Senator Bill Cassidy

Question 1: Director Cruickshank, I've been told the President's announced 10-year moratorium in the South Atlantic, Eastern Gulf and Florida Straits available for energy leasing applies to offshore wind.

a. Can you please confirm whether this is true?

Response: The President announced the withdrawal of all energy leasing, including conventional and renewable energy, beginning on July 1, 2022. No new leases will be issued offshore North Carolina, South Carolina, Georgia and Florida, for a 10-year period beginning July 1, 2022.

b. Because the moratorium in the South Atlantic does not begin until July 2022, if BOEM conducts a lease sale for offshore wind prior to that date, would a company still be able to develop the lease, or would that activity be prohibited under the President's order?

Response: If a lease is issued by July 1, 2022, the proposed project would not be impacted. However, there are multiple stages remaining in BOEM's renewable energy leasing process that must occur before a lease could be issued.

Question 2: You state in your testimony BOEM is examining additional offshore wind planning activities in both the Atlantic and Pacific.

a. When do you anticipate BOEM will schedule and announce the next offshore wind lease sale?

Response: BOEM does not have a schedule for future offshore wind lease auctions.

BOEM is committed to working with all our stakeholders, including state and local governments, the fishing and maritime communities, and the offshore wind industry, to ensure potential development acknowledges and balances other ocean uses.

BOEM has begun planning activities to identify and assess potential wind energy areas in the Gulf of Maine, the New York Bight, California, Hawaii, and Oregon.

**U.S. Senate Committee on Energy and Natural Resources
September 22, 2020 Hearing: *An Examination of Emerging Offshore and Marine Energy Technologies in the United States, including Offshore Wind, Marine and Hydrokinetic Energy, and Alternative Fuels for Maritime Shipping***

Questions from Senator Martin Heinrich

Question 1: Future of Offshore Wind--It is clear that we need to accelerate the deployment of clean energy technologies to meet our 2050 climate goals. Offshore wind in particular is extremely well positioned to play a pivotal role in reducing greenhouse gas emissions. Yet, projects have struggled to get through the permitting process at BOEM. To date, we have no commercial-scale projects that have made it through the permitting process. There are various offshore wind projects that have submitted their Construction and Operations Plans (COPs), but most are waiting for BOEM to start the official permitting review process.

Does BOEM have a formal hold on issuing NOIs for offshore wind projects that have submitted their COPs?

Response: At this time, BOEM does not have a hold on or a schedule for initiating the permitting process for additional offshore wind projects. In order to issue NOIs, BOEM first needs to complete several steps, and establish cooperative relationships with other Federal agencies to ensure high quality documents are prepared. In addition, BOEM would have to determine that sufficient information has been provided by lessees in the COPs.

Question 2: When do you expect BOEM will issue Notices of Intent to start the official permitting review process for the numerous projects awaiting BOEM action?

Response: BOEM does not have a schedule for initiating the permitting process for additional offshore wind projects.

Question 3: Significant delays are likely if these pending offshore wind projects do not begin the official permitting review process at BOEM soon. Is Secretary Bernhardt aware of the substantial jobs and investments in manufacturing supply chain, US vessel construction and port infrastructure that are waiting on the sidelines because of the Department's lack of progress in permitting offshore wind projects?

Response: The Secretary recognizes the positive economic benefits associated with a new offshore wind industry. However, the Secretary wants to make sure any offshore wind projects are executed in a safe and environmentally sound manner that accounts for other important uses of the ocean. The Department's goal is to ensure that offshore wind projects, commercial fishing, and maritime navigation are all successful, and that there are no unexpected environmental consequences.

U.S. Senate Committee on Energy and Natural Resources
September 22, 2020 Hearing: *An Examination of Emerging Offshore and Marine Energy Technologies in the United States, including Offshore Wind, Marine and Hydrokinetic Energy, and Alternative Fuels for Maritime Shipping*

Question 4: Vineyard Wind Project--The Vineyard Wind Project is still under review at BOEM. Is BOEM on schedule to issue the Final Environmental Impact Study in November 2020 and the Record of Decision in December?

Response: The application for this project was recently withdrawn.

**U.S. Senate Committee on Energy and Natural Resources
September 22, 2020 Hearing: *An Examination of Emerging Offshore and Marine Energy Technologies in the United States, including Offshore Wind, Marine and Hydrokinetic Energy, and Alternative Fuels for Maritime Shipping***

Questions from Senator Mazie Hirono

Question 1: The Bureau of Ocean Energy Management (BOEM) has jurisdiction for permitting and leasing of ocean waters for offshore wind. Can you describe if and how BOEM seeks public and community input in determining which sections of ocean space to lease and who to lease it to during BOEM's request for proposal (RFP) and selection processes?

Response: Prior to the issuance of a lease or grant, BOEM works to deconflict all areas to the greatest extent possible. To achieve this, BOEM conducts extensive stakeholder outreach, convenes regional and state renewable energy task forces, and requests information from industry and the public. In addition, any proposed projects undergo analysis through the NEPA process to identify and avoid, minimize, or mitigate potential environmental impacts.

To best facilitate these relationships and ensure effective communication from the very beginning of the planning process, BOEM created Intergovernmental Renewable Energy Task Forces.

These task forces are generally focused on a specific coastal region, which may be adjacent to one or more coastal states, and consist of members from the federal government as well as state, local and tribal governments. They provide a public forum for information exchange throughout BOEM's decision-making process – such as the development of public notices – and keep lines of communication open on important issues.

BOEM also issues a series of public notices during key points in the process. These notices announce potentially suitable areas for leasing and solicit public input, including from important ocean user groups. BOEM uses the comments and information submitted to identify areas of concern and to further refine the areas under consideration for leasing.

Public meetings are often arranged by BOEM at key points in our planning process to solicit input from stakeholders on specific topics, such as commercial fishing and maritime safety. In addition, BOEM will often attend meetings hosted by state and local governments, industry groups, and maritime user groups to provide updates and answer questions about ongoing planning activities.

Question 2: While there is significant potential for federal revenue from leasing areas for offshore wind development, there are also issues of environmental impacts, compatibility with fisheries and military missions, and availability of renewable power at affordable rates. In Hawaii, for example, electricity rates are among the highest in the country because of our geographic isolation in the middle of the Pacific Ocean. What other criteria besides lease price can BOEM factor into its selection processes for offshore wind projects?

U.S. Senate Committee on Energy and Natural Resources
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Response: When proposing an area for leasing, BOEM follows a process that includes all of the factors you mentioned in order to ensure the future success of all ocean industries and reduce the impacts from potential offshore wind development. This includes engaging stakeholders – including federal, state and local agencies, fishing communities, and the public – throughout our processes to highlight environmental as well as socio-economic considerations. BOEM continues to work with our state partners to identify potential leasing opportunities to assist states in meeting their offshore wind procurement goals. Aligning our leases with state goals helps provide certainty to the offshore wind industry.

Once an area is selected, the use of a multiple-factor auction format allows BOEM to consider both monetary and non-monetary factors in selecting a winner for offshore wind energy auctions. Using non-monetary factors in BOEM renewable energy auctions is currently authorized in 30 CFR 585.220 (“Multiple-factor bidding . . . factors may include, but are not limited to: technical merit, timeliness, financing and economics, environmental considerations, public benefits, compatibility with State and local needs, cash bonus, rental rate, and an operating fee rate.” 30 CFR 585.220(a)(4)).

Question 3: What lessons has BOEM learned from the offshore wind projects in the Atlantic that it would apply to future projects in the Pacific? What are the unique challenges for development in the Pacific, and how does BOEM plan to address them?

Response: Developing good working relationships with our stakeholders has been instrumental in identifying potential areas for wind energy development.

We identify lease areas through a rigorous, multi-stage process that involves opportunities for significant public input. The areas we identify for offshore wind leasing consideration, which we call “Wind Energy Areas,” appear to be best suited for commercial wind energy development with fewer environmental and user conflicts than other methods.

In addition, we have learned that open and frequent communication helps reduce user conflicts and establishes a strong foundation for future wind projects.

Finally, BOEM continues to work with the Department of Defense and the State of Hawaii to identify potential areas for future offshore wind development.

U.S. Senate Committee on Energy and Natural Resources
September 22, 2020 Hearing: *An Examination of Emerging Offshore and Marine Energy Technologies in the United States, including Offshore Wind, Marine and Hydrokinetic Energy, and Alternative Fuels for Maritime Shipping*

Questions from Senator Cindy Hyde-Smith

Question 1: As we discuss the implementation of emerging offshore technologies, the challenge that remains is this: it is difficult to deploy technologies regardless of how green it might be without a reliable and functioning permitting and leasing program. What similarities have you seen between the challenges of leasing and permitting that an offshore wind development project might have as would a conventional oil and gas leasing project?

Response: For offshore conventional and renewable energy projects, BOEM must comply with the National Environmental Policy Act (NEPA) and other environmental laws prior to deciding whether to approve a plan. For offshore oil and gas leasing and exploration, development and production plans, BOEM prepares an environmental impact statement at the leasing stage, with the type of environmental analysis conducted at the plan stage varying based on geographic location and the nature of the potential impacts. For offshore renewable energy, BOEM typically prepares an environmental assessment for the lease sale, and the consideration of more site-specific potential impacts from development does not occur until after lease issuance, once a lessee submits a construction and operations plan. While several of the environmental issues and use conflicts are similar (e.g., noise from pile driving, and viewshed), these concerns vary by geographic region. Many of the lessons learned from leasing and permitting oil and gas can be applied to offshore renewable energy, such as identifying appropriate and effective mitigation and filling knowledge gaps through BOEM's Environmental Studies Program.

Question 2: Congress recently passed historic conservation legislation – the Great American Outdoors Act, which depends now almost entirely on federal royalties from offshore revenues to be successful. Could you draw a comparison between the typical offshore wind project vs an oil and gas development in terms of federal revenues and which one will likely produce more conservation revenues over the next 20 years?

Response: Leasing revenues received vary greatly between projects based on several factors. Wind and oil and gas leases both pay a bonus bid for rights to the acreage. All leases pay nominal per acre rental fees before operation or production. Renewable energy leases pay an operating fee and oil and gas leases pay a royalty once energy production begins. The operating fee and royalty payment revenues vary significantly based on the size of a project.

On average, considering bonus, rental, and operating fee/royalty revenues, we estimate that a medium size wind development (500 Megawatts (MW)) would generate approximately \$110 million in leasing revenues over 32 years, whereas a large development (1,000 MW) would generate approximately \$220 million over 32 years. A medium oil and gas development (25 million barrels of oil equivalent (MMBOE)) would generate \$270 million in leasing revenues over 28 years and a large development (400 MMBOE) would generate \$4.5 billion over 37 years. These revenue estimates are based on typical project sizes, recent bonus bids and projected energy prices for the U.S. Atlantic (wind projects) and the Gulf of Mexico (oil and gas projects).



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 21 2020

The Honorable Lisa Murkowski
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Chairman Murkowski:

Enclosed are responses prepared by the Office of Natural Resource Revenue to the questions for the record submitted following the November 7, 2019, hearing to *Examine Federal Revenues Derived from Energy Development on Federal and Indian Lands as well as Federal Offshore Areas and Programs that Share those Revenues with State, Local and Tribal Governments; and to Receive Testimony on S. 2418 and S. 2666.*

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

Sincerely,

Cole Rojewski
Director
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Joe Manchin III, Ranking Member
Committee on Energy and Natural Resources

Questions for the Record

U.S. Senate Committee on Energy and Natural Resources

Hearing “To Examine Federal Revenues Derived from Energy Development on Federal and Indian Lands as well as Federal Offshore Areas and Programs that Share those Revenues with State, Local and Tribal Governments; and to Receive Testimony on S. 2418 and S. 2666”

November 7, 2019

Questions from Chairman Lisa Murkowski

Questions: Could you please describe how funds to be shared under the Mineral Leasing Act, the Outer Continental Shelf Lands Act, the Gulf of Mexico Energy Security Act, or other revenue sharing provisions of federal law are treated under sequestrations under the Budget Control Act? What is the process for resolution and release of sequestered funds, and are any funds still subject to prior sequestrations?

Response: Congress enacted The Budget Control Act of 2011 (BCA, P.L. 112-25) amending the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA, P.L. 99-177), which established an automatic sequester process to reduce spending starting in 2013, if certain spending milestones were not met. The bill’s objective was to reduce the deficit by at least \$1.2 trillion over the period covering FY 2012-FY 2021. This timeframe was most recently extended through FY 2029 by the Bipartisan Budget Act of 2019 (P.L. 116-37). In the absence of legislation to reduce the deficit by at least \$1.2 trillion over the legislated time period, the BCA requires the annual sequester of funding from non-exempt mandatory programs. Interior has implemented the required annual sequestration reductions for all mandatory programs not explicitly exempted in statute from the automatic reductions, since 2013.

Implementing the sequestration reductions for most of Interior’s non-exempt activities is straight-forward and funds are returned to Treasury at the end of the year. However, Section 256(k)(6) of BBEDCA allows for a temporary reduction of budgetary resources in the fiscal year of sequestration in special, trust, and revolving fund accounts, with a determination of the availability of sequestered funding in future fiscal years based on the underlying statutory authority for the account. The BBEDCA does not make the receipts or collections available for obligation in subsequent fiscal years. Rather, the determination must be made by analyzing the underlying authorizing or appropriations laws which indicates whether sequestered funds are returned to the account the following year. Due to the complex nature of these determinations, the Department works closely with the Office of Management and Budget to develop and finalize them to ensure the sequester is correctly applied.

Questions for the Record

U.S. Senate Committee on Energy and Natural Resources

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November 7, 2019

Amounts Sequestered to Be Released in the following FY

The underlying statutes for the funds listed below include identifiable mandatory appropriations authority applicable to the following fiscal year. ONRR releases sequestered funds for the following accounts in the subsequent fiscal year.

Treasury Account Name	Treasury Account #
Mineral Leasing and Associated Payments	14-5003
Payments to Oklahoma	14-5134
Geothermal Lease Revenues, Payments to Counties	14-5574

Amounts Sequestered in FY 2019 to Be Withheld

The underlying statutes for the funds listed below do not provide affirmative language authorizing expenditure in the subsequent fiscal year. ONRR maintains sequestered funds as unavailable budget authority in each Treasury account.

Treasury Account Name	Treasury Account #
Leases of Lands Acquired for Flood Control, Nav. & Allied Purposes	14-5248
National Forest Fund, Payments to States	14-5243
State’s Share from Certain Gulf of Mexico Leases	14-5535
National Petroleum Reserve, Alaska	14-5045

For all sequestered accounts, ONRR maintains records indicating the amount withheld from each recipient.

Questions for the Record

U.S. Senate Committee on Energy and Natural Resources

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November 7, 2019

Questions from Ranking Member Joe Manchin III

Question 1: What steps is the Department of Interior taking to reduce the unnecessary venting and flaring from oil and gas leases on public lands?

Response: As of October 2020, the BLM has largely reverted to Notice to Lessees-4A, Royalty or Compensation for Oil and Gas Lost (NTL-4A) guidance for venting and flaring. This change is the result of the October 8, 2020 order of the U.S. District Court for the District of Wyoming vacating all provisions of the Waste Prevention Rule pertaining to the loss of gas through venting, flaring, and leaks, and reinstating NTL-4A with respect to venting, flaring, and avoidably/unavoidably lost determinations. NTL-4A requires royalty payments for the avoidable loss of natural gas through venting and flaring.

The BLM is actively coordinating with internal and external stakeholders to ensure all relevant parties are aware of the rule changes. On October 23, 2020 the BLM, issued an Information Bulletin (IB-2021-003) to BLM personnel providing a status update on the regulations pertaining to the venting and flaring of gas. Further, the BLM will distribute letters to operators and tribes and provide a webinar for operators.

Question 2: How much gas is being vented and flared on public lands?

Response: The following table summarizes the reported volumes of gas vented and flared on federal and American Indian onshore land, and offshore on the Outer Continental Shelf, for the last four fiscal years:

Vented/Flared Gas on Federal and Indian Lands

Land Category	Fiscal Year				
	2015	2016	2017	2018	2019
Offshore (Federal)	10.96	9.81	9.93	10.62	11.87
Onshore (Federal and Indian)	40.62	28.66	32.78	50.21	74.68
Total	51.57	38.47	42.72	60.83	86.55

(all values in billion cubic feet)

Questions for the Record

U.S. Senate Committee on Energy and Natural Resources

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November 7, 2019

Question 3: Of the gas being currently being vented and flared on public lands, how much is unavoidable?

Response: Following the Wyoming court ruling, BLM is coordinating with ONRR to determine the extent to which operators will need to amend Oil and Gas Operations Reports (OGOR) based on the vacating of the 2016 Methane Waste Prevention rule and reversion to NTL-4A. The BLM is currently unable to determine the overall volume of unavoidable vented and flared gas. The first month of venting/flaring of avoidable/unavoidable gas data since the return to NTL-4A will be in January 2021.

Questions for the Record

U.S. Senate Committee on Energy and Natural Resources

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November 7, 2019

Questions from Senator Steve Daines

Question 1: LWCF and our National Parks are very important to our Montana way of life. Do the bills before committee, S. 2418 and S. 2666, protect the revenue generated for programs like LWCF, and if passed into law under the Restore our Parks Act, the National Park Service Legacy Restoration Fund?

Response: S. 2418, the Conservation of America’s Shoreline Terrain and Aquatic Life Act (COASTAL Act) ensures that the LWCF continues to receive 12.5 percent of qualified revenues under the Gulf of Mexico Energy Security Act of 2006 (GOMESA) revenue-sharing provisions.

S. 2666, the Public Land Renewable Energy Development Act of 2019 promotes the establishment of a Renewable Energy Resource Conservation Fund, which would share revenues with state and local governments for the purposes of restoring and protecting fish and wildlife habitats and corridors for affected species, and water resources in areas affected by wind, geothermal or solar energy development; and preserving and improving recreational access to Federal land and water in affected regions.

Question 2: According to ONRR, Montana received approximately \$30 Million from onshore oil, gas and coal revenue in FY2019. This doesn’t include with tax revenue and jobs that Montana also gets from oil, gas and coal development that are the life blood for our rural counties. That \$30 million is solely from the 50% share that states receive under our current revenue sharing laws. Unfortunately, we saw that number decrease between 2009 and 2016, but we are seeing a consistent growth over the last couple of years. Everyone benefits when these revenue numbers grow. Conservation programs like LWCF, County governments struggling to pave roads, our school teachers in small rural towns and many more. The Public Lands Renewable Energy Development Act, which I am a cosponsor, helps grow the revenue sharing pie by including renewable energy sources in the mix. How else can we continue to increase revenue, both onshore and offshore, on our public lands?

Response: The growth of the energy sector is in part attributable to policy changes made under President Trump’s leadership. The Department has made several policy and administrative changes, directly supporting responsible energy development on public lands in accordance with President Trump’s Executive Order 13807; the Department issued Secretarial Order 3355 in accordance with this executive order, which implemented a new, streamlined process for infrastructure and energy projects.

Questions for the Record

U.S. Senate Committee on Energy and Natural Resources

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Interior-managed lands and waters produced 923 million barrels of crude oil, 4.6 trillion cubic feet of natural gas, and 322 million tons of coal in FY 2018, supporting an estimated \$151 billion in economic output and an estimated 643,000 jobs. National parks, national wildlife refuges, national monuments and other public lands managed by Interior hosted an estimated 486 million recreational visits in FY 2018, supporting an estimated \$58 billion in economic output and an estimated 452,000 jobs nationwide.

Questions for the Record

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November 7, 2019

Questions from Senator Bill Cassidy

Questions: I see that LWCF had approximately \$130 million deposited from GOMESA eligible areas in FY19. Because GOMESA says LWCF can only receive up to \$125 million (12.5 percent), \$5 million must go back to Treasury. However, the bigger issue is that this suggests the cap was hit in FY19.

- **Can you please confirm whether the cap was hit in FY19?**
- **How much will Gulf States receive in FY20 from revenues generated during FY19?**

Response: The \$500 million cap, specified in GOMESA 105(f), was reached in FY 2019. As a result, the maximum of \$125 million was disbursed to the LWCF in FY 2019. The states and their coastal political subdivisions (CPS) receive their allocations in the year following the year of receipt per GOMESA. The states and their CPS will share the maximum of \$375 million to be disbursed in FY 2020 for the FY 2019 revenues.

The cap applies to the majority of GOMESA revenues, but revenue received from leases in the 181 Area in the Eastern Planning Area and the 181 South Area are disbursed above the cap. The states and their CPS will receive \$93,665.95 in FY 2020 for the FY 2019 revenues from those leases. In total, the states and their CPS will share \$375,093,665.95 in FY 2020, prior to any sequestration being applied.

Questions for the Record

U.S. Senate Committee on Energy and Natural Resources

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November 7, 2019

Questions from Senator John Hoeven

Question 1: In North Dakota, our increased oil and gas production are directly attributable to innovative techniques including horizontal drilling, hydraulic fracturing, and Enhanced Oil Recovery (EOR). Earlier this year, the Energy & Environmental Research Center (EERC) at the University of North Dakota was awarded two DOE contracts totaling \$16 million to better develop enhanced oil recovery techniques.

Can you further elaborate on the relationship between fossil energy research, increased energy production, and ultimately increased revenue to states, tribes, and the federal government alike?

Response: Given the tremendous scale of the energy industry and the ubiquity of electricity, optimizing the responsible use of fossil fuels can help improve energy security and living standards. We defer to the Department of Energy regarding the role of fossil energy R&D in contributing to these objectives.

Question 2: Earlier this year, the State of North Dakota and the Mandan, Hidatsa, and Arikara Nation entered into a new contract over how energy revenue generated on tribal trust lands is shared, which is estimated to generate an additional \$33.6 million in revenue to the tribe over the next two years.

Oil production on the Fort Berthold Indian Reservation for the month of August was 335,475 barrels of oil per day, about one-fifth of the state’s production.

Can you discuss the positive impacts that revenues generated from energy production on tribal lands has on those communities?

Response: For fiscal year 2019, ONRR disbursed over \$1 billion dollars in royalty revenues from oil, gas, and coal mineral production to American Indian tribes and individual Indian mineral owners. This is more than double the disbursements paid in FY 2016. Additionally, BIA disbursed over \$34 million in other Indian mineral royalty-related revenue. The revenues disbursed to the 33 federally-recognized American Indian tribes and approximately 37,000 individual Indian mineral owners represent 100 percent of the royalty revenues received from energy and mineral production activities on Indian trust lands.

Mineral revenue is a critical source of funding for the American Indian communities that receive those royalties. The positive economic impact these funds have on tribes and mineral owner families cannot be overstated.

Questions for the Record

U.S. Senate Committee on Energy and Natural Resources

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Many tribal governments rely on mineral royalty revenues to pay the salaries of their tribal government employees. The funds are used to cover government administrative costs, as well. Tribal governments may use the funds to build and maintain infrastructure, such as roads and bridges. Tribes may also use these revenues to provide healthcare and education, and support other critical community development programs, such as senior centers, public safety projects, and youth initiatives.

Individual mineral owners receive energy royalty revenues from production that occurred on their allotted lands. These lands may have been in their family for multiple generations and passed down throughout the years. Mineral owners and their families depend on those funds as part of their household income. In some instances, the mineral royalties are substantial enough to build new homes and provide for new family vehicles. And in most instances, mineral owners rely on the royalty income to help support raising children, heating homes, paying bills, and buying groceries. As a general statement, mineral royalties received by Individual Indian mineral owners are often necessary to sustain their livelihoods and to provide for a better quality of life.