



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

February 16, 2022

MEMORANDUM

TO: Raina Thiele, Senior Advisor for Alaskan Affairs and Strategic Priorities

FROM: Heather C. Gottry, Director, Departmental Ethics Office and
Designated Agency Ethics Official
HEATHER GOTTRY

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SUBJECT: Limited Ethics Pledge Waiver Pursuant to Section 3, Executive Order 13989

Pursuant to the authority delegated under Section 3 of Executive Order 13989 (January 20, 2021) and as designated by the Acting Director of the Office of Management and Budget,¹ and after consultation with the Counsel to the President, I hereby grant you a limited waiver from the requirements of Section 1, paragraph 2 of the Executive Order. I certify that this limited waiver is necessary and in the public interest to permit you to participate in certain particular matters in which your former clients, the National Congress of American Indians, Bristol Bay Native Corporation, and the Alaska Native Heritage Center, are parties or represent a party, provided that you did not previously participate personally and substantially in the same matters on behalf of those former clients or any other party, and as limited by other applicable ethics authorities.²

I. Background and Facts

On January 20, 2021, President Biden signed Executive Order 13989, “Ethics Commitments by Executive Branch Personnel” (Ethics Pledge). The Ethics Pledge imposes ethics requirements beyond federal ethics laws and regulations and attorney bar obligations. All individuals appointed to political positions on or after January 20, 2021, are required to sign the Ethics Pledge, which sets forth the “former clients” restriction at Section 1, paragraph 2:

I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially

¹ Waiver Authority and Making Waivers Public under Section 3 of Executive Order 13989, “Ethics Commitments by Executive Branch Personnel,” U.S. Office of Government Ethics, Legal Advisory LA-21-04, (Feb. 18, 2021).

² Please note that this limited waiver is also accompanied by a Limited Conflict of Interest Waiver Pursuant to 18 U.S.C. § 208(b)(1) granted on December 10, 2021.

related to my former employer or former clients, including regulations and contracts.

With the approval of the White House, the Acting Director of the Office of Management and Budget (OMB) has delegated to each executive branch Designated Agency Ethics Official the authority to exercise Section 3 waiver authority after consultation with the Counsel to the President.³ Such waivers from the restrictions contained in Section 1, paragraph 2 may be granted upon certification either that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver.

II. Your Prior Consulting Services for the National Congress of American Indians, Bristol Bay Native Corporation, and the Alaska Native Heritage Center and Current Position at the Department of the Interior

You entered federal service on April 26, 2021, as Senior Advisor for Alaskan Affairs and Strategic Priorities, U.S. Department of the Interior (DOI or Department), and signed the Ethics Pledge on April 26, 2021. As Senior Advisor for Alaskan Affairs and Strategic Priorities, you serve as the Secretary's senior advisor focusing on Alaska activities and their impact on major program and policy issues of the Department, as well as the Nation's energy security, and formulating options for presentation to the Secretary. Your major duties and responsibilities include, but are not limited to, providing close review and coordination of issues, programs and/or policies involving the Department and the State of Alaska; participating in intra-agency meetings where the subject matter crosses Bureau/Assistant Secretary lines to seek consensus on controversial issues and to develop a coordinated approach to recommend or seek changes for better legislative and public acceptance of Departmental programs/policies related to Alaska issues and initiatives; developing and performing necessary liaison with constituents and the private sector to ensure widespread understanding of Departmental programs and policies related to human and natural resources as well as legislative initiatives impacting those programs and policies.

Prior to joining the Biden Administration, you most recently served as the President and Founder of Thiele Strategies, LLC, a consulting firm, from August 2016 to April 2021.⁴ There, you personally provided consulting services to a number of former clients, within the two year prior to the date of your appointment at DOI. You have sought a waiver of the Ethics Pledge restrictions for the following three former clients:

- National Congress of American Indians (last provided consulting services on November 22, 2019);

³ See OGE Legal Advisory, LA-21-04 (Feb. 18, 2021).

⁴ You have ceased operating and providing services for the firm, which will remain dormant and will not advertise during your appointment to the Department. Further, you will not perform any services for the consulting firm, except that you will comply with any requirements involving legal filings, taxes, and fees that are necessary to maintain the consulting firm while it is in an inactive status.

- Bristol Bay Native Corporation (last provided consulting services on April 1, 2021); and
- Alaska Native Heritage Center (last provided consulting services on February 15, 2021).

As defined in Executive Order 13989, a former client is any person or entity for whom you have, within two years prior to your appointment, served personally as an agent, attorney, or consultant.⁵ You personally provided consulting services for each of the above-referenced entities. Based on this information, the Departmental Ethics Office (DEO) has determined that the above-named entities are former clients for the purposes of the Ethics Pledge.

As the DEO determined that these entities are properly considered your former clients for purposes of the Ethics Pledge, ethics officials have advised you that you are required to recuse yourself from and not participate in certain particular matters involving specific parties that is directly and substantially related to these former clients. You have confirmed that you sought guidance and recused yourself, whenever appropriate, from participating in official actions affecting the former clients from the date of your appointment. Absent a waiver of the applicable Ethics Pledge restrictions, you will continue to be restricted from participating in any particular matter involving specific parties, including a meeting or other communication, that is directly and substantially related to the former clients.

The National Congress of American Indians (NCAI) is a 501(c)(4) organization, whose purpose as outlined in the NCAI Constitution is to serve as a forum for unified policy development among tribal governments in order to: (1) protect and advance tribal governance and treaty rights; (2) promote the economic development and health and welfare in Indian and Alaska Native communities; and (3) educate the public toward a better understanding of Indian and Alaska Native tribes. NCAI is a significant stakeholder with respect to DOI matters of importance to Native American tribes, including the Federal Boarding School Initiative, DOI's actions to address the crisis of missing and murdered Native women, and issues related to the fee-to-trust process at DOI, among others.

The Bristol Bay Native Corporation (BBNC) is one of the twelve regional corporations established after Congress enacted the Alaska Native Claims Settlement Act (ANCSA). In ANCSA, Congress authorized the transfer of state and federal funds and approximately 44 million acres of Alaska land to state-chartered private business corporations that were to be formed pursuant to ANCSA.⁶ As one of the 12 Regional Corporations established by the Secretary of the Interior, BBNC is a significant stakeholder with respect to DOI matters related to ANCs, including decisions affecting subsistence rights of BBNC shareholders, DOI oil and

⁵ OGE has advised that the definition of former client includes non-profit organizations. Ethics Pledge: Revolving Door Ban--All Appointees Entering Government, OGE DO-09-011 (March 26, 2009).

⁶ Congress required Alaska Natives to "incorporate under the laws of Alaska a Regional Corporation to conduct business for profit." *Id.* at § 1606(d).

gas leasing activities in and around the region, decisions affecting the environmental protections for Bristol Bay, and climate change issues.

The Alaska Native Heritage Center is a 501(c)(3) non-profit organization with a stated mission to preserve and strengthen the “traditions, languages, and art of Alaska’s Native People through statewide collaboration, celebration, and education.” The Alaska Native Heritage Center serves as a meeting place for Alaska Native People and organizations, coordinates with Alaska Native groups, and also co-leads a statewide cultural tourism working group on interests relevant to members of the Alaska cultural tourism business community. Based on the information provided, DOI typically engages with Alaska Native Heritage Center representatives to gather input from the Alaska tourism business community, works with the organization as a coordinator to engage with a diverse group of Alaska Native stakeholders, as well as arranging to rent the meeting space to conduct official DOI business.

You confirmed that from April 26, 2021, to the present, you sought guidance from the DEO and then properly recused yourself from all particular matters involving specific parties that are directly and substantially related to NCAI, BBNC, and the Alaska Native Heritage Center in compliance with the Ethics Pledge and other applicable ethics laws and regulations. At the present time, however, your recusal is no longer tenable because there is a critical need for your unique qualifications and participation in matters involving these three organizations.

III. Ethics Pledge Limited Waiver Analysis and Determination

The Department requires your engagement with NCAI, BBNC, and the Alaska Native Heritage Center, particularly as related to a significant number of pending DOI matters within the State of Alaska. Although other Department employees currently serve in senior leadership roles within the agency, certain matters involving these three organizations are only appropriate to be handled by the Senior Advisor for Alaskan Affairs and Strategic Priorities.

Additionally, your current recusal has impaired the ability of the Department to interact with NCAI, BBNC, and the Alaska Native Heritage Center as important stakeholders and partners on nationally significant matters that require consensus building in order to advance Administration priorities related to DOI’s natural resource conservation and management in Alaska, as well as issues of importance to the Alaska Native community. Specifically, your recusal has limited your ability to engage in certain discussions with NCAI representatives on matters of importance to Alaska Native communities, BBNC representatives on matters of importance to the BBNC, including climate changes issues, as well as certain discussions with representatives from the Alaska Native Heritage Center to coordinate with stakeholders in the Alaska cultural tourism community.

Finally, the purposes of the Ethics Pledge restriction with respect to NCAI, BBNC, and the Alaska Native Heritage Center, your former clients, may be satisfied through the limitations contained in this limited waiver. Particularly, the limitations that you will continue to recuse

from participating in any particular matter involving specific parties in which you participated in personally and substantially by providing consulting services for the NCAI, BBNC, and the Alaska Native Heritage Center, or any other client, within two years before the date of your appointment.

You are uniquely qualified to meet the government's needs and to engage with NCAI, BBNC, and the Alaska Native Heritage Center. Continuing your ongoing recusals would result in substantial limitations in your ability to perform the essential duties of your position and would significantly and negatively impact important Department mission areas. Therefore, we have determined that it is within the public interest to grant a limited waiver of Ethics Pledge Section 1, paragraph 2 restrictions related to NCAI, BBNC, and the Alaska Native Heritage Center. Absent this limited waiver, you would be required to continue to recuse yourself from participating in matters involving specific parties directly and substantially related to NCAI, BBNC, and/or the Alaska Native Heritage Center. Such a recusal would impair your ability to perform the essential responsibilities of your official position to advance Administration priorities with respect to Native American issues in Alaska, among other priorities. Further, the Department would be deprived of your particular credentials and expertise, for which a critical need exists within the agency.

IV. Conclusion

For the reasons set forth above, I have concluded that it is in the public interest to grant you a limited waiver of the provisions of Section 1, paragraph 2 of Executive Order 13989 to enable you to effectively carry out your duties as Senior Advisor for Alaskan Affairs and Strategic Priorities and to advance the interests of the Department. Pursuant to this limited waiver, you may participate in specific party matters arising at the Department in which NCAI, BBNC, and/or the Alaska Native Heritage Center is a party or represents a party, including meetings or other communications in which any of these three organizations is present, subject to the limitations set forth below.

Please note that this limited waiver does not permit you to participate in any party-specific matters that, to your knowledge, directly and predictably affects the financial interests of NCAI, BBNC, and/or the Alaska Native Heritage Center, including, but not limited to, contracts or grants if your participation would be limited by other applicable ethics authorities. As noted above, the DEO previously granted you a limited conflict of interest waiver pursuant to 18 U.S.C. § 208(b)(1) that permits your participation in certain particular matters involving the financial interests of BBNC.

Further, this limited waiver does not permit you to participate in matters in which you previously participated personally and substantially as a consultant for NCAI, BBNC, and/or the Alaska Native Heritage Center or any other party. This limited waiver does not otherwise affect your obligations to comply with all other applicable federal ethics laws and regulations and provisions of Executive Order 13989, including other applicable recusals. Additionally, this

limited waiver covers only your role as Senior Advisor for Alaskan Affairs and Strategic Priorities and does not extend to any other position. In accordance with Section 3(b) of Executive Order 13989 and OGE LA-21-04, once issued, this limited waiver shall be publicly posted on the DOI website.

Cc: Dana Remus, Counsel to the President