



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC - 7 2015

The Honorable James M. Inhofe
Chairman
Committee on Environment and Public Works
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the U.S. Fish and Wildlife Service to questions submitted following the Committee's May 6, 2015, hearing on "Fish and Wildlife Service: The President's FY2016 Budget Request for the Fish and Wildlife Service and Legislative Hearing on Endangered Species bills."

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

Sincerely,

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

Enclosure

cc: The Honorable Barbara Boxer
Ranking Member

Environment and Public Works Committee hearing entitled, "Fish and Wildlife Service: The President's FY2016 Budget Request for the Fish and Wildlife Service and Legislative Hearing on Endangered Species Bills" Questions for the Record for Director Dan Ashe

May 6, 2015

Senator Inhofe:

American Burying Beetle

At the May 6 hearing, you stated that the U.S. Fish and Wildlife Service (Service) would initiate a 5-year status review for the American Burying Beetle (ABB) in June 2015, and the process could take between six and 18 months to complete.

1) What are the steps the Service will take in considering whether to delist the ABB, and how long are these steps expected to take?

Response: The Service has initiated a status assessment to review the status of the ABB across its range. We had meetings with multiple Service offices on June 23 and 24, 2015, and with ABB experts on October 8 and 9, 2015. Information from the status assessment will be used to prepare the 5-year review and to inform other decisions related to the recovery of the ABB. The status assessment is expected to be completed by December, 2016. The assessment will involve the coordination and consolidation of information from multiple Service regions and field offices and will provide opportunities for input, feedback and review from several species experts and State Game and Fish Agencies within the range of the ABB.

The Service is also responding to a petition to delist the ABB. The Service is preparing a 90-day finding that we expect to publish in the Federal Register within a few months. If the 90-day finding is positive, the Service would initiate a status review of the ABB to inform our 12-month finding as to whether the petitioned action is warranted, warranted but precluded by higher actions, or not warranted. Public comment would be sought during the status review. The SSA would be used to inform the 5-year review and 12-month finding, if needed.

2) How will the Service take into consideration the size and health of the ABB population in specific states and geographic areas to determine whether the species has recovered?

Response: The Service will develop a process to bring in Federal, state, and other knowledgeable experts from all portions of the ABB range to collectively assess the existing scientific information on the ecology, distribution, status and viability of known populations using peer reviewed and other published research.

3) Would the Service be authorized to make a recovery determination and delisting decision for the ABB in a specific state or geographic area, even if the species has not recovered in its entire range?

Response: The Service would not have the authority to downlist or delist the ABB in a specific state or geographic area, even if the species has not recovered in its entire range. For vertebrate species, we are authorized to apply listing determinations to geographic populations if the populations meet the criteria described in our Distinct Population Segment Policy (61 FR 4722-4725; February 1996). However, because the ABB is not a vertebrate, this policy cannot be used to change the listing status of the ABB for individual geographic populations.

4) How will the lack of an updated recovery plan and delisting criteria impact the Service's ability to assess whether the ABB has recovered and should be delisted as part of the new status review?

Response: For the 5-year review, the Service will use the best available scientific and commercial information to assess the status of the ABB, which will include an analysis of the five listing factors and whether we believe the species continues to be endangered, or should be considered for downlisting—to threatened—or proposed for delisting. The lack of an updated recovery plan and delisting criteria does not preclude the Service from proposing changes in the status of the ABB. Any decisions to propose changes in the status will be justified and based on the best available information developed through the species status assessment. If we conclude that the ABB should remain on the list, the 5-year review will help us determine what, if any, additional information is needed to update the recovery plan, or revise recovery goals, including the development of delisting criteria.

5) What is the status of the MOU and the ABB fund with The Nature Conservancy?

Response: The Service entered into a Memorandum of Understanding (MOU) with The Nature Conservancy - Oklahoma Chapter in February 2009 to establish a conservation fund for the ABB. The MOU was scheduled to operate for a period of five years and was subject to expiration or renewal at that time. The conservation fund received money from the Federal government, the state, and private parties for habitat conservation and recovery research activities related to the ABB. However, the MOU and ABB fund are no longer in effect.

6) Did the Service renew the MOU after the initial 5-year period? If not, please explain the circumstances surrounding the expiration, cancellation, or revocation of the MOU.

Response: The MOU was terminated in 2012 and was not renewed. The Service made the decision to terminate the MOU to develop an appropriate and efficient mechanism for compliance with the Endangered Species Act that would support individual incidental take permits for oil and gas development while promoting conservation of the ABB. The Service then began developing the Industry Conservation Plan for oil and gas development activities within Oklahoma in May 2012.

7) Were any audits or reviews conducted of the contributions received by or expenses from the ABB conservation fund? If yes, please describe the findings and any recommendations concerning such audits or reviews.

Response: There were no audits conducted of the funds or expenses. All individual projects completed through the ABB conservation fund were reviewed and approved by the Service as they were submitted. All funded projects and proposals were considered appropriate for research and recovery of the ABB and were approved.

8) How much money from the ABB conservation fund was used to acquire land or otherwise support the Tallgrass Prairie Preserve?

Response: The ABB conservation fund totaled \$830,537.00. A majority of that funding was used by The Nature Conservancy to manage ABB habitat and purchase lands that are now part of the Tallgrass Prairie Preserve. About 335 acres were purchased adjacent to the Tallgrass Prairie Preserve to support ABB conservation. This was considered appropriate because the area near the Preserve represents the largest and best-known population of ABBs in northern Oklahoma.

9) To what extent was section 7 consultation performed in connection with the bison herd's impact on the ABB at the Tallgrass Prairie Preserve?

Response: Oklahoma State University conducted research on the effects of bison grazing and burning at the Tallgrass Prairie Preserve. The research indicated the effects of grazing are related to recent fire history. The results demonstrated potential ABB benefits with appropriate levels of burning and grazing that maintained habitat diversity and favored rodents and birds used by ABBs as sources of carrion during reproduction. The Service is not aware of any section 7 consultation having been conducted that considered the effect of the bison herd's impact on ABB at the Tallgrass Prairie Preserve.

Consultation

In a letter dated May 27, 2014, you informed me that as of that date Environmental Protection Agency (EPA) had not asked the Service to engage in section 7 consultation on the proposed New Source Performance Standard for greenhouse gases from new power plants.

10) Has the Service had any discussions with EPA, the Department of Justice, the Council on Environmental Quality, or other federal official about section 7 consultation in regards to EPA's development of the Standards of Performance for Greenhouse Gas Emissions for new Stationary Sources or the Carbon Pollution Emission Guidelines for Existing Stationary Sources? If yes, please provide the dates of these discussions, the officials involved, and a description of what was discussed and any decisions made.

Response: Between April 14 and April 17, 2015, the Service and EPA had two email exchanges and two telephone calls to discuss a draft response from the Service to a letter from Chairman Rob Bishop of the House Natural Resources Committee on this subject. The following individuals participated in one or more of those email exchanges and/or telephone calls:

Gary Frazer, Assistant Director for Ecological Services, FWS
Megan Kelhart, Office of Congressional and Legislative Affairs, FWS
Stephenne Harding, Office of Congressional and Legislative Affairs, DOI

Jason Powell, Office of Congressional and Legislative Affairs, DOI
Jeremy Bratt, Office of Congressional and Legislative Affairs, DOI
Laura Vaught, EPA
Nichole Distefano, EPA
William Niebling, EPA
Todd Siegel, EPA

The email exchanges and phone calls were to confirm that the Service's response to Chairman Bishop accurately described EPA's consideration of the need for section 7 consultation with regard to their development of these two rules. No decisions were made, other than to concur on the substance of the Service's response to Chairman Bishop. To our knowledge, the Service has not had any other conversations with EPA, the Department of Justice, the Council on Environmental Quality, or other federal official regarding this issue.

11) Section 7 of the ESA and Service regulations require that all federal agencies consult with the Service about whether any proposed action – including issuance of a regulation – is likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. EPA's proposed greenhouse gas rule for existing power plants promotes the use of renewable energy, and many of these solar and wind projects will impact threatened and endangered species and their habitat – from the desert tortoise to the northern long-eared bat. Can you confirm that EPA has not asked the Service to undergo section 7 consultation with the Service in regards to the greenhouse gas rules for new and existing power plants, correct?

Response: The EPA has not asked the Service to enter into section 7 consultation regarding this issue.

The FY 2016 budget request (at ES-12) indicates that the Fish and Wildlife Service works closely with EPA on water quality and pesticide registrations, including section 7 consultations for these EPA actions. In a recent letter to the House Natural Resources Committee, you wrote that the Fish and Wildlife Service “has not requested that EPA consult on these two Clean Air Act rules, and we do not intend to do so, because we know from past experience that EPA has full knowledge of their Section 7 responsibilities. EPA, as the expert agency on the Clean Air Act, is best positioned to understand if their rules will affect listed species or designated critical habitat; the Service does not have the technical expertise in the Clean Air Act to be able to independently do so.”

12) Does the Fish and Wildlife Service consider EPA to be the expert agency on the Clean Water Act or the Federal Insecticide, Fungicide, and Rodenticide Act, and if so, why then is EPA not in the best position to understand if their actions involving water quality standards and pesticide registrations will affect listed species and designated critical habitat? If not, please explain the basis for the different approaches to consultation with EPA under the Clean Water Act and the Federal Insecticide, Fungicide, and Rodenticide Act and the approach involving these two Clean Air Act rules.

Response: Federal agencies are ultimately responsible for determining if their proposed actions may affect listed species or designated critical habitat. If an agency determines that an action it is proposing may affect listed species or designated critical habitat, it must either formally consult with the Service and/or NOAA Fisheries, or obtain written concurrence that the proposed action is not likely to adversely affect any listed species or critical habitat (i.e., the effects are completely beneficial, insignificant, or discountable). In contrast to the two Clean Air Act rules, EPA has initiated consultations with the Service and NOAA Fisheries regarding certain activities they are authorizing, funding, or otherwise carrying out under the Clean Water Act and Federal Insecticide, Fungicide, and Rodenticide Act.

13) Does the Fish and Wildlife Service interpret the Endangered Species Act to require consultation under section 7 if an action agency believes that its action would have a beneficial or positive effect on listed species or designated critical habitat?

Response: Section 7 consultation is required for any proposed Federal action that “may affect” a listed species or designated critical habitat, including if the effects of the action are beneficial. However, if a proposed action is wholly positive, without any adverse effects, on a listed species or designated critical habitat, formal consultation with the Service is not required. Instead, the action agency may request concurrence from the Service that the action, “may affect, but is not likely to adversely affect” listed species or designated critical habitat.

14) In determining whether an action “may affect” a listed species or designated critical habitat, would consultation be required even if an action agency believed the action would have a beneficial or positive effect?

Response: Section 7 consultation is required for any proposed Federal action that “may affect” a listed species or designated critical habitat, including if the effects of the action are beneficial. However, if a proposed action is wholly positive, without any adverse effects, on a listed species or designated critical habitat, formal consultation with the Service is not required. Instead, the action agency may request concurrence from the Service that the action, “may affect, but is not likely to adversely affect” listed species or designated critical habitat.

15) How does the Service track petitions to list species or designate critical habitat?

Response: The Service enters each petition received into our Environmental Conservation Online System. The public can view the list of all petitions received at <http://ecos.fws.gov/ecp/report/table/petitions-received.html>. This report provides information on when the petition was received, the petitioners name, the petitioned action, and the petition finding if it has been concluded. The Service also provides access to petitions and petition findings through its specific species web pages, available through <http://endangered.fws.gov>, and then search by species name.

16) Does the Service post to its website the ESA petitions it has received? If not, is there a legal prohibition that would prevent the posting of such petitions?

Response: Yes, the Service maintains a list of petitions received online at <http://ecos.fws.gov/ecp/report/table/petitions-received.html>. Through this report, the public can view any uploaded petitions. The Service continues to upload petitions to this database. Petitions and petition findings are also available through our specific species web pages, available through <http://endangered.fws.gov>, and then search by species name.

17) What policies and procedures does the Fish and Wildlife Service have in place to inform the public and affected states about the receipt of petitions under the ESA?

Response: The above referenced report and various Service species specific or program specific web pages provide access to petitions. The Service also provides notice about the receipt of petitions through its publication of 90-day petition findings.

18) What is the Service's backlog of species that are awaiting delisting or down-listing action based on recent five-year reviews?

Response: As of June 12, 2015, there were 53 species with completed 5-year reviews recommending downlisting or delisting that had not yet been acted on. (We note that as of [date] we have proposed actions for 10 of these species but have not yet made final determinations.)

19) How many species does the Service plan to delist in FY 2016?

Response: The Service currently has 22 delisting or downlisting actions scheduled for FY 2015-2016. Thus far in FY 2015, we have delisted one species and proposed to delist 3 additional species. Of the remaining actions, eleven of these are final determinations on actions we have already proposed. The pace at which delistings and downlistings occur is dependent largely on the resources available and complexity of the individual action, so while we have established these as targets, we may not accomplish all these actions by end of FY 2016. If we were to receive an increase of \$1 Million in FY 2016 for delisting and downlisting actions, we estimate that we could initiate an additional 5-6 proposed rules; similarly if we receive an increase of \$2 Million in FY 2016, we estimate that we could initiate or finalize an additional 10-12 delisting or downlisting rules in FY 2016.

20) How many listed species are without recovery plans?

Response: As of June 12, 2015, 326 out of 1490 listed species do not have a draft or final recovery plan. 144 of these species have been listed since the beginning of FY 2013, meaning they have been listed less than 3 years. While there are no statutory deadlines for preparing recovery plans, the Service tries to prepare recovery plans within 2.5 years of listing. However, the large number of recent listings—213 species over the last 5 years—has made it difficult to achieve this timeline.

21) How many listed species with recovery plans are lacking criteria that would allow them to be delisted?

Response: The Service does not track which species do not have delisting criteria. However, we require that all recovery plans contain delisting criteria unless such criteria cannot be determined. Our guidance indicates that this should be an unusual case and provides the following directions for such circumstances:

“In the rare case that recovery objectives and criteria cannot be established at the time the plan is written, the following steps should be taken: (1) describe interim objectives and criteria, which will be used for the short-term until better delisting objectives and criteria can be determined; (2) explain clearly in the plan and the administrative record why objectives and criteria are undeterminable at the time; and (3) include the actions necessary and timelines in the plan to obtain the pertinent information and develop recovery objectives and criteria once the information is obtained.”

This approach is rare and is generally used only in cases where the species is in such a state of endangerment or threats are so poorly understood that we cannot estimate or predict how recovery may be achieved. If recovery criteria have not been developed it is still possible to delist a species. The determination of whether a species is threatened or endangered is based on an analysis of the 5 factors outlined in Sec 4(a)(1) of the ESA. If a species is not endangered or threatened according to this analysis, it should be delisted.

22) One of the problems with listing decisions is the lack of periodic review, even though it is mandated. Is there a better way to ensure species are reviewed for updated population counts? Status reviews?

Response: The Service supports the 5-year review requirement of the ESA for all listed species. Our 5-year reviews not only consider the numeric status of the populations, but more importantly consider the status of threats to the species that affect the species' ability to recover. The Service is moving towards the use of Species Status Assessments (SSA) for compiling and analyzing the status of the species. These SSAs are intended to provide a transparent, systematic assessment of the species' biology, population numbers, and the status of the species threats as related to the 5 listing factors under s4(a)(1). This analysis provides a scientific basis for making a determination of whether a species' listing status should remain the same, or be changed . These SSAs would be better informed if resources were available for population surveys and threats assessments..

23) Numerous Fish and Wildlife Service officials have testified in various Congressional hearings over the years that critical habitat designations are among the most costly and least effective measures of conserving species under the ESA. Do you agree with that characterization?

Response: The U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (together, the "Services") are nearing completion of a rule that better describes the role and purpose of critical habitat. The Services are working together to improve the implementation of critical habitat language under the ESA to maximize efficiency and effectiveness of the critical habitat designations in supporting recovery of listed species.

Interim 4(d) Rule

24) On March 17 of this year the Fish and Wildlife Service closed the comment period for its sweeping proposal to designate the Northern Long Eared Bat, a species present in 37 states, as threatened or endangered under the Endangered Species Act and to implement a draft Section 4(d) rule under that Act. Just over two weeks later the Service published its final rule listing the species as threatened and issuing the interim 4(d) rule for the species. How do you expect any of the 37 impacted states and the myriad of stakeholders impacted to believe that you reviewed and took into account all of the comments received regarding this massive proposal in just two weeks?

Response: In the proposed listing rule published on October 2, 2013, we requested that all interested parties submit written comments on the proposal by December 2, 2013. Following that first 60-day comment period, we held four additional public comment periods (see 78 FR 72058, December 2, 2013; 79 FR 36698, June 30, 2014; 79 FR 68657, November 18, 2014; 80 FR 2371, January 16, 2015) totaling an additional 180 days for public comments, with the final comment period closing on March 17, 2015. We reviewed comments as they were received, throughout the multiple comment periods. The majority of unique, substantive comments on the proposed listing rule were received during the earlier comment periods; later comment periods raised a few, additional unique, substantive issues, but many comments raised similar issues to those in previous comments. During the last few weeks while the final rule was being written, a team of Service biologists worked diligently to sort and review all comments received during the final comment period (that pertained to the listing determination), to assure that all substantive issues were identified and addressed in the final listing rule.

Due to the complexity of the issue, the volume of comments and the limited time between proposing the 4(d) rule and the date that the final listing rule had to be published, we decided to publish an interim 4(d) rule. The interim 4(d) rule allowed incidental take exemptions to be in place when the listing of the northern long-eared bat became final, but also provided additional time to open another public comment period for 90 days, fully consider all comments received, and engage with stakeholders.

25) In the Service's 12 month finding on the petition to list the Service stated that it "will seek peer review" and is "seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available science and application of that science and to provide any additional scientific information to improve this proposal." What peer review was conducted prior to publication of the final decision and interim 4(d) rule, and if any was conducted, can that be made available to the Committee?

Response: For the listing determination, in accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from seven knowledgeable individuals with scientific expertise that included familiarity with the northern long-eared bat and its habitat, biological needs, and threats. We invited these peer reviewers to comment on our listing proposal. We received responses from four of the peer reviewers. Peer reviewer comments are addressed in the final listing rule (beginning on page 18006).

We also solicited three peer reviews of the proposed 4(d) rule. However, due to the complexity of the issue, the volume of comments and the limited time between proposing the 4(d) rule and the date that the final listing rule had to be published, we decided to publish an interim 4(d) rule. As stated above, the interim 4(d) rule allows incidental take exemptions to be in place when the listing of the northern long-eared bat became final, but also provided additional time to open another public comment period, fully consider all comments received, including peer reviews.

All peer review comments received on the listing rule and 4(d) rule are available on the internet at <http://www.regulations.gov> under Docket No. FWS-R5-ES-2011-0024.

26) The bulk of your Section 4(d) rule for the long eared bat centers on the creation of 150-mile "white nose syndrome buffer zones" which strongly restrict most land uses within 150 miles of bat hibernacula. Your published decision states that these buffers represent a "compromise distance" that is useful for "estimating the extent of syndrome infection." Why did the service choose to impose highly restrictive 150 mile buffer zone that will effectively shut down all land use in the area based on estimation rather than rely on the best available science as required under the law?

Response: The purpose of the white-nose syndrome (WNS) buffer is to estimate the area where northern long-eared bat (NLEB) populations are considered to be experiencing the impacts of WNS. Currently, direct detection of WNS is limited largely to wintering bat populations in the locations where they hibernate. To fully represent the extent of WNS, we must also include the areas where the NLEB migrates to spend summers. To estimate the extent of infection, we used the migratory distance of the little brown bat, which is widely considered a likely source of WNS spread across eastern North America. The best available science shows that little brown bats have a known maximum migratory distance of 344 miles. However, based on the approximate observed movements of WNS to date, the interim 4(d) rule sets the WNS buffer zone as those within 150 miles of areas where the fungus Pd or WNS has been detected. We acknowledge that 150 miles does not capture the full range of potential WNS infection, but represents an intermediate distance between the known migration distances of NLEBs and little brown bats that is suitable for our purpose of estimating the extent of WNS infection on the northern long-eared bat.

You expressed concerns that the 150-mile buffer will "shut down all land use in the area." Under a threatened listing, all incidental take is prohibited. However, the interim 4(d) rule greatly reduces restrictions on land use by exempting the prohibitions on incidental take resulting from a wide variety of activities. In addition, activities that do not involve incidental or purposeful take of the bat are not restricted.

27) Your interim 4(d) rule exempts only a select few land uses within the massive Northern Long Eared Bat habitat despite the Service's acknowledgement in the rule that many land uses, including surface and mining and reclamation, have no known impact on the spread of white nose syndrome, the acknowledged cause of population decline. Why was surface mining and other activities with no known impact on the spread of white nose syndrome not included in the Section 4(d) exemptions?

Response: Due to the complexity of this issue, the volume of comments and the limited time between proposing the 4(d) rule and the date that the final listing rule had to be published, we did not have enough information concerning take of the bat from many specific activities, including surface mining, to adequately determine whether that take was compatible with the conservation of the species or not. Therefore, we published an interim 4(d) rule, which allowed some incidental take exemptions to be in place while we reopened the comment period to consider all comments received, including those from surface mining and other activities, and engage with stakeholders to explore whether additional exemptions should be included in a final 4(d) rule.

28) In the Service's 12 month finding on the petition to list the species, FWS states that "although conservation efforts have been undertaken to help reduce the spread of the disease through human-aided transmission, these efforts have only been in place for a few years and it is too early to determine how effective they are in decreasing the rate of spread." The Service goes on to mention a number of WNS mitigation initiatives recently underway, including the national Plan for Assisting States, Federal Agencies, and Tribes in Managing White-Nose Syndrome in Bats, the Western Bar Working Group's White-Nose Syndrome Action Plan, and the adoption of recommended best practices by a host of states and federal agencies. Given that White Nose Syndrome is the sole primary cause of population decline, why weren't any of these initiatives that actually address the problem given a chance to work before the Service promulgated a rule that doesn't address the problem?

Response: The Service received a petition to list the northern long-eared bat and eastern small-footed bat in 2010. We published a substantial 90-day finding on June 29, 2011 (76 FR 38095), indicating that listing these two species may be warranted and initiating a status review. Section 4(b)(3) of the ESA establishes the statutory timelines for completing petition findings; within 12 months after receiving a petition, the Service must make a determination whether listing is or is not warranted. Completion of this status review for the northern long-eared bat was delayed due to listing resources expended on other higher priority rulemakings. On July 12, 2011, the Service filed a multiyear work plan as part of a settlement agreement with WildEarth Guardians and the Center for Biological Diversity, in a consolidated case in the U.S. District Court for the District of Columbia. The settlement agreements in Endangered Species Act Section 4 Deadline Litigation, No. 10-377 (EGS), Multi-district Litigation Docket No. 2165 (D.D.C. May 10, 2011 and July 11, 2011) were approved by the court on September 9, 2011. The settlement agreements specified that listing determinations be made for more than 250 candidate species, and specified dates for several petitioned species with delayed findings. For the northern long-eared bat, the specified date for completing a 12-month finding, and a listing proposal if that finding was warranted was September 30, 2013, 3 years after the receipt of the petition.

We are required to make our final determination based on the best scientific and commercial data available at the time of our rulemaking. The ESA requires the Service to publish a final rule within 1 year from the date we propose to list a species, unless there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, but only for 6 months and only for purposes of soliciting additional data. Based on the comments received and data evaluated, we determined that an extension was necessary. However, we were able to extend the listing determination by 6 months, but not

longer. Thus, the Service completed the listing action within the established statutory and court-ordered deadlines, based on the best available scientific information available.

Sage Grouse

Along with the U.S. Geological Service, the Fish and Wildlife Service hosted the "Expert Elicitation Workshop on the Genetics of the Greater Sage Grouse" in Fort Collins, Colorado, in October 2014. A number of scientific experts were invited to provide their views and answer questions on the genetic differences of sage grouse. The workshop apparently was not convened as a formal advisory committee in accordance with the Federal Advisory Committee Act.

29) What were the criteria used for selecting participants for this workshop?

Response: The Service reviewed recent greater sage-grouse genetics publications to identify potential workshop invitees. Then, the planning team used selection criteria, including a candidate's professional credentials, position, area of expertise, and experience with the greater sage-grouse, to develop a list of potential invitees. These criteria helped ensure that invitations to participate were made to scientific experts familiar with the topic and that the selections were transparent, unbiased, and captured a broad diversity of expertise and professional judgments related to the topic. With assistance from USGS, the Service developed the draft invitation list and then the Service also requested input on our list of experts from the Western Association of Fish and Wildlife Agencies (WAFWA). WAFWA reviewed the list of potential participants that we already identified and responded with additional suggestions. The workshop Summary Report, publically available on our website, describes the selection criteria and invitation process in more detail (<http://1.usa.gov/1cOcdSx>, p. 1).

30) To what extent did the workshop discuss scientific support for recognition of additional sage-grouse subspecies?

Response: The purpose of the workshop was to explore the current state of information regarding greater sage-grouse genetics including: recent and upcoming genetic studies of the greater sage-grouse; evaluating genetic evidence for barriers to gene flow between populations or groups of populations; evaluating evidence of genetic divergence or isolation; and, evaluating evidence for other genetic mechanisms or processes that potentially impact the greater sage-grouse. Workshop participants briefly discussed the current information regarding potential genetic differentiation in sage-grouse. The discussion is summarized in Appendix 7 *Meeting Notes* of the publically available workshop summary report that is available on our website (<http://1.usa.gov/1cOcdSx>, p. 105).

31) Did any of the authors of the 2011 "Report on National Greater Sage-Grouse Conservation Measures" produced by the Sage-Grouse National Technical Team or the 2013 "Greater Sage-Grouse Conservation Objectives: Final Report" participate in the workshop?

Response: Dr. Michael Schroeder of the Washington Department of Fish and Wildlife was the only expert participant who was also a team member for the Greater Sage-Grouse Conservation

Objectives Team: Final Report (COT Report). No members of the National Technical Team attended the workshop.

32) Did the workshop review the "Report on National Greater Sage-Grouse Conservation Measures" produced by the Sage-Grouse National Technical Team or the 2013 "Greater Sage-Grouse Conservation Objectives: Final Report"? If yes, please describe what aspect(s) of these reports was reviewed and discussed at the workshop.

Response: Neither document was discussed or reviewed at the workshop.

33) Were any findings, minutes, recommendations, report, summaries, or notes developed or issued as part of the workshop? If yes, were they distributed to members of the workshop.

Response: Yes. All preparation materials, meeting notes, and presentations are readily available to the public on our website in our workshop Summary Report. We distributed the Summary Report to all workshop participants. The workshop produced information and scientific discussion regarding sage-grouse and conservation genetics, and did not result in any findings or recommendations.

https://www.fws.gov/greatersagegrouse/documents/ESA%20Process/20150505_Genetics_Summary_Report_FINAL.pdf.

34) Were any scientists employed by state, county, or local governments invited to participate, and if yes, did any in fact participate?

Response: Our summary report explains the invitation criteria and provides the attendee list for the genetics workshop (<http://1.usa.gov/1cOcdSx>). We invited several genetics experts from state agencies who attended the workshop. Additionally, the Western Association of Fish and Wildlife Agencies (WAFWA) helped review our list of potential participants and provided additional suggestions.

35) Were any nongovernmental scientists who had received grants or other financial assistance from the Fish and Wildlife Service invited to participate, and if yes, did any in fact participate?

Response: The workshop report with appendices explains the invitation criteria and provides the attendee list for the genetics workshop (<http://1.usa.gov/1cOcdSx>). We investigated potential participants from nongovernmental organizations; however, we did not identify experts, based on the established criteria, from these affiliations.

36) What role will the workshop have in informing the Fish and Wildlife Service's decision on whether to list the Greater Sage-Grouse?

Response: This workshop was one component of the Service's information gathering process for the status review. Information gathered during the workshop will be used by the Service in conjunction with other published literature or information submitted by interested parties, to evaluate the status of the species. The Service is committed to using the best available scientific and commercial information, and will incorporate new information as it becomes available.

37) Why was the workshop not convened as a formal advisory committee under the Federal Advisory Committee Act?

Response: The workshop complied with the Federal Advisory Committee Act (FACA), but it did not qualify as a formal advisory committee under the FACA. The workshop was designed to collect information from individual experts on conservation genetics and sage-grouse genetics only; it did not seek advice or consensus. Rather, information was exchanged and the Service noted factual information, and, as appropriate, professional opinions regarding available scientific information from each individual expert.

38) On October 27, 2014 you wrote to the Director of the Bureau of Land Management and the Chief of the Forest Service recommending that they implement enhanced protections in what you call sage grouse "strongholds" within previously identified Priority Habitat Management Areas. In response to this action, Governor Mead of Wyoming wrote to you questioning the need for the establishment heightened areas of restriction which would overlap existing state based conservation frameworks. In light of the considerable collaboration and science based conservation occurring at the state level in Wyoming and in other western states, what is the need for additional restrictions that would undermine these locally driven protections already in place?

Response: The Conservation Objectives Team (COT) Report, developed jointly with State representation and expertise, identified Priority Areas for Conservation (PACs) essential for conservation of the greater sage-grouse. Further, the COT Report identified reducing or eliminating disturbance in PACs as a central component to the species conservation. At the request of the land management agencies, the Service identified a subset of PACs, consisting of Federal lands, with high grouse densities, healthy sagebrush habitat, and that the literature has identified as critical to the species persistence; we called these "strongholds" or "highly important landscapes." The maps were intended to provide additional information to our federal land management agency partners as to areas where it is most important to ensure that the species is conserved such that it will persist into the future. The Service's objective in developing this memorandum and accompanying maps was to provide information to help our partners advance the conservation of the species.

39) How did you arrive at the sage grouse "strongholds" that you are suggesting BLM and the Forest Service use in developing strict land use restrictions?

Response: On October 27, 2014, Service Director Ashe – acting in response to a request from the Bureau of Land Management (BLM) asking FWS to identify high-value landscapes where we recommend BLM consider maximizing conservation for sage grouse - provided BLM and U.S. Forest Service leadership with a memo transmitting maps identifying areas within sage-grouse range that the scientific literature indicates is essential to the persistence of the species. These maps, which represent a synthesis of current spatial data showing large, contiguous blocks of high-value sage-grouse habitat on federal lands, and the associated transmittal, have been made available to all partners and interested parties.

Whooping Cranes

40) Recently, it has been brought to my attention that many media outlets continue to report that 23 whooping cranes died during the winter of 2008-2009 at the Aransas National Wildlife Refuge (the Refuge) in Texas. However, I have also been informed that after a thorough review, the U.S. Fish and Wildlife Service (the Service) abandoned the methodology of making aerial counts of the wintering whooping crane flock at the Refuge that was in place during the winter of 2008-2009 because of problems with the methodology in use for many years, and replaced that methodology with a the Whooping Crane Winter Abundance Survey Protocol which is based on proven techniques used widely by wildlife biologists for decades and which is based upon the scientific method. A September 2012 FWS report describes the core assumption of the estimate as “untenable” and the method as not “defensible.” Therefore, my question to you is what is the Service's official position on how many whooping cranes died at the Aransas National Wildlife Refuge during the winter of 2008-2009?

Response: In a 2008-2009 publication, the Service's Southwest Region reported what we believed there was a loss of 23 whooping cranes, using the best information available at that time. Following the retirement of the Service's Whooping Crane Coordinator in 2011, a team of specialists was formed to evaluate our process for estimating the whooping crane population. After an extensive review, the team updated the methodology used for estimating whooping crane abundance. Use of this scientifically sound methodology has improved our knowledge and understanding of this whooping crane population and will aid in conservation planning, future policy decisions and the long-term conservation of this species for the American public. However the Service is unable to confirm the loss of whooping cranes previously reported in 2008-2009, because the data could not be verified using the previous methodology. Therefore the number of whooping cranes that died at the Aransas National Wildlife Refuge during the winter of 2008-2009 remains unknown.

Please see the following peer reviewed publications for further details:

<http://ecos.fws.gov/ServCatFiles/reference/holding/28257>

<http://www.sciencedirect.com/science/article/pii/S0006320714003115>

Note: Tom Stehn, former Service Whooping Crane Coordinator, retired on September 30, 2011.

Categorical Exclusion – Invasive Species

41) The U.S. Fish and Wildlife Service's (the Service) proposed Categorical Exclusion rule to facilitate adding species to the injurious wildlife list under the Lacey Act has been the subject of three public comment periods including July 1-July 31, 2013; August 1- October 15, 2013; and January 22-February 22, 2014. It has been over a year since your latest public comment period closed. How do you plan to proceed with categorical exclusion?

Response: The Service is working to finalize the categorical exclusion by August 2015, and will coordinate with the Council on Environmental Quality as required.

42) Water agencies are responsible for serving the needs of millions of people from Texas to Southern California. I am hearing concerns that categorical exclusion will increase the number of invasive species listed under the Lacey Act and that will in turn force local water agencies and the Congress to duplicate the special actions that were necessary with Lake Texoma to restore Texas drinking water supplies. Has the Service looked at the issue of how the Lacey Act and the proposed rule could disrupt water supply transfers over state lines?

Response: The Service implements the Lacey Act (18 U.S.C. 42) to protect United States interests from the harm that injurious wildlife species can cause to human beings, to the interests of agriculture, horticulture, or forestry, or to wildlife or wildlife resources. However, the administrative process for listing injurious wildlife can be protracted and complex, reducing its effectiveness. A categorical exclusion, if appropriate, is one way to expedite the listing process and, in so doing, support the purposes of the Lacey Act's injurious wildlife provisions. The Service is aware of concerns about the spread of injurious aquatic species in the West, as well as concerns raised about the potential impacts on water distribution projects of preventing this spread.

S. 292 and S. 293

43) You referenced in your testimony that, "The Administration is working to address the underlying concerns that may have motivated S. 292 and S. 736 using existing authorities and welcomes input from Congress as we move toward increased transparency using modernized methods." Please explain what the Service is doing to improve transparency for all stakeholders and taxpayers?

Response: On May 18, 2015, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service (the Services) announced an additional suite of actions the Administration will take to improve the effectiveness of the Endangered Species Act and demonstrate its flexibility. The actions will engage the states, promote the use of the best available science and transparency in the scientific process, incentivize voluntary conservation efforts, and focus resources in ways that will generate even more successes under the ESA.

As part of the Administration's ongoing efforts, the Services will also be unveiling additional proposals over the coming year. One of the four broad goals is improving science and increasing transparency. To improve public understanding of and engagement in ESA listing processes, the Services will strengthen procedures to ensure that all information that can be publicly disclosed related to proposed listing and critical habitat rule notices will be posted online; and adopt more rigorous procedures to ensure consistent, transparent, and objective peer-review of proposed decisions.

44) You referenced in your testimony the Service's opposition to S. 293 because it "will greatly diminish the opportunity to settle deadline lawsuits brought under the ESA, where it is in the interests of the Government and taxpayer to do so." However, you did not specifically comment on certain provisions of the bill. Should the Service publish all complaints received pursuant to the ESA within thirty days of being served in order to provide notice to all affected parties? Should affected parties have a "reasonable opportunity" to move to intervene, during which time

parties would be prohibited from moving for entry of a consent decree or to dismiss the case pursuant to a settlement agreement? In other words, does the Service believe it adequately represents impacted stakeholders who are not aware of these settlement negotiations until they are announced?

Response: To require the Service to publish all complaints filed against the Service pursuant to the ESA would be a significant workload. Further, once a complaint is filed, it is a matter of public record. For example, all federal lawsuits are available on PACER (psc.uscourts.gov). Therefore, we believe such a requirement would create unnecessary hardship for the Service.

The Federal Rules of Civil Procedure Rule 24 provides a mechanism whereby parties with an interest in the subject matter of the litigation may move to intervene. To give a few examples, the Texas Comptroller intervened in litigation challenging our decision not to list the dune sagebrush lizard; the State of Wisconsin intervened in litigation challenging our decision to delist the Western Great Lakes population of the gray wolf; and the State of Wyoming intervened in litigation challenging our decision that listing of the whitebark pine was warranted, but precluded. In fact, interested parties are frequently granted intervenor status in ESA litigation. Thus, we believe interested stakeholders are adequately represented by the judicial system.

45) You noted in your testimony, "We do not give away our discretion to decide the substantive outcome of any agreed upon actions, and the notice and comment and other public participation provisions of the ESA and the Administrative Procedure Act still apply to the process for making those decisions." Does the Service believe that plaintiffs in settlements should be able to negotiate listing priority changes and timeframes for workplans that while not dictating the ultimate decision by the Service, certainly alter the priority order of species and the timeline of the Service's decision, and leave out other impacted stakeholders?

Response: The Service developed its Listing Priority Guidelines to help us determine how to make the most appropriate use of our limited resources to implement the ESA. These guidelines provide for the ranking of species according to: (1) the magnitude of the threats they face; (2) the immediacy of those threats; and (3) their taxonomic distinctiveness. The numbers assigned in this ranking process are not subject to negotiation in Service litigation. However, while the Service generally follows this ranking system, courts have found the rankings do not create any requirement – procedural or otherwise – that we consider the species in the order they are ranked and that the Service may consider factors such as staff resources and geographic efficiencies when making its determinations as to order.

The ESA requires the Service to respond to petitions within a specific time frame. When litigation is filed against the Service for failure to do so, the Service attempts to negotiate these cases in hopes of obtaining a resulting deadline for the action that is consistent with its priorities and based on its resources and other workload.

46) You also stated in your testimony, "When deadline cases have been litigated in the past, courts have frequently imposed very short deadlines. Therefore, removing the incentive for settlement is likely to accelerate the timing of listing determinations and other actions required by deadline, thereby reducing the opportunity for interested parties to participate in the decision-

making process.” Would you please explain which species in the workplan settlements of 2011 were subject of a missed deadline, and which candidate species were re-prioritized from the Service’s listing priority as part of the settlement actions? Please list those species contained in the settlements that had existing candidate conservation agreements with states or local entities where the species is found.

Response: The workplans filed by the Service resolved petition deadline litigation for more than 100 species. See Attachment 1. Additionally, it resolved the five following lawsuits challenging warranted but precluded determinations (i.e., asserting that we should have proceeded immediately to a listing proposal, or that we were not making expeditious progress in resolving the status of species on the candidate list) for more than 200 candidate species: WildEarth Guardians v Salazar, Civ. No. 4:10-420 (D. Ariz.) (New Mexico meadow jumping mouse); WildEarth Guardians v. Guertin, et al., Civ. No. 1:10-1959 (D. Colo.) (Canada lynx); WildEarth Guardians v. Salazar, Civ. No. 1:10-2129 (D. Colo.) (lesser prairie-chicken); Biodiversity Conservation Alliance, et al. v. Kempthorne, et al., Civ. No. 04-2026 (D.D.C.) (See Attachment 2 for list of 200+ species); and Western Watersheds Project, et al. v. Salazar, Civ. No. 4:10-229 (D. Idaho) (greater sage-grouse). The workplans did not “re-prioritize” species, as no prior multi-year workplan for all the candidate species (which would consider factors other than just the listing priority number) was in place. Rather, they resolved the deadline litigation in a manner acceptable to the Service.

Twelve species covered by the MDL settlement had candidate conservation agreements at the time the Service entered into the settlement agreement. Those twelve species include: the boreal toad, barrens top minnow, Columbia spotted frog, fisher (Pacific), Guadalupe fescue, inquirer cave beetle, Louisiana pine snake, relict leopard frog, greater sage-grouse, Southern Idaho ground squirrel, Tahoe yellow cress, and Washington ground squirrel.

Mega-Settlements

The Fish and Wildlife Service entered into settlements with WildEarth Guardians and the Center for Biological Diversity in 2011 requiring final decisions on listing hundreds of species by 2016. You have previously informed me and other members of the Committee that Local Rule 84.9 of the U.S. District Court for the District of Columbia prohibits the Service from disclosing details of how the settlement agreements were developed.

47) Is it the Service’s position that this local court rule would bar disclosure of these mediation-related documents to Congress pursuant to a subpoena?

Response: The Service defers to the Department’s Office of the Solicitor and Department of Justice on these matters. However, Local Rule 84.9 provides a number of exceptions, none of which would seemingly permit disclosure pursuant to subpoena. Further, the Local Rules specifically state that Mediators shall not respond to subpoenas or requests for such information. Thus, presumably it would likewise not be appropriate for one party to unilaterally release records otherwise covered under this Rule.

48) In a law review article entitled "Endless War or End this War? The History of Deadline Litigation Under Section 4 of the Endangered Species Act and the Multi-District Litigation (14 Vermont Journal of Environmental Law 328, 373), Department of the Interior attorney Benjamin Jesup writes, "This settlement was much broader in scope than the cases covered by the [multi-district litigation]." In what ways was the settlement broader in scope than the cases covered by the multi-district litigation?

Response: The Multi-District Litigation (MDL) Panel consolidated 20 cases involving petition deadline violations for 100 species in the District Court for the District of Columbia. In addition to resolving these cases by providing deadlines for the majority of actions at issue, the MDL Agreements also resolved five lawsuits pending in multiple districts involving challenges to warranted but precluded findings for more than 200 species. Thus, the scope of the settlement was broader than the cases consolidated by the MDL Panel, but it served to resolve significant exposure in other pending cases as well.

49) Did the draft settlement agreements undergo review by the Office of Management and Budget? If yes, please describe the impact of the OMB review process on the settlement agreements.

Response: No. The Office of Management and Budget (OMB) Office of Information and Regulatory Affairs (OIRA) has the authority to review rulemaking documents under Executive Order 12866. It does not typically review settlement agreements as they are not rulemaking documents. The agreements merely set a schedule for making a decision or issuing a rulemaking document that may be subject to OIRA review prior to issuance.

50) Please describe agency policies regarding closed door settlements. If a settlement is to affect uses of lands and human and economic activities in the area subject to the terms of the settlement, what is your perspective on the ability of state, local or tribal units of government to participate?

Response: The Service generally defers to the Department of Interior's Office of the Solicitor and the Department of Justice on matters involving the settlement process. However, the Service does not agree to any substantive outcome or specific terms within its settlement agreements that affect the uses of lands and human and economic activities in those areas. The agreements generally set a schedule for an action that is already required by law and any negotiations involve all parties to the litigation. As stated previously, parties with an interest in the litigation may move to intervene and, thus, be a part of any negotiations.

51) Will you fully consider proposals (including regulatory or legislative efforts) that ensure that potentially affected states, tribes and local governments have the ability to review settlement proposals that may greatly affect their citizens and their economies?

Response: The Service would need more details about such proposals and any process before it is able to provide a thoughtful response to your question.

If a burdensome process is imposed on the settlement process, it could force parties to litigate rather than enter into mutually beneficial negotiations and settlement agreements. Plaintiffs may be unwilling to spend time in this administrative process, particularly for deadline litigation, where the Service has no defense. Instead, they would likely press the courts for summary judgment, seeking a remedy that may be far less palatable for the Service. In the past, courts have frequently imposed short deadlines where the Service has missed a statutorily required deadline. Therefore, removing the realistic possibility of settlement is likely to accelerate the timing of listing determinations, thereby reducing the opportunity for interested parties to participate in the decision-making process. In addition, an acceleration of the timing of listing determinations could also decrease the quality of the decisions, ultimately impairing our defensibility and leading to remands and reduced efficiency. Further, the necessity of fully litigating each case would greatly increase the burdens on the Service and the courts, with no offsetting benefit. It is likely to increase attorney's fees, particularly in deadline cases, where the Service has no defense and plaintiffs have a disincentive to settlement. These are all considerations that may factor into the Service's position on such a policy or procedure.

52) Will you consider measures that will assure that parties do not use the judicial system to usurp the effective administration of the ESA, including improvements to the management and deadlines for listing and critical habitat determinations under the ESA?

Response: Again, the Service would require additional details in order to provide an informed position.

53) Describe how your agency sees the role of conservation agreements with private landowners in protecting species and in assisting with their recovery. What does your agency do to encourage such agreements? Considering a case study, what has been the role of conservation agreements in the case of the Lesser Prairie-Chicken?

Response: Because approximately 2/3 of the habitat on which candidate and listed species depends is privately owned, it is essential that the Service partner with private landowners to conserve and restore habitat on private lands. The Service's Habitat Conservation Plan, Safe Harbor and Candidate Conservation Programs and the Partners for Fish and Wildlife Program work closely with private landowners to support activities and agreements that contribute to species conservation. Conservation agreements provide transparency and clarity about how landowners will be in compliance with the ESA. The Service actively urges landowners to take advantage of candidate agreements, Safe Harbor Agreements, Habitat Conservation Plans and other conservation efforts through outreach efforts including meetings with landowners about the tools available through the Service.

Before the Lesser prairie-chicken was listed as a threatened species, over 340 private landowners and energy related companies had voluntarily enrolled in four different Candidate Conservation Agreements with Assurances (CCAAs) administered by either state wildlife agencies or not-for-profit organizations that assure habitat is maintained and restored. These four CCAAs include one in Oklahoma specifically for ranching activities, agreements covering both agricultural and energy activities in New Mexico and Texas, and a range-wide CCAA for oil and gas producers in five states that was developed with the Western Association of Fish and Wildlife Agencies.

The landowners and companies enrolled in a CCAA and who continue to implement their agreements have not been required to change their management practices as a result of the listing decision.

Landscape Conservation Cooperatives

The Office of Inspector General issued a June 27, 2013 audit report on the Fish & Wildlife Service's Landscape Conservation Cooperative that identified several concerns related to grants management and oversight that places several millions of dollars at risk. The report made 15 recommendations, one of which was resolved and implemented at the time the report was issued and the remaining 14 were resolved but not implemented.

54) What is the status of the remaining 14 recommendations?

Response: The Service developed a Corrective Action Plan (CAP) for the 14 resolved, but not implemented, recommendations. Current status is as follows:

- 4 have been completed
- 7 have been completed except for satisfying the training requirement for all Landscape Conservation Cooperative (LCC) staff involved in financial assistance to attend the Basic Financial Assistance Management Course by December 31, 2015. We anticipate this training requirement will be fulfilled by December 31, 2015.
- 2 have been completed except for the training requirement and sampling for compliance. We anticipate both training and sampling requirements will be fulfilled by December 31, 2015.
- The final recommendation, an internal review by the FWS Division of Policy and Directives Management, is on track for completion by December 31, 2015. FY2015 is the first year of a 4-year review cycle.

The progress of the CAP has been reported quarterly to the Division of Internal Control and Audit Follow-Up in the Office of Financial Management in the Department of the Interior. The entire plan is to be completed on schedule by December 31, 2015. The Service will update the Committee once all 14 recommendations have been implemented.

ESA Science

The Fish and Wildlife Service and the National Oceanic and Atmospheric Administration issued a policy on July 1, 1994 on the use of peer review in Endangered Species Act activities. Accordingly, it is the policy of the Fish and Wildlife Service to "[s]olicit the expert opinions of three appropriate and independent scientists" a part of the peer review process associated with ESA activities.

55) How does the Service define "appropriate" under the peer review policy?

Response: The policy states that "Independent peer reviewers should be selected from the academic and scientific community, Tribal and other native American groups, Federal and State

agencies, and the private sector; those selected have demonstrated expertise and specialized knowledge related to the scientific area under consideration." Thus we seek reviewers who are species experts or have specialized knowledge and expertise relevant to the species, habitat, and or threats being reviewed, and draw those reviewers from a wide variety of backgrounds as much as possible. The Service also follows the Office of Management and Budget (OMB) bulletin, "Final Information Quality Bulletin for Peer Review," issued in December 2004 which provides additional direction on the selection of peer reviewers.

56) How does the Service define "independent" under the peer review policy?

Response: The policy states that "Independent peer reviewers should be selected from the academic and scientific community, Tribal and other native American groups, Federal and State agencies, and the private sector; those selected have demonstrated expertise and specialized knowledge related to the scientific area under consideration." The Service utilizes external experts to serve as peer reviewers to assure credibility of the process. The Service also seeks peer reviewers from diverse groups and backgrounds to assure independence in peer review and minimize bias. The Service also follows the Office of Management and Budget (OMB) bulletin, "Final Information Quality Bulletin for Peer Review," issued in December 2004 which provides additional direction on the selection of peer reviewers.

57) Does the FWS consider the peer reviewer's employer or professional affiliations in determining whether the individual is "appropriate" or "independent"?

Response: According to the OMB guidelines, "The selection of participants in a peer review is based on expertise, with due consideration of independence and conflict of interest." Whenever possible, FWS solicits peer review from an expert with no conflict of interest. In some situations, particularly with narrow endemic species, there may only be one or two experts that exist on that species.

58) The Fish and Wildlife Service routinely uses scientists whose research, articles, studies, and other work forms the scientific basis for an ESA action as a peer reviewer for the same action. Please explain how the use of such scientists as peer reviewers is not a conflict of interest and how such peer reviewers can be "appropriate" or "independent" under the 1994 policy.

Response: As directed by the OMB guidelines, "The selection of participants in a peer review is based on expertise, with due consideration of independence and conflict of interest." Whenever possible, the Service solicits peer review from an expert with no conflict of interest. In some situations, particularly with narrow endemic species, there may only be one or two experts that exist on that species or habitat type.

In compliance with the best available data standard, the Service relies on scientific work from recognized experts that are knowledgeable about a species, its habitat, ecology, and how threats may impact it when making listing determinations under the ESA. The Service believes that it is completely appropriate to also ask these scientists to review our interpretation of the information in our decisions. Even though the Service relies heavily on information from these scientific experts, the Service also seeks additional review of the scientific information and its use from

other scientific experts directly knowledgeable with the species, similar species or ecology, or general conservation principals as peer reviewers. The Service always provides notice of proposed rulemaking and opportunity for comment as part of our rulemaking process, in which others (and not just the peer reviewers) may review our information and conclusions, and provide comment or further information. This robust process allows for a more thorough and balanced review that we believe limits the possibility of conflict of interest.

59) The Fish and Wildlife Service routinely uses scientists who have received grants and other financial assistance from the Service, other Department of the Interior bureaus, and other federal agencies as peer reviewers for ESA actions. Please explain how the use of such scientists as peer reviewers is not a conflict of interest and how such peer reviewers can be "appropriate" or "independent" under the 1994 policy.

Response: The Service does rely on scientific work from recognized experts in making ESA-related decisions, and sometimes provides funding for that work to meet specific data needs. The Service often requests that these same scientists review the Service's interpretation and use of scientific information to ensure appropriate use and interpretation in making listing determinations. Even though the Service relies heavily on information from these scientific experts, the Service also seeks additional review of the scientific information and its use from other scientific experts directly knowledgeable with the species, similar species or ecology, or general conservation principals as peer reviewers. To this end, the Service always provides notice and opportunity for comment as part of our rulemaking process, in which others (and not just peer reviewers) may review our information and conclusions, and provide comment or further information. This robust process allows for a more thorough and balanced review that we believe limits the possibility of conflict of interest.

60) Does the Service have any policy or legal restrictions that would prevent a scientist employed by a non-for-profit trade or professional association from serving as a peer reviewer for an ESA action?

Response: The Service does not currently have a policy nor is aware of any legal restrictions that would prevent a scientist from serving as a peer review on a specific ESA action based on their organization's tax status. However, when soliciting peer review, Service policy recommends seeking balanced peer review of ESA actions.

61) Does the Service have any policy or legal restrictions that would prevent a scientist employed by a for-profit trade or professional association from serving as a peer reviewer for an ESA action?

Response: The Service does not currently have a policy or is aware of any legal restrictions that would prevent a scientist from serving as a peer review on a specific ESA action based on their organization's tax status. However, when soliciting peer review, Service policy recommends seeking balanced peer review of ESA actions.

62) Does the Service have any policy, or is there a legal prohibition, against identifying the individuals who have served as peer reviewers for ESA activities, either on the Service's

website, in relevant Federal Register notices, or on the online rulemaking docket Regulations.gov? If yes, please explain what those policy and/or legal prohibitions are.

Response: The Service does not have a policy nor are we aware of a legal prohibition against identifying individuals who serve as peer reviewers on ESA activities. Peer reviewers are notified that they will be identified as peer reviewers as part of the rulemaking process. Peer review comments on a specific ESA action are treated as public comments on that action and are posted on Regulations.gov as part of the rulemaking docket.

63) How do you respond to the assertion that too much of the documentation on which your agency is currently relying to assess the state of Greater sage-grouse populations derives from a particular subset of research specialists? One example is the National Technical Team's A Report on National Greater Sage-Grouse Conservation Measures (the "NTT Report"), which uses data and studies from a small number of Greater Sage-Grouse specialist-advocates. Another is the U.S. Fish and Wildlife Service's ("USFWS") Greater Sage-Grouse Conservation Objectives Final Report (the "COT Report") is a limited and selective review of scientific literature and relies upon unpublished reports on the Greater Sage-Grouse. These reports offer Action alternatives that include 4 mile no surface occupancy buffers around active leks during seasonal use. A May 2013 letter from Western Association of Fish and Wildlife Agencies (WAFWA) criticized the Department of Interior for using the NTT report as BLM's sole source of GSG management direction rather than a wide variety of peer-reviewed publications which collectively provide the best available science for conserving GSG. How do you respond to the statements that these reports rely on a small group of researchers, lack rigorous peer review, overstate impacts to the species from human activity, and propose restrictions on certain uses of the sage brush range land that are inadequately supported by science?

Response: The NTT Report and COT Report examine the breadth of available research and cite more than 80 studies examining sage-grouse populations and conservation. While the Service is using these reports to guide sage-grouse conservation, they are only two documents within a wide array of research and published literature that the Service is reviewing and evaluating.

In drafting the action alternatives, the Bureau of Land Management considered the U.S. Geological Survey's 2014 report that compiles and summarizes published scientific studies that evaluate effective conservation buffer distances from human activities and infrastructure that influence greater sage-grouse populations. The report reviewed more than 50 scientific studies, with the literature largely indicating that 90-95 percent of sage-grouse movements are within 5 miles of lek sites.

The Service has not completed its data collection process and will continue to accept new data as long as the greater sage-grouse is a candidate species. The Service will continue to consider any data or information provided related to the status of the species. We will continue to update and refresh these and all other materials on the site as newer versions become available. The Administration is committed to decision-making that is transparent and supported by public participation and collaboration. In an effort to be as transparent as possible, an increasing number of documents on our site relate to our Endangered Species Act status review process.

In addition, the site serves as a repository for a growing number of documents including cutting-edge research, useful information for landowners, and information on the biology of and threats to the bird. We also feature the most up-to-date sage-grouse news on the site each week to foster awareness of and support for long-term conservation of sage-grouse and the places they inhabit. Maps related to the greater sage-grouse habitat are also stored on this website.

64) Many people have questioned the degree to which decisions on application of the Endangered Species Act are based on objective scientific data and the degree to which these decisions are based on judgment and opinion. Judgment and opinion will always be a part of any decision that is informed by science. Nevertheless, it's important to understand the role played by data and the role played by judgment. Please describe your principles and policies regarding the data used in ESA decisions, and the access to that data to be provided affected stakeholders. Please describe the Agency's policies regarding access to that data for states, local governments and tribes, and the ability of these entities to furnish additional data for use in a pending ESA decision.

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

65) Please discuss the use of predictive models by the Agency in the course of preparing determinations on the status of species or habitats. How does the Agency come to the determination that models may be necessary? What are the policies in place regarding use of or access to the data on which modeling will rely?

Response: The ESA requires the Secretary of the Interior and the Secretary of Commerce to determine whether any species is endangered or threatened (16 U.S.C. 1533) based on the best scientific and commercial data available. The Services receive and use information on the biology, ecology, distribution, abundance, status, and trends of species from a wide variety of sources as part of their responsibility to implement the ESA. Some of this information is anecdotal, some of it is oral, and some of it is found in written documents. When necessary to answer a question about current or future status, the Service will consider information provided through predictive models. The Service typically has access to the data on which the model relies if the Service funded the development of the model. In all other situations, access to underlying data is determined in agreement with their modelers depending on the proprietary nature of the model or data.

Senator Booker:

Necessity of Body-Gripping Traps

1) In terms of wildlife management in the NWRS, what species can FWS point to where FWS believes that the use of body-gripping traps is the only possible management option?

Response: The U.S. Fish and Wildlife Service is unable to provide this information to meet the Committee's deadline. The Service manages 563 National Wildlife Refuges and 38 Wetland Management Districts on over 150 million acres. Each refuge is unique and requires a variety of site specific and landscape-scale resource management approaches to meet the goals of the individual refuge and the System as a whole. In order to provide the information requested, the Service would need to collect extensive data to estimate the scope of trapping in the National Wildlife Refuge System (Refuge System).

2) If you have identified examples where FWS believes that body-gripping traps were the only possible management option, please provide specific details regarding the circumstances of the incident(s), including the refuge name, species involved, and what alternatives were attempted before resorting to body-gripping traps.

Response: Please see above response.

3) FWS has singled out nutria as an invasive species that FWS believes requires the use of body-gripping traps. Is FWS aware that governmental entities such as USDA APHIS and the Washington Department of Fish and Wildlife state that nutria can be captured effectively and easily using cage and box traps, and in a variety of environmental settings including wetlands?

Response: The Service agrees that capturing nutria in live-traps can be done effectively and easily under many circumstances. However, eradicating nutria from complex landscapes is neither practical nor possible relying solely on live-trapping techniques.

The nutria eradication effort in Chesapeake Bay has been frequently referenced by the Service because we believe it provides a relevant example that addresses multiple concerns regarding trapping decisions and methodologies in the NWRS. This one example is illustrative of the rigor of our analysis, our engagement with partners, and the accomplishment of habitat protection efforts through efficient and effective control of a highly invasive species. The scope and magnitude of the effort and the tidal nature of the system limit methodologies, including live-trapping, at our disposal. We believe maintaining the ability to employ a variety of trapping methodologies is necessary in order to efficiently and effectively achieve our conservation goals.

Statutory Authority

1) What is the statutory authority for FWS to allow trapping in the NWRS?

Response: The U.S. Fish and Wildlife Service receives its statutory authority to allow trapping for management from the National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997 (Organic Act). The Organic Act, set the mission of the National Wildlife Refuge System, "to administer a national

network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.”

The 1997 House Committee Report that accompanied the National Wildlife Refuge System Improvement Act explained that “[the Organic Act] defines the terms “conserving”, “conservation”, “manage”, “managing”, and “management” to mean sustaining and, where appropriate, restoring and enhancing healthy populations of fish, wildlife, and plants by utilizing methods and procedures associated with modern scientific resource programs. The Committee understands that the list of methods in this definition is not inclusive and that any or all of these methods may be inappropriate in certain situations. One of the listed methods and procedures, “regulated taking” encompasses management tools such as hunting, trapping and fishing.”

Compatibility Determinations

1) Please provide a copy of each trapping compatibility determination for each refuge open to trapping (as per the 1997 Refuge Improvement Act).

Response: A compatibility determination is not required for all trapping programs. If trapping is carried out as a refuge management activity – defined by the Service’s Compatibility Policy, (603 FW 2) as, “an activity conducted by the Service or a Service-authorized agent to fulfill one or more purposes of the national wildlife refuge, or the National Wildlife Refuge System mission” – then it is exempted from the compatibility standard.

A compatibility determination would be required only if the trapping activity is considered a refuge use, defined by the Service’s Compatibility Policy as, “a recreational use (including refuge actions associated with a recreational use or other general public use), refuge management economic activity, or other use of a national wildlife refuge by the public or other non-National Wildlife Refuge System entity.” However, the U.S. Fish and Wildlife Service is unable to provide a copy of the compatibility determinations prepared for refuges where trapping activities are considered a refuge use by the Committee’s deadline.

2) Please describe the process in place used to generate trapping compatibility determinations – namely the type of evidence, data, or justification needed (if applicable) in order to open a refuge to trapping.

Response: The process is outlined in the above referenced compatibility policy (603 FW 2) which we will provide to the Committee as an attachment to these responses (See Attachment 3).

3) A review of the Comprehensive Conservation Plans for a subsample of eight refuges identified from the 2012 list of refuges opened to trapping revealed that two (Theodore Roosevelt National Wildlife Refuge Complex and Catahoula National Wildlife Refuge) included compatibility determinations on trapping, five (Sacramento River, Kootenai, Mingo, Cape May, Valentine National Wildlife Refuges) did not include compatibility determinations for trapping, and one (Havasu National Wildlife Refuge) apparently has not completed its Comprehensive

Conservation Planning process. Can you explain why five of the eight CCP's review from the list of refuges open to trapping do not appear to have compatibility determinations for trapping?

Response: Please see the above response – not all trapping programs require a compatibility determination. Additionally, not all compatibility determinations are done concurrently with the CCP. Managers review compatibility as new uses are requested, circumstances change, or new information becomes available.

Non-lethal Control

1) Before opening a refuge to trapping for wildlife management, does the FWS attempt alternative methods of predator and/or wildlife control? If not, why not? Where applicable, please provide specific examples, including species involved, non-lethal methods used, refuge name, etc.

Response: The Service employs numerous alternatives to trapping (eg. Fencing, scare devices, etc.) but does not track the extent to which refuges use non-lethal methods of wildlife control.

2) FWS has maintained that body-gripping traps are used to manage wildlife and protect endangered/threatened species. Please provide data since 2011 showing how frequently body-gripping traps are employed for these purposes. If this information is not collected, please explain why not?

Response: The Service does not systematically collect this type of information. Responsibility for management actions, documentation, and record keeping are largely delegated to our field project leaders. Gathering and synthesizing all relevant information would require a substantial investment of Service resources. The Service would have to invest significant staff time to plan and execute an information collection process, including: establishing a method to gather required data and obtaining approval under the Paperwork Reduction Act; identifying Service lands where trapping is used to meet refuge and wildlife objectives; identifying management versus recreational objectives; consulting with our State fish and wildlife agency partners for consistency with State regulations and reporting requirements; identifying legal trapping methods within each State; and ensuring the privacy of individuals is protected during the data gathering process.

Data Collection

1) Please provide a current list of all refuges open to trapping. Please include in this list the primary purposes of any trapping program allowed on any refuge.

Response: The Service is unable to provide this information by the committee's deadline.

2) For each refuge in the NWRS that allows trapping, please provide a list of how many allow body-gripping traps and what specific type of traps are used – e.g., Conibear, leghold, snare.

Response: The Service does not systematically collect this type of information. Responsibility for management actions, documentation, and record keeping are largely delegated to our field project leaders.

3) What data does the FWS have on the number of animals caught in body-gripping traps that injure their limbs, teeth, paws or other body parts when attempting to escape the trap? When providing this data, please provide evidence of the type of injuries sustained by trapped animals by refuge and trap type if available and describe how the FWS collects such data if it does so. If the FWS does not collect this data, please explain why not.

Response: The Service does not systematically collect this type of information. Responsibility for management actions, documentation, and record keeping are largely delegated to our field project leaders.

4) Please provide the following data from 2011 to the present; if you do not have data for any of the following please explain why:

- The number and species, target and non-target, of animals trapped by trap type on each National Wildlife Refuge that has allowed trapping.

Response: The Service does not systematically collect this type of information. Responsibility for management actions, documentation, and record keeping are largely delegated to our field project leaders. This information may be maintained at the field station level for some of the refuges that having trapping programs.

- How many refuge special use permits have been issued to private citizens for recreational or commercial trapping purposes? If you are unable to provide this data, please elaborate how else FWS quantifies the amount of trapping on refuges conducted by private citizens for recreational or commercial purposes.

Response: See previous answer.

- How many refuge special use permits have been issued to the public for "resource management" trapping purposes?

Response: The Service does not systematically collect this type of information. Responsibility for management actions, documentation, and record keeping are largely delegated to our field project leaders. This information may be maintained at the field station level for some of the refuges that having trapping programs.

- Please quantify the amount of trapping conducted by refuge staff and the amount conducted by contract trappers, and for what purposes. Please provide a copy of all contracts with third parties for trapping services.

Response: The Service does not systematically collect this type of information. Responsibility for management actions, documentation, and record keeping are largely

delegated to our field project leaders. This information may be maintained at the field station level for some of the refuges that having trapping programs.

- What non-target species are most commonly trapped?

Response: The Service does not systematically collect this type of information. Responsibility for management actions, documentation, and record keeping are largely delegated to our field project leaders. This information may be maintained at the field station level for some of the refuges that having trapping programs.

- What types of traps are used to trap FWS's primary target species?

Response: The Service does not systematically collect this type of information. Responsibility for management actions, documentation, and record keeping are largely delegated to our field project leaders. This information may be maintained at the field station level for some of the refuges that having trapping programs.

- What trap check times has the FWS set for management, commercial, and recreational trapping on each refuge open to such activities?

Response: Where trapping is permitted on refuges, it generally follows the regulations of the state where it occurs, but is often more restrictive. Records are maintained at the field station level.

5) What is the ecological impact of recreational and commercial trapping on refuges? Has this been studied through ecosystem research or experimental controls? If not, why not?

Response: Each refuge is unique and the ecological impact of trapping programs differs at each refuge. The majority of trapping programs, including recreational and commercial trapping programs, have some management nexus which supports the mission of the refuge and System. As outlined in the Service's Organic Act, refuge managers will use "sound professional judgment" and will consider principals of sound fish and wildlife management and administration, and available science and resources when determining if a trapping program is compatible with the refuge and ecosystems it contains.

Priority Uses

As per the 1997 Refuge Improvement Act, trapping is not considered a priority wildlife-dependent public use of the NWRS.

1) Why, then, does the default presumption seem to be that trapping should be allowed in the NWRS?

Response: Trapping programs on refuges are generally implemented to accomplish wildlife management objectives. These objectives vary between refuges, and are often an essential tool in

meeting refuge objectives (e.g., trapping of predators may be necessary to accomplish waterfowl production objectives or to protect an endangered species).

The Committee Report for The National Wildlife Refuge System Improvement Act of 1997, which amended the National Wildlife Refuge System Administration Act of 1966, does address trapping as a management tool. House Report 105-106 states that management tools encompass actions "such as hunting, trapping and fishing," in wildlife management. (H.R. 1420 Committee Report [105-106]).

2) Is this why FWS does not publish trapping-specific regulations in the Federal Register?

Response: The vast majority of trapping programs on Service lands are conducted to accomplish resource management objectives. Special use permits are often issued to impose more restrictive stipulations on trapping activities over state trapping regulations. These stipulations are required to ensure that trapping activities are compatible with refuge purposes. Special use permits give the refuge manager greater flexibility to adjust conditions of the permit as needed. Publishing regulations in the Federal Register is a lengthy process and eliminates the flexibility offered to refuge managers through the issuance of a special use permit. This flexibility, and the ability to adjust trapping activities, is important since most trapping activities are conducted to help reach a resource objective, and resource conditions are constantly changing.

3) Recognizing that refuge-specific hunting and fishing regulations were required well before passage of the 1997 Refuge Improvement Act, can you please explain why refuge-specific trapping regulations are not published?

Response: See above response.

4) Does this pose a problem for transparency purposes given that the Service publishes hunting and fishing regulations, which the public can easily access?

Response: The Service does not believe this creates a transparency issue but believes if required to publish trapping information in a similar manner to the hunting and fishing regulations it would require staff to divert time from higher priority work and prevent some units of the National Wildlife Refuge System from completing mission critical work among other concerns outlined in previous responses.

Clarification on Statements in Testimony

1) You state in your testimony that "trapping is an important management tool that the Service uses to protect threatened and endangered species." What special precautions does the FWS take to ensure that endangered, threatened, and other non-target animals are not captured by body-gripping traps on NWRs? Has the FWS engaged in an analysis of the potential use of non-lethal management measures, including using barriers to temporarily exclude predators from habitat used by threatened and endangered species when most critical to ensure protection of said species? Similarly, what regulations does FWS have in place concerning the use of body-

gripping traps in designated critical habitats for threatened and endangered species or other unique habitats, like wetlands?

Response: Site specific evaluations and the use of best management practices are employed on a case-by-case basis to maximize the selectivity of trapping. Evaluations of alternatives occur on a case-by-case basis. The Service does not have specific regulations related to the types of traps employed in areas designated as critical habitat. However, if the Refuge System's actions were likely to result in the destruction or adverse modification of critical habitat they are required, like any federal agency, to consult with the Service's Endangered Species Program to ensure any activity will not jeopardize the survival of a threatened or endangered species.

2) You state in your testimony that "trapping is often used on Refuge System lands to accomplish wildlife management objectives."

Who determines what these wildlife management objectives are?

Response: Refuge managers and biologists, often working with states, tribes, partners, academia, and the public, determine management objectives. Each Refuge is required to undergo a National Environmental Policy Act (NEPA) compliant, Comprehensive Conservation Plan (CCP), which involves extensive public review and comment, to guide the management of the Refuge.

How often are they reassessed?

Response: These CCP are to be reassessed every 15 years or when conditions warrant reassessment.

How and when does the public get to participate in determining wildlife management objectives for individual refuges and in providing input in response to FWS proposals to achieve its refuge-specific wildlife management goals?

Response: There are five basic steps in the CCP process:

Step 1: Conduct scoping phase. Refuges hold open houses and collect comments from the public to help identify all possible concerns and issues regarding the refuge. At this time, refuge employees collect data on such things as fish and wildlife resources, wildlife oriented recreation, or visitor services, needs and costs.

Step 2: Formulate Plan and planning team consisting of representatives from other government agencies, Tribes and State and local governments Refuge staff and planning team members outline key issues and concerns, as well as long-term goals for the refuge. Next, they analyze alternative ways to protect fish and wildlife, resolve concerns and meet goals.

Step 3: Write Draft Plan. The draft plan identifies management alternatives and examines the effects each would have on wildlife and habitat, visitation and public use, and refuge acquisition and expansion. Once the draft plan is written it is distributed within the Fish and Wildlife Service for internal review. Then, the draft is distributed to the public for review.

Step 4: Revise Plan. After hearing from the public, refuge employees analyze the comments, revise the plan and issue the final CCP.

Step 5: Implement, Monitor, and Evaluate Plan.

3) You state in your testimony that “restricting trapping methods will result in expenditure of additional Service resources, staff time, and taxpayer money.” Since S. 1081 still allows for all other forms of trapping and wildlife management to occur – including the use of cage/box/live traps – on what basis are you making the determination that enacting S. 1081 would result in additional expenses?

Response: The Service often partners with local trappers to help meet management objectives on National Wildlife Refuges. These trappers operate under their individual state regulations and do not solely work on National Wildlife Refuges. Having separate requirements to trap on a National Wildlife Refuge would deter trappers from offering their vital, and often free, service to help us meet our resource management needs. Without the partnerships with local trappers the Service would be required to either forgo trapping programs all together due to resource challenges or would have to pull staff and funding resources from other high priority areas to conduct these trapping activities. In addition, box and live-enclosure traps are often less effective and significantly more expensive than other types of traps that would be banned by this legislation.

4) You state in your testimony that trapping is “viewed by the Service as a legitimate recreational and economic activity when there are harvestable surpluses of furbearing mammals.”

- First, could alternative trapping methods, including box and live traps, fulfill this function?

Response: Many trappers do use box and live-enclosure traps but not exclusively. Also, there are many species of furbearing mammals that are not effectively trapped using box and live-enclosure traps.

- Second, who keeps track of whether there is a “surplus” of furbearing mammals?

Response: In general, the state sets harvest regulations on furbearing mammals and determines population trends that help set harvest limits however; the Service through its biological program, guided by refuge management documents (CCPs, Habitat Management Plans, etc.), monitors some species of furbearing mammal populations.

- How is that determined (particularly to ensure that population numbers do not fall below a sustainable level)? Is this decision-making process uniformly applied across refuges? What scientific evidence do you use?

Response: In general, the state sets harvest regulations on furbearing mammals and determines population trends that help set harvest limits however; the Service through its biological program, guided by refuge management documents (CCPs, Habitat Management Plans, etc.), monitors some species of furbearing mammal populations.

5) In your written testimony you declared that body-gripping traps are more selective than cage traps. Does FWS recognize that a Conibear style body-gripping trap will literally crush a non-target animal whereas an animal caught in a cage trap can very often be released unharmed? Please explain how and under what circumstances body-gripping traps are more selective?

Response: The Service and its partners use best management practices when trapping on National Wildlife Refuges to minimize capture of non-target species. Body-gripping traps, when used in conjunction with best management practices, are highly selective and minimize the risk of capturing non-target species. To increase selectivity, body-gripping traps can be easily set in targeted locations to avoid non-target species, trigger settings can be adjusted to target species by size and weight, and many body-gripping traps can be used in conjunction with cubbies, which restrict access by non-target animals. These are a few ways body-gripping traps are selective however this list is not all inclusive.

6) You mentioned in your testimony that you do use traps in California that California voters voted to ban in 1998. Do you use body-gripping traps in other states where those devices have been banned or restricted by state law and/or voter initiative or referendum?

Response: The Service does not use types of body-gripping traps in states where those devices have been banned for resource management by state law.

7) In your testimony you indicate that "when waterfowl are caught in traps, raccoons will predate on the birds before staff can get to them to band and release the birds." Can you explain what types of traps are used to capture waterfowl (for banding and other research purposes) and why alternative traps, including cage traps, that would provide greater protection for trapped waterfowl cannot be used for waterfowl research purposes in order to avoid the apparent need to trap raccoons to prevent their depredation of trapped waterfowl?

Response: Per standard scientifically established methods, we use live-enclosure traps to capture waterfowl and other bird species for banding and other research purposes.

ANILCA

In your testimony you express concern that S. 1081 conflicts with the Alaska National Interest Lands Conservation Act by not exempting trapping for subsistence use.

1) Please provide data on the amount of subsistence trapping that takes place on Alaskan national wildlife refuges.

Response: ANILCA specifically requires Alaska refuges to provide for continued subsistence uses. Trapping is one of many subsistence uses in Alaska. All refuges in Alaska support subsistence trapping at some level. Since refuges follow state regulations for trapping we do not collect information. The Alaska Department of Fish and Game collects trapping information across the state annually. This information can be found at their website under trapping.

2) Please clarify what FWS believes that ANILCA, and in particular those sections dealing with subsistence management and use, requires in regard to trapping for subsistence purposes.

Response: After the establishment of ANILCA refuges were asked to examine subsistence and recreation use opportunities when developing the first comprehensive conservation plans. One of the establishing purposes for Alaska refuges is to provide for continued subsistence uses. Trapping is one of many subsistence uses.

3) Does all of the trapping utilizing body-gripping traps on wildlife refuges in Alaska qualify as subsistence use under ANILCA? If not, please provide any data which FWS has that would show how much of the trapping utilizing body-gripping traps on wildlife refuges in Alaska is for subsistence use and how much of the trapping utilizing body-gripping traps on wildlife refuges in Alaska is for other purposes.

Response: Yes. ANILCA does not specify types of traps, but clearly states subsistence uses must continue on refuges. With this in mind, many forms of traps and snares are legal under state and federal regulations, including body-gripping traps for subsistence purposes.

Public Safety and Balancing Needs of All Users

1) Given that the NWRS draws 47 million visitors each year and the vast majority of refuges are in close proximity to urban areas, should any special precautions be taken to ensure the safety of visitors and their pets to ensure they do not encounter body-gripping traps set on refuge land? Similarly, since most visitors go to NWRs to hike on trails and observe wildlife in their natural setting, is there any need, in your view, to minimize the probability that they will encounter injured or dying animals captured in body-gripping traps?

Response: We do take precautions to ensure the safety of visitors, and where allowed on Refuges, their pets. We also look to provide an enjoyable experience for all of our visiting public.

2) DOI reports show that the vast majority of people who visit refuges are non-consumptive users; they are not there to hunt, fish, or trap. How does allowing the use of body-gripping traps help the FWS to balance the needs of all users of public refuge lands?

Response: While wildlife-dependent recreation is important, the mission, as laid out in the Organic Act is wildlife conservation. Trapping is a wildlife management tool used to manage populations and ensure a healthy refuge.

Wildlife Services

1) Does FWS work with USDA APHIS Wildlife Services to trap on refuge land?

Response: Yes.

2) If so, please state the reasons for trapping operations conducted by the USDA's Wildlife Services program and provide data on the number of animals (both target and non-target) trapped? Please break this information down by refuge.

Response: They are the lead federal agency on species population control and monitoring. The mission of USDA APHIS Wildlife Services (WS) is to provide Federal leadership and expertise to resolve wildlife conflicts to allow people and wildlife to coexist. WS conducts program delivery, research, and other activities. The U.S. Fish and Wildlife Service is unable to provide the data requested to meet the Committee's deadline.

3) What kind of information does Wildlife Services report back to FWS regarding their activities on NWRs? Does Wildlife Services, for example, report trap check times, capture of target and non-target wildlife, types and severity of injuries to trapped animals, disposition of injured non-target animals released from traps, and/or whether Wildlife Services sought veterinary care for any injured non-target animals trapped by Wildlife Service's personnel?

Response: We do not have this information collected at a National level to provide to the Committee to meet the deadline.

4) Is there concern with using Wildlife Services given that the agency is currently under an OIG investigation?

Response: No.

1) Please provide a copy of all existing contracts between FWS and USDA Wildlife Services for trapping operations on refuges.

Response: We do not have this information collected at a National level to provide to the Committee to meet the deadline.

Transparency/lack of oversight

Before a refuge is opened up to hunting or fishing, FWS allows for public comment. However, no public comment is required before a refuge can allow trapping; it is up to refuge manager to decide if trapping is compatible with the purpose of the refuge.

1) Why does the Service publish refuge-specific hunting regulations but not refuge-specific trapping regulations?

Response: The vast majority of trapping programs on Service lands are conducted to accomplish resource management objectives, not for recreational purposes. Special use permits are often issued to impose more restrictive stipulations on trapping activities over state trapping regulations. These stipulations are required to ensure that trapping activities are compatible with refuge purposes. Special use permits give the refuge manager greater flexibility to adjust conditions of the permit as needed. Publishing regulations in the Federal Register is a lengthy process and eliminates the flexibility offered to refuge managers through the issuance of a special use permit. This flexibility, and the ability to adjust trapping activities, is important since most trapping activities are conducted to help reach a resource objective, and resource conditions are constantly changing.

2) How can this policy be altered to ensure all interested parties and stakeholders have easy, continued access to refuge-specific trapping data and regulations?

Response: Hunting and fishing are priority public uses, as outlined in the Organic Act. Trapping is not a priority public use and is primarily a management activity. As such, trapping should not be included in the hunting and fishing rule. Management activities are not subject to the same rulemaking process.

3) Should proposals to allow trapping on refuges be open to a public comment period? If not, why not?

Response: When it comes to managing a refuge, and the activities needed to support the mission of that refuge and the System, the Organic Act directs our managers to "use principles of sound fish and wildlife management and administration... in considering and designing a program or public use." We believe the Organic Act gives our refuge managers the authority to conduct management activities without a separate rulemaking process. When trapping is a use, as opposed to a management activity, Compatibility Determinations are completed which includes a public comment period.

4) 50 CFR 31.2(f) specifies that "surplus wildlife" on refuges can be controlled through trapping. Yet 50 CFR 31.1 indicates that a determination of whether wildlife is surplus on a refuge is to be "determined by population census, habitat evaluation, and other means of ecological study." Has the FWS completed such censuses, habitat evaluation, and other types of ecological study for all species allowed to be trapped on each refuge open to trapping? If so, please provide that data for each refuge that allows trapping.

Response: Refuge CCPs include Habitat Management Plans (HMPs) that evaluate and study habitats and species populations on the particular refuge. Refuge Managers work with state officials as well to determine if harvestable surpluses exist. Additionally, CFR 50 31.14 states:

(a) Animal species which are surplus or detrimental to the management program of a wildlife refuge area may be taken in accordance with Federal and State laws and regulations by Federal or State personnel or by permit issued to private individuals.

5) The FWS has a policy (605 FW 2) on hunting in the NWRS. There is not commensurate policy on trapping. Why not? Also, 605 FW 2-2.9 indicates how a refuge is opened to hunting and includes a list of all of the documents that must be compiled as part of the refuge hunting opening package. Are the same documents required to open a refuge to trapping? If not, why not? If so, please provide that information for each refuge that currently allows trapping.

Response: The Organic Act directs the Service to “ensure that biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans.” The majority of trapping activities on refuges are done to accomplish resource management objectives. Since trapping is a primarily a management tool to benefit the mission of the refuge and System, it does not go through the same process as opening a refuge to hunting or fishing. A refuge manager will exercise sound professional judgment when using trapping as a management tool to accomplish a population objective.

Indiscriminate Nature of Trapping, Selectivity, Inhumaneness

1) At the EPW hearing you agreed that we should use humane methods when dealing with wildlife on NWRs. At least 88 countries have banned the use of steel-jaw leghold traps (and many states restrict or prohibit body-gripping traps); moreover, the US prides itself on being a world leader when it comes to strong legislation that protects vulnerable species. How does the use of indiscriminate trapping methods – namely snares, Conibear traps, and leghold traps – further the NWRS’s mission of protecting wildlife?

Response: Trapping is an important management tool that the Service uses to protect threatened and endangered species, such as piping plover and loggerhead sea turtles, protect migratory birds, and manage other wildlife populations. In addition, trapping programs help protect Service infrastructure investments, such as impoundment dikes used to manage wetlands for a myriad of migratory birds, wetland habitats, and rare plants. The Service allows for different trapping methods to be employed to ensure that Refuges have the ability to achieve desire wildlife management goals as effectively and efficiently as possible.

2) Recognizing the variability in trap check times required by state wildlife agencies; that the FWS often sets refuge trapping requirements to be consistent with state laws; and recognizing that trap check times excessively long in duration significantly exacerbate the suffering, potential for injury, and severity of injury of trapped wildlife, would the FWS be willing to set a standard required trap check time (e.g., no more than 24 hours) to be applicable to all refuges that allow trapping to try to reduce the suffering inherent to trapping? If not, why not?

Response: The Service’s trap check requirements are at least as stringent as the States’ requirements but for the vast majority of trapping activities on refuges, refuges impose more stringent requirements for trap check times, depending on local circumstances.

Senator Cardin:

1) Does the USFWS frequently have to spend portions of its annual O&M budget, to restore damaged or destroyed assets or responding to ongoing emergency situations?

Response: Yes. Routinely, the Service must use Operation and Maintenance funds to address assessment and restoration of damages—such as illegal timber harvest, arson, destruction of visitor amenities, gate or road damage that restricts access—caused by third parties and illegal activities. This does place a strain on Operation and Maintenance activities, often causing a backlog effect on other needs.

2) Is it correct that USFWS has the authority to levy criminal fines against bad actors that destroy or damage USFWS assets, but USFWS cannot pursue damages?

Response: This is correct. Currently, unlike other land management agencies (e.g., the National Park Service), the U.S. Fish & Wildlife Service only has criminal penalties for those damages occurring on National Wildlife Refuge System lands. The penalties levied are limited, and rarely provide for the recovery of the damaged property.

- Do those criminal fines come back to the Service to restore damaged or destroyed assets?

Response: Under the Refuge System Administration Act as amended by the Refuge System Improvement Act of 1997, for criminal violations by statute, up to \$100,000 can be levied for knowing violations, and \$5000 can be levied for strict liability violations. These fines imposed go to the General Fund and are not applied to the recovery of the damage.

- Even if it did would the fines adequately cover the cost of restoring these damaged or destroyed assets?

Response: No. In most cases the damages far exceed any fines recovered by the United States Government, and as a result, the taxpayer, through the appropriated Operations and Maintenance budget, bears the burden.

3) If the USFWS had the authority to pursue civil suits to attain damages from bad actors, would USFWS be able to better allocated its annually appropriated O&M budget to actual O&M projects like repairing regular wear and tear on visitors centers, or restoring naturally degraded wetland and forested habitats?

Response: Yes.

4) Should taxpayers be responsible for restoring the damages caused by bad actors, or should USFWS be able to hold those responsible for destroying assets financially liable?

Response: We believe bad actors should be held responsible for their actions, not the taxpayer.

5) Would enactment of the USFWS Resource Protection Act allow the Service to better avoid having to spend O&M funds on restoring damage and destroyed resources, and thereby allocating more O&M funds to better address the Service's backlog of (more traditional) maintenance and repair projects?

Response: Yes. If enacted into law, the USFWS Resource Protection Act would allow the Service to avoid spending operations and maintenance funding on restoring damaged and destroyed resources by enabling the Service to pursue the responsible party or parties. This would relieve the impact on the taxpayer.

Senator Sessions:

1) Section 4(d) of the Endangered Species Act (ESA) authorizes the U.S. Fish and Wildlife Service (Service) to prescribe special rules "necessary and advisable to provide for the conservation of" threatened species. Recently, the Service announced an interim Section 4(d) rule for the northern long-eared bat and a proposed Section 4(d) rule for the black pine snake.

2) While the Service's effort to protect these species is laudable, I am concerned that the Section 4(d) measures for the northern long-eared bat and the black pine snake may significantly impact forest management activities in Alabama without benefitting the species. Specifically, while the Section 4(d) measures exempt some forest management activities from take liability, these measures are overly prescriptive and fraught with conditions that will do little to encourage forest managers to conserve the northern long-eared bat and black pine snake.

3) The Service's approach contrasts with a good example of an effective conservation incentive measure: the 1992 Section 4(d) rule for the Louisiana black bear. In that rule, the Service determined that "normal forest management activities that support a sustained yield of timber products and wildlife habitats are considered compatible with Louisiana black bear needs" and exempted the "effects incidental to normal forest management activities within the historic range" of the species. The Section 4(d) rule incentivized forest landowners to maintain their lands in a forested condition, and as a result the Louisiana black bear population has increased substantially to the point where the species may warrant delisting.

4) In light of the concerns that have been raised regarding the Section 4(d) measures for the northern long-eared bat and black pine snake, the Service must work more cooperatively with forest landowners as these measures approach finalization. In that regard, to what extent is the Service using the experience of the Louisiana black bear Section 4(d) rule as it considers revisions to the interim Section 4(d) rule for the northern long-eared bat and the proposed Section 4(d) rule for the black pine snake?

Response: The exemptions authorized under section 4(d) of the Endangered Species Act (ESA) included in the listing rules for Louisiana black bear (final), black pinesnake (proposed), and northern long-eared bat (final) are intended to minimize the regulatory burdens for landowners

by exempting certain activities beneficial for the conservation of the species from the ESA take prohibitions, while still providing protections important for the species. These exemptions are customized based on the biology and management needs of each species. For all three species, the Service exempted (or is proposing to exempt) most normal forest management activities from the prohibitions of “take” under the ESA, meaning those activities could continue to take place if the conservation measures in the rules are followed. However, a subset of these activities has a potential to greatly impact the species to a level that does not provide a conservation benefit and are not exempted. For example, normal forest management activities within the historic range of the Louisiana black bear were exempted, except for activities causing damage to or loss of den trees, den tree sites or candidate den trees.

For the black pinesnake, the Service is proposing activities such as thinning, herbicide treatment, and prescribed burning to be exempt from ESA prohibitions since they encourage management and restoration of the longleaf pine ecosystem where the snake predominantly occurs. However, activities that do not protect the snake’s underground habitat, such as stump removal, are not exempt.

The final listing rule for the northern long-eared bat includes interim exemptions for normal forest management activities. The exempted forest management activities may continue as long as the activity includes the conservation measures outlined in the rule, which are intended to protect the bat during its most vulnerable life stages—when the bats are hibernating, and when females are raising young that are not yet able to fly. The final exemptions will be developed following public comments and consideration of those comments and concerns.

These rules do prohibit activities that are not exempted. In such situations, to ensure compliance with the ESA, the landowner should contact the local Fish and Wildlife Service Ecological Services Office to determine whether the activity is likely to result in take of the species. If so, the Service will work with the landowner to obtain the appropriate authorization prior to conducting the activity.

The Service has been actively seeking feedback from the public, including forest landowners, about the exemptions included in the rules for black pinesnake and northern long-eared bat. We have engaged interested stakeholders, including states, other federal agencies, and industry including the forest landowners through briefing calls, information meetings and webcasts, and personal conversations. This is good government—putting out our best proposal and then shaping it based on public comment, peer review, and new information. The Service is actively reviewing the feedback gathered during 120 days of open comment period for the black pinesnake and 60 days of open comment period for the northern long-eared bat (which closes July 1, 2015), and will use that feedback to shape the finalized exemptions for these two species.

Senator Vitter:

White Nose Bat Syndrome

1) How much money does the Fish and Wildlife Service (“Service”) estimate will be required to fund necessary research of white-nose syndrome (WNS) over the next five years?

Response: The strategy for implementing the national WNS response plan, *Implementation of the National Plan for Assisting States, Federal Agencies, and Tribes in Managing White-Nose Syndrome in Bats*, was formally accepted by the WNS interagency Executive Committee on March 13, 2014. The implementation plan follows the goals and objectives outlined in the national plan and provides cost estimates for all relevant action items for a period of 5 years (FY 2011 to 2015). Using the average value for any cost estimates provided as a range, the total cost of implementing all aspects of the national response plan over the last 5 years was estimated to be \$37.5 million. During this same timeframe, the Service has allocated \$23 million to WNS, with at least \$17.7 million being awarded in grants and contracts for the highest priority research and related projects. It is important to note that while the Service has provided the majority of funding for WNS research to date, other Federal agencies (e.g., US Geological Survey, National Science Foundation), non-government organizations, and other private entities have also funded high priority research projects in the U.S., Canada, and Europe that have yielded important results.

The Service and its partners are in discussions now to revise the plan for the future and cannot provide exact costs for implementation for the next five years at this time. Because the research has matured, and we are now pursuing the development of treatments options, we anticipate that future costs would be as much, if not more, than the past 5-year research investment of \$17.7 million. Because past research has led to the development of potential future treatment options, it is a critical time for continued research investment.

2) Why doesn't the interim 4(d) rule for the Northern Long-Eared Bat establish a mechanism to allow the Service to generate that funding given that the ESA's definition of "conservation" specifically identifies "research" as a key conservation measure?

Response: The purpose of a 4(d) rule is to adjust or modify what forms of take of a threatened species are prohibited under the ESA. Overall, the take prohibitions as modified by a 4(d) rule must be "necessary and advisable to provide for the conservation of threatened species." There is no allowance for a 4(d) rule to establish a "mechanism" to generate funding for any species conservation measures.

3) I understand that, for over a year, industry stakeholders have volunteered to pay into a conservation fund a per-acre amount to account for any habitat impacts of their activities so that those crucial projects can be built without unnecessary delays. I also understand that those monies could be dedicated to funding the WNS research tasks identified by FWS in the White Nose Syndrome National Plan, but that your office has declined that offer so far. Is that correct? If so, please explain the reasoning behind that decision.

Response: The Service is not aware of any formal offers by industry to pay for research specifically focused on combating white-nose syndrome. We would be interested in any opportunity to work with partners to combat the disease. The Service has experience working with industry through the National Fish and Wildlife Foundation on species conservation issues and would be interested in exploring opportunities specifically related to white-nose syndrome. Industry has approached us during the listing process for the northern long-eared bat to consider

mitigation funds related to the oil, gas and wind industries as part of our proposed 4(d) special rule. We will continue to explore those opportunities as we receive public comments and work to finalize the 4(d) rule this year.

4) Since it is beyond dispute that the bat has more than sufficient habitat (425 million acres) and that WNS is the only reason that the Service is considering listing the species, in light of your mandate to conserve only species that are truly at risk how can you justify the Service's failure to create a conservation mechanism through the 4(d) rule intended to identify a treatment to WNS?

Response: As mentioned in Question 2 regarding the purpose of a 4(d) rule, the purpose of a 4(d) rule is to adjust or modify what forms of take of a threatened species are prohibited under the ESA. Overall, the take prohibitions as modified by a 4(d) rule must be "necessary and advisable to provide for the conservation of threatened species." There is no allowance for a 4(d) rule to establish a "mechanism" to generate funding for any species conservation measures.

The Service has made research and management of WNS a priority since 2008. In that time, Service has committed over \$20 million on research to understand the disease and its impacts, and to develop treatments and tools to manage the disease and conserve bats. In 2015, Service has made available an additional \$3.5 million for important research and response through several funding opportunities available to Federal, state, academic, and non-government partners. Service is also coordinating a workshop in July 2015 that will focus on refining our collaborative treatment and management strategy with options that are safe and effective for bats and the environment.



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

DEC 14 2015

The Hon. John Barrasso
Chairman
Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests, and Mining
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Management to the questions for the record submitted following the July 16, 2015, legislative hearing.

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

Sincerely,

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

Enclosure

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

**U.S. Senate Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests, and Mining
July 16, 2015**

S. 132 Oregon and California Land Grant Act of 2015
S. 326 Stewardship End Result Contracting Improvement Act

Questions from Senator John Barrasso

Question 1: In response to a question about the debate that exists over the likely harvest volumes under S. 132, you referenced the estimate of approximately 320 million board feet (mmbf) from the BLM lands prepared by the BLM's Oregon office under the direction of Dr. Norm Johnson.

What level of annual appropriations would be required to accomplish this 320 mmbf annual sale program?

Response:

Given uncertainties in exactly how the bill would be implemented, it is not possible to speculate about costs or cost savings and the level of appropriations necessary for the BLM to accomplish a specific volume range. In addition to harvest offerings, the BLM's annual appropriations for the management of O&C lands also fund the management of other resources essential and integral to western Oregon communities including: maintenance of and improvements to recreational facilities that accommodate over five million recreational visits annually; restoring miles of fish habitat; monitoring endangered species and water quality; and restoring and reducing hazardous fuels on thousands of acres of forest lands to increase resiliency to wildfires, insects, and climatic variables.

Question 2: How many acres of the lands identified as forestry emphasis areas under S. 132 are designated as critical habitat for the spotted owl, marbled murrelet, or salmonid species?

Response:

Within the Forestry Emphasis Area, a total of 610,000 acres are designated as critical habitat for the marbled murrelet and northern spotted owl. That area is comprised of approximately 566,000 acres of critical habitat for the northern spotted owl, and 218,000 acres of critical habitat for the marbled murrelet, with an overlap of 174,000 acres that covers critical habitat for both species. For salmonid species, the assumption is that the treatments in the Riparian Reserves, as defined in the bill, would result in minimal impacts to salmonids and other aquatic resources.

Question 3: How many of acres of the type of regeneration harvest envisioned in S. 132 for Moist Forests (variable retention harvest) have been implemented on the BLM lands over the past decade? How many acres of this type of harvest have been implemented in critical habitat?

Response:

In 2011, the BLM began implementing pilot projects in Dry and Moist Forests in western Oregon that incorporated various ecological principles proposed by Dr. Norm Johnson and Dr. Jerry Franklin, some of these principles are described in S. 132. The BLM has planned and offered a total of five Moist Forest timber sales that resulted in 869 acres of sold timber sales. Of the 869 acres of sold timber sales, 470 acres are in northern spotted owl critical habitat.

Question 4: Your written testimony notes the following:

“There remain some provisions of the bill that we believe may not provide sufficient clarity about the relationship between the various statutory provisions in this legislation and other related laws and regulations. This could lead to duplicative analyses and planning efforts, disputes or confusion over appropriate BLM management actions, delayed compliance, and potentially increased costs of litigation.”

Please provide the Committee more specific information related to the BLM’s concerns.

Response:

There are certain provisions of S.132 that we believe are duplicative, unclear, or could result in confusion or delays in implementing treatments. The BLM looks forward to working with the sponsor to help address these issues. Some examples include:

- S.132 requires two Environmental Impact Statements (Moist and Dry) to be completed. As the western Oregon Draft EIS has recently demonstrated, a single EIS that analyzes both Moist and Dry Forest designations can be completed instead of two separate analyses.
- S.132 requires a Watershed Analysis as stipulated in the Northwest Forest Plan. The BLM in western Oregon is already completing landscape level NEPA analysis at the watershed scale or larger. These NEPA documents analyze the impacts to all resources within the watershed from the proposed treatments. A watershed analysis is often a duplicative review of the same area.
- Section 3 – Survey and Manage Requirement. Under S.132, Survey and Manage requirements are exempt for proposed treatments in the Forestry Emphasis Areas, but are still required in the Conservation Emphasis Areas. Because S. 132 already includes management objectives for Conservation Emphasis Areas to improve or maintain certain habitat, the survey and manage guidelines provide duplicative protections that are difficult and time-consuming to implement.
- Section 3 – Transition Timber Sale Language. Once enacted, S.132 only allows 90 days during which timber sales and other treatments could still proceed in compliance with the 1995 RMPs. After 90 days, all treatments must be compliant with S.132. The Final EISs

mandated by S. 132 would be completed approximately 27 months after enactment, leaving a period of over two years during which compliant timber sales could not be executed.

- Section 6 – Onsite Reviews. For purposes of developing the five-year timber harvesting plan (i.e. Landscape Prioritization Plan), S.132 requires specific parameters of all forest stands proposed for harvest to be verified. These parameters are site-specific and extensive on-the-ground field work will be required to gather the necessary data. Compiling this level of data up front will be difficult or impossible within the timeframes required by the bill.
- Section 7 – S.132 requires a 90 day Federal Register Notice for all proposed treatments. The bill is unclear whether this requirement is just for the initial Landscape Prioritization Plan or if it includes all subsequent individual treatment proposals once the Environmental Impact Statements and Landscape Prioritization Plans are completed. This process appears to duplicate BLM's existing NEPA policy for public notification of proposed treatments.

Question 5: Last year you testified concerning Title II of the O&C bill that you would like to “address issues related to the bill, including access rights, utility and facility encumbrances, and timber harvest.” Yet, in the recent hearing on July 16, 2015, there was no concern mentioned on these issues. Does the BLM still have concerns about access rights, utility and facility encumbrances, and timber harvest? If it does, what are they?

Response:

As noted in the BLM testimony, the BLM still has concerns pertaining to lands identified for potential future timber sales that have also been proposed for conveyance. The BLM appreciates the change from prior versions of this bill that provides for the development of an agreement to address many of the access concerns raised in testimony on previous versions. The BLM has historic rights-of-ways agreements and easements with adjoining landowners and utility companies to various facilities, recreation sites, and other lands. These agreements are essential to effectively administer the checkerboard ownership pattern in western Oregon. In any conveyance of BLM lands in western Oregon, it is essential to maintain these valid existing reciprocal access rights. Also, the BLM would like to continue to work with the sponsor as stated in our testimony to address access concerns for certain parcels.

Question 6: The 1937 O&C Act is fairly unique in that it does identify sustained-yield timber production as the dominant use for these 2-plus million acres of forest land. Mr. Swanson pointed out in his testimony that S. 132 would set aside approximately 70 percent of these lands from sustained-yield management in conservation allocations. I understand that the BLM is developing new resource management plans for these lands that would set aside as much as or even more of the land from ongoing timber management.

Do you believe this is consistent with the original Congressional intent for these lands?

Response:

As stated in our testimony, the BLM is striving to strike a balance between compliance with the O&C Act and providing for non-timber products while also supporting conservation objectives, such as protecting older forests and aiding in the recovery of the Northern Spotted Owl and other

threatened and endangered species. The BLM strives to successfully implement Congressional intent from various laws such as the 1937 O&C Act, Federal Land Policy and Management Act, Endangered Species Act, and the Clean Water Act. The Northwest Forest Plan, S.132, the BLM's existing 1995 RMPs, and the recently released Draft EIS all strive to meet Congressional intent for managing these lands through various statutes. In meeting the various requirements for managing the O&C lands, the Secretary of the Interior has discretion under the O&C Act to determine how to manage the forest to provide for permanent forest production on a sustained yield basis, including harvest methods, rotation length, silvicultural regimes under which these forests would be managed, or minimum level of harvest. These management objectives are reflected in the western Oregon 1995 RMPs and will be addressed through the current western Oregon Draft EIS planning effort.

How do these set-asides impact the need to manage these forests to reduce the risk of catastrophic events?

Response:

One common theme that is acknowledged in S.132, the 2012 Northern Spotted Owl Critical Final Critical Habitat Plan, the Draft EIS, and the 20-year Northwest Forest Plan Monitoring Report is the recognition and need for active management in forests, particularly drier forests at risk of catastrophic events. Under current and draft plans (Northwest Forest Plan, BLM's 1995 RMP's and Draft EIS) and under S. 132, active management would not be precluded in areas that are set aside to be managed for conservation purposes provided it is consistent with these purposes. For example, Section 10 of S.132 allows certain forest management treatments in the Conservation Emphasis Areas as long as the treatments align with the objectives for those areas. Similarly, the purpose and need for the BLM's Draft EIS to restore fire-adapted ecosystems is reflected in the draft alternatives allowing active management, including an estimated harvest level, within set-aside lands. The bill and the BLM's planning effort recognize the need to reduce the risk of catastrophic events by reducing hazardous fuel conditions and increasing forest resiliency.

Question 7: I understand that required analysis and litigation related to NEPA and ESA consultation compliance are the biggest limiting factors for the BLM's O&C timber program. It is Senator Wyden's intent to streamline some of these processes, including the NEPA process, but S. 132 appears to add new procedural requirements for the BLM while leaving many of the current barriers in place.

Does the BLM share this concern?

Response:

The amount of controversy regarding timber sales in western Oregon is a clear indication of the wide range of values associated with these lands and their importance to the people who care about them. The BLM appreciates the committee's efforts to help provide clarity and predictability for managing these lands. Some of the BLM's continuing concerns regarding new procedural requirements are detailed in the response to Question 4. The BLM would like to ensure that the bill can provide clarity and avoid ambiguity in how the bill is interpreted.

Does the BLM have an estimate of the level of funding it will need to comply with the legislation?

Response:

As stated above, given uncertainties in exactly how the bill would be implemented, it is not possible to speculate about the level of funding the BLM would need to comply with the legislation. In addition to harvest offerings, the BLM's annual appropriations for the management of O&C lands also fund the management of other resources essential and integral to western Oregon communities including: maintenance and improvements to recreational facilities that accommodate over 5 million recreational visits annually; restoring miles of fish habitat; monitoring endangered species and water quality; and restoring and reducing hazardous fuels on thousands of acres of forest lands to increase resiliency to wildfires, insects, and climatic variables.

Question from Senator Jeff Flake

Question: In your written testimony you state that "the BLM's future strategy for stewardship projects includes increasing the size and duration of these projects." Please elaborate on the BLM's strategy. Would a change allowing twenty-year stewardship contracts facilitate the strategy?

Response:

The BLM has been implementing a landscape approach to managing public lands through a number of national strategies and policies. As the BLM analyzes resource conditions at the landscape scale, BLM is looking for opportunities using stewardship contracting to further address vegetation treatment needs.

The BLM has used the provision in existing stewardship contracts that increases the limit on multiyear contracts from 5 years to 10 years. Although the BLM welcomes greater flexibility, the contract term limit of 10 years has not been identified as a barrier to improved implementation of stewardship contracting.

One measure that would help the BLM increase the size of projects is Section 2(a)(3) of S. 326, which would give the BLM authority to award best-value stewardship contracts for timber volumes over 250,000 board feet.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 23 2015

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 Department of the Interior to the questions for the record submitted following the October 8, 2015, legislative hearing before your Committee on drought legislation, which covered the following bills: HR 2898, the Western Water and American Food Security Act of 2015; S. 1894, the California Emergency Drought Relief Act of 2015; and S. 1936, the New Mexico Drought Preparedness Act of 2015.

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

Sincerely,

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

Enclosure

cc: The Honorable Maria Cantwell, Ranking Member
Committee on Energy and Natural Resources

U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation

Questions for the Record Submitted to The Honorable Michael Connor

Questions from Chairman Lisa Murkowski

Question 1: The Administration has indicated that it believes H.R. 2898 likely violates the Endangered Species Act because the bill establishes a new standard regarding the adverse impacts on Smelt from Reclamation's operations, thus creating a conflict between existing law and H.R. 2898. If there were a lawsuit, it is likely the courts would give the Department the discretion to harmonize competing standards created by Congress so as to address the statutory conflict, correct?

Answer: HR 2898's use of a new standard - "negative impact on the long-term survival" of Delta smelt and other listed species - creates uncertainty that could limit water supplies by creating confusing conflicts with existing laws such as the Endangered Species Act, potentially slowing down decision-making, generating significant litigation, and limiting real-time operational flexibility. While a court may ultimately grant the Department discretion in reconciling this new standard and the Endangered Species Act jeopardy standard, such an outcome is uncertain, and a resolution of such an ambiguity by the courts would likely be preceded by significant litigation, which could potentially interfere with water operations during drought conditions.

Question 2: On the spending front, you know as well as anyone that federal purse is limited. What is your view of the financial role of state, local and private entities in partnering with you on funding to meet critical needs such as increased storage?

Answer: The Department recognizes that securing non-federal cost-share partners is often essential to meet water supply project or program funding needs. Across the country, state, local, and Tribal governments are taking a greater leadership role in water resources investments, including financing projects the federal government would have financed in the past. Federal water resource investments continue to be important in effectively leveraging state, local, tribal, and private funds to meet critical needs, such as building drought resiliency.

A few examples of non-federal cost share arrangements include Reclamation's investment of more than \$24 million in grants for 50 WaterSMART water and energy efficiency projects in 12 western states in 2015, which will be leveraged with at least 50 percent non-federal funding for a total of \$133 million in improvements over the next two to three years. Since 2009, about \$174 million worth of WaterSMART grants has enabled 274 projects to proceed, leveraging federal funding to implement more than \$555 million in water management improvements across the West. Under Reclamation's Title XVI program, since 1992, approximately \$649 million in Federal cost-share has been leveraged with more than \$2.4 billion in non-Federal funding to design and construct water recycling projects. In 2014, an estimated 378,000 acre-feet of water was recycled through Title XVI projects. In 2015, Reclamation leveraged \$3.4 million in Federal funding to implement over \$36 million for 12 drought resiliency projects as a part of Reclamation's new Drought Response Program.

U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation

Questions for the Record Submitted to The Honorable Michael Connor

In the Colorado River basin, Reclamation and four municipal entities have entered into an agreement to jointly fund \$11 million for the Pilot System Conservation Program to conserve water in Lakes Powell and Mead to the benefit of the Colorado River System. Other programs contributing toward this the Department's goal of increasing partnerships with States, Indian Tribes, irrigation and water districts and other organizations include the Water Conservation Field Services Program, the Bay-Delta Restoration Program, the Yakima River Basin Water Enhancement Project, and the Upper Colorado River Recovery Implementation Program.

Question 3: Are there regulatory or statutory barriers to greater financial partnering between the federal government and others that we should be aware of? If so, what are these barriers and in what ways can Congress be helpful?

Answer: The Department has not identified any regulatory or statutory barriers to greater financial partnering. Every year, Reclamation acts pursuant to dozens of existing cooperative agreements for water and energy-conservation grant activities under the WaterSMART program, partnering with non-federal entities across the West. Under the Contributed Funds Act of 1921, Reclamation can undertake a diverse assortment of additional activities using non-federal funds provided by partners including state agencies, local governments and non-governmental entities.

Question 4: Is it true that the numbers of smelt that die annually during the course of Bureau of Reclamation operations in the Delta are consistently below the number the Fish and Wildlife Service allows under the incidental take permit the Service issued them?

Answer: Every December, the Service calculates the maximum anticipated incidental take that may result from operation of the Central Valley Project (CVP) and State Water Project (SWP) Federal and State facilities during the following December-June. Incidental take is measured by the number of Delta Smelt incidentally taken at the Tracy fish collection facility. It is assumed that none of these fish survives this process. This loss to the population is thought to be a small percentage of the total number of smelt that die prematurely (before spawning) because of CVP/SWP operations. This total loss rate, known as 'entrainment,' is not measured. Water operations are managed to the operational criteria described in Reclamation's project description in the 2008 Biological Assessment (BA), with the addition of the Fish and Wildlife Service and National Marine Fisheries Service's (NMFS) Reasonable and Prudent Alternatives (RPA) from both the 2008 and 2009 Biological Opinions. The anticipated incidental take that is calculated each year does not serve to limit operations nor should it be considered an operational target. Incidental take is merely an indicator of the number of Delta Smelt entrained as a result of project operations.

Many factors affect the CVP and SWP's observed incidental take each year, including operations management that changes throughout the water year depending on: water availability for export, drought-related actions, heavy debris load and power outages at the facilities that affect the CVP and SWP's ability to conduct fish counts, continued decline and rarity of Delta Smelt, State water quality standards, California Department of Fish and Wildlife's Incidental Take Permit for Longfin Smelt for the CVP and SWP, and implementation of the actions required by the NMFS

**U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation**

Questions for the Record Submitted to The Honorable Michael Connor

2009 Biological Opinion Reasonable and Prudent Alternative. Because decisions related to water operations management depend on constantly changing conditions and operation factors, in some water years, the Service's anticipated incidental take may be an overestimate.

Question 5: Is it true the Fish and Wildlife Service has recognized this and begun to consider modifying its process?

Answer: In an effort to continue to use the best available science, in January 2015 the Service implemented a revised methodology to calculate anticipated incidental take for the CVP and SWP. We continue to use best available science to better estimate incidental take and population level effects to Delta Smelt. However, the factors we previously described will likely remain and continue to influence the overall observed incidental take of Delta Smelt at the CVP and SWP facilities each water year.

Question 6: Would you agree that the scientific data that was the basis for the biological opinions is now out of date and needs revision?

Answer: The Endangered Species Act requires that agencies use the best scientific and commercial data available during interagency consultation. While the most recent Service Biological Opinion (BiOp) on the Coordinated Operations of the Central Valley Project (CVP) and State Water Project (SWP) was signed in 2008, new scientific data have been incorporated continually into implementation of the BiOp. For example:

- During the winter of 2015, monthly trawl data collected by California Department of Fish and Game, daily early warning monitoring data collected by the Service, and daily turbidity monitoring data collected by the California Department of Water Resources (DWR) and the U.S. Geological Survey were used to enable the Service to help agencies (Reclamation and DWR) voluntarily reduce water exports in order to ensure that a significant Delta Smelt entrainment event would not occur. Had these voluntary reductions not been taken, additional Delta Smelt likely would have been drawn toward the export facilities where they likely would have resided and spawned, resulting in greatly reduced flexibilities later in the winter and through the spring to continue to export water.
- In January 2015, Reclamation requested reinitiation of Section 7 consultation on the 2008 BiOp and asked the FWS to adopt an alternative method for calculating the Cumulative Salvage Index used to establish anticipated annual Delta Smelt Incidental Take. The FWS concluded that the alternative method, with modification, would be a viable interim approach to addressing incidental take and used it to calculate the take limit for 2015.
- New scientific data have been incorporated into the implementation of the BiOp on a number of occasions in response to Reclamation and DWR's multiple Temporary Urgency Change Petitions (TUCP) to California's State Water Resources Control Board in which they requested operational flexibility in response to the drought. Each time a TUCP was submitted in WY2014 and WY2015, a Biological Review was developed by Reclamation

**U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation**

Questions for the Record Submitted to The Honorable Michael Connor

that used best available science to assess the status of Delta Smelt, as well as the effects of the proposed operational modifications on the species.

Question 7: Could the agencies begin new data collection to do that now? Have they started that process?

Answer: As we previously described, new data are continually being collected and used to implement the Service's 2008 BiOp on the Coordinated Operations of the CVP and SWP. Data being collected include fish presence data in regularly scheduled trawls throughout the year, trawls specifically designed to detect smelt at times when they may be moving to areas where they are vulnerable to entrainment (early warning data), and turbidity monitoring data. Without doubt, a survey strategy specifically designed to use best methods to assess distribution and abundance of Delta Smelt would result in valuable information. The Service is working with the State and others to develop and implement this strategy.

In addition, the Service is a key participant in a process to develop and conduct collaborative science that will inform water operations management decisions in California's Delta. The Collaborative Science and Adaptive Management Program (CSAMP) was established, in part, to break the cycle of litigation on California water issues and work collaboratively on science and recommendations for adaptive management decisions as related to implementation of the current Biological Opinions associated with Operations of the CVP/SWP and the development of future Biological Opinions. Over the past three years, the CSAMP Policy Group and the Collaborative Adaptive Management Team (CAMT) have demonstrated that this collaborative process has the potential to yield better understanding and more broadly supported science relevant to water management actions.

Question 8: What has the Department done to date to address the west-wide drought? Please outline the steps that the Department has taken in detail.

Answer: The Department is taking a broad set of coordinated actions to provide meaningful relief to those affected by the drought situation in the western United States. The Department is taking short, medium, and long-term approaches toward marshalling all available resources to assist communities impacted by drought, many of which the Department outlined during the June 2, 2015 hearing on "Status of Drought Conditions Throughout the Western United States and Actions States and Others Are Taking to Address Them".

In the short term, the Bureau of Reclamation is taking actions to more effectively manage water and maximize supplies for human use while maintaining environmental conditions necessary to protect fish and wildlife, as well as interests of other water users, through a focus on the day-to-day operations of Reclamation facilities. The Department is making strategic investments designed to stretch limited supplies and minimize conflicts over water, through programs such as the WaterSMART Program. For instance, the Secretary recently announced \$49.5 million in grant assistance to co-fund local water conservation projects. In FY 2015, Reclamation also invested \$24 million in grants for 50 WaterSMART water and energy efficiency projects. In

**U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation**

Questions for the Record Submitted to The Honorable Michael Connor

addition, seven water reclamation and reuse projects were awarded a total of \$23 million in FY 2015 funding that will help create new drought resistant water supplies. Through its new Drought Response Program, Reclamation also provided \$5.1 million in FY 2015 funding for 12 drought resiliency projects and 11 drought contingency plans in 9 Western States.

In California, Reclamation has under taken a series of extraordinary measures and new agreements with multiple parties to respond to the historic drought. A sampling of activities and operations that have been deployed by the Department over the last year include: facilitating agreements to reschedule when water is transferred and delivered; ensuring sufficient cold water is stored for the benefit of endangered salmon and other fish; working with the State Water Resources Control Board to help enforce laws prohibiting illegal diversions; and adjusting export pumping, fine-tuning reservoir releases, and controlling Delta salinity for the benefit of fish species and water users.

While these resources and activities will help, much of the western United States remains in the grips of an historic drought. The Department will continue to take a multi-faceted approach and to marshal every resource at its disposal to assist western communities impacted by drought.

Question 9: Is the Department maximizing its existing authority to take action? Is more authority needed? If more authority is needed, please list and describe what additional authorities are needed to deal with the west-side drought.

Answer: While the Department is not seeking additional programmatic authorities to coordinate its drought response efforts, the Department supports an additional appropriations ceiling under the Secure Water Act (Section 9504 of PL 111-11) to enable the Department to continue providing funding through the WaterSMART Program. As we noted in our testimony, this additional funding authority was requested in Reclamation's FY 2016 Budget Request, and the Department appreciates inclusion of this language in S. 1894. In addition, we look forward to exploring with the Committee opportunities to create a mandatory fund for Indian water settlements that would foster certainty in water rights and boost economic growth in Indian Country.

Questions from Senator John Barrasso

Question 1: Are there proposals that you are developing or have developed that you can share with the committee to increase water delivery throughout the West?

Answer: The Department is taking a broad set of coordinated actions to provide meaningful relief to those affected by the drought situation in the western United States. The Department is taking short, medium, and long-term approaches toward marshalling all available resources to assist communities impacted by drought, many of which the Department outlined during the June

U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation

Questions for the Record Submitted to The Honorable Michael Connor

2, 2015 hearing on "Status of Drought Conditions Throughout the Western United States and Actions States and Others Are Taking to Address Them".

In the short term, the Bureau of Reclamation is taking actions to more effectively manage water and maximize supplies for human use while maintaining environmental conditions necessary to protect fish and wildlife, as well as interests of other water users, through a focus on the day-to-day operations of Reclamation facilities. The Department is making strategic investments designed to stretch limited supplies and minimize conflicts of water through the WaterSMART Program. For instance, the Secretary recently announced \$49.5 million in grant assistance to co-fund local water conservation projects. Reclamation is also investing \$24 million in grants for 50 WaterSMART water and energy efficiency projects, and \$23 million for ongoing construction of seven water reclamation and reuse projects. Through its new Drought Response Program, Reclamation also provided \$5.2 million in FY 2015 funding for 12 drought resiliency projects and 11 drought contingency plans in 9 Western States.

In California, Reclamation has undertaken a series of extraordinary measures and new agreements with multiple parties to respond to the historic drought. A sampling of activities and operations that have been deployed by the Department over the last year include: facilitating agreements to reschedule when water is transferred and delivered; ensuring sufficient cold water is stored for the benefit of endangered salmon and other fish; working with the State Water Resources Control Board to help enforce laws prohibiting illegal diversions; and adjusting export pumping, fine-tuning reservoir releases, and controlling Delta salinity for the benefit of fish species and water users.

While these resources and activities will help, much of the western United States remains in the grips of an historic drought. The Department will continue to take a multi-faceted approach and to marshal every resource at its disposal to assist western communities impacted by drought.

Question 2: Dionne Thompson with the Bureau of Reclamation stated in her written testimony with regard to the Water Rights Protection Act on June 18th before this committee that-

"The BLM does not require the transfer or relinquishment of water rights as a condition of authorizations for public land use."

They may not require it, but my question is, does the BLM believe they have the authority to do so?

Answer: Federal land management agencies, including the Bureau of Land Management, retain the authority to reserve water necessary to fulfill the purposes of its land reservation. In addition, the Federal Land Policy and Management Act of 1975 authorizes the Secretary of the Interior to grant or renew rights-of-way across public lands for water storage and distribution facilities. The BLM issues permits for the use of rights-of-way across BLM lands for the purposes of constructing or maintaining water storage and distribution facilities. The permits are subject to conditions on use deemed necessary to comply with mandates in public lands laws. As such,

**U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation**

Questions for the Record Submitted to The Honorable Michael Connor

federal land management agencies may, in certain circumstances, establish conditions on the use of water on federal lands. The Department is not aware of any authority that requires the transfer or relinquishment of water rights as a condition of authorizations for public land use.

Question 3: Dionne Thompson, representing the Bureau of Reclamation, stated in her written testimony on June 18th that-

“Originally expressed as the power to reserve water associated with an Indian reservation, over time, the Supreme Court and other courts have revisited and built on the doctrine in holding that reserved rights applied to all federal lands.”

At the June 28th hearing I asked her-

“Does all federal land come with reserved federal water rights and do these rights trump state water rights, including privately held water.”

Her response was-

“Reclamation follows the Reclamation Act. Section 8 of the 1902 Act says that state waters have primacy. State rights have primacy over water rights.”

She also stated that states have primacy over ground water “for the most part.” Do you agree with the Bureau’s response to my question?

Answer: As stated in the Department’s testimony, the federal government generally defers to the States in the allocation and regulation of water rights. However, the U.S. Supreme Court, as well as other federal and state courts, has recognized that the establishment of federal reservations impliedly reserved water rights necessary to fulfill the purposes of those reservations, in what is known as the doctrine of federal reserved water rights. A federal reserved water right is measured both by the amount necessary to meet the reservation’s purposes and made up of water unappropriated at the time of the reservation’s establishment.

Whether adjudicated by state or federal court – or settled in the context of federal legislation – federal reserved water rights typically fit within the “prior appropriation” system (“first in time is first in right”) adopted in most Western states. Federal reserved water rights generally have a priority date as of the date of the reservation’s establishment, although some Indian reservations may have even earlier priority dates based on the particular Indian tribe’s aboriginal rights. In times of shortage, federal reserved water rights can be administered in light of the respective priorities of all water rights holders within the particular watershed – federal, private, or otherwise - as has been done by Wyoming through the Big Horn River adjudication and its implementation. Accordingly, if the federal reservation priority date is junior in time to a state water right, then the more senior state water right on that system prevails in administration.

**U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation**

Questions for the Record Submitted to The Honorable Michael Connor

Numerous federal and state courts, as well as federal legislation, have recognized that federal reserved water rights can also apply to groundwater. Treatment of groundwater rights also varies widely by state, but the concept behind federal groundwater rights is based on the same concept – the date when the federal reservation was created provides the priority date vis-à-vis other state water rights users.

Finally, Section 8 of the 1902 Act provides that the Bureau of Reclamation will comply with state law relating to the control, appropriation, use or distribution of water used for its project purposes unless state laws are inconsistent with clear Congressional directives. Thus, while Reclamation generally defers to state water law, the existence of a federal reserved water right or direct Congressional authorization, such as in the case of water allocation in the Colorado River pursuant to the Boulder Canyon Project Act, requires a fact-specific determination as to the application of Section 8 of the 1902 Act in a particular situation.

Questions for the Record from Senator Ron Wyden

Question 1: Drought is a serious concern in states across the West, including in Oregon. And as we know all too well in Oregon, particularly in the Klamath Basin, finding a solution to the challenge of less water coupled with more water users is not easy. While the challenges of the California drought do not necessarily have a direct impact on water users in Oregon, the consequences of any drought legislation that walks back environmental or Endangered Species Act protections could be profound, and severely impact Oregon's fisheries and economy.

I've been hearing great concern that if the policies in H.R. 2898 were to become law, the Oregon salmon fisheries could experience a total shut down like we saw a few years ago, which would have profound impacts on Oregon's economy. I'm interested in hearing your view on a couple of key points: first, can you talk a little bit about how the drought management policies in the House bill would weaken Endangered Species Act and other environmental protections for river and species health? And that being the case, how does that impact the long-term health of salmon and steelhead runs, and what does that mean for Oregon fisheries?

First, can you talk a little bit about how the drought management policies in the House bill would weaken Endangered Species Act and other environmental protections for river and species health?

Answer: H.R. 2898 represents an unprecedented congressional amendment to existing biological opinions that have been upheld as scientifically and legally sound. Specifically, the newly defined term "negative impact on the long-term survival" of Delta smelt and other listed species is used throughout the bill -- often in combination with the undefined terms "imminent" and "significant" -- in provisions that would require operators to maintain certain operations unless doing so would cause such an impact. This new standard would conflict with the ESA's jeopardy standard, creating uncertainty that could limit water supplies by creating confusing

**U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation**

Questions for the Record Submitted to The Honorable Michael Connor

conflicts with existing laws, potentially slowing down decision-making, generating significant litigation, and limiting real-time operational flexibility.

Another provision in H.R. 2898 states that, “the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional significant negative impacts on the long-term survival of a listed fish species beyond the range of those authorized under the Endangered Species Act of 1973, provided that the requirements imposed do not reduce water supplies available for the Central Valley Project and the State Water Project.” This is inconsistent with the ESA as it applies to a standard that conflicts with the ESA’s jeopardy standard.

Furthermore, H.R. 2898 will likely limit existing real-time operational flexibility that has proven critical to protecting the listed species and maximizing water delivery during the current drought. State and Federal managers have worked in concert since 2013 and taken extraordinary measures to adapt to dry hydrology and provide minimum protections to listed species while also providing as much water as possible amidst severe drought.

And that being the case, how does that impact the long-term health of salmon and steelhead runs, and what does that mean for Oregon fisheries?

Answer: H.R. 2898 as currently drafted reduces protections for ESA-listed species, including ESA-listed salmonids, and it will thus increase the risk of extinction of these species and otherwise delay or preclude their recovery. Ocean salmon fisheries are managed in direct response to the status and health of ESA-listed salmonids. If the status of listed salmonids is diminished, as would likely be the case under H.R.2898, it is reasonable to expect that ocean salmon fisheries would be further constrained and that those constraints would last longer into the future than would have otherwise occurred.

The loss of the long-term health of salmon and steelhead runs from the Klamath and Central Valley stocks would have a significant impact on Oregon fisheries. Genetic stock identification sampling of Oregon commercial troll catches during 2010-2014 showed that 42% of the Chinook salmon catch was from the Central Valley fall and the Klamath River stocks. However, the proportional contribution will change from year to year depending on the status of individual stocks. Chinook salmon produced in the Klamath-Trinity system primarily contribute to fisheries in northern California and Southern Oregon. In some years, the Klamath and Central Valley may make a much larger contribution to Oregon’s fisheries if the Columbia and coastal fall Chinook stocks were depressed.

Question 2: Based on your assessment of the bill, would these provisions impact your ability to manage salmon restoration and other conservation programs?

Answer: H.R. 2898 is likely to negatively impact salmon and steelhead restoration. Specifically, H.R. 2898 provisions reduce existing protections or undermine conservation efforts

**U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation**

Questions for the Record Submitted to The Honorable Michael Connor

for ESA-listed Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, California Central Valley steelhead, and non-ESA listed fall-run Chinook salmon. The Fish and Wildlife Service works in partnership with other State and Federal agencies to manage these species and loss of management discretion for any partners will have a negative impact. The greatest degree of impact is likely to be for NMFS due to their authorities for salmon harvest and ESA recovery. Managing under the rigid definitions and constraints of H.R. 2898 will require the modification of currently existing Reclamation service contracts, ESA biological opinions, and other longer standing agreements with State and Federal agencies. The loss of management flexibility could also impact flow augmentation releases that are designed to prevent recurring outbreaks of Ich (*Ichthyophthirius multifiliis*), the fish disease thought primarily responsible for a historic 2002 die-off of Chinook salmon and ESA-listed coho salmon that return to spawn in both the Trinity and Klamath Rivers. Eliminating the flexibility needed to address fish health issues increases the risks of large scale die-off events in the Klamath Basin that could impact future fishing opportunities on the west coast and tribal trust resources of the Hoopa and Yurok Tribes, who rely on Chinook salmon migrating through the lower Klamath River for subsistence, ceremonial, and other purposes.

Question 3: I know you're familiar with the importance of collaboration when it comes to finding solutions to difficult water emergencies. And I know you're familiar with the collaborative work that's been taking place in Oregon's Klamath Basin to work toward a resolution of the decade's long water issues there. Can you tell us about the role that collaboration plays in these decisions and why it's critical to the success of any water solution?

Answer: Broad-based, consensus-driven cooperation is essential to successful modern water resources management. In every state where the Department owns and operates water infrastructure or upholds the federal trust responsibility to Native communities, the Department collaborates with state and federal wildlife agencies, water management agencies, water rights offices, and other entities involved in natural resources management at the state and federal levels. In the case of drought response in the West, the Department has maintained a rapid tempo of coordination with state and other parties to adapt the operation of existing water infrastructure in real-time as conditions dictate. In the Colorado River Basin, the Department works closely with the seven basin states, Mexico, Native American Tribes, and other federal agencies. This collaboration extends to our support for Indian water rights settlements that result from negotiations with all stakeholders, including the Federal government, and represent a good use of taxpayer dollars good cost share contributions from states and other benefitting parties. Finally, the value of the Department's collaboration can be seen in the in the Klamath Basin, where the Department has worked tirelessly on Klamath Agreements to provide a comprehensive solution for water, fishery, and power issues in the Klamath Basin.

Questions from Senator James Risch

Question 1: From the Dept. of Interior perspective, do S. 1894 and/or H.R. 2898 provide resources for the Corps (working with BOR) to complete new or "updated" reservoir hydrologic "Rule Curve" flood impact studies for given western reservoir states? If so, is there sufficient

**U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation**

Questions for the Record Submitted to The Honorable Michael Connor

authorization language in either bill to “better manage new Rule Curve studies” to balance yearly flood control and mix-use (i.e. irrigation and ecosystem water) water resources for the western states?

Answer: Section 315 of S. 1894 directs the U.S. Army Corps of Engineers to prepare a report on Army Corps and non-federal flood control projects in any state with a drought declaration in place during 2015, the dates of their associated water control manuals, the timelines for the manuals’ planned revision, and listing any external requests for the manuals’ revision. The bill further directs that, 60 days after the report is provided to Congress, the Corps must identify any projects that have flood control rule curves older than 20 years, or where an updated rule curve might enhance existing authorized project purposes. Bureau of Reclamation facilities are explicitly excluded pursuant to subsection 315(h)(3). Subsection 315(g) provides that the Corps may accept non-federal funding to implement recommendations, but the legislation does not authorize nor appropriate any new federal funding or staffing resources to implement these directives. While the Department cannot authoritatively estimate the costs to USACE to comply with Section 315, the potential breadth of including Army Corps and non-federal facilities suggests that the timelines will be extremely difficult to meet, and the report itself will pose a significant challenge on existing agency resources. For the same reasons, implementing any of the reports’ recommendations would be similarly challenging under the legislation as written. None of these provisions appear in the House-passed version of H.R. 2898 discussed at this hearing.

Question 2: From the Dept. of Interior perspective, do S. 1894 and/or H.R. 2898 provide authorization language for not only construction expansion for storage of a California dam (i.e. Shasta Dam), but authorization language for possible construction expansion dam for storage for all other western state dam projects? Specifically, would either legislative bill provide support language for a possible consideration of a construction expansion dam for any type of water storage in the future for the state of Idaho?

Answer: Subtitle B of Title III of S. 1894 authorizes \$600 million for the facilitation of new water storage projects. Specifically, Sec. 312 of S. 1894 provides the Secretary of the Interior general authority to participate in the construction or expansion of any Federal storage project, which is not limited to storage in the State of California. Sec. 314 of S. 1894 authorizes additional reservoir storage to be developed at Reclamation Safety of Dams projects if certain conditions are met, including full financing by local project sponsors. Section 421 of S. 1894 would amend the SECURE Water Act to authorize federal assistance for planning, design, and construction of new non-federal permanent water storage and conveyance facilities, among other water storage and conservation projects. Section 1001 of HR 2898 contains language similar to that in Section 314 of S. 1894 amending the Safety of Dams Act (PL 95-578, as amended; 43 USC 509) to authorize additional project benefits in conjunction with a dam safety construction. However, the Department has made significant budgetary and legal observations for Congress to consider before these provisions could be implemented, and these were noted in the testimony on

**U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation**

Questions for the Record Submitted to The Honorable Michael Connor

both bills, as well as on HR 2749 (Valadao)¹ this past June. Separate from the Safety of Dams amendments, HR 2898 does not provide the same authorization for the construction or expansion of surface storage projects outside of the State of California as is found in S. 1894.

Question 3: From the Dept. of Interior perspective, do S. 1894 and/or H.R. 2898 provide language for nontraditional supplies and conservation for re-charge (and/or water banking) projects for all western states - - not just authorization for the state of California only.

Answer: S. 1894 includes several provisions that have the potential to increase the use of nontraditional water supplies or enhance water conservation for all western states. Subtitle A of Title III of the bill authorizes feasibility studies and the construction of Reclamation funded water recycling and desalination projects, with such drought recovery and resiliency projects as groundwater recharge, stormwater capture, agriculture or urban water conservation and efficiency, or other innovative water supply projects. Section 301 would reauthorize and expand the Desalination Act and authorizes additional funding to support feasibility and design studies. Subtitle C of Title III would authorize the WaterSense Program at the Environmental Protection Agency to identify and promote water efficient products, buildings, landscapes, facilities, processes, and services. Title IV would provide federal support for state and local drought resiliency projects, through the authorization of the Reclamation Infrastructure Finance and Innovation Act, which would provide low-cost, long-term loans and loan guarantees for water infrastructure projects, including water recycling; expand the SECURE Water Act to authorize federal assistance for the planning, design and construction of new water infrastructure, including water reclamation and reuse; and eliminates the need for Congressional authorization for individual Title XVI projects. HR 2898 primarily focuses on addressing drought conditions in California, and does not contain corresponding authorities for nontraditional water supplies and conservation initiatives as does S. 1894.

If DOI or BOR have questions for clarification, please contact:

Tim Petty

Deputy Legislative Director

Senator James Risch

tim_petty@risch.senate.gov

Questions from Senator Mazie Hirono

Question 1: I am happy to see provisions in S. 1894 that extend eligibility of both the WaterSMART grants and RIFIA beyond Reclamation states to Hawaii and Alaska as well as other provisions that have national applicability. I appreciate Senators Feinstein and Boxer keeping my state, as well as others, in mind.

¹ <http://www.usbr.gov/newsroom/testimony/detail.cfm?RecordID=2804>

**U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation**

Questions for the Record Submitted to The Honorable Michael Connor

We all acknowledge that drought is something that Americans in all 50 states have experienced or should be concerned about.

I would like to receive your analysis of how high of a national priority water conservation will need to be in the coming decades and if possible, any key recommendations you have for Congress to consider in making sure U.S. communities can respond effectively.

Answer: As noted in the Department's Strategic Plan for FY 2014-2018, the American West is the nation's fastest growing region and faces serious water challenges. Competition for finite water supplies is increasing as a result of persistent drought, population growth, agricultural demands, and water for environmental needs. An increased emphasis on domestic energy development will place additional pressure on limited water supplies, as significant amounts of water may be required for unconventional and renewable energy development. Impacts of climate change, as evidenced by increases in temperature, decreases in precipitation and snowpack, extended droughts, and depleted aquifers and stream flow in several Reclamation river basins are reducing water supplies. Water is vital for the environment and the economies of rural and urban communities in the West.

The Department has made considerable progress toward its Priority Goal for Water Conservation, which is to facilitate an increase in the available water supply for agricultural, municipal, industrial, and environmental uses. Through WaterSMART and other conservation activities, Reclamation has exceeded the goal of 840,000 acre-feet annually by the end of FY 2015 (since FY 2009) by partnering with states, Indian tribes, irrigation and water districts and other organizations with water or power delivery authority to implement programs that will result in water conservation once completed. Together, projects funded through WaterSMART and other conservation activities from 2010-2015 have contributed over 977,000 acre-feet of water savings toward the goal.

Question 2: I look forward to working with the Administration in making sure that Hawaii can take advantage of some of the water conservation and innovation provisions in S. 1894 as we prepare for future drought conditions in our state.

As I'm sure you know, we are the endangered species capital of the world and as such, folks back home are very aware of any activities that could negatively impact our environment.

Can you describe in more detail how your Department would implement some of the programs within S. 1894 that are made available to Hawaii? Would the Department engage collaboratively with stakeholders to ensure our unique local concerns are addressed and if this bill were to pass, what should I tell our state and local officials about how to engage the Department?

Answer: While it would be premature to set forth how the Department would implement water conservation and innovation provisions in S. 1894, especially in light of the potential changes to the bill as it works its way through Congress, the Department has similar programs and activities that would provide a good starting point in a discussion surrounding implementation. For

**U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation**

Questions for the Record Submitted to The Honorable Michael Connor

example, Section 301 of the bill would reauthorize and expand the Desalination Act and authorizes additional funding to support feasibility and design studies. Through the Desalination and Water Purification Research and Development Program, Reclamation enters into cost-share agreements with a broad range of participants: individuals, institutions of higher education, commercial or industrial organizations, private entities, public entities (including state and local), and Indian Tribal Governments. Section 421(b) would amend the SECURE Water Act to authorize federal assistance for the planning, design and construction of new water infrastructure, including water reclamation and reuse, and provide for an additional appropriations ceiling under the SECURE Water Act as requested in the President's FY16 budget. The Department continues to engage in outreach efforts to ensure that funding opportunities are as inclusive as possible and that grant categories align with interest among applicants. Section 431 would eliminate the need for Congressional authorization for individual Title XVI projects and require the Department to establish new guidelines consistent with the criteria set forth in S. 1894. On October 15th, Reclamation announced it was seeking applications from congressionally authorized sponsors of Title XVI projects, which provides funding for projects that reclaim and reuse municipal, industrial, domestic or agricultural wastewater. The deadline for applications for this funding announcement, which applies to all 17 western states and the State of Hawaii, is December 10th.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 3 0 2015

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 Department of the Interior in response to questions received by the Department following the September 17, 2015, hearing before your Committee regarding the Federal Lands Recreation Enhancement Act.

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

Sincerely,

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

Enclosure

cc: The Honorable Maria Cantwell
Ranking Member

U.S. Senate Committee on Energy and Natural Resources
September 17, 2015 Hearing: The Federal Lands Recreation Enhancement Act
Questions for the Record Submitted to Deputy Director Peggy O'Dell

Questions from Senator John Barrasso

Question 1: In her testimony, Ms. Benzar discussed the hidden administrative costs of the Federal Land Recreation Enhancement Act as revealed by the GAO. She also mentioned the \$9 or \$10 campground reservation service fee on Recreation.gov. What was the cost of creation of the website, and what portion of recreation fee funds above and beyond the service fee has been diverted for the creation and maintenance of Recreation.gov?

Response: Recreation.gov is an interagency program that was initiated under President Bush's Quicksilver E-Government initiative in 2002. It is a one-stop shop that provides information, trip planning and advanced reservation services for federal recreational lands and activities (camping, cabins, tour tickets and permits). This reservation service is administered under a USDA contract with the Active Network (ReserveAmerica), which was awarded through a full and open competitive process.

Under the terms of the contract, the initial costs to build the reservation service, including providing on-line and call center support, database management, information security, centralized reporting, content development and marketing, were borne by the contractor. The contractor is paid on a per-reservation transaction model, and the fee structure varies based on what is being reserved and the method by which it is reserved. The payment is provided either as an add-on reservation fee or is built into the fee itself, is designed to amortize the cost of a reservation over the length of stay.

Question 2: You also testified that traffic to the Recreation.gov website increased 27% in two years. Did the use of these funds result in a corresponding increase in visitors to your recreation fee sites?

Response: Enhancements to the Recreation.gov website have contributed to the increased use of the site. For example, since 2009, the agencies have added approximately 480 facilities to the reservation service, an 18% increase. This new inventory supports visitors to the sites, who increasingly prefer to reserve a campsite and activities rather than using the first-come, first served option. The Recreation.gov website has also been expanded to provide lottery tickets for the National Christmas Tree Lighting Ceremony and the White House Easter Egg Roll, processing nearly 128,000 lottery applications in 2014. Also in 2014, the public reserved over 1 million tickets for locations where only a convenience fee is charged to make the reservation. However, for privacy and other reasons, we are unable to track whether these increased visits to the Recreation.gov website correlate to actual visitation to the recreation fee sites.

Question 3: The GAO estimates deferred maintenance backlogs of \$11.5 billion for the National Park Service and \$5 billion for the Forest Service for Fiscal Year 2014. Has there been any decrease in the deferred maintenance backlogs of your agencies as a result of the Federal Land Recreation Enhancement Act funds?

U.S. Senate Committee on Energy and Natural Resources
September 17, 2015 Hearing: The Federal Lands Recreation Enhancement Act
Questions for the Record Submitted to Deputy Director Peggy O'Dell

Response: Since the full implementation of the Federal Land Recreation Enhancement Act (FLREA) funding in 2006, the NPS has devoted \$714.9 million of FLREA funds to deferred maintenance projects through FY 2014, plus approximately \$60 million in FY 2015. The NPS' deferred maintenance backlog, estimated at \$11.5 billion at the end of FY 2014, would be larger if these FLREA deferred maintenance projects had not been completed. FLREA funding has been particularly critical in supporting deferred maintenance projects linked to visitor services; for example, FLREA funds supported the rehabilitation of 12 miles of the Copper Lake Trail at Wrangell-Saint Elias National Park and Preserve, and the repaving of over 114,000 square feet of the Mazama Campground loops at Crater Lake National Park.

Question 4: In your testimony, you highlight the economic revenue and jobs for local communities that recreation provides as well as the importance of recreation fees. During questioning, you expressed interest engaging in a conversation about the impacts the DOL's regulations may have on outfitters and guides. What steps are being taken to engage the Department of Labor?

Question 5: Are your agencies moving forward to impose the Department of Labor's interpretation of the President's minimum wage executive order on outfitter and guide permit holders?

Question 6: How far into an outfitter or other permit holder's operation would you expect the minimum wage requirement to extend? Where do you draw the line of who is connected to the permit and who isn't?

Question 7: Do you see any policy reason for not extending the same exemption from the Fair Labor Standards Act that currently applies to ski areas to other seasonal recreational businesses like river rafting or horseback riding?

Response to Questions 4 – 7: Questions about how the new minimum wage requirements are to be interpreted and applied are best answered by the Department of Labor.

With respect to the NPS, all commercial use authorizations (CUAs) and concession contracts awarded to outfitters and guides after January 1, 2015, contain language regarding the new minimum wage requirements. If an employee of a concessioner or CUA holder notifies the NPS of a potential violation of the wage requirements, the NPS will submit that information to the Department of Labor for enforcement. BLM contracts similarly contain a requirement that the contractor comply with all applicable laws, regulations, and policies

Question 8: In her testimony, Ms. Benzar noted public concern that concessionaires who operate on public lands are not required to follow the Federal Land Recreation Enhancement Act procedures. Given that concessionaires are not subject to the requirements and fee limitations of

U.S. Senate Committee on Energy and Natural Resources
September 17, 2015 Hearing: The Federal Lands Recreation Enhancement Act
Questions for the Record Submitted to Deputy Director Peggy O'Dell

the Federal Land Recreation Enhancement Act, should concessionaires be required to accept the federal Interagency Pass as they operate on public lands?

Response: Concessionaires provide a wide variety of valuable services and activities on federal lands, from operating iconic lodges, to providing hunting, fishing, rafting and other recreational opportunities. On federal lands managed by the Interior agencies, concessionaires do not charge for entry, but for specific services or facilities, which often require private investment. Requiring a pass acceptance in these concession cases would limit the agencies' ability to partner with these organizations and provide these services and amenities. The Interagency Pass is valid for standard amenity fee sites on BLM-administered lands. To further clarify authorities for concession operations, the BLM would like to work with the committee on stand-alone recreational concessions authority for the agency.

Question 9: The purpose of the Federal Land Recreation Enhancement Act was to provide an element of user pay while also limiting agency fee authority. In Ms. Benzar's testimony, she characterizes the land management agencies' implementation of the law as agency overreach, evasion of the restriction on fees, and treating citizens as customers rather than owners. She further describes hidden or high administrative fees and the practice of creating facilities in order to justify a fee. Her testimony contains eight examples of instances where she believes the law has been inappropriately applied. These examples are not exhaustive but representative of a larger disputed application of the law.

For each of the examples under your jurisdiction, will you provide a written explanation for the authority the agency has under the Federal Land Recreation Enhancement Act to take the described action?

Response:

The only example identified in Ms. Benzar's testimony under the jurisdiction of the Department of the Interior is the Cedar Mesa area, managed by the Bureau of Land Management (BLM).

The BLM does not issue recreation permits by activity type and does not charge fees for specialized uses; rather it issues permits and charges fees for categories of use as defined in the regulations at 43 CFR § 2930.5. All the BLM's special recreation permitted uses are governed under section 6802(h) of FLREA. Under 43 CFR § 2932.5 (most recently revised in October 2002 with extensive public input), "*Special area means:* (1) An area officially designated by statute, or by Presidential or Secretarial order; (2) An area for which BLM determines that the resources require special management and control measures for their protection; or (3) An area covered by joint agreement between BLM and a State under Title II of the Sikes Act (16 U.S.C. 670a *et seq.*)" The Cedar Mesa area is considered a special area under criterion 2.

U.S. Senate Committee on Energy and Natural Resources
September 17, 2015 Hearing: The Federal Lands Recreation Enhancement Act
Questions for the Record Submitted to Deputy Director Peggy O'Dell

While visitors can park at any of the Cedar Mesa canyon trailheads and hike for free across the vast majority of the land in the Cedar Mesa area (the mesa top), the BLM charges a \$2 fee for in-canyon use. Cedar Mesa has long been identified with world class Ancestral Puebloan cultural remains and excellent day hiking and backpacking opportunities. Grand Gulch itself has been managed to protect these values since 1970 when the Secretary of the Interior designated it as a Primitive Area. The modern day Hopi, Navajo, Ute and Pueblo tribes all have a deep connection and heritage to the area. These resources are incredibly fragile, and even small touches can cause irreparable damage, as happened when a part of a wall was lost at Monarch Cave this year due to a visitor leaning on it. Heavy visitation can take a toll on important archaeological sites and visitor contact is prioritized with use of fee revenue.

The \$2 fee for day use of the area has proved to be an important motivator for visitor registration. Even a small monetary value placed on a permit improves registration compliance, and it is during the registration process that BLM is able to provide important information on the use and care of the area and resources. Registration also provides the only method for accounting for visitors, which has proved extremely important for initiating search and rescue operations, monitoring use patterns, and law enforcement.

If an area meets the special area criteria it must be described in the governing Land Use Plan (LUP) subject to the full rigors of the National Environmental Policy Act (NEPA) and public input. The subject area then undergoes additional planning through the development of a recreation area management plan with public input and comment. The final step is the development of a fee business plan and Federal Register notification, following all of the public outreach and consultation requirements of FLREA.

The Grand Gulch Plateau Cultural and Recreation Area Management Plan and EA covered both the Cedar Mesa special recreation management area and the Grand Gulch area of critical environmental concern, along with several overlapping wilderness study areas. The March 30, 1993 environmental analysis (EA) garnered more than 400 comments following more than a decade of development. The EA instituted a permit and fee system designed to protect the vast cultural, scientific, and natural resources of the area, in response to rampant looting and national exposure. Following the 1993 EA, fees were initiated in 1995 and adjusted in 1999.

100% of fees collected at Cedar Mesa are used locally. Fees are used for volunteer stipends, educational materials, and first aid and search and rescue supplies. One good example of a direct benefit to sites and visitors is the ability to post a volunteer at Moon House Ruin to provide interpretation to visitors on busy days. This both decreases the potential for site damage and enriches the visitor experience.

U.S. Senate Committee on Energy and Natural Resources
September 17, 2015 Hearing: The Federal Lands Recreation Enhancement Act
Questions for the Record Submitted to Deputy Director Peggy O'Dell

Question from Senator Jeff Flake

Question: During the shutdown in 2013, the Park Service collected entry fees at the Grand Canyon National Park. Will you please provide my office with the amounts the Park Service collected in entry fees at all park units which states paid to keep open during the shutdown?

Response: During the October 2013 shutdown, six states donated funds to the National Park Service to support re-opening national parks within their borders. Consistent with the terms of the donation agreements, the re-opened national parks operated and were managed in accordance with their standard operating procedures. At most of the re-opened parks, this included the collection of entrance fees, totaling \$0.65 million.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 1 0 2015

The Honorable John Kline, Chairman
House Education and the Workforce Committee
Washington, D.C. 20515

Dear Mr. Chairman,

Enclosed are responses prepared by the Bureau of Indian Education in response to questions received following the May 14, 2015, hearing before your Committee titled "Examining the Federal Government's Mismanagement of Native American Schools."

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

Sincerely,

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

Enclosure

cc: The Honorable Robert C. Scott
Ranking Member

Questions from Representative Glenn Thompson:

- 1. In your testimony, you mentioned some of the significant challenges the BIE faces in improving educational opportunities for Indian children. Can you elaborate on how the blurred lines of communication between the BIE, BIA, and the Department of the Interior have contributed to these challenges?**

Response: Over the last four years, Indian Affairs has been reviewed and surveyed in reference to administrative and educational processes. These reviews resulted in the following reports: the Bronner Study (2012); the Government Accountability Office reports (September 2013 and November 2014); and the *Blueprint for Reform* (June 2014). There are different mission goals and operational policies between the Deputy Assistant Secretary – Indian Affairs (Management) (DAS-M), the Bureau of Indian Affairs (BIA), and the Bureau of Indian Education (BIE), which results in unmet needs not only in the BIA, but also the BIE. The challenge is highlighted in the procurement process, where the needs of the BIE and the BIA are very different.

Another challenge highlighted is the need for Human Resource personnel to understand the unique qualifications necessary for hiring staff, such as principals, teachers, and other educational specialists (i.e., reading specialists and special education teachers) and the unique urgencies of timing in light of the academic calendar.

Following the release of the GAO Report, the Appropriations Committees, in their Joint Explanatory Statement on the Consolidated Appropriations Act, 2014, stated their expectations that DOI implement certain management reforms:

“The Committees are concerned that management challenges within the Department, the Bureau of Indian Affairs, and the Bureau of Indian Education (collectively, “Indian Affairs”), as identified in a September 2013 report by the Government Accountability Office (GAO-13-774), may impact the overall success of the students in the system. Although the Committees are encouraged that Indian Affairs concurred with all of GAO’s recommendations and that a full-time director of the Bureau of Indian Education is in place after a vacancy of more than a year, the Committees expect the Secretary to oversee implementation of these management reforms.”

This resulted in the Assistant Secretary for Indian Affairs and the BIE issuing the *Blueprint for Reform* in June 2014. Moreover, the BIE has now had a director who has served more than two and a half years in the role of Director or Acting Director. The continuity in BIE leadership has contributed strongly to improved communication and helped to provide important leadership and advocacy for the needs of the BIE within the larger Department.

- 2. I would like to thank you for your recognition of the importance of higher education/professional career preparation for BIE students. Aside from funding, what support can the federal government provide to BIE schools to help grow and strengthen college-readiness programs?**

Response: The Bureau of Indian Education (BIE) schools would benefit from partnerships with federal agencies that provide summer internships or other hands-on-learning. Institutions that receive federal support could be encouraged to develop articulation/transfer agreements with BIE schools. In addition, the following are suggestions to help grow and strengthen college-readiness programs:

- Engage parents in the needs of emotional and financial costs associated with having students leave their community to go away to school and consider opportunities to bring students back to the community following graduation.
- Offer workshops in financial aid assistance and opportunities for funding beyond Pell Grants.
- Build in upper level course study and other assessment measures to ensure success in college and move away from remedial instruction and toward enrichment instruction.
- Build mentorship programs that model strong adult contacts to support students in growing their vision for beyond high school (e.g., job shadowing).
- Develop a network of support systems for schools to help students navigate the transition from high school to higher education by establishing a High School Counselors network to bring best practices back to the schools (e.g., the common application process).

3. What is the status of Career and Technical Education in BIE schools? Is there anything we can be doing to help cultivate these types of programs?

Response: Career and Technical Education is an area where Bureau of Indian Education schools are at a disadvantage. Since Carl Perkins was block granted to states, BIE funded schools have lost millions of dollars in CTE. Reinstating the set-aside would be beneficial to all BIE funded high schools.

The Bureau of Indian Education's (BIE) Sherman Indian High School has successful partnerships with local colleges and universities, e.g., Loma Linda University, University of California, Riverside, and the California Polytechnic University, Pomona. These partnerships include health career demonstration forums, a biomedical scholars program, one or two week shadowing/internship programs, and tutoring and reading intervention. Partnerships with other colleges and universities in states that include BIE-funded schools would be equally helpful.

The Navajo Nation reservation hosts a program that supports Arts and Technology and which is tied to STEM fields of science, technology, engineering and mathematics. More programs and sharing of resources through a Career and Technical Cooperative Agreement Unit would be helpful to allow more students to take advantage of current programs at certain sites, such as auto mechanics, welding, heavy equipment, etc.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 10 2015

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

Dear Mr. Chairman:

Enclosed are responses prepared by the Department to the questions for the record submitted following the July 8, 2015, hearing on "*The Helium Stewardship Act and the Path Forward.*"

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

Sincerely,

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

Enclosure

cc: The Honorable Alan Lowenthal, Ranking Member
Committee on Natural Resources,
Subcommittee on Energy and Mineral Resources

Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
1324 Longworth House Office Building
Wednesday, July 8, 2015 10:00 AM

Oversight hearing on:

"The Helium Stewardship Act and the Path Forward"

Questions from Rep. Lamborn for Tim Spisak, Senior Advisor for Minerals and Realty Management, Bureau of Land Management

- 1. Is the underground storage reservoir owned or leased by the BLM - and if it is leased, what is the cost to the taxpayer?**

Answer: The BLM manages the mineral rights and storage rights for natural gas and helium. Helium is stored at the Cliffside Storage Facility near Amarillo, Texas and is managed by the BLM's Amarillo Field Office. The Federal Helium Program operates the storage facility using non-appropriated funds. Money to support the program is generated from the sale and storage of helium and other related non-tax revenues. After funding operations, the program yields about \$430,000 per day for the U.S. Treasury.

- 2. Who owns the Amarillo Enrichment Plant, how is it operated, and what are the costs of operating the plant?**

Answer: The Crude Helium Enrichment Unit (CHEU) is the property of the Cliffside Refiners Limited Partnership (CRLP). The original partners of the CRLP were Air Products, BOC, Praxair, and El Paso Natural Gas. The current partners are Air Products, Linde (formerly BOC), Praxair, and Kinder Morgan (formerly El Paso). The BLM operates the CHEU under agreement with the CRLP. The total annual cost for operating the CHEU is approximately \$10.8 million.

- 3. Does the BLM own the 450-mile pipeline in which the helium is transported to the refineries - and if so, what is the cost of operating the pipeline, and the estimated value of the pipeline?**

Answer: The BLM manages the 450-mile pipeline used to transport helium to the refineries. The cost of operating the pipeline is included in the annual operating cost for the Federal Helium Program. In Fiscal Year (FY) 2014, the cost to operate the pipeline was approximately \$3.9 million. The BLM accounting book value for Plants, Property, and Equipment (net of depreciation) is \$8.6 million for the pipeline and Cliffside Gas Field; however, this may not accurately reflect the current market value. That valuation is planned to occur prior to disposal, which will occur not later than September 30, 2021.

4. How much helium within the storage reservoir is owned by the federal government, and what is the estimated value of the helium?

Answer: The Federal storage balance in the reservoir as of May 2015 was 6.6 billion cubic feet of helium. Using the FY 2015 sale price of \$106 per thousand cubic feet for conservation helium, the helium within the storage reservoir is valued at \$700 million. Since the BLM only supplies crude helium, that value assumes the price for crude helium that is ready for further refining into pure helium for private sale.

5. What is the annual income received by the BLM in connection with operating and managing the federal helium reserve, exclusive of the helium sold?

Answer: For FY 2014, the sale of natural gas and natural gas liquids generated from crude helium processing activities was \$13.8 million and storage and reserve reservoir fees generated \$5.0 million, for a total of \$18.8 million.

6. The Helium Stewardship Act requires the BLM to dispose of all assets by September 30, 2021, or sooner, if the federal ownership of helium decreases to three billion cubic feet of helium.

Is the BLM on track to reach the three billion cubic feet threshold before September 30, 2021; and if it is, when does the BLM predict to reach this point – and if not, what will hinder the BLM’s ability to meet this statutory deadline?

Furthermore, what assets will be disposed of once Phase D of the Helium Stewardship Act (50 U.S.C. § 167d(d)) is triggered, what are the values of those assets, and how will the BLM go about disposing of those assets?

Answer: The BLM’s geologic projections for the production of crude helium from the Federal Helium Reserve indicate that the three billion cubic feet target of recoverable, Federally-owned helium in the Cliffside Field may be reached as early as 2019, depending on private industry purchases of crude helium. Regardless of the amount of helium remaining in the storage facility, the HSA requires disposal of all assets within the Federal Helium System no later than September 30, 2021.

Phase C: Continued Access for Federal Users begins when the Federal Helium Reserve declines to 3.0 Bcf, and lasts a minimum of two years or until the mandated disposal deadline of September 30, 2021. Once Phase C begins, the HSA requires the BLM to support Federal user needs and stop selling to private companies. During this time, the BLM would still continue to deliver any remaining privately stored helium until the mandated closure date. The identification of assets for disposal and any advanced work necessary to complete the disposal would run concurrently, beginning no later than 2019 (or whenever Phase C begins).

The Helium Stewardship Act requires disposal of the Federal Helium System, which consists of the: Federal Helium Reserve; Cliffside Gas Field; Federal Helium Pipeline; and all other infrastructure owned, leased, or managed under contract by the Secretary for the storage, transportation, withdrawal, enrichment, purification, or management of helium. The BLM has not completed a valuation of the Federal Helium System, but a valuation is planned to occur prior to disposal, which will occur not later than September 30, 2021. The BLM will begin the disposal process in FY 2019 to ensure completion by September 30, 2021.

7. How do you intend to enforce the tolling provision provided for in Section 6 of the Helium Stewardship Act of 2013?

Answer: The Helium Stewardship Act requires that, as a condition of sale, refiners make excess refining capacity available at a commercially reasonable rate. The BLM requires refiners to report excess refining capacity and tolling activity as a condition of allowing the refiners to participate in auctions and sales.

8. At the July 8th hearing you testified that all of the helium refiners have complied with section 6(b)(8)(B) of the HSA. A representative for one of the refiners, Mr. Nelson, testified that his company had offered an RFP for tolling services but had rejected the offers that came in from nonrefiners. He further testified to his belief that “cost plus” was not “commercially reasonable” to toll for a competitor and would therefore be rejected by his company. Please state the basis for your conclusion that all of the helium refiners are in compliance with the tolling provision in section 6(b)(8)(B).

Does BLM interpret section 6(b)(8)(B) as not requiring refiners to make excess refining capacity available to competitors at “commercially reasonable rates”?

Does BLM believe that Mr. Nelson’s interpretation is consistent with Congress’ clear intent—i.e. to encourage greater participation and competition in the federal helium market—in drafting section 6(b)(8)(B)?

Answer: Refiners reported over 700 million cubic feet of excess refining capacity prior to the FY 2015 auction and sale. Several refiners reported price and volume related to tolling activities between the refiner and a non-refiner, indicating that tolling was occurring.

The BLM collects internal market valuation of tolling services from tolling reports that refiners provide. The manner in which a refiner prices its tolling services is unique to the particular situation of the two parties and may vary substantially from one transaction to another.

The BLM interprets section 6(b)(8)(B) as written. That is, as a condition of sale, the refiners shall make excess refining capacity of helium available at commercially

reasonable rates. The BLM understands that refiners and non-refiners have a variety of competitive interests that drive their business decisions.



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

DEC 18 2015

The Honorable John Fleming
Chairman
Committee on Natural Resources
Subcommittee on Water, Power and Oceans
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Department to the questions for the record submitted following the May 20, 2015, hearing on a discussion draft, *"To protect and enhance opportunities for recreational hunting, fishing, and shooting, and for other purposes."*

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

Sincerely,

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

Enclosure

cc: The Honorable Jared Huffman, Ranking Member
Committee on Natural Resources,
Subcommittee on Water, Power and Oceans
The Honorable Tom McClintock, Chairman
Committee on Natural Resources,
Subcommittee on Federal Lands
The Honorable Niki Tsongas, Ranking Member
Committee on Natural Resources,
Subcommittee on Federal Lands

**Committee on Natural Resources
 Subcommittee on Federal Lands
 Subcommittee on Water, Power and Oceans
 1324 Longworth House Office Building
 Wednesday May 20, 2015
 9:30 A.M.**

Joint legislative hearing on:

A discussion draft, "To protect and enhance opportunities for recreational hunting, fishing, and shooting, and for other purposes."

Questions from Rep. Lummis for Mr. Steve Ellis, Deputy Director for Operations, Bureau of Land Management, U.S. Department of the Interior, Washington, D.C.

1. Before the Federal Land Transaction and Facilitation Act (FLTFA) expired, the BLM was able to use 20 percent of FLTFA proceeds for administrative costs. How much of that administrative allowance did you actually use every year?

Answer: The table below shows administrative costs by year.

Year	Receipts (dollars)	Amount Spent on Administrative Costs (dollars)	Administrative Cost as Percentage of Receipts
2000	0	0	-
2001	0	0	-
2002	3,000,000	35,145.59	1.17%
2003	1,000,000	194,153.33	19.42%
2004	16,000,000	517,065.17	3.23%
2005	10,000,000	781,615.29	7.82%
2006	58,000,000	1,024,850.45	1.77%
2007	7,000,000	835,419.22	11.93%
2008	12,000,000	70,191.46	0.58%
2009	2,000,000	123,686.29	6.18%
2010	0	411,535.82	-

2. What happened to the money left over in the administrative account if the BLM does not spend it on administrative costs? Does it go towards conservation?

Answer: The BLM established several internal accounts for FLTFA Receipts and Expenditures. The revenues generated from FLTFA sales were split between the respective State (4%) for educational purposes or for the construction of public roads, and a special account (96%) available to the Secretary of the Interior and the Secretary of Agriculture for acquisition of land in certain Federally designated areas, and for administrative expenses necessary to implement the sale program. The money in the administrative account carried over annually and was used to prepare additional FLTFA sales. All FLTFA balances were eventually deposited into the Land and Water Conservation Fund of the U.S. Treasury when FLTFA expired.

3. Could you provide a detailed description and chart of accounting measures explaining exactly how the funding under FLTFA was allocated for both federal land acquisition (80 percent) and administrative functions (20 percent) under the previous FLTFA funding formula?

Answer: FLTFA required that (1) no more than 20 percent could be used for BLM's administrative and other activities necessary to carry out the land disposal program; (2) of the amount not spent on administrative expenses, at least 80 percent of the revenue had to be expended in the state in which the funds were generated; and (3) at least 80 percent of FLTFA revenue spent on land acquisitions within a state must be used to acquire inholdings (as opposed to adjacent land) within that state. In addition, a national MOU set the allocation of funds from the FLTFA account for each agency—60 percent for BLM, 20 percent for the Forest Service, and 10 percent each for the Fish and Wildlife Service and the Park Service, but the Secretaries of the Interior and Agriculture had the discretion to deviate from those allocations by mutual agreement. The chart below shows an example of the BLM's accounting measures for FLTFA funds, assuming all land purchase funds are used by the BLM.

Federal Land Transaction Facilitation Act

Distribution of \$1,000,000 of FLTFA revenue

RECEIPTS

FLTFA Sale/Equalization Funds Deposited	\$1,000,000
State Component (4% of \$1,000,000)	\$40,000
Federal Component (96% of \$1,000,000)	\$960,000
Land Acquisition/Purchase (80%)	\$768,000

EXPENDITURES

Land Acquisition/Outside State (20%)	\$153,600
Land Acquisition/Inside State (80%)	\$614,400
Not less than 80% limited to the purchase of inholdings	\$491,520
Not more than 20% limited to the purchase of edgeholdings	\$122,880
Administration/Sales/Pooled Account (20%)	\$192,000



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

DEC 18 2015

The Honorable Tom McClintock
Chairman
Committee on Natural Resources
Subcommittee on Federal Lands
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Department to the questions for the record submitted following the May 20, 2015, hearing on a discussion draft, *"To protect and enhance opportunities for recreational hunting, fishing, and shooting, and for other purposes."*

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

Sincerely,

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

Enclosure

cc: The Honorable Niki Tsongas, Ranking Member
Committee on Natural Resources,
Subcommittee on Federal Lands
The Honorable John Fleming, Chairman
Committee on Natural Resources,
Subcommittee on Water, Power and Oceans
The Honorable Jared Huffman, Ranking Member
Committee on Natural Resources,
Subcommittee on Water, Power and Oceans

**Committee on Natural Resources
 Subcommittee on Federal Lands
 Subcommittee on Water, Power and Oceans
 1324 Longworth House Office Building
 Wednesday May 20, 2015
 9:30 A.M.**

Joint legislative hearing on:

A discussion draft, "To protect and enhance opportunities for recreational hunting, fishing, and shooting, and for other purposes."

Questions from Rep. Lummis for Mr. Steve Ellis, Deputy Director for Operations, Bureau of Land Management, U.S. Department of the Interior, Washington, D.C.

1. Before the Federal Land Transaction and Facilitation Act (FLTFA) expired, the BLM was able to use 20 percent of FLTFA proceeds for administrative costs. How much of that administrative allowance did you actually use every year?

Answer: The table below shows administrative costs by year.

Year	Receipts (dollars)	Amount Spent on Administrative Costs (dollars)	Administrative Cost as Percentage of Receipts
2000	0	0	-
2001	0	0	-
2002	3,000,000	35,145.59	1.17%
2003	1,000,000	194,153.33	19.42%
2004	16,000,000	517,065.17	3.23%
2005	10,000,000	781,615.29	7.82%
2006	58,000,000	1,024,850.45	1.77%
2007	7,000,000	835,419.22	11.93%
2008	12,000,000	70,191.46	0.58%
2009	2,000,000	123,686.29	6.18%
2010	0	411,535.82	-

2. What happened to the money left over in the administrative account if the BLM does not spend it on administrative costs? Does it go towards conservation?

Answer: The BLM established several internal accounts for FLTFA Receipts and Expenditures. The revenues generated from FLTFA sales were split between the respective State (4%) for educational purposes or for the construction of public roads, and a special account (96%) available to the Secretary of the Interior and the Secretary of Agriculture for acquisition of land in certain Federally designated areas, and for administrative expenses necessary to implement the sale program. The money in the administrative account carried over annually and was used to prepare additional FLTFA sales. All FLTFA balances were eventually deposited into the Land and Water Conservation Fund of the U.S. Treasury when FLTFA expired.

3. Could you provide a detailed description and chart of accounting measures explaining exactly how the funding under FLTFA was allocated for both federal land acquisition (80 percent) and administrative functions (20 percent) under the previous FLTFA funding formula?

Answer: FLTFA required that (1) no more than 20 percent could be used for BLM's administrative and other activities necessary to carry out the land disposal program; (2) of the amount not spent on administrative expenses, at least 80 percent of the revenue had to be expended in the state in which the funds were generated; and (3) at least 80 percent of FLTFA revenue spent on land acquisitions within a state must be used to acquire inholdings (as opposed to adjacent land) within that state. In addition, a national MOU set the allocation of funds from the FLTFA account for each agency—60 percent for BLM, 20 percent for the Forest Service, and 10 percent each for the Fish and Wildlife Service and the Park Service, but the Secretaries of the Interior and Agriculture had the discretion to deviate from those allocations by mutual agreement. The chart below shows an example of the BLM's accounting measures for FLTFA funds, assuming all land purchase funds are used by the BLM.

Federal Land Transaction Facilitation Act

Distribution of \$1,000,000 of FLTFA revenue

RECEIPTS	
	FLTFA Sale/Equalization Funds Deposited \$1,000,000
	State Component (4% of \$1,000,000) \$40,000
	Federal Component (96% of \$1,000,000) \$960,000
	Land Acquisition/Purchase (80%) \$768,000
EXPENDITURES	
	Land Acquisition/Outside State (20%) \$153,600
	Land Acquisition/Inside State (80%) \$614,400
	Not less than 80% limited to the purchase of inholdings \$491,520
	Not more than 20% limited to the purchase of edgeholdings \$122,880
	Administration/Sales/Pooled Account (20%) \$192,000



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 14 2015

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

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Environmental Safety and Enforcement to questions submitted following the June 16, 2015, oversight hearing on "Arctic Resources and American Competitiveness" in the Subcommittee on Energy and Mineral Resources.

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

Sincerely,

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

Enclosure

cc: The Honorable Alan Lowenthal
Ranking Member

Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
1334 Longworth House Office Building
Tuesday, June 16, 2015
10:30 AM

Oversight hearing on:

“Arctic Resources and American Competitiveness”

Questions from Rep. Lamborn for Director Salerno, Bureau of Safety and Environmental Enforcement

1. *Who from the Bureau of Safety and Environmental Enforcement (BSEE) participated in the NPC Study and in what capacity? Did BSEE staff report back regularly on the progress and content of the NPC Study? If so, was any of this information discussed or integrated into discussions on the formation of the Arctic Rule?*

Representatives from both BSEE Headquarters and the Alaska Region participated in the National Petroleum Council (NPC) Study and reported back regularly. Several representatives from BSEE were present and served on a range of study groups (full roster of study groups can be found in the study appendices, http://www.npcarcticpotentialreport.org/pdf/AR_Appendices-FINAL.pdf). Information from the study was discussed and integrated into the formation of the proposed Arctic Rule. For example, the NPC Study calls for the use of alternate technology in the Arctic operating environment. Both the preamble of the proposed rule and the proposed regulatory text address this NPC suggestion:

“Operators may request approval of alternative compliance measures under existing regulations, if they can demonstrate that such alternative equipment or procedures could provide a level of safety and environmental protection equal to or surpassing the protection provided by the proposed SCCE and relief rig requirements (30 C.F.R. § 250.141). This provision enables operators to request approval for innovative technological advancements that may provide them additional flexibility, provided that the operator can establish that such technology provides at least the same level of protection as the proposed requirements.” (see Arctic NPRM: 80 FR 9916 at 9925)

30 C.F.R. § 260.472 :

“What are the relief rig requirements for the Arctic OCS? [...] (c) Operators may request approval of alternative compliance measures to the relief rig requirement in accordance with § 250.141.”

2. *One of the major discrepancies between the Arctic Rule that your Bureau published versus the National Petroleum Council (NPC) Arctic study is drilling season length. The NPC Study not only found that Alaskan OCS resources could be developed now using existing technology, but it also addressed the need for updated regulations. The study specifically called for an efficient regulatory framework with a clear process and predictable timeline to support investment – and cited that drilling season length and lease length currently have substantial negative impacts on exploration in the Alaskan OCS.*

a. *Why does the Arctic rule not address drilling season length or lease length?*

The language in the proposed Arctic Rule allows for flexibility depending on weather and other naturally occurring conditions during exploration activities in the Arctic. Open water drilling season length is a function of nature (e.g., ice), and the length of time during which drilling can take place is primarily determined by ice and weather forecasting. The proposed Arctic rule addresses drilling season length by creating a regulatory framework that allows operators to work safely within the context of these operational realities. The proposed rule addresses the time needed to access well control and spill containment equipment, and to have a separate drilling rig available to drill a relief well in the event of an incident. At the end of the season, the well must be left in a safe condition before the well becomes inaccessible due to seasonal ice cover. Should a loss of well control occur at the end of the season, there needs to be sufficient response time built in to allow for control to be re-established. For that reason, drilling into hydrocarbon zones is stopped when the time needed to respond to an event equals the amount of time remaining before the onset of seasonal ice. This limitation is important as it minimizes the risk of a blowout during this critical period; however, operators are able to conduct other activities during this time that do not involve drilling into hydrocarbon-bearing zones. This risk-based approach—considering both availability of technology and real-time operating conditions—allows for industry innovation and the ability of responders to effectively address unforeseen events in an unpredictable environment.

b. *Does the DOI intend to address the issue of the Arctic drilling season and if so, how?*

The public comment period for the Arctic Rule was between February 24, 2015, and May 27, 2015, in which DOI received over 113,000 comments. DOI is considering comments on the proposed Arctic Rule related to Arctic drilling season issues that have been received from industry, non-governmental organizations (NGOs), stakeholders, State and local governments, and Alaska Native Tribes, as well as ongoing discussions in public forums that may fall within the scope of DOI's proposed regulations. However, pursuant to 30 C.F.R. § 556.37, all OCS oil and gas leases are limited to ten years. Under 30 C.F.R. § 556.70 and 30 C.F.R. § 250.180, the Secretary has the discretion to extend leases where the operator has exhibited due diligence in developing the lease. Also, under 30 C.F.R. § 250.175(a), the Regional

Director may grant a Suspension of Operations (SOO) when it is "necessary to allow you to begin drilling or other operations when you are prevented by reasons beyond your control such as unexpected weather, unavoidable accidents, or drilling rig delays." By temporarily suspending the requirement that an operator conduct leaseholding activities, this provision has the effect of extending a lease in its primary term or preventing the lapse of a lease after the primary term.

3. *Given that both the Arctic Rule and Well Control Rule are highly technical in nature and their timing for comments does not sync up, is there potential for changes that will need to be made to the Arctic Rule as a result of the finalization of the Well Control Rule?*

The proposed Well Control Rule has national application. The proposed Arctic Rule has a specific geographical application to the Arctic Outer Continental Shelf (seaward of the State of Alaska in the Beaufort and Chukchi Sea Planning Areas), and is specifically crafted for application in regard to the Arctic's unique operating environment. Therefore, it is not expected that changes to the Arctic Rule will be necessary as a result of finalizing the Well Control Rule. Finally, the Arctic Rule now enables us to implement systems and processes that reduce risk and provide rigorous safeguards for Alaska's coastal communities and sensitive Arctic marine environment.

4. *In several of your rulemakings, the manner in which you connect your cost benefit analysis has been questioned. Can you explain how you came up with the figure for the Arctic Rule?*

BSEE uses standard, sound economic analysis to perform its benefit-cost studies, using the best available information and in accordance with the requirements set out by EO 12866 and other applicable laws and guidance. BSEE uses a variety of sources for the data in its economic analyses, which include BSEE's own electronic databases involving information collected from industry reports and/or compiled by BSEE inspectors and other staff in the course of their duties. Other data are acquired from publicly available statistics from several agencies such as: energy prices and volumes from the Department of Energy; industry statistics from the Department of Commerce; and wage rates and the Consumer Price Index from the Bureau of Labor Statistics. Additional data are acquired from trade association and professional association (e.g., Society of Professional Engineers) websites and, where appropriate, from inquiries to knowledgeable and reliable sources within the affected industry, including BSEE's own subject matter experts with direct knowledge of relevant facts.

Do you expect your currently scheduled Chukchi and Beaufort Lease Sales to attract as much industry interest as the 2008 sale – which garnered over \$2 billion into the federal treasury? When you finalized the rule, did you take into the account the long term effect it will have on other companies who are weighing bidding on Arctic lease sales in the future?

Even before the decline in oil prices beginning in the Fall of 2014, the Bureau of Ocean Energy Management (BOEM) had very modest expectations about the results of the two Alaska sales scheduled during the next few years in the Chukchi and Beaufort Seas under the current 5-year program. When prices were higher, in 2013, we projected that the upcoming Chukchi Sea and Beaufort Sea sales would together generate bids on 44 tracts amounting to \$19 million. After the decline in oil prices, BOEM projected that bidding in these sales would cover 28 tracts and amount to \$10 million. These estimates were made largely independent of the provisions included in the proposed Arctic rule published early this year. Given these modest expectations, the proposed new Arctic safety and environmental regulations will not have a significant effect on the acquisition of new leases in the Chukchi Sea and Beaufort Sea planning areas.

5. *How do you envision the integrated operations plan to be different from the exploration plan and in what way?*

DOI proposes to add the requirement for an Integrated Operational Plan (IOP) at an early point in the planning process. The IOP will require operators to describe how their exploratory drilling program would be designed and conducted in an integrated manner suitable for Arctic OCS conditions. In this sense, the IOP is a description of conceptualized information that will underpin the development of the operator's Exploration Plan, which will ultimately be submitted for agency approval. Although the IOP is not subject to agency approval, the IOP provisions will provide agencies with high-level planning information to help with early identification of issues and preparation for the agencies' respective regulatory approval processes; many of the IOP provisions will be further developed in the operator's exploration plans or other agency permits or authorizations.

The Arctic is a frontier area and best practices for safe exploration operations are still evolving. The IOP process is intended to aid the operator in planning safe and efficient operations by facilitating the early sharing of information, and provides an opportunity to engage in a meaningful and constructive dialogue, between operators, the State of Alaska, and relevant Federal agencies (e.g., BSEE, BOEM, U.S. Fish and Wildlife Service, U.S. Coast Guard, National Oceanic and Atmospheric Administration, U.S. Army Corps of Engineers, and Environmental Protection Agency).

Early communication on planning is anticipated to minimize the potential for project delays by allowing agencies to identify informational gaps or the need for clarification early in the decision process, or to identify regulatory provisions that must be met by industry before exploration can commence. The IOP will give agencies information about how an operator proposes to satisfy regulatory requirements and will allow consideration of potential issues at an early planning stage, ideally before the operator expends significant resources securing contractual arrangements. Relevant issues include equipment, logistics, subsistence use of OCS waters, scheduling regulatory and Coast Guard resources, effects on the operations of local villages, and other considerations that may not be appropriate or a safe practice given the Arctic's extreme operating conditions.

An integrated Federal approach to project management should avoid last minute surprises and eliminate "stovepipe" agency actions.

Questions from Rep. Fleming for BSEE Director Brian Salerno

In your response to my questions at the Arctic hearing, you said that you had conversations with the White House on climate change and social cost of carbon. How many conversations have occurred, and what was the nature of those conversations? In what ways are BSEE rules informed or shaped by the White House's policies on climate change or the social cost of carbon?

As indicated at the hearing, BSEE has not had any conversations with the White House regarding climate change or the social cost of carbon.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 14 2015

The Hon. Don Young
Chairman
Committee on Natural Resources
Subcommittee on Indian, Insular and Alaska Native Affairs
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 June, 2015, hearing on *H.R. 2387 the "Alaska Native Veterans Land Allotment Equity Act."*

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

Sincerely,

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

Enclosure

cc: The Honorable Raul Ruiz, Ranking Member
Committee on Natural Resources,
Subcommittee on Indian, Insular and Alaska Native Affairs

BLM Responses to QFRs

Committee on Natural Resources
Subcommittee on Indian, Insular and Alaska Native Affairs
June 10, 2015

H.R. 2387 (Young of AK), To amend the Alaska Native Claims Settlement Act to provide for equitable allotment of land to Alaska Native veterans.

Questions from the Honorable Don Young, Chairman

PANEL 1: Mr. Mike Black, Director, Bureau of Indian Affairs, Department of the Interior

- 1. Can you provide a record of the Native veterans who applied for allotments and received a total acreage that was less than their 160 acre entitlement?**

Answer: The Native Allotment Act of 1906, as amended, did not create a 160-acre entitlement. Rather, the 1906 Act authorizes the Secretary of the Interior to make allotments to an "Indian or Eskimo who resides in and is a native of" Alaska, for land "occupied by him not exceeding one hundred and sixty acres" (34 Stat. 197). Further, the Alaska Native Veterans Allotment Act (1998 Act) provides for Native veterans "eligible for an allotment of not more than two parcels of federal land totaling 160 acres or less under the Act of May 17, 1906." A representative sample of the BLM's records indicates that most of the Alaska Native Vietnam-era veterans who met the application requirements and applied for eligible lands under the 1998 Act, received the entire parcel for which they applied. Very few parcels were rejected in part; however, in some instances, the requested allotments were not contiguous, and if only one parcel was eligible under the 1998 Act, that parcel was conveyed.

- 2. What are the reasons why some Native veterans received partial allotments?**

Answer: Some Native veterans applied for allotments of land that were explicitly excluded from eligibility for conveyance under the 1998 Act. In other cases, Native veterans applied for lands that the Federal government did not own. The BLM did not convey ineligible lands. In cases where an application included both eligible and ineligible lands, however, the BLM conveyed those lands that were eligible pursuant to the 1998 Act, which provided that a person who qualified for an allotment on certain types of land prohibited from conveyance may select an alternative allotment from lands within the geographic boundary of the applicant's regional corporation. Unfortunately, several regional corporations (Aleut, CIRI, Sealaska, Chugach, for example) had little or no land within their boundaries available for selection as an alternative allotment under the 1998 Act.

- 3. How many Native veterans who applied for allotments under the 1998 Act did not receive allotments, or received partial allotments, because they missed deadlines that were set by the Department administratively during the process (as opposed to the 18 month application timeframe set by the Act)?**

Answer: In implementing the 1998 Act, the BLM's regulations set out procedures for an "open season," for 18 months, from July 31, 2000, through January 31, 2002, during which eligible Alaska Native Vietnam-era veterans could apply for an allotment under the repealed 1906 Act. Many of the applications BLM received were incomplete, lacking the required proof of military service, proof of Native blood, maps, legal descriptions, or other required information. In those cases, each applicant was given written notice of the deficiency, and an opportunity to provide the required information. Those notices were generally delivered by certified mail, and included deadlines to respond, though requests for extensions of time were routinely granted. Any rejections arising from the notices were based on failure to file a complete application, not mere failure to meet a deadline. Applicants with inadequate proof of use and occupancy received written notice and an additional opportunity to file additional proof, and if they failed to do so, were given a formal contest hearing before an administrative law judge.

The BLM does not have an exact number of Native veterans who did not receive allotments or received partial allotments. The BLM's land information record keeping system only records a single reason for rejection and many of these cases were ultimately rejected for multiple legal flaws. While more comprehensive information is recorded in each physical case file, collecting this data would require the BLM to review each of the case files for all rejected applications, to identify all of the documented reasons for rejection.

4. Were any Native veterans denied their allotment because they did not have Alaska residency for part or all of the application period?

Answer: The BLM received applications from Alaska Natives who resided outside Alaska during the "open season" period of July 31, 2000, through January 31, 2002. Under the 1998 and 1906 Acts, the Secretary of the Interior was authorized to make allotments only to an "Indian or Eskimo who resides in and is a native of" Alaska. Approximately 30 applications were rejected, at least in part, for failure to establish Alaska residency.

5. Of the Native veterans who applied for allotment under the 1998 Act, and were denied because they did not meet the period of service requirements under the Act, how many would be eligible under the new period of service requirements in H.R. 2387?

Answer: The number is unknown, because many applications that were denied for failure to prove military service provided no evidence of service whatsoever. The 1998 Act was intended to redress the burden of Vietnam-era military service that prevented Alaska Natives then on active duty from exercising their rights to file for an allotment under the 1906 Native Allotment Act during the three-year period immediately prior to repeal of the 1906 Act. Alaska Natives who served during other periods, for example, from 1964 to 1968, or from 1972 to 1975, were not prevented, due to their military service, from filing for an allotment prior to the December 18, 1971 repeal of the 1906 Act.

We also note that H.R. 2387 expands not just the period of service requirements under the 1998 Act, but also the residency, use and occupancy, and eligible lands requirements. The bill expands potential beneficiaries to include all Alaska Natives who served in the military from 1964 to 1975, with no requirement that their military service adversely affected their ability to

file an allotment application. H.R. 2387 also opens vast new areas of Federal land in Alaska to selection, including but not limited to, national forests, wildlife refuges, wild and scenic rivers, wilderness areas, military installations, and State and ANCSA selections, with no requirement to show any prior use, occupancy, or other connection with the land. The BLM did not receive sufficient information from applicants under the 1998 Act to estimate the number of people who would be eligible under the expanded eligibility requirements of H.R. 2387.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 24 2015

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

Dear Chairman Lamborn:

Enclosed are responses prepared by the BLM in response to questions received following the July 15, 2015, oversight hearing before your Subcommittee on "*The Future of Hydraulic Fracturing on Federally Managed Lands.*"

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

Sincerely,

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

Enclosure

cc: The Honorable Alan Lowenthal
Ranking Member

Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
1324 Longworth House Office Building
Wednesday, July 15, 2015
10:30 AM

Oversight hearing on:

"The Future of Hydraulic Fracturing on Federally Managed Lands"

Questions from Rep. Lamborn for Neil Kornze, Director, U.S. Bureau of Land Management

- 1. In your written testimony, you state the implementation of the Hydraulic Fracturing ("HF") rule will be \$11,400 for each HF operation which you term "a modest cost." When developing this cost, did the bureau look at the many other costly inhibitors and costs including leasing and appraisal delays, APD fees, the lack of cadastral surveys? How are you going to provide operators with certainty that their Notice of Intent to hydraulically fracture a well will be reviewed on a timely basis, by employees trained in well completion, and under a scenario that respects the investments made by operators in well drilling?**

Response:

Consistent with applicable legal requirements, the Bureau of Land Management (BLM) published a Regulatory Impact Analysis (RIA) for the hydraulic fracturing rule on March 26, 2015, alongside the rule. The RIA compares the industry's costs of compliance with the requirements of the final rule with the costs of drilling and hydraulic fracturing operations without the final rule. The cost estimates in the RIA were developed after consulting the available literature and conferring with BLM's petroleum engineers and other knowledgeable professionals, and they were refined after considering the public comments on economic impacts and costs submitted as part of the rulemaking process, including those comments that were submitted to the Office of Management and Budget.

Based on all of that information, the RIA concluded that the rule will increase costs an average of \$11,400 per hydraulically fractured well, or between 0.13 and 0.21 percent of the total cost of drilling and fracturing a typical oil and gas well. In those cases where fluid volumes exceed a certain threshold, we estimate that the compliance with the storage tank requirement could cost an operator \$74,400 (representing approximately 0.8 to 1.4 percent of the cost of drilling a well). Through our analysis we estimate that this is only a small subset of total operations. These operations are those where the volumes of recovered fluids are expected to be very high and typically occur in states (Arkansas, Louisiana, Mississippi, Ohio, Oklahoma, and Pennsylvania) which represent only about 0.8% of estimated hydraulic fracturing activities on Federal and Indian land.

The BLM understands the time-sensitive nature of oil and gas drilling and well completion activities and routinely works with operators to prioritize review activities. We are currently field testing an online system for drilling permits that has the potential to significantly reduce processing times.

- 2. Because of the added costs of federal approvals and processes, the GAO recently found that "... an oil or gas well that develops Indian resources generally costs almost 65 percent more for regulatory compliance than a similar well developing private resources." Do you think adding the final HF rule to this mountain of approvals, fees and permits will help or hurt Indian tribes who are interested in developing their energy resources and providing jobs for their tribal members?**

Response:

The estimated cost to implement the rule is between 0.13 and 0.21 percent of the overall cost of drilling a well for the vast majority of wells. The BLM does not anticipate this modest increase will affect the industry's decisions about whether or where to seek oil and gas leases or conduct oil and gas drilling and hydraulic fracturing operations. The BLM also believes that Indian tribes and tribal members will benefit from the assurance that wells are properly constructed to protect water supplies, and that the fluids that flow back to the surface as a result of hydraulic fracturing operations are managed in an environmentally responsible way. While some tribes have expressed concern over potential economic impacts, other tribes and tribal members have expressed support for BLM's efforts to protect groundwater and the environment.

- 3. The final HF rule would be applicable to operators on public as well as Indian lands. In developing, drafting and now finalizing the rule, did the bureau keep in mind the truly unique political and legal relationship the U.S. has with Indian tribes? Does the U.S. trust responsibility to Indian tribes impose on the federal government additional obligations to ensure the value of their energy resources are maximized for benefit of tribal members?**

Response:

Throughout the rulemaking process, the BLM took steps that recognized the unique political and legal relationship that the U.S. has with Indian tribes. Together with the Bureau of Indian Affairs (BIA), the BLM provides permitting and oversight services under the Indian Mineral Leasing Act of 1938 for approximately 56 million acres of land held in trust by the Federal government on behalf of tribes and individual Indian owners. The BLM works closely with surface management agencies, including the BIA and tribal governments, in the management of the subsurface resources associated with these lands.

The BLM is mindful of its responsibility for stewardship of public land resources and Indian trust assets that generate substantial revenue for the U.S. Treasury, the states, tribal governments,

and individual Indian owners, and remains committed to ensuring the responsible stewardship of Federal and Indian lands, assets, and resources. The BLM's hydraulic fracturing rule is consistent with the Federal government's trust responsibility because it assures that Indian lands receive the same substantive protections as BLM-managed public lands by establishing consistent requirements for safe and environmentally responsible hydraulic fracturing operations.

- 4. Your statement suggests that one rationale for the HF rule is because it has not been updated and a lot has happened in the last 30 years. Indeed, a lot has happened in Indian Country in the last three decades and several Indian tribes repeatedly recommended to the bureau that tribal regulatory authority and decision-making be respected in the final rule. Why did the bureau ignore these recommendations?**

Response:

The BLM carefully considered tribal comments and recommendations. Tribal consultation was a critical part of this rulemaking effort, and the BLM remains committed to making sure tribal leaders play a significant role as the BLM and tribes work together to develop resources on public and Indian lands in a safe and responsible way. The BLM initiated government-to-government consultation with tribes on the proposed rule and held many follow-up consultation meetings with tribes that desired to have an individual meeting. In January 2012, the BLM held four regional tribal consultation meetings, to which over 175 tribal entities were invited. These group meetings were followed by individual consultation meetings with local BLM authorized officers, in recognition of established local relationships. On occasion, these individual consultations included State Directors. After the issuance of the proposed rule, tribal governments, tribal members, and individual Native Americans were again invited to comment directly on the proposed rule.

In June 2012, the BLM held additional regional consultation meetings in Salt Lake City, Utah; Farmington, New Mexico; Tulsa, Oklahoma; and Billings, Montana. Eighty-one tribal members representing 27 tribes attended the meetings. In these sessions, the BLM and tribal representatives engaged in substantive discussions of the proposed hydraulic fracturing rule. A variety of issues were discussed, including but not limited to the applicability of tribal laws, validating water sources, inspection and enforcement, wellbore integrity, and water management, among others. Consultation meetings were also held at the National Congress of American Indians Conferences in Lincoln, Nebraska, on June 18, 2012, and in New Town, North Dakota on July 13, 2012. Additional individual consultations with tribal representatives have taken place since that time. The BLM undertook a robust tribal consultation process for the rule.

- 5. You cite the growth of production on federal land as a testament to this Administration's commitment to onshore oil and gas development; how do you reconcile this commitment to onshore oil and gas with Lloyd Hetrick's testimony that this additional bureaucratic layer will further dissuade producers from federal land production?**

Response:

Many factors influence where producers invest their capital, including commodity prices and various economic factors associated with a given geologic basin (e.g., proximity to demand centers, the availability of infrastructure, etc.). Oil production from Federal and Indian lands rose 12 percent between 2013 and 2014 and is up 81 percent since 2008.

- 6. You admitted that you had not prepared any instructional memoranda directing your state offices on how to implement the rule; as such, not a single variance was in place on June 23, and several offices were providing conflicting information concerning the rule's application. How is your agency taking steps to ensure uniform implementation of the rule throughout all state offices?**

Response:

Prior to the Wyoming District Court's postponement of the hydraulic fracturing rule's June 24, 2015, effective date, the BLM had taken a number of steps internally and externally to prepare for rule implementation. Internally, the agency had partnered with the Society of Petroleum Engineers to add more technical training for the BLM's engineers. The training emphasized cementing and other critical aspects of hydraulic fracturing operations. The BLM has developed, offered, and refined these technical training modules to ensure successful implementation of the new rule, and will continue to do so. The BLM also hosted additional formal training sessions for an estimated 300 internal participants. Beginning in May of 2015, and prior to the Court's stay, the BLM's Washington Office held weekly coordination calls with the BLM State Offices on implementation of the rule in anticipation of the scheduled effective date of June 24. Through these and other efforts, the BLM is confident our offices were and remain prepared for uniform implementation of the rule.

Externally, the BLM has undertaken outreach efforts for states, operators, trade associations, and other interested stakeholders. The BLM State Offices have met with interested state counterparts to undertake side-by-side comparisons of regulatory requirements in order to identify opportunities for variances, and to discuss establishment of Memoranda of Understanding (MOUs) that will realize efficiencies and allow for successful implementation of the rule.

- 7. One of the associated costs with the hydraulic fracturing rule is an additional National Environmental Policy Act ("NEPA") analysis that will occur if an operator submits a standalone notice of intent to hydraulically fracture, separate from the Application for a Permit to Drill. Did the final rule analyze the cost of this additional NEPA analysis, and why or why not? Can NEPA analyses add substantial costs and delays to a project?**

Response:

As explained above, the RIA compares the industry's cost of compliance with the final rule with the costs for drilling and hydraulic fracturing operations without the final rule. This includes assessment of the administrative requirements associated with the rule, including the review of information associated with a Sundry Notice in the event the operator submits a request to hydraulically fracture separate from their APD. It concludes that the rule will increase costs an average of \$11,400 per hydraulically fractured well, or between 0.13 percent and 0.21 percent of the total cost of drilling and fracturing a well. The BLM anticipates that the rule will add just four hours to the agency's review time for a drilling operation.

Of wells currently being approved to be drilled, over 90% use hydraulic fracturing. In the uncommon scenario that an applicant uses a Sundry Notice rather than an APD to request approval to hydraulically fracture a well, the BLM will determine whether the existing NEPA analysis is adequate to authorize the hydraulically fractured well completion. We anticipate that additional NEPA analysis will rarely be required.



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

DEC 24 2015

The Honorable Tom McClintock
Chairman
Committee on Natural Resources
Subcommittee on Federal Lands
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Department to the questions for the record submitted following the June 16, 2015, legislative hearing on H.R. 482, H.R. 496, H.R. 959, H.R. 1138, H.R. 1554, and H.R. 2223.

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

Sincerely,

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

Enclosure

cc: The Honorable Niki Tsongas, Ranking Member
Committee on Natural Resources,
Subcommittee on Federal Lands

**Committee on Natural Resources
Subcommittee on Federal Lands
1324 Longworth House Office Building
Tuesday June 16, 2015
10:00 A.M.**

Legislative hearing on:

H.R. 482, H.R. 496, H.R. 959, H.R. 1138, H.R. 1554, H.R. 2223

Questions from Chairman Tom McClintock for Deputy Assistant Director of Energy Minerals, and Realty Management Karen E. Mouritsen and/or Associate Director for Park Planning, Facilities and Lands Victor Knox:

1. Last year the National Park Service published a boundary study and environmental assessment on the Old Ocmulgee Fields. In the study, the National Park Service urged the authorization of acquisition of property from willing donors or sellers up to approximately 2,100 acres. The study notes that once properties are transferred to NPS ownership, "staff responsibilities would expand, although it is not anticipated that new staff would be required."¹

What is the additional cost of maintenance, park operations, and amenities by expanding the Ocmulgee Mounds monument from 702 acres to approximately 2,800 acres?

Answer: The National Park Service based the findings of the study on a comparison of staffing needs for other similarly sized and situated park units.

Monument personnel currently travel through or around a significant portion of the proposed boundary expansion area as part of their regular duties. The Lamar Unit is a separate, non-contiguous section of Ocmulgee National Monument, located approximately two miles south of the Main Unit and south of the proposed boundary expansion area. If all suitable tracts were to be acquired in an expansion, park staff would still travel between the Main Unit and the Lamar Unit, but the National Park Service would administer much of the intermediate land. Expansion

¹ U.S. Department of the Interior National Park Service, "Old Fields Boundary Study & Environmental Assessment," Ocmulgee National Monument, January 2014, P. 2-24.

would make the entire monument more feasible to administer because it would create one contiguous park and better protect the Lamar Unit and its resources by allowing the park to control access from surrounding lands.

The majority of the lands found suitable for addition to the national monument are undevelopable wetlands. Some relatively low-cost improvements for recreational enhancement are anticipated – such as trailhead kiosks, the maintenance of old roadbeds for biking/hiking trails, and the installation of canoe launching facilities – but the park does not plan to develop significant facilities or amenities within the proposed addition.

As indicated in the statement submitted for this hearing, if lands within the expanded boundary were to be acquired, some costs could be incurred for the treatment of structures within the expanded boundary. If the structures were determined to be non-historic in consultation with the State Historic Preservation Office, it is likely the National Park Service would incur demolition costs. Non-historic structures would likely be demolished to comply with the National Park Service policy mandating no net gain of real property assets. Demolition is currently estimated to cost approximately \$10,000 per structure, given the size of the structures in the study area. There are fourteen structures in the study area.

It should be noted, however, that if all the tracts in this proposed boundary expansion were to be acquired, an unanticipated increase in demands related to visitor access, resource protection, and law enforcement could ultimately require additional staff, such as additional law enforcement rangers or maintenance staff to ensure enhanced access and resource protection.

Committee on Natural Resources
Subcommittee on Federal Lands
1324 Longworth House Office Building
Tuesday June 16, 2015
10:00 A.M.

Legislative hearing on:

H.R. 482, H.R. 496, H.R. 959, H.R. 1138, H.R. 1554, H.R. 2223

Questions from Rep. Raúl Labrador for Karen Mouritsen

1. What are the specific threats to the Bureau of Land Management managed land which H.R. 1138 would designate as wilderness that require additional protection?

Answer: The Bureau of Land Management (BLM) has managed the area referenced in H.R. 1138 as a Wilderness Study Area (WSA) since 1980. The BLM manages WSAs in a manner that is substantially similar to the Bureau's management of designated wilderness areas. WSAs remain subject to Congressional review and potential release from WSA status. Designating this area as wilderness would ensure its future protection.

2. What are the specific threats to the Bureau of Land Management managed land which H.R. 1138 would designate as wilderness that cannot be protected against under existing authority?

Answer: The BLM currently manages this area as a WSA to preserve its wilderness values for Congressional consideration, but only Congress can designate the area as wilderness for permanent wilderness protection.

3. What new land use restrictions would be put in place if H.R. 1138 was enacted? Specifically, what activities that are now allowed would no longer be allowed?

Answer: As noted, the BLM already manages this area as a WSA to protect its wilderness values for Congressional consideration. Designating the area as wilderness would make this current management permanent with few changes.

It should be noted that H.R. 1138 would also release approximately 80,000 acres from WSA status. Under the bill, the BLM would no longer manage these lands as WSAs. As such, the BLM would manage the released parcels considering a full range of multiple uses.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 3 0 2015

The Honorable Tom McClintock
Chairman
Subcommittee on Federal Lands
Committee on Natural Resources
United States House of Representatives
Washington, D.C. 20515

Dear Chairman McClintock:

Enclosed are responses prepared by the Department of the Interior in response to questions received by the Department following the October 28, 2015, hearing before your Subcommittee on a discussion draft of the "Federal Lands Recreation Enhancement Modernization Act."

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

Sincerely,

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

Enclosure

cc: The Honorable Niki Tsongas
Ranking Member

Committee on Natural Resources
Subcommittee on Federal Lands
1324 Longworth House Office Building
Wednesday, October 28, 2015
10:00 A.M.

Hearing on:

H.R. _____, the "Federal Lands Recreation Enhancement Modernization Act"

Questions from Chairman Rob Bishop for Olivia Ferriter

1. The Department of the Interior was the victim of a very significant security breach earlier this year where millions of employee records and other sensitive data were exposed. While this was a major concern for these employees, I am concerned with what the level of preparedness might be for resisting any efforts that could be made to target the data of millions of Americans that conduct financial transactions with land management agencies when they make reservations and payments online to enjoy their national parks and public lands.

As the land management agencies consider how to make new technologies and other applications available to the public to enjoy recreating on federal parks and public lands, how do we ensure that we have robust levels of security in place with these transactions and that we don't let our guard down in protecting the data of visitor families?

How do we ensure that there is no weak link in the chain of those that have access to data that becomes something these sophisticated hackers might exploit?

Answer: The Department of the Interior is very concerned about the security of personal data in financial transactions. In conducting these transactions, the Department follows the payment card industry's data security standards for handling, processing and storing credit card related data. Furthermore, the Department is continuously monitoring systems and working with auditors and the information technology security community to ensure that that our information management practices exhibit the absolutely highest standards of diligence.

With respect to the Recreation.gov website, our processing environment is comprised of multiple levels of security including: a secure network, a vulnerability management program, strong access control measures, a monitoring system for regularly testing networks, and an information security policy that includes adherence to the payment card industry's data security standards. Furthermore, our card processing sites do not store cardholder data or personally identifiable information.

In addition, we use, or are in the process of deploying, the following technologies to specifically reduce the potential attack surface in our card processing environment: point-to-point encryption, in which tamper-resistant, hardware-encrypting PIN pads are used to encrypt cardholder data at the point of swipe, and are decrypted only by the processing financial institution, thereby

ensuring that unencrypted data does not enter point of sale devices, servers, or the network; dial out-only connections for credit card processing, where permitted by park logistics, to maintain as few credit-card processing devices on the enterprise network as possible; and, EMV chip and PIN deployment to reduce exposure to counterfeit in-person card use.

2. At a recent Senate oversight hearing, Senator Cantwell asked the Forest Service witness about a \$9 service fee charged by USFS on top of a \$20 campsite user fee. Based upon the response from the federal witnesses at the hearing, the committee appears to have been left with the impression that the contractor has the discretion for the imposition of that fee and is the beneficiary of any perceived upcharge. It is our understanding that that is inaccurate.

In the interest of making sure that we have accurate information regarding the administration of these fees, is it accurate to state that the amount ultimately received by the contractor for making a reservation through the call center or through the website is fixed per the service contract and does not change based upon whether the relevant federal agency chooses to impose an additional discretionary service fee?

Why is there a difference between the approaches taken by the federal agencies? Is that a decision left to the agencies or to the contractor?

Answer: Recreation.gov is an interagency program that was initiated under President Bush's Quicksilver E-Government initiative in 2002. It is a one-stop shop that provides information, trip planning and advanced reservation services for federal recreational lands and activities (camping, cabins, tour tickets and permits). This reservation service is administered under a USDA contract with the Active Network (ReserveAmerica), which was awarded through a full and open competitive process.

Under the terms of the contract, the initial costs to build the reservation service, including providing on-line and call center support, database management, information security, centralized reporting, content development and marketing, were borne by the contractor. The contractor is paid on a per-reservation transaction model, and the fee structure varies based on what is being reserved and the method by which it is reserved. The payment is provided either as an add-on reservation fee or is built into the fee itself, and is designed to amortize the cost of a reservation over the length of stay.

The agencies have discretion to determine how to structure the payments. Generally, the National Park Service (NPS), the Fish and Wildlife Service (FWS), and the Bureau of Reclamation (Reclamation) amortize the cost of the reservation service in the pricing of their facilities. The U.S. Forest Service (USFS) and the Bureau of Land Management (BLM) generally utilize a flat reservation fee of \$9 for on-line transactions and \$10 for telephone transactions.

Many concessioners with USFS sites in the National Recreation Reservation System view the flat reservation fee as a safer business model as it ensures that all reservation service costs are covered. Including a flat reservation fee is also a standard business practice for similar industries and other reservation services.

Questions from Rep. LaMalfa for Olivia Ferriter

1. State Route 89, a very popular road in my district, runs directly through Lassen Volcanic National Park. In order to use this road, the Park Service charges the same fee for people merely passing through the park as it does for people stopping to use different facilities within the park.

Is the Department of the Interior exploring or looking into a reduced fee rate or no fee rate for people merely passing through Lassen Volcanic National Park and other national parks across the country?

Answer: The National Park Service does not charge an entrance fee on State-owned and maintained highways and roads that transect units of the national park system. For example, California State Route 190, which transects Death Valley National Park, is owned by the State of California and maintained by Caltrans, the California Department of Transportation. Access to the public for through travel, including commercial trucking, is permitted without paying an entrance fee. Park roads connecting to State Route 190 within Death Valley National Park are Federally owned and maintained. Visitors using these roads are expected to pay the park entrance fee and commercial trucking not connected with the operation of the park is prohibited except in cases of emergencies when the superintendent may grant permission to use park roads. Visitors are advised that through travel on Hwy 190 is allowed, although if stopping to enjoy the resource or visitor center, the visitor is expected to pay the park entrance fee.

Generally, unlike the U.S. Forest Service, the National Park Service owns and maintains the roads that transect units of the national park system. In instances where a State-owned highway transitions to Federal ownership within the boundaries of a unit of the national park system, that unit may charge visitors an entrance fee on that particular road. The National Park Service does not charge entrance fees on every road that transects a unit of the national park system. The decision to locate an entrance fee station on any road is based on a number of factors, including: whether the unit charges fees; whether the route is the primary, or sole, means of entry into the unit; whether the route is considered a commercial route; and, whether alternative routes of travel are available.

Lassen Volcanic National Park requires an entrance fee for vehicles entering the park. State Route 89 transitions to Federal ownership at the boundary of the park, and is known as Lassen Peak Highway within the park. Lassen Peak Highway is the primary means of entry for visitors to the park, and the sole means by which vehicles can access the developed facilities within the park, including the visitor center. Lassen Peak Highway is not considered a commercial route and is closed seasonally in the winter. Several routes surrounding the park offer alternatives for vehicles traveling north and south of the park. When surrounding State highway or county roads are closed affecting commercial and private commuting (wildfire, flooding, emergency closures), entrance fees for through traffic in the park are temporarily suspended.

The Federal Lands Recreation Enhancement Act prohibits the Bureau of Land Management, the Forest Service, and the Bureau of Reclamation from charging any standard amenity recreation fee or expanded amenity recreation fee for persons who are driving through Federal recreation lands without using the facilities and services. The law does not apply this prohibition to National Park Service lands.

The National Park Service has not explored a separate fee for users who intend to drive through a unit of the national park system that charges an entrance fee without using that park's facilities or services. Park superintendents have the authority to provide local commuters with the opportunity to apply for a permit that would exempt them from entrance fees when entering the park for non-recreational purposes, but there are a number of reasons why the National Park Service does not extend this opportunity to all visitors. In the case of many parks, the road itself is considered a facility and an integral part of the visitor experience, constructed and maintained in such a way as to provide the visitor who never leaves their vehicle with an appreciation of, and connection to, the resources the park was established to protect. In addition, issuing separate fees for visitors who intend to use the non-road facilities offered by the park and those who intended to simply drive through would be difficult, if not impossible, to administer and enforce.

Questions from Rep. Newhouse for Olivia Ferriter

1. As you are aware, per capita national park visitation is in decline, especially among younger Americans. What would draw younger users to our public lands and what are the biggest barriers to their use of America's parks and forests? Are there any Park Service campaigns targeting young people specifically and how effective have they been in increasing park visitation?

Answer: Visitation to national parks is on the rise. The national parks experienced a record year in 2014 with over 292 million visitors and they are on track to exceed that number in 2015. The increased visitation is likely related to a combination of mild weather in some regions of the country, lower fuel prices nationwide, and the success of the public awareness campaign launched earlier this year in advance of National Park Service's Centennial celebration in 2016. Since the National Park Service and the National Park Foundation launched the "Find Your Park" campaign in March 2015, there has been a marked increase in media coverage, advertisements, and social media content about national parks.

The goal of the National Park Service Centennial is to connect the next generation to all of their public lands. Outreach efforts, including the "Find Your Park" campaign, are therefore aimed at reaching younger audiences.

Since the launch of the "Find Your Park" campaign, the National Park Service has added between 20,000 – 45,000 new social media followers monthly. In addition, a recent survey conducted by Grey Advertising indicated that 1 in 4 millennials (18-35 yrs. old) recall seeing "Find Your Park" advertising. In short, the campaign has reached a wide audience since its launch, including younger Americans, and the National Park Service expects that this may correlate to increased visitation in 2016 and beyond.

In addition, in September 2015, the Administration launched the "Every Kid in a Park" initiative to provide all fourth grade students and their families with free admission to national parks and other federal lands and waters for a full year. The current pass is valid for the 2015-2016 school year and grants free entry for fourth graders and three accompanying adults (or an entire car for drive-in parks) at more than 2,000 federally managed sites. This initiative was developed

to encourage all of the nation's children to visit and enjoy the outdoors and inspire a new generation of Americans to appreciate their natural and cultural heritage.