

U.S. Senate Committee on Energy and Natural Resources
May 18, 2017 Hearing
The Nomination of Mr. David Bernhardt to be Deputy Secretary of the Interior

Questions from Chairman Lisa Murkowski

Question 1: I appreciated your answer to my question on consultation with Alaska Natives and American Indians during today's hearing, and have a few brief follow-ups.

- a. Do you believe that tribal consultation is a requirement?**
- b. What will you do to ensure meaningful consultation with tribal governments?**

Response to a. and b.: Chairman Murkowski as I indicated at the hearing, I appreciate the importance of tribal consultation, take consultation seriously, and commit to consult with Alaskan Natives and American Indian Tribes. I will work with Secretary Zinke to implement a culture at the Department of the Interior that ensures opportunities for consultation, where appropriate.

Question 2: What is your view of compacting programs (other than programs in the Bureau of Indian Affairs) within the Department of the Interior? What would you do, if anything, to move forward with those efforts in this administration?

Response: I am strong supporter of efforts of self-governance and self-determination and believe that compacting can help facilitate meaningful economic improvement. However, I would need to learn more about any specific efforts before describing specific steps the Department should take. I would be happy to do so, if confirmed.

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Questions from Ranking Member Maria Cantwell

Question 1: Cadiz Inc.

Regarding Cadiz Inc., please answer the following:

- A. Your financial disclosure forms indicate that you have been providing legal services to a company called Cadiz Inc. Have you provided any services to Cadiz Inc. in the last 6 months? If so, what has been the nature of those services?**

Response: Yes. The nature of the services, as described in the OGE 278e Form that was provided to the Committee after undergoing review by the Office of Government Ethics, is identified as legal services.

- B. Please explain the extent to which your firm's compensation from Cadiz is based on agency or judicial actions and milestones.**

Response: I am not the lead attorney for Cadiz Inc. at my firm. While my private law firm does not publically discuss fee agreements, it is my understanding that the stock arrangement you reference is freely available on the world wide web as part of 8-K filings by Cadiz Inc.

- C. Since November of 2016 have you discussed or otherwise communicated about any issue or project that Cadiz Inc. has an interest in with any member of the following:**

- 1. The Presidential Transition Team, and if so who?**

Response: No

- 2. Executive branch employees (including political officials), and if so who?**

Response: No.

- 3. Members of Congress or their staff, and if so who?**

Response: No

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D. Did you or members of your firm advise or in any way have involvement in the appearance of the Cadiz Water Conveyance Project on the Preside-Elect's Priority List of Emergency and National Security Projects?

Response: I had no involvement with the appearance of the Cadiz Water Conveyance Project on the "Preside-Elect's Priority List of Emergency and National Security Projects," and I do not know if that is a document developed by the Presidential transition.

E. Do you believe that you or your firm's advocacy or work on behalf of Cadiz Inc. in any way influenced the Bureau of Land Management's issuance of the Instruction Memorandum on March 29, 2017, rescinding the Washington Office Instruction Memorandum No. 2014-122—either directly or indirectly?

Response: The nature of my services to Cadiz Inc is addressed in the materials that I have provided to the Committee that were reviewed and certified by the Office of Government Ethics. I did not engage in regulated lobbying for this client under the Lobbying Disclosure Act of 1995, however, to the extent members of my firm did, their activities are disclosed and publically available at www.House.gov.

F. Have you or your firm received any compensation of any kind from Cadiz Inc., including additional shares of stock, since November of 2016? If so, is this compensation in any way reflected in the pay, equity, or bonuses you have received from Brownstein to date? Will the *pro rata* partnership distribution you receive upon your withdrawal from your firm reflect any fees or other form of compensation paid by Cadiz?

Response: As previously stated, my private law firm does not publically discuss the fee agreements of our clients. To the extent that any revenues were received at our firm, expenses are paid and then funds are saved for contingencies and bonus pools, and a monthly distribution to partners is determined. If a monthly distribution is determined, I receive a pro-rata share of the distribution based upon my placement in the firm. Any pro-rata distribution would not include any value from any stock identified in Cadiz Inc's stock price.

G. Will you recuse yourself from working on any matter in which Cadiz Inc. has as interest or on which you have worked on behalf of Cadiz Inc., for the duration of your service, if confirmed?

Response: I believe that public trust is a public responsibility, that maintaining an ethical culture is important, and that it starts at the top. I will fully comply with the ethics agreement that I signed. In addition, as we discussed at the hearing, for the duration of my service at the Department, I intend to actively seek and consult with the Department's Designated Agency Ethics Official regarding any particular matters involving specific parties of former clients or

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entities represented by my former firm. I will install a robust screening process, should one not exist within the office.

In addition, on May 4, 2017, the Committee received correspondence from the General Counsel of the United States Office of Government Ethics, David J. Apol.

Mr. Apol's correspondence included an enclosure of the "ethics agreement outlining the actions that the nominee [David Bernhardt] will undertake to avoid conflicts of interest." Further, General Counsel Apol explained, "we [the Office of Government Ethics] believe that this nominee [David Bernhardt] is in compliance with the applicable laws and regulations governing conflicts of interest."

Finally, I have reviewed some of the prior ethics agreements provided to the Committee in the past. There is a striking degree of consistency between the ethics agreement that I provided to and that was certified by Mr. Apol, and the agreements provided by other nominees to positions within the Department of the Interior who also worked in large private law firms representing similar clients, and in some cases the same clients. Indeed, nominees with very similar ethics agreements were favorably reported out of the Committee subsequent to the publication of the Inspector General's Report you referenced in your recent letter to me. Copies of two such ethics agreements are attached to this document.

Given General Counsel Apol's determination that the ethics agreement I signed complies with the Office of Government Ethics' regulations and the applicable laws governing conflicts of interest, as well as the obvious similarity between that ethics agreement and those previously found by the Committee to be sufficiently clear to proceed with the nominations, with your personal support, I reaffirm to you that I will comply with the ethics agreement that I have signed.

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Question 2: Westlands Water District

Regarding the Westlands Water District, please answer the following:

A. In what court cases and litigation have you represented the Westlands Water District? Please list the cases and their subject matter.

Response:

Case Name	Case #	Subject
Westlands Water District v. United States	109 Fed. Cl. 177 12-cv-0012	Water district's claims against the government for alleged breaches of purported contractual obligation to provide drainage to the district.
San Luis & Delta-Mendota Water Authority; Westlands Water District v. Locke	776 F.3d 971 09-cv-1053-LJO-DLB US Dist. Court of Eastern CA Appeal: 12-15144, 15289, 15290, 15291, 15293, 15296	Action pertaining to a formal Biological Opinion ("BiOp") developed by the Commerce Department's National Marine Fisheries Services pursuant to the Endangered Species Act.

B. During what dates were you registered as a lobbyist for the Westlands Irrigation District?

Response: This information is addressed in the response I have provided to question 20 of the Statement for Completion by Presidential Nominees. In addition, this information is publically available at www.house.gov.

C. On what matters did you lobby for on behalf of the Westlands Water District?

Response: Potential legislation related to the Bureau of Reclamation.

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D. Did you lobby or otherwise advise on any legislative language pertaining to the operation of the Central Valley Project or any related Biological Opinions on behalf of the Westlands Water District in 2016?

Response: I was a registered lobbyist for Westlands Water District until November 2016. I was one of many attorneys across the United States who responded to technical drafting requests made by offices in the U.S. House of Representatives and U.S. Senate from members of both political parties. In that capacity, and upon their request, I provided technical drafting assistance.

E. Did you advise any Members of Congress or their staff on such language after November 18, 2016?

Response: I have not engaged in regulated lobbying on behalf of Westlands Water District after November 18th, 2016.

F. Please provide complete records to the Committee on Energy and Natural Resources of any communications you had with any employee of Congress, the Presidential transition team or executive branch after November 18, 2016.

Response: I am in full compliance with all disclosures and requirements required by the U.S. Senate for consideration as a presidential nominee, including the form entitled Statement for Completion by Presidential Nominees for the Senate Energy and Natural Resources Committee, the clearances required by the Office of Government Ethics and the ethics experts with the Department of the Interior's Ethics Office, and the background investigation by the Federal Bureau of Investigation. It is my understanding that these disclosures are entirely consistent with the past practice for nominees considered and reported favorably by this Committee on a bipartisan basis with the same background in a private law practice, including those who participated on a voluntary basis in presidential transitions.

G. As an employee and shareholder in Brownstein, have you or will you receive any compensation or financial benefits of any kind from the fees collected from Westlands Water District since November 18, 2016?

Response: As previously stated, my private law firm does not publically discuss the fee agreements of our clients. To the extent that any revenues were received at our firm, expenses are paid and then funds are saved for contingencies and bonus pools, and a monthly distribution to partners is determined. If a monthly distribution is determined, I receive a pro-rata share of the distribution based upon my placement in the firm.

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H. Will you recuse yourself from working on any matter in which the Westlands Water District has an interest or on which you have worked on for Westlands for the duration of your service, if confirmed?

Response: I believe that public trust is a public responsibility and that maintaining an ethical culture is important. I will fully comply with the ethics agreement that I have signed. As I explained at the hearing, for the duration of my service I intend to actively seek and consult with the Department's Designated Agency Ethics Official regarding any particular matters involving specific parties of former clients or entities represented by my former firm. I will install a robust screening process, should one not exist within the office.

That said, on May 4, 2017, the Committee on Energy and Natural Resources received correspondence from the General Counsel of the United States Office of Government Ethics, David J. Apol.

Mr. Apol's correspondence included an enclosure of the "ethics agreement outlining the actions that the nominee [David Bernhardt] will undertake to avoid conflicts of interest." Further, General Counsel Apol explained, "we [the Office of Government Ethics] believe that this nominee [David Bernhardt] is in compliance with the applicable laws and regulations governing conflicts of interest."

In addition, I have reviewed some of the prior ethics agreements provided to the Committee in the past. There is a striking degree of consistency between the ethics agreement that I provided to, and that was certified by, Mr. Apol and the agreements provided by other nominees to positions within the Department of the Interior who also worked in large private law firms representing similar clients, and in some cases the same clients. Indeed, nominees with very similar ethics agreements were favorably reported out of the Committee subsequent to the publication of the Inspector General's Report you referenced in your recent letter to me. Copies of two such ethics agreements are attached to this correspondence.

Given General Counsel Apol's determination that the ethics agreement I signed complies with the Office of Government Ethics' regulations and the applicable laws governing conflicts of interest, as well as the obvious similarity between that ethics agreement and those previously found by the Committee to be sufficiently clear to proceed with the nomination, with your personal support, I reaffirm to you that I will comply with the ethics agreement that I have signed.

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I. Will you recuse yourself from working on any matter pertaining to the Central Valley Project for the duration of your service, if confirmed?

Response: As I have stated above, I believe that public trust is a public responsibility and that maintaining an ethical culture is important. I will fully comply with the ethics agreement that I have signed. For the duration of my service, I intend to actively seek and consult with the Department's Designated Agency Ethics Official regarding particular matters involving specific parties of former clients or entities represented by my former firm. In addition, I will install a robust screening process, should one not exist within the office.

J. Will you recuse yourself from working on any matter pertaining to the Endangered Species Act and any relevant Biological Opinions that relate to the operation of the Central Valley Project for the duration of your service, if confirmed?

Response: I believe that public trust is a public responsibility. I believe that maintaining an ethical culture is important. I will fully comply with the ethics agreement that I signed. For the duration of my service, I intend to actively seek and consult with the Department's Designated Agency Ethics Official regarding particular matters involving specific parties of former clients or entities represented by my former firm. In addition, I will install a robust screening process, should one not exist within the office.

Question 3: Conflicts of Interest

On May 11, 2016, I sent you a letter asking you to clarify what steps you will take to avoid conflicts of interest. You have not responded. Please provide a written response to the questions contained in that letter, which were:

- A. Please identify, with specificity, which particular matters involving your clients are currently pending before the Department, and any additional ones you believe may come before the Department within the next two years, which you understand your ethics agreement commits you to not participate in.**
- B. With respect to each of these matters, please identify "precisely what measure will be undertaken" to avoid an actual or apparent conflict of interest.**

Response to A. and B.: Seven days before you sent your correspondence to me asking these questions, the Committee on Energy and Natural Resources had received correspondence from the General Counsel of the United States Office of Government Ethics, David J. Apol.

Mr. Apol's correspondence included an enclosure of the "ethics agreement outlining the actions that the nominee [David Bernhardt] will undertake to avoid conflicts of interest."

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Further, General Counsel Apol explained, “we [the Office of Government Ethics] believe that this nominee [David Bernhardt] is in compliance with the applicable laws and regulations governing conflicts of interest.”

In addition, I have reviewed some of the prior ethics agreements provided to the Committee in the past. There is a striking degree of consistency between the ethics agreement that I provided to, and that was certified by, Mr. Apol and the agreements provided by other nominees to positions within the Department of the Interior who worked in large private law firms representing similar clients, and in some cases the same clients. Indeed, nominees with very similar ethics agreements were favorably reported out of the Committee subsequent to the publication of the cited Inspector General’s Report you referenced in your recent letter to me. Copies of two such ethics agreements are attached to this correspondence.

Given General Counsel Apol’s determination that the ethics agreement I signed complies with the Office of Government Ethics’ regulations and the applicable laws governing conflicts of interest, as well as the obvious similarity between that ethics agreement and those the Committee previously found sufficiently clear to proceed with the nomination, with your personal support, I reaffirm that I will comply with the ethics agreement that I have signed.

In addition, as a general matter, it is my experience that the focus of the chief operating officer of the Department of the Interior will generally not be on particular matters involving specific parties. However, I intend to implement a robust screening process and work closely with the Designated Agency Ethics Official to ensure that I am implementing best practices in my office for the duration of my tenure, should I be confirmed.

C. You reserve the right, in your ethics agreement, to seek a waiver from your recusals in accordance with 5 C.F.R. § 2635.502(d). Under what circumstances would you seek such a waiver? Would you commit to making any such waiver request public?

Response: I do not know under what circumstances I might seek a waiver because I do not anticipate doing so. However, should I seek a waiver from the Designated Agency Ethics Official, I will discuss whether such a request should be made public.

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D. You were widely reported in the press as heading President-elect Trump's transition team for the Department of the Interior, but make no mention of it in your questionnaire.

- 1. Did you serve on President-elect Trump's transition team for the Department of the Interior? If so, in what capacity? Beginning when and ending when?**
- 2. Were you compensated for your service on the transition team?**
- 3. Were you still employed by your law firm while serving on the transition team? Were you still receiving compensation from your law firm while working for the transition team?**
- 4. Did you sign the transition team's ethics pledge? If so, please provide a copy.**

Response to D1-4: I served on the President's transition team throughout the transition as a part-time, unpaid volunteer from approximately September 19th through the inauguration.

Question number 8 of the Committee's Statement for Completion by Presidential Nominees, which I was asked by the Committee to complete, requests material related to employment positions held since college. I fully responded to that question. In addition, my response is consistent with the personal statement of other nominees who have come before this Committee, reported participation in the transition activities of prior administrations, but did not cite any transition activities in response to the employment question.

While I am unable to provide you copy of any ethics agreement I signed for that service, it is my understanding that one version of a Trump For America Ethical Code of Conduct is publically available through the world wide web at <http://www.wsj.com/public/resources/documents/ethicscode.pdf>.

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Question 4: Recusals from Conflicts of Interest

A. Do you believe that your representation of some of your clients—like Westlands or Cadiz—has been so substantial that a reasonable person might question your impartiality beyond the one-year period in your recusal agreement and the two-year period in your ethics pledge under President’s Trump executive order?

Response: No, nor do I believe would a reasonable person, after a 2 year period.

B. Would you be willing to recuse yourself from particular matters involving those clients for the duration of your tenure at the Interior Department?

Response: I believe that public trust is a public responsibility and that maintaining an ethical culture is important. I will fully comply with the ethics agreement that I signed. As I stated at the hearing, for the duration of my service I intend to actively seek and consult with the Department’s Designated Agency Ethics Official regarding particular matters involving specific parties of former clients or entities represented by my former firm. In addition, I will install a robust screening process, should one not exist within the office.

That said, on May 4, 2017, the Committee on Energy and Natural Resources received correspondence from the General Counsel of the United States Office of Government Ethics, David J. Apol.

Mr. Apol’s correspondence included an enclosure of the “ethics agreement outlining the actions that the nominee [David Bernhardt] will undertake to avoid conflicts of interest.” Further, General Counsel Apol explained, “we [the Office of Government Ethics] believe that this nominee [David Bernhardt] is in compliance with the applicable laws and regulations governing conflicts of interest.”

In addition, I have reviewed some of the prior ethics agreements provided to the Committee in the past. There is a striking degree of consistency between the ethics agreement that I provided to, and that was certified by, Mr. Apol and the prior agreements provided by other nominees to positions within the Department of the Interior who worked in large private law firms representing similar clients, and in some cases the same clients. Indeed, nominees with very similar ethics agreements were favorably reported out of the Committee subsequent to the publication of the Inspector General’s Report you referenced in your recent letter to me.

Given General Counsel Apol’s determination that the ethics agreement I signed complies with the Office of Government Ethics’ regulations and the applicable laws governing conflicts of interest, as well as the obvious similarity between that ethics agreement and those the Committee previously found sufficiently clear to proceed with the nomination, with your personal support, I reaffirm that I will comply with the ethics agreement that I have signed.

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Question 5: Service on the Presidential Transition Team

Regarding your service on the Presidential Transition Team for Donald J. Trump, please answer the following questions:

A. Did you discuss any matter or issue for which you or your firm provide legal or lobbying services with the Presidential Transition Team? If so, what matters or issues? Please list them.

Response: I was not involved in any particular transition matter for which I or my firm provided legal or lobbying services.

B. As a lawyer, do you believe that a Presidential transition team's non-disclosure agreement authorizes the withholding of information from Congress?

Response: No.

Question 6: Antiquities Act

Do you agree with President Trump that the use of the Antiquities Act to designate national monuments is an "egregious abuse of federal power?" If so, please provide specific examples of national monuments designations that you believe reflect an abuse of federal power.

Response: As I stated at my hearing, any decisions on monument designations will be made by President Trump. He has stated that public outreach and proper coordination with state, tribal, and local officials and other relevant stakeholders are key elements of any designation, and I agree with this view. I understand that Secretary Zinke is currently reviewing certain monument designations made since 1996. If confirmed, I will support the Secretary and President as appropriate.

Question 7: Offshore Drilling

A. Please provide a list of the clients for which you have provided lobbying or litigation services since January 2009, on matters pertaining to federal leasing policies on the Outer Continental Shelf. Please identify the matters on which you lobbied and the litigation in which you represented each client.

Response: Please see question 20 of the Statement of Completion by Presidential Nominees, which references Cobalt International Energy Incorporated. I have also represented the National Oceans Industry Association as a defendant intervenor in a federal district court case in the United States District Court for the District of Columbia, where judgement was

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entered on March 12, 2014.

B. Please identify which clients lobbied or litigated on each of the following:

(1) The rule entitled "Oil and Gas and Sulfur Operations in the Outer Continental Shelf- Blowout Preventer Systems and Well Control" 81 *Fed. Reg.* 25888 (April 29, 2016);

(2) The proposed rule entitled "Air Quality Control, Reporting, and Compliance," 81 *Fed. Reg.* 19718 (April 5, 2016);

(3) NOAA's Technical Memorandum NMFS-OPR-55 of July 2016 (Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing); and

(4) The Final Rule entitled "Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf," 81 *Fed. Reg.* 46478 (July 15, 2016).

Response: As described in my Statement for Completion by Presidential Nominees, I have not engaged in regulated lobbying activities regarding such issues since 2013, nor have I litigated on any of the matters described in 1-4.

C. Did you advise the Presidential Transition Team on matters pertaining to Federal Offshore Leasing policy? If so, please provide any written documentation associated with the policies you advocated.

Response: My role did not include advocacy.

D. Given your previous activities lobbying and litigating on matters relevant to federal offshore leasing policies, will you recuse yourself from activities undertaken by the Department pursuant to the Executive Order issued April 28, 2017, entitled "Implementing an America-First Offshore Energy Strategy"?

Response: I believe that public trust is a public responsibility and that maintaining an ethical culture is important. If I am confirmed, I will seek the guidance of the Designated Agency Ethics Official regarding all actions that I must take to comply with my ethics agreement. I will fully comply with the ethics agreement I signed. Moreover, for the duration of my service I intend to actively seek and consult with the Department's Designated Agency Ethics Official, regarding particular matters involving specific parties of former clients or entities represented by my former firm. In addition, I will install a robust screening process, should one not exist within the office.

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That said, on May 4, 2017, the Committee on Energy and Natural Resources received correspondence from the General Counsel of the United States Office of Government Ethics, David J. Apol.

Mr. Apol's correspondence included an enclosure of the "ethics agreement outlining the actions that the nominee [David Bernhardt] will undertake to avoid conflicts of interest." Further, General Counsel Apol explained, "we [the Office of Government Ethics] believe that this nominee [David Bernhardt] is in compliance with the applicable laws and regulations governing conflicts of interest."

In addition, I have reviewed some of the prior ethics agreements provided to the Committee in the past. There is a striking degree of consistency between the ethics agreement that I provided to, and that was certified by, Mr. Apol and the prior agreements provided by other nominees to positions within the Department of the Interior who worked in large private law firms representing similar clients, and in some cases the same clients. Indeed, nominees with very similar ethics agreements were favorably reported out of the Committee subsequent to the publication of the Inspector General's Report you referenced in your recent letter to me.

Given General Counsel Apol's determination that the ethics agreement I signed complies with the Office of Government Ethics' regulations and the applicable laws governing conflicts of interest, as well as the obvious similarity between that ethics agreement and those the Committee previously found sufficiently clear to proceed with the nomination, with your personal support, I reaffirm that I will comply with the ethics agreement that I have signed.

E. Do you support the current moratorium in relation to offshore drilling in the Eastern Gulf of Mexico?

Response: I am aware that, in response to the President's recent Executive Order on the Outer Continental Shelf, Secretary Zinke issued a Secretarial Order 3350 directing the Bureau of Ocean Energy Management to review and develop a new five-year plan. I support the President's and Secretary's actions to examine new leasing opportunities within the OCS in order to advance the Administration's energy agenda.

F. Do you support extending this moratorium?

Response: As discussed in the response to the previous question, I support the President's and Secretary's actions aimed at increasing offshore production while balancing conservation objectives.

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Question 8: Congressional Requests

I would like to clarify how you intend to treat Congressional requests for information. When you were the Director of the Office of Congressional and Legislative Affairs under President Bush, in 2003 you responded to the committee's ranking member that you were processing his request for information in accordance with the Freedom of Information Act, and that you were withholding information not subject to disclosure under that Act.

A. If confirmed as Deputy Secretary, what standard will you use in determining how to handle requests for information from Members of Congress? What kinds of information do you believe are exempt from disclosure when responding to Congressional requests for information?

Response: The Department itself needs to carefully weigh every request from Congress and ensure it is meeting the needs of Congress to facilitate harmonious relationships with you and this Committee. As I stated in 2006, my personal view is that the Department of the Interior needs to provide full disclosure to Members of Congress, subject to the Department of Justice's guidelines. In 1998, the Chief of Staff for the Secretary of the Interior promulgated guidance for the Department and stated in that guidance that was to treat requests from individual members under FOIA. Since that time, I have reviewed the Department of Justice's guidelines and I think that the Department's 1998 guidance missed a number of caveats that were contained within the Department of Justice's guidelines.

B. Does the Administration have a formal or informal policy of not responding to requests for information from Democratic Members of Congress?

Response: Not to my knowledge.

C. Will you commit to responding in a timely manner to all Congressional questions or informational requests, whether submitted by a Republican or Democratic member?

Response: I expect the Office of Congressional Affairs to make its best efforts to do so.

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Question 9: Use of Public Lands

A. Do you believe that extractive development (such as oil, gas, mining etc.) is inherently a better use of our public lands than using those lands for conservation or outdoor recreation use? Can you provide any specific examples of where you have advocated conservation or recreation purposes over development of specific public lands?

Response: I do not believe that extractive development is an inherently better use. A specific example of advocating for conservation was the resolution of the National Park Service claims for the Black Canyon of the Gunnison reserved water rights.

B. Is there any case of suspending energy or mineral extraction on federal lands that you would support, and, if so, what would be an appropriate case for a Secretary or President to do so?

Response: I am in agreement with Secretary Zinke that development can and should be conducted in accordance with the principles of multiple use. If confirmed, I will work with the Secretary to balance uses, including hunting, fishing, hiking, and other forms of recreation, which play an important role on public lands.

Question 10: Impact of Trump Budget Proposal

The President's initial budget request for the Department of the Interior is \$11.6 billion for FY 2018, a \$1.5 billion or 12 percent decrease from the currently enacted spending level. If confirmed as Deputy Secretary, you will be the chief operating officer for the department. What would the impact be of a 12 percent budget cut be on the department, including on tribal programs, on national park operations, and other key agency programs?

Response: The impact of such a cut would depend on how the 12 percent cut was allocated or structured, which is information that I do not have access to at this time.

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Question 11: Hardrock Mining

Hardrock mines pay no federal reclamation fee, unlike coal mines. Nor do they pay any royalty. In his confirmation hearing, Secretary Zinke stated that “this is where we need to have the discussion. [...] And I’ll be glad to work with you on it because it needs to be fair.” Do you agree with Secretary Zinke that hardrock mines on federal land should get a similar treatment to keep our policies fair?

Response: I agree with Secretary Zinke that we should have the discussion and that it needs to be fair.

Question 12: Coal Moratorium

On March 29, Secretary Zinke ended a moratorium on federal coal leasing and all work on a programmatic environmental impact statement (EIS) begun under Secretary Jewell. Last week, a group of states sued the Department for violating the National Environmental Policy Act, given the Secretary’s claim that “the public interest is not served” by continuing the BLM’s scientific review. Given your experience with the Department’s alternation of scientific conclusions under Secretary Norton, do you think it is credible or legally defensible for the Department to ignore the science already reviewed by the BLM in its January scoping report?

Response: I reject the premise of your question, and I have not reviewed the referenced report. Should I be confirmed, I would be happy to opine. I am skeptical that “science” was ignored.

Question 13: Coal

On March 29, 2016, Secretary Zinke announced that a comprehensive review of the federal coal program would be terminated, along with lifting a moratorium on significant new coal leases pending the outcome of that review.

A. Do you agree that the federal coal leasing program is flawed and needs to be modernized, consistent with two decades or more of independent audits and evaluations?

Response: I believe that most programs, including the coal program, could be modernized and improved, but I have not reviewed the mentioned reports.

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- B. Will you commit to addressing these long-standing problems and ensure that Americans receive a fair economic return for these public resources before significant new leasing occurs?**

Response: I am committed to ensuring that American taxpayers receive a fair return for public resources.

Question 14: Improving BLM Oil and Gas Permitting Practices

In a recently published report, the GAO identified insufficiencies in the BLM's practices with respect to the development of oil and gas on Federal lands. In particular, after investigating 42 BLM offices, the GAO found that the extent to which the BLM approves requests for exceptions to environmental lease and permit requirements is unknown. The BLM doesn't keep records of who actually submits exception requests, nor does it keep records of request determinations – which raises the question of whether the agency can meet its statutory environmental responsibilities. The same is true for inspections. The GAO found that the BLM didn't use data from site inspections to evaluate whether its permit process was protecting the environment. The BLM doesn't have procedures or guidance on how inspections should be documented and how inspection data should be used. Further, the BLM doesn't always include the public during the permitting stage of development. The GAO found that by not allowing the public to participate in drilling decisions derived from the prior public planning process, the BLM created a set of conditions that allow poor drilling practices to continue to go unchecked. Will you commit to continuing the Department's work to implement the recommendations of the GAO with respect to these issues and improving these processes?

Response: If I am confirmed, I can commit that the Department will consider the GAO's recommendations and incorporate them, as appropriate.

Question 15: Onshore Oil and Gas Royalties

- A. Do you believe that Americans are getting a fair return under the current valuation rules for production of oil and gas on federal lands?**

Response: I am informed that Secretary Zinke has tasked the Royalty Policy Committee to determine whether taxpayers are getting a fair return and I look forward to the results.

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B. Can you tell me how, if confirmed, you will work with Secretary Zinke to achieve a common goal of ensuring a fair return to taxpayers?

Response: I agree that we must ensure taxpayers are getting a fair return. As stated previously, if confirmed I look forward to learning the results of the Royalty Policy Committee's efforts.

Question 16: BLM Master Leasing Plans

Master leasing plans (MLPs) were designed to provide a legal framework for evaluating oil and gas proposals, in particular because as recently as 2009, BLM staff "believed they were required by law to give greater deference to mineral leasing proposals than to the protection of other land uses..." Do you agree that MLPs are necessary in removing ambiguity around multiple land use?

Response: I agree that clear guidance is a necessary component of successful policies. I would need to learn more about the framework to provide a meaningful response to this question. If I am confirmed I would be happy to get up to speed on the issue and meet with you to discuss it further.

Question 17: Taylor Energy

- A. If confirmed, will you ensure that Taylor Energy will remain financially responsible to respond to the ongoing oil discharge from the well?**
- B. Since your firm worked directly with Taylor Energy, will you recuse yourself from all future work on this topic since you advocated for one particular outcome in the past?**

Response to A and B: I believe that public trust is a public responsibility and that maintaining an ethical culture is important. If I am confirmed, I intend to seek the guidance of the Designated Agency Ethics Official regarding all actions that I need to take to comply with my ethics agreement. I will fully comply with the ethics agreement I signed. Moreover, for the duration of my service, I intend to actively seek and consult with the Department's Designated Agency Ethics Official regarding particular matters involving specific parties of former clients or entities represented by my former firm. In addition, I will install a robust screening process, should one not exist within the office.

That said, on May 4, 2017, the Committee on Energy and Natural Resources received correspondence from the General Counsel of the United States Office of Government Ethics, David J. Apol.

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Mr. Apol's correspondence included an enclosure of the "ethics agreement outlining the actions that the nominee [David Bernhardt] will undertake to avoid conflicts of interest." Further, General Counsel Apol explained, "we [the Office of Government Ethics] believe that this nominee [David Bernhardt] is in compliance with the applicable laws and regulations governing conflicts of interest."

In addition, I have reviewed some of the prior ethics agreements provided to the Committee in the past. There is a striking degree of consistency between the ethics agreement that I provided to, and that was certified by, Mr. Apol and the agreements provided by other nominees to positions within the Department of the Interior who worked in large private law firms representing similar clients, and in some cases the same clients. Indeed, nominees with very similar ethics agreements were favorably reported out of the Committee subsequent to the publication of the Inspector General's Report you referenced in your recent letter to me. Copies of two such ethics agreements are attached to this correspondence.

Given General Counsel Apol's determination that the ethics agreement I signed complies with the Office of Government Ethics' regulations and the applicable laws governing conflicts of interest, as well as the obvious similarity between that ethics agreement and those the Committee previously found sufficiently clear to proceed with the nomination, with your personal support, I reaffirm that I will comply with the ethics agreement that I have signed.

Question 18: Arctic

You recently served as Counsel to the State of Alaska in *State of Alaska v. Jewell, et al*, which challenged the Department of the Interior's decision to deny the state a permit for exploratory oil and gas studies in the 1002 section of the Arctic National Wildlife Refuge. Due to your inability to maintain impartiality on this issue, will you recuse yourself from issues relating to drilling in the Arctic National Wildlife Refuge?

Response: I reject the premise of your question, which appears to be that litigation on a particular legal question regarding whether the lawfulness of Department of the Interior actions creates a presumption of permanent partiality on different matters. I believe that public trust is a public responsibility and that maintaining an ethical culture is important. If I am confirmed, I will seek the guidance of the Designated Agency Ethics Official regarding all actions that I need to take to comply with my ethics agreement. I will fully comply with the ethics agreement I have signed. For the duration of my service, I intend to actively seek and consult with the Department's Designated Agency Ethics Official regarding particular matters involving specific parties of former clients or entities represented by my former firm. In addition, I will install a robust screening process, should one not exist within the office.

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Question 19: Bush Administration Scandals

During your time as Solicitor at the Department of the Interior under President George W. Bush, the Deputy Assistant Secretary for Fish, Wildlife and Parks—Julie MacDonald—resigned her position after being found to have committed unethical activities, specifically pressuring Fish and Wildlife Service scientists to alter findings and data to suit political ends in regards to Endangered Species Act determinations. In the Inspector General's report on this scandal, it was pointed out that you had been very involved in ESA decisions and were the person who would make final decisions on such matters should a dispute arise. Can you give an account of your involvement in tampering with scientific findings and in the Julie MacDonald issue on the whole? Do you currently work with Ms. MacDonald in her role with Westlands Water District?

Response: I became involved with matters related to the Endangered Species Act because the listing, critical habitat, and litigation defense process seemed broken as I evaluated the work of the Office of the Solicitor. The implementation program, from a legal review process, was a mess. Indeed, it is demonstrated in the report you reference that some lawyers

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in the Solicitor's Office had found packages drafted in the field and region to be not legally sufficient for years – and not merely as result of the actions of the Deputy Assistant Secretary. I thought this was a serious problem, and I knew improvements to the Office of the Solicitor's role were necessary to support these decisions. As a result of reaching this conclusion, I took various steps to address the challenges shortly after I was sworn in as Solicitor. For example, one of my first acts as Solicitor was to provide clear direction on what it meant to complete a legal review as an office of the Solicitor attorney, and my expectations as to how issues should be elevated to reach resolution if the bureau's client representatives were not accepting the legal advice that was provided. In addition, I began an effort to evaluate certain questions to evaluate the defensibility of legal positions that did not appear successful and to address other questions the U.S. Fish and Wildlife Service seemed to be grappling with.

I was not involved in tampering with scientific findings, and any such inference is wrong.

As I explained, I put in place mechanisms to ensure that lawyers' comments on flawed packages were elevated through the ranks all the way to the Deputy Secretary, if necessary, to ensure such matters were resolved. It is concerning that such mechanisms appear to have not remained in place in recent years.

I am not aware of any referenced role Ms. MacDonald has with Westlands Water District.

Question 20: Maintaining Public Lands

Secretary Zinke has stated plainly to this committee that he will not sell or transfer our public lands. Will you also commit to keeping our public lands in the federal estate?

Response: I share Secretary Zinke's opposition to the sale or wide scale transfer of federal lands. As the Secretary offered in his written responses to this Committee, "...there are some situations in which commitments have previously been made, inholdings need to be swapped or exchanged, or land banks are well situated to address the needs of growing urban areas, where limited transfer is appropriate." I would need to review such proposals before making any decisions.

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Question 21: Methane

As you know, the BLM Methane and Natural Gas Waste Prevention rule is in effect after some in Congress failed last week to nullify the rule under the Congressional Review Act.

- A. Prior to your service on the President-elect's transition team, did you engage in lobbying on behalf of oil and gas clients on this rule?**

Response: No, I have not engaged in regulated lobbying on this issue.

- B. What are your plans for effectively implementing this rule to ensure producers do not waste valuable energy resources we all own, while exercising the considerable flexibility built into the rule to contain the costs of compliance.**

Response: I echo the Secretary's commitment to ensuring that the American taxpayers get a fair return from natural resource development on federal lands. If confirmed, I will support the Secretary's efforts to review this regulation, in addition to other programs at the Department, and to evaluate whether there are opportunities to ensure that fair return is captured.

Question 22: Wilderness

Our nation's public lands are incredible assets to the country that support a booming outdoor recreation economy as well as clean air, clean water, and healthy ecosystems for wildlife. At the core of these public lands are the designated wilderness areas across the country that provide the most rugged, wild, outdoor experiences one can have.

Will you commit as Deputy Secretary of Interior to protecting and enhancing these incredible places so that their wilderness values are upheld for all future generations of Americans to enjoy?

Response: Like you, in general, I find wilderness areas to provide the most rugged wild outdoor experiences one can have, and I believe they provide special solitude and enjoyment today and into the future.

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Question 23: Tribal Consultation

Tribal Consultation is governed by Executive Order 13175 and requires consultation with tribes on all “Policies that have tribal implications,” including “regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” Will you fully comply with and Tribal consultation requirements and ensure that the Department will conduct meaningful tribal consultation on all policies that have tribal implications?

Response: As I indicated at the hearing, I appreciate the importance of tribal consultation, take consultation seriously, and commit to consult with tribes.

Question 24: Trust responsibility to Tribes

The federal government has moral and legal obligations to uphold its treaty and trust responsibilities to Native Americans and engage with tribes on a government-to-government basis. This government-to-government relationship is the basis for tribal consultation, the process by which the United States engages in a meaningful, good-faith dialogue with tribes. Interior, by virtue of its role in Native American affairs, plays a prominent part in how the government engages in tribal consultation.

- A. If confirmed, will you uphold the federal trust responsibility and ensure that tribes are provided with adequate government-to-government consultation on any issue that may affect them?**
- B. In the wake of the Dakota Access Pipeline, three federal agencies, including Interior, published a report in January 2017 entitled, “Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions.” The subject of months-long consultation across Indian country, this report sets forth a number of recommendations to improve the process for permitting and infrastructure development. What steps do you intend to take to incorporate this report into the agency’s decision-making process?**

Response to A. and B.: Before I was out of law school, I was receiving lessons outside class on the meaning of the federal government’s trust responsibility from a remarkable tribal leader and his longtime attorney, as they tried to advocate their interests in Congress. They both had a very a significant impact on the development of my perspective of the trust responsibility and self-determination. I am not familiar with the report published by the previous Administration, but as I indicated at the hearing, I appreciate the importance of tribal consultation and take it and the trust responsibility seriously.

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More important than my views, however, are the words of Tribes who know me, such as the Southern Ute Tribe, which has stated its belief that I “am well positioned to help lead the Department of the Interior in a manner that respects the federal trust responsibility to Indian tribes and empowers tribal communities to exercise greater self-determination.”

Question 25: Co-management with Tribes

Do you believe in co management when tribes have a significant interest in cultural preservation of an area?

Response: I think co-management can be appropriate. From my perspective, it is appropriate to consider such matters on a case-by-case basis. I believe it is worth looking at and accommodating, where appropriate.

Question 26: Tribal Trust

Secretary Zinke recently stated that tribes should have an “off-ramp” with regard to the Indian Reorganization Act – that tribes should “have a choice of leaving Indian trust lands and becoming a corporation . . .” The last time an administration attempted to privatize Indian lands was nearly seventy years, when Congress terminated more than one hundred tribes and small bands, depriving nearly 1.4 million acres of land of federal trust protections. In most cases, the impact of termination on a tribe was to increase poverty.

A. Can you please clarify the Secretary’s remarks regarding privatizing Indian country?

Response: I am not aware of the remarks.

B. Can you please share your views on the importance the Administration will place on the land to trust process?

Response: I have not discussed this issue with the Secretary or anyone in the Administration and thus have not formed a view.

Question 27: Tribal Land into Trust

Restoring tribal homelands rebuilds tribal land bases and strengthens the relationship between tribes and the federal government. It also makes administering justice and engaging in economic development easier by reducing checkerboard landholdings. During your time at the Department of the Interior, it is reported that the Department imposed a de facto moratorium on land into trust acquisitions through agency

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memorandums.

- A. Can I get a commitment from you that the Interior Department will not put in place a land into trust moratorium? If you can't make that commitment, would you at least commit to a transparent process that prioritizes meaningful consultation with tribes and tribal organizations - on an open and fair basis – so their voices can be heard on any proposed changes to the Department's land into trust procedures?**

Response: I will commit to learning more about the matter and talking to your staff.

- B. In 2008, the Department of the Interior, through then-Assistant Secretary Carl Artman, finalized guidance for restricting land to be taken into trust related to gaming. The Department did not consult with tribes in drafting this guidance. Can I get a commitment from you that the Interior Department will consult with tribes on a government-to-government basis when developing any additional guidance or regulations as it pertains to land into trust acquisitions?**

Response: I am not sure what, if any, actions have been taken regarding this matter, but in general, I support consultation.

Question 28: Tribal Sovereignty

Well-settled principals of tribal sovereignty provide that tribes be free from interference of state and local jurisdictions. While you were Solicitor, however, you spearheaded sweeping changes to Interior's off-reservation trust acquisitions by requiring memoranda of understanding between local governments and the tribal applicants, effectively giving localities veto authority over trust acquisitions.

- A. What role do you believe is appropriate for state and local governments to play in a tribe's economic development vis-à-vis the land into trust process?**
- B. Please state the bases of authority—contained within the Indian Reorganization Act or elsewhere in law—that authorizes Interior to elevate the concerns of states over that of tribes.**

Response: Because I am not currently at the Department, I would need to review the current land into trust procedures and process, if confirmed.

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Question 29: Tribal Energy

As the Department of Energy laid out during a recent Tribal Energy summit, the potential for renewable energy in Indian Country is enormous. While reservations account for 2% of the nation's land mass, they hold 5% of the nation's potential renewable energy resources. The Department of Energy also estimates that wind power from tribal lands could satisfy 32% of the total U.S. electricity demand. And solar production from Indian lands could generate enough energy to power the country two times over.

We've also heard from the GAO that the Department of the Interior is turning its attention to conventional fossil fuels for development, this despite the upward trajectory of renewables.

What role do you think renewable energy should play in energy development in Indian Country?

Response: I believe it can play a significant role. The Secretary has made it one of his highest priorities that tribes should be able to make their own decisions regarding what type of resource development, including renewable energy, will best benefit each individual tribe. I support the President's and the Secretary's goals.

Question 30: Tribal Gaming

While you were with the Department of the Interior, the agency implemented a number of sweeping regulatory changes that had the effect of slowing down gaming approvals. Yet the Indian Gaming Regulatory Act provides tribes, states, and the surrounding counties with billions of dollars nationally.

A. Do you intend to seek changes to implementation of the Indian Gaming Regulatory Act, either by regulation or through official or unofficial agency guidance??

Response: Because I am not at the Department, I cannot speak to the Department of the Interior's plans on this matter or whether changes might be considered for this program.

B. Do you commit to engaging in meaningful consultation with tribes on any changes this Department makes to how it implements the Indian Gaming Regulatory Act?

Response: As I have indicated previously, I support consultation.

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Question 31: Federal Recognition

The Executive branch has recognized tribes through executive orders and other federal action for more than a century, and Interior first promulgated regulations on this process more than forty years ago, in 1978. Federal recognition is extremely powerful: it allows a tribe to exercise its sovereign status on equal footing with states, with the full panoply of associated rights, such as the right to tax and assert civil and criminal jurisdiction. Also with federal recognition comes eligibility for federally-funded services such as health care and housing assistance. Given the importance of the decision to recognize a tribe, Interior has put in place a process intended to be free of political considerations.

As Deputy, what steps will you take to ensure the process is free from political interference?

Response: I am not familiar with the current state of the federal recognition process and will examine the current regulations, visit with career staff, and meet with you to discuss appropriate steps.

Question 32: Coal self-bonding

A significant number of coal companies filed for bankruptcy last Congress. These bankruptcies highlighted the fact that federal and state coal reclamation performance bonding requirements are inadequate. In response, the Department took important steps to begin address its financial assurance rules under the Surface Mining Control and Reclamation Act, including implementation by states of those rules. Earlier this year, the GAO concluded that across a range of federal energy and natural resources, coal alone benefits from being able to “self-bond” in order to meet reclamation performance requirements.

Will you commit to continuing the Department’s important work to reform the financial assurance rules for coal in light of lessons learned from the recent slate of bankruptcies?

Response: I am not familiar with the current status of the Department’s financial assurance regulations under the Surface Mining Control and Reclamation Act. If confirmed, I will commit to becoming better acquainted with the issue.

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Questions from Senator John Barrasso

Question 1: Among the Obama Administration’s particularly harmful regulations is the Bureau of Land Management’s “Waste Prevention, Production Subject to Royalties, and Resource Conservation” rule regarding venting and flaring of methane on federal and Indian lands. I believe this rule is unnecessary, costly, and duplicative of existing state and federal regulations. Please explain the steps you will take to address this rule and similar duplicative rules, and to prevent future duplicative regulations from being issued.

Response: I have not yet had any substantive interaction with the Department on implementing the President’s America First Energy Plan. However, closely examining regulations to eliminate those that are duplicative and burdensome will be a start. A brighter future depends on energy policies that stimulate our economy, ensure our security, and protect our health.

Question 2: In Wyoming, there are plans underway to expand surface water storage capacity. For too long, the permitting review process at the Department of the Interior has proven to be more timely and costly than necessary. This uncertainty threatens project funding and completion. If confirmed, will you commit to improving and streamlining the process to insure that timely communications with applicants occur and decisions on water storage facility permits are made?

Response: If confirmed, I will look into this matter. I recognize the need to streamline and expedite the consideration of water storage projects, as these projects have the potential to provide numerous benefits, including reliable water supplies, flood control, hydropower, and water quality improvements.

Question 3: Permitting on federal lands frequently requires mitigation of some kind. The Obama Administration took many liberties with the concept of mitigation, including issuing a revised Department-wide strategy and suggesting that advanced mitigation should be the future standard. What guidance would you give the Department to ensure there are clear, consistent guidelines for mitigation in the future?

Response: If confirmed, I would work to ensure that program authorizations are examined to confirm whether the Department’s legal mandates establish when and how mitigation could be charged, along with appropriate sideboard.

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Question 4: What roles do you believe public land and private land/private investment should have in the future of mitigation, and are these roles different?

Response: I want to ensure that the Department's actions regarding on or off site mitigation requirements are well grounded in the law, if confirmed I will review the Department's statutes and regulations and discuss the matter with Secretary Zinke before offering an opinion.

Question 5: While the Forest Service is housed in the Department of Agriculture, cohesive and coordinated management between the Forest Service and the Department of Interior is critical in addressing the risk of catastrophic wildfire. How would you work with Secretary Perdue, and staff at the Department of Agriculture to improve forest and fire management on multi-agency fires?

Response: I agree that maximizing coordination between the Department of the Interior and the Department of Agriculture on multi-agency fires is an important approach, and if confirmed I will support pursuing ways of improving cohesive and coordinated fire management between the agencies.

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Questions from Senator Ron Wyden

Question 1: On Secure Rural Schools, I expect you to be engaged and helpful in getting a long-term solution on this important issue. As you know, I coauthored the original Secure Rural Schools bill because counties were struggling, and it is just as important today as it was then. Faced with continued budget shortfalls, rural counties are forced to make difficult cuts to libraries, schools, and infrastructure projects, and do more with less. I understand that many of my colleagues will need to see forest management reforms as part of any long-term SRS solution. I want to be clear that I take a back seat to no one when it comes to tackling tough forestry issues, including increasing timber harvest, which is what my O&C bill did. But it must be done in a sustainable way that does not stomp on our bedrock environmental laws. Tying the well-being of rural economies to unsustainable logging levels is a dead-end, leading the counties to exactly the same gridlock they are facing now while depleting our nation's forests.

Mr. Bernhardt, short-term reauthorizations of SRS are simply not adequate for rural counties working to manage budgets each year. Will you commit to working with Congress towards a long-term solution for SRS?

Response: Yes, I will commit to working with you and other Members of Congress on the issue.

Question 2: I have long said that land management decisions are best made through a deliberative process that includes broad stakeholder engagement and thorough consideration of local concerns. Recently there have been reports that the Department has suddenly postponed meetings of Resource Advisory Councils (RACs) until September. RACs are a great example of bottom-up land management, and should serve as a model for stakeholder engagement.

As Deputy Secretary, what steps will you take to ensure local voices, including RACs, have opportunities to provide input and take part in the process at all times, not just when those local voices align with the goals of the administration?

Response: Like you, I believe collaboration and listening to varied views are important. I would need to learn more about the specific issues here to have specific steps to recommend.

Question 3: I was very disappointed to see the President's Executive Order calling for a review of national monument designations and to learn that Secretary Zinke will be reviewing the Cascade-Siskiyou National Monument's recent expansion. The original monument designation in 2000 and its expansion both received significant and broad local support, and the public was given the opportunity in both designations to be a part of the process.

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As Deputy Secretary, what will be your role in reviewing and evaluating monuments?

Response: If confirmed, I do not know if I will have any role in this process.

Will your review of monument designations ensure the overwhelming public support for monuments like Cascade-Siskiyou are respected, even if that public support is in opposition to the Administration's goals?

Response: I believe that where a monument has the support of its local community, state, and congressional delegation, the Administration would be wise to listen to such consensus.

Question 4: Mr. Bernhardt, the Department of the Interior's Land Buy-Back Program for Tribal Nations implements the land consolidation component of the *Cobell* Settlement, a component that provided \$1.9 billion for tribes to consolidate tribal homelands. This program is vital for the economic development of Tribal communities across the United States, works to promote self-sufficiency, and is a necessary step in repairing years of injustice committed against Tribes in Oregon and throughout the United States.

The Administration recently sent a letter to tribal leaders on May 9 of this year, in which the Administration expressed its intent to undertake a "brief strategy review period" regarding this important program. Please walk me through how you intend to implement the Buy-Back Program.

Response: I am not aware of the letter, and I have limited knowledge of this program. If confirmed, I would be happy to learn more about the issue and meet with you.

Should the Department of Interior propose changes to the Buy-Back Program, how will Interior ensure Tribes are provided opportunities for meaningful input?

Response: As I indicated in the previous response, I am not aware of the letter, and I have limited knowledge of this program. If confirmed, I would be happy to learn more about the issue and meet with you.

What do you believe are appropriate steps the Department of the Interior should take to address the issue of fractionalization once the Buy-Back program exhausts the fund?

Response: I have limited knowledge of this program. If confirmed, I would be happy to learn more about the issue and meet with you.

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Question 5: Recreational, commercial, and tribal fishing groups in Oregon are very concerned about how water allocation will affect salmon and steelhead runs, especially in the Klamath river basin. In fact, due to extremely low numbers of Chinook salmon returning to the Klamath drainage, the Pacific Fisheries Management Council closed entire salmon fishery south of Humbug Mountain to Eureka, CA for the entire 2017 season.

Citing your previous work for the Westlands Water District and the risk that excess pumping of water during drought years poses to both endangered species as well as fishermen reliant on adequate river flows, how will you balance the needs of agribusinesses with those of the fishing community and the environment?

Response: First, I will follow my recusals. That said, I will enter questions with an open mind. More important, if appropriate, I would be interested in meeting with your constituents, who are concerned, to learn more about their perspective, their concerns, and the impact these closures have on them, and their suggested solutions.

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Questions from Senator Bernard Sanders

Climate change

Question 1: President Trump has suggested in the past that climate change is a hoax. Is the President correct? Is climate change a hoax?

Response: As I indicated at the hearing, I believe that man is an influence on climate change.

Question 2: Do you agree with the vast majority of scientists that climate change is real, it is caused by human activity, and that we must aggressively transition away from fossil fuels toward energy efficiency and sustainable energy like wind, solar, and geothermal?

Response: As I indicated at my hearing, I believe that man is an influence on climate change. I agree we need to produce renewable energy.

Question 3: Do you agree with the vast majority of scientists that the combustion of fossil fuels contributes to climate change?

Response: Yes.

Question 4: Do you believe that the Department of the Interior has a role in reducing the extraction and use of fossil fuels?

Response: I am not aware that Congress has ever provided that direction to the Department of the Interior.

Question 5: If confirmed, how will you work to address climate change?

Response: I will work to understand it better and pursue adaptive management strategies, as appropriate.

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Congressional Relations

Question 6: While you were the Director of Congressional Relations for the Department of the Interior under President George W. Bush, you took the position that you did not need to be responsive to Democratic Congressional Members and Staff. Do you commit that, if confirmed, you will respond to all relevant inquiries from all Members of Congress, regardless of party or position?

Response: I do not believe your depiction is accurate. The Department itself needs to carefully weigh every request from Congress and insure it is meeting the needs of Congress to ensure harmonious relationships with you and this committee. As I stated in my 2006, my personal view is that the Department of the Interior needs to provide full disclosure to Members of Congress, subject to the Department of Justice's guidelines. In 1998, the Chief of Staff for the Secretary of the Interior promulgated guidance for the Department and stated in that guidance that was to treat requests from individual members under FOIA. Since that time, I have reviewed the Department of Justice's guidelines and I think that the Department's 1998 guidance missed a number of caveats that were contained within the Department of Justice guidelines.

Question 7: If confirmed, do you commit to assuring staff in the Office of the Secretary, including the Office of Congressional and Legislative Affairs, will respond to all relevant inquiries from all Members of Congress, regardless of party or position?

Response: I expect the Office of Congressional and Legislative Affairs to make its best efforts to do so.

Conservation Cooperatives

Question 8: In Vermont, the North Atlantic Landscape Conservation Cooperative and University of Vermont's Cooperative Fish and Wildlife Research Unit provide critical scientific information used by natural resource managers, communities, and citizens. Do you support these types of programs, and if so, how will you ensure they are strengthened at the Department of Interior?

Response: As I indicated at the hearing, the Department and its bureaus should base decisions on available science. Regarding the specific programs that you mention, I would need to learn more about them to provide a meaningful response to this question.

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Energy Policy

Question 9: What are the policy implications of the President's America First Energy Plan for the Department of Interior? How will you implement the plan?

Response: Greater energy independence. If confirmed, I look forward to helping the Secretary implement the President's vision, and to engaging in policy discussions and implementation efforts.

Endangered Species Act

Question 10: In the past, including during your testimony to the House Natural Resources Committee on April 19, 2016, you advocated for weakening protections for critical habitat of endangered species. If confirmed, will you continue your earlier efforts to roll back critical-habitat protections for imperiled species?

Response: I did not advocate weakening protections for critical habitat of endangered species. Instead, my testimony advocated following the law. If confirmed, my focus in recommending decisions pertaining to critical habitat and ESA implementation will be on minimizing conflict and controversy associated with the Act in a manner that is consistent with the law.

Question 11: As Solicitor at the Department of the Interior, you authored a controversial opinion, "The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of its Range,'" that was widely criticized by scientists for its failure to grasp the biological realities of extinction and whose central premise was rejected by multiple courts. Do you stand by the assertions made in the opinion? If confirmed, will you continue in your earlier efforts to curtail conservation measures that seek to protect and recover endangered species throughout their geographic range?

Response: My efforts to address the meaning of the phrase "*all or a significant portion of its range*" had nothing to do with any effort of curtailing conservation measures. Instead, it had everything to do with helping the U.S. Fish and Wildlife Service develop a policy that might withstand legal review. The laws in our country are written not by a council of scientists but by Congress, and sometimes the agencies struggle within them. I think it is possible I will need to continue my review of these issues because on March 28th of this year, a federal district court vacated and remanded the Obama Administration's "Final Policy on Interpretation of the Phrase 'Significant Portion of Its Range' in the Endangered Species Act's Definitions of 'Endangered Species' and 'Threatened Species,'" 79 Fed. Reg. 37,578 (July 1, 2014), as it considered the agency's decision related to the pygmy owl. In that case, the court explained that the Obama's administration's

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... interpretation set forth in the Final SPR Policy impermissibly clashes with the rule against surplusage and frustrates the purposes of the ESA. *Cf. Pac. Nw. Generating Coop*, 580 F.3d at 812. Accordingly, it is not a permissible administrative construction of the ESA's SPR language. The Final SPR Policy is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," in violation of the APA. 5 U.S.C. § 706(2)(A).

It is my view that my opinion's central premise was that in this phrase "*all or a significant portion of its range*" the word "significant" could not have the same meaning as the word "all", which should be obvious.

Question 12: In regard to the implementation of the Endangered Species Act, do you support designating critical habitat for species, and do you believe these decisions should be based on the best scientific data available?

Response: I support faithfully executing the laws that have been enacted and, if confirmed, this will include actions under the Endangered Species Act. As I indicated at the hearing, decisions should be based on sound science, however, the inclusion of section 4(b)2 of the act also specifically provides the Secretary the authority to exclude certain areas from designation under certain conditions.

Question 13: Do you support Fish and Wildlife Service guidelines to ensure that science is the driving force behind Endangered Species Act implementation?

Response: As I indicated at the hearing, decisions should be based on sound science and fall within the rubric of applicable law. I am not certain what specific guidelines your question refers to.

Question 14: Do you support relying on independent scientists with relevant expertise to evaluate and review the data that the Fish and Wildlife Service uses when making decisions related to the implementation of the Endangered Species Act?

Response: As I stated at my hearing, my view is that policy decisions should be predicated on the evaluation of science and application of the law. This view applies to my approach to ESA implementation. I believe when scientific data is evaluated on its merits and used as an information base to make policy decisions that are honest to the science, conflicts will likely be reduced and those decisions will be reliable and legally sound.

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Question 15: Are you confident that the current process for selecting contractors and independent scientists to conduct scientific peer reviews related to the implementation of the Endangered Species Act sufficiently guards against political bias, and/or the appearance of political bias? Why or why not?

Response: I am not sufficiently familiar with the current process for selecting peer reviewers and would need to learn more about the program to provide a meaningful response to your question.

Question 16: Based on your interpretation of the Endangered Species Act and Department of the Interior policies, what are the requirements for consultation with federally recognized Native American tribes in making rulings under the Act?

Response: If confirmed, I would need to evaluate the Department's current policies on consultation prior to offering my interpretation. That said, as I have stated previously I believe in consultation and need to balance consultation within the confines of the Act.

Question 17: How could the Department of the Interior's consultation with Native American tribes concerning Endangered Species Act enforcement be improved?

Response: As I am not at the Department nor up to speed on existing consultation policies, I would need to review those materials, if confirmed.

Fisheries

Question 18: Many fish populations in both marine and freshwater environments are threatened. What actions would you take to address these issues?

Response: As a fisherman and former member of the Board of Game and Inland Fisheries for the Commonwealth of Virginia, I am sensitive ecological and economic value of our nation's fish populations. Much of my career has focused on finding durable solutions to the many challenges associated with threatened and endangered species recovery through the lens of the ESA both from public and private sector perspectives. Should I be confirmed, I would apply this experience and the knowledge gained through it to making recommendations that comport with the law and advance Secretary Zinke's conservation agenda.

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Question 19: What additional actions should Department of the Interior take to prevent invasive Asian carp from invading the Great Lakes and potentially destroying the ecosystem?

Response: I recognize the risk to the Great Lakes associated with the introduction of Asian carp and, if confirmed, I look forward to evaluating ongoing activities at the Department to prevent, detect and control Asian carp in order to protect the Great Lakes.

Question 20: Will you support full funding of fisheries management activities that result in many hundreds of millions of dollars flowing through the recreational sector of the United States economy?

Response: As a fisherman and former member of the Board of Game and Inland Fisheries for the Commonwealth of Virginia, I am keenly aware of the ecological and economic value of effective and informed fishery management as well as its importance for subsistence to Alaska communities. I know the U.S. Fish and Wildlife Service, working with state and local governments and other partners, maintains a network of fisheries that spans the country. Should I be confirmed, I commit to working with Secretary Zinke, the Administration, and the Congress to facilitate appropriate funding for fisheries consistent with the President's budget and priorities.

Question 21: What are your specific priorities for the management of the Great Lakes and Lake Champlain fisheries?

Response: My view is that effective resource management decisions hinge on sound science applied within the contours of the law. Within this framework, my priorities will be to advance Secretary Zinke's conservation agenda in a manner that is rooted in and supported by input from a wide array of stakeholders, particularly those state and local communities most directly affected by the decisions the Department makes.

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Fossil Fuels

Question 22: According to recent studies, the quantity of federal fossil fuels already under lease exceeds the amount that can be burned and still meet our commitments to reduce domestic greenhouse gas emissions, keeping average global temperature below 2 degrees Celsius. The Department of the Interior is responsible for managing fossil fuel development on public lands and waters. Would you take action to ensure federal fossil fuel leasing decisions are consistent with our national and international climate commitments? Do you support a moratorium on fossil fuels extraction on federally-owned public lands and waters?

Response: I am a believer in an all-of-the-above energy strategy and, if confirmed as Deputy Secretary, I would support the Secretary's efforts to foster responsible development of wind, solar, hydro, coal, oil, and natural gas on federal and tribal lands.

Question 23: President Trump campaigned on the promise of bringing the coal industry back and restoring thousands of coal jobs. Many economic and policy analysts agree that the decline in coal production has more to do with the increase in natural gas production than environmental regulations. What is your assessment?

Response: The Energy Information Administration has projected that coal will remain an important part of the American fuel mix for decades.

Question 24: What role do you think the Department of the Interior can play in transitioning our country away from fossil fuels?

Response: The role of the Department of the Interior is to make energy resources on federal lands available for development, as appropriate; it is not to select winners and losers among energy sources.

Question 25: Will you encourage wind and solar generation on lands managed by the Department of the Interior?

Response: I support an all-of-the-above energy approach, which includes wind and solar.

Question 26: Do you agree that there are places that are too unique, either for historical, cultural, environmental, wildlife, or similar reasons, to open up to fossil fuel development?

Response: Yes, along with other important factors, the characteristics your question references are among those it is appropriate to consider when making decisions about where and how development takes place.

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Question 27: President Obama withdrew significant portions of the Arctic and Atlantic Oceans from oil and gas development. The reasons he cited for this action include the irreplaceable value of these waters for Indigenous, Alaska Native, and local communities' subsistence activities, economies, and cultures; protection of wildlife and wildlife habitat; promotion of scientific research; and the vulnerability of these ecosystems to an oil spill, which would present significant logistical, operational, safety and scientific challenges for extraction and spill response. In addition, President Obama noted that by the time oil production could begin in these areas, our nation needed to be well on our way to transitioning to clean, renewable energy sources.

In President Trump's Executive Order of April 28, 2017 on Offshore Energy Strategy for the Five Year Offshore Leasing Program, President Trump modified President Obama's withdrawal, and opened these areas for leasing consideration. This Executive Order directs the Department of the Interior to review the Five Year Offshore Leasing Program. **Notwithstanding DOI's statutory requirement to analyze all available leasing areas, if confirmed, will you commit to the highest environmental protections for the Atlantic Region, Pacific Region, and Alaska Region, including the Beaufort, Chukchi, and North Aleutian Basin Planning Areas commensurate with those provided by the Obama Administration?**

Response: Because I am not at the Department, I am unaware of the details regarding the ongoing review of the Five Year Offshore Leasing Program.

Question 28: The Gulf of Mexico and Gulf Coast communities are on the front lines of climate disruption and fossil fuel extraction. Many communities, primarily low-income and communities of color, suffer daily from environmental injustices related to the fossil fuel industry. If confirmed, would you support action to extend or make permanent the drilling moratorium in the Eastern Gulf of Mexico? If confirmed, will you commit to further action to phase out fossil fuel development and promote a just transition to a clean, renewable energy-based economy along the Gulf Coast?

Response: I am committed to the president's energy plan.

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National Heritage Areas

Question 29: Congressionally designated National Heritage Areas (NHAs) are special places where natural, cultural, historic, and recreational resources combine to form a distinctive landscape arising from patterns of human activity shaped by geography. All NHAs tell nationally important stories through the physical features of the area and the traditions that have evolved within them. Each of the 49 NHAs in the United States is governed by separate authorizing legislation and operates under provisions unique to its resources and desired goals. As Deputy Secretary of the Interior, will you continue to support National Park Service's National Heritage Area program?

Response: Yes. I understand that National Heritage Areas have provided many positive benefits to local communities.

Question 30: All NHAs interpret and highlight nationally important stories. Heritage areas are representative of the national experience through both the physical features that remain and the traditions that have evolved within them. In recent years, funding to these heritage areas have been unequally distributed with older heritage areas receiving twice the amount of \$300,000 awarded to heritage areas created after 2006. If confirmed, will you support equal funding among all NHAs, so that decade-old heritage areas might start to meet their potential?

Response: If confirmed, I commit to working with Secretary Zinke, the Administration and the Congress to ensure appropriate funding consistent with the President's budget and priorities.

Question 31: If confirmed, will you defend the National Heritage Area program against unwarranted and harmful budget cuts?

Response: Again, if confirmed, I commit to working with Secretary Zinke, the Administration and the Congress to advocate for appropriate funding consistent with the President's budget and priorities.

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National Monuments

Question 32: The 1906 Antiquities Act allows the president to proclaim “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States” to be national monuments. At his nomination hearing, Secretary Zinke said of rescinding a national monument, “legally, it’s untested.” Do you believe that the President has the legal authority to overturn an existing national monument designation?

Response: As I noted during the hearing, the exercise of the President’s authority under the Antiquities Act is a matter that will be evaluated by the White House Counsel. As I also noted, I am familiar with conflicting legal opinions interpreting the President’s authority under the Antiquities Act but, again, this is a matter for the White House to decide.

Question 33: Earlier this month, the Department of the Interior revealed its list of National Monument designations that it would review under Executive Order 13792 to determine whether each designation or expansion conforms to the policy set forth in 82 FR 20429, Section 1. This section states that designations should “appropriately balance the protection of landmarks, structures, and objects against the appropriate use of Federal lands and the effects on surrounding lands and communities.” How will you instruct the Department to balance these considerations in conducting the designation reviews?

Response: If confirmed, I do not know what role, if any, I will have in the monument designation review that is currently underway at the Department.

National Parks

Question 34: Do you believe we should privatize the National Parks Service?

Response: No. I believe that our parks are our national treasures and should serve and inspire all Americans.

Question 35: How would you describe the economic and environmental value of the National Parks?

Response: National parks provide many tangible economic benefits to our economy and to local communities, benefits that I observed growing up in a small town in Colorado.

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Question 36: If confirmed, how will you initiate policy reforms to make the National Parks more accessible and relevant to communities of color, low-income families and people with disabilities?

Response: If confirmed, I will work with the Secretary and Congress to ensure that our parks serve and inspire all Americans.

National Wildlife Refuges

Question 37: How will you ensure that our National Wildlife Refuges are adequately maintained for the benefit of current and future generations of Americans?

Response: As a sportsman, I understand and appreciate the importance of fish and wildlife conservation. I have applied this stewardship ethic throughout my career, from my time at Interior to my service on Virginia's Board of Game and Inland Fisheries. Should I be confirmed, I will continue my commitment to working with a wide array of stakeholders and partners, in particular states and local communities, to find solutions to conflicts; to advance Secretary's Zinke's agenda for conservation stewardship; to improve game and habitat management; and to increase outdoor recreational opportunities for this and future generations.

National Scenic and Historic Trails

Question 38: Will you commit to protecting National Scenic and Historic Trails lands from fossil fuels and mineral extraction?

Response: I will commit to looking into the issue. I am in agreement with Secretary Zinke that development can and should be conducted in accordance with the principles of multiple use. If confirmed, I will work with the Secretary to find a balance for all uses, including hunting, fishing, hiking, and other forms of recreation, which play an important role on public lands.

Question 39: Will you commit to preventing fossil fuel pipelines from crossing National Scenic and Historic Trail systems?

Response: I am in agreement with Secretary Zinke that development can and should be conducted in accordance with the principles of multiple use. If confirmed, I will work with the Secretary to find a balance for all uses, including hunting, fishing, hiking, and other forms of recreation, which play an important role on public lands.

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Question 40: National Scenic and Historic Trails drive local recreation economies. What is your plan for ensuring that National Park Service funding is sufficient to maintain critical trail infrastructure such as trails, shelters, and bridges?

Response: If confirmed, I commit to working with the Secretary, the President, and Members of Congress to address the many infrastructure needs of our communities.

Public Lands

Question 41: Under what conditions do you believe it is appropriate to transfer federal lands to private ownership?

Response: I share Secretary Zinke's opposition to the sale or wide scale transfer of federal lands. As the Secretary offered in his written responses to this Committee, "...there are some situations in which commitments have previously been made, inholdings need to be swapped or exchanged, or land banks are well situated to address the needs of growing urban areas, where limited transfer is appropriate." I would need to review such proposals before making any decisions.

Question 42: Under what conditions do you believe it is appropriate to transfer federal lands to state ownership?

Response: As I stated above, I support Secretary Zinke's commitment to federal lands.

Question 43: You have a long career advocating and/or lobbying for big oil, gas, coal and mining corporations that operate on public lands. How can you be effective in protecting federal public lands when you will have to recuse yourself from so many of these issues?

Response: I can be effective protecting public lands. For example, I resolved contentious claims on the Black Canyon of the Gunnison, protecting the National Park's assets. I believe that public trust is a public responsibility, and believe maintaining an ethical culture is important. I will fully comply with the ethics agreement I signed. Moreover, it is not my experience that the that the primary focus of the chief operating officer of the Department of the Interior is directed at particular matters involving specific parties, but rather larger policy and organization issues. In addition, for the duration of my service, I intend to actively seek and consult with the Department's Designated Agency Ethics Official regarding particular matters involving specific parties of former clients or entities represented by my former firm. Finally, I will install a robust screening process, should one not exist within the office.

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Question 44: If confirmed, how will you address issues of inequality in access to public lands?

Response: Secretary Zinke and I both believe public lands should be available for the enjoyment of all. If confirmed, I look forward to working with the Secretary to increase recreational access to public lands.

Question 45: How would you describe the economic and environmental value of public lands?

Response: Having grown up in a small town in Colorado, I understand firsthand the economic impact our public lands have on local communities across the country. From energy development to recreational access, these lands offer invaluable resources to locals and tourists alike.

Question 46: According to the Outdoor Industry Association, the outdoor recreation economy generates \$887 billion in economic activity and 7.6 million American jobs. The association claims that it is a stronger economic sector than oil and gas, motor vehicles and accessories, and pharmaceuticals. Do you concur with this economic assessment? Does the economic significance of outdoor recreation affect your support for maintaining public lands for recreation purposes in contrast to other uses?

Response: I grew up in Colorado, where some communities benefitted significantly from an outdoor recreation economy. Access to federal lands creates jobs and bolsters local economies, so I believe there is great merit in supporting these opportunities for quality access.

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Land and Water Conservation Fund

Question 47: Created by Congress in 1965, the Land and Water Conservation Fund (LWCF) was a bipartisan commitment to safeguard natural areas, water resources and our cultural heritage, and to provide recreation opportunities to all Americans. National parks like Rocky Mountain, the Grand Canyon, and the Great Smoky Mountains, as well as National Wildlife Refuges, national forests, rivers and lakes, community parks, trails, and ball fields in every one of our 50 states were set aside for Americans to enjoy thanks to federal funds from the Land and Water Conservation Fund (LWCF). The LWCF is critical to the protection and preservation of the many landscapes that drive the \$887 billion outdoor recreation economy.

Question 48: The Administration's "skinny" budget included a direct attack on federal land conservation, proposing to drastically slash funding for this bipartisan priority. The temporary extension of the LWCF expires September 30, 2018. If confirmed, will you support the LWCF, and continuing to expand public access to parks, forests and trails?

Response: Since 1965, the LWCF has been a successful program that has benefitted both Vermont and my home state of Colorado. It has my support and the support of Secretary Zinke. Should I be confirmed, I look forward to working with you and your colleagues to reauthorize the program.

Question 49: The LWCF makes incredibly important investments in my state, protecting federal units like the Appalachian Trail and the Conte National Fish and Wildlife Refuge and working in public-private partnership through the Forest Legacy Program to preserve working forests and keep jobs in the woods. If confirmed, will you commit to supporting permanent reauthorization and full, dedicated funding of this program, as Secretary Zinke did in his confirmation hearing?

Response: I share Secretary Zinke's support for the LWCF and look forward to working with you and your colleagues to reauthorize the program.

Question 50: Natural and recreational infrastructure is critical to clean water, healthy families, safe neighborhoods and continued growth and jobs in our extremely productive outdoor recreation economy. Our National Parks and public lands are in need of continued investment in conservation as well as maintenance. Do you agree that the LWCF represents an infrastructure investment necessity that drives economic production, growth, and employment in America every bit as much as do road and bridge construction, water resource development, and other public works projects?

Response: Our public lands and national parks hold some of our nation's greatest treasures. As I said at my hearing, I grew up surrounded by public lands and know the many benefits

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they have to offer. The outdoor industry is an integral part of our economy. Should I be confirmed, I will continue to support programs like LWCF that incentivize and preserve necessary investments in outdoor and recreational opportunities.

Question 51: Should you be confirmed, will you commit to an annual budget that allocates all of the annual \$900 million from the LWCF account to the programs identified by Congress each year in the appropriations bill?

Response: The LWCF has my support and should I be confirmed I look forward to working with you and your colleagues to protect and bolster this important program. As a native Coloradan and outdoorsman, I have seen the good work LWCF does for local communities, sportsmen, recreationists, and conservation as a whole. As the budget process moves forward, I look forward to working with President Trump, Secretary Zinke and Congress to support LWCF's critical work.

Science

Question 52: While you were with the Department of the Interior, there were allegations that you manipulated scientific data for political outcomes. In order to protect scientific integrity, the Department of the Interior created a Scientific Integrity Policy, which all career, political, and contract employees must adhere. There are now designated Scientific Integrity officers, who are career employees in each bureau to review and adjudicate any discrepancies. Do you commit to maintaining this policy?

Response: As I indicated at my hearing, I did not manipulate scientific data. I am not yet familiar with this policy, but I agree that scientific integrity should underpin agency actions.

Question 53: Do you commit to respecting all decisions that come from these Scientific Integrity Officers?

Response: I will support decisions, but I will not support arbitrary or capricious decisions, so I cannot say yes to all decisions.

Question 54: Do you commit to personally signing the Scientific Integrity Policy, and sharing with this committee a copy of that document?

Response: As I indicated in response to a previous question, I am not yet familiar with this policy, but I agree that scientific integrity should underpin agency actions.

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Tribal Issues

Question 55: Indian Affairs is the oldest bureau of the Department of the Interior. Throughout history and even today, the United States government has treated the Native American people with disrespect, abrogating treaty obligations and its trust responsibility. As a result, there are Native American communities living in unbelievable poverty with high unemployment rates and unspeakably high youth suicide rates. Do you agree with these assertions? If so, what do you propose to do at the Department to improve life for the Native American people throughout this country?

Response: Secretary Zinke and I both believe the Department of the Interior has an important trust responsibility in Indian Country. If confirmed, I look forward to working with him to promote tribal sovereignty and self-determination.

Question 56: The federal government's moral and legal obligations to tribes in light of the trust responsibility carry immense moral and legal force. This trust relationship serves as an underlying basis for tribal consultation, the process by which the government engages in a meaningful, good-faith dialogue with all tribes. The Department of the Interior, by virtue of its role in Native American affairs, plays a prominent part in how the government engages in tribal consultation.

In the wake of the Dakota Access Pipeline, three federal agencies, including the Department of the Interior, published a report in January 2017 entitled, "Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions." The subject of months-long consultation across Indian country, this report sets forth a number of recommendations to improve the process for permitting and infrastructure development. What steps do you intend to take to incorporate this report into the agency's decision-making process?

Response: I am not familiar with the January 2017 report and therefore cannot comment on its proposals. I do share Secretary Zinke's commitment to building and maintaining mutual trust among tribes to build consensus on infrastructure or permitting issues.

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Question 57: As the Department of Energy laid out during a recent Tribal Energy summit, the potential for renewable energy in Indian Country is enormous. While reservations account for 2% of the nation's land mass, they hold 5% of the nation's potential renewable energy resources. The Department of Energy also estimates that wind power from tribal lands could satisfy 32% of the total U.S. electricity demand. And solar production from Indian lands could generate enough energy to power the country two times over. Nevertheless, the Department of the Interior is turning its attention to conventional fossil fuels for development, this despite the upward trajectory of renewables. What role do you think renewable energy should play in energy development in Indian Country?

Response: Similar to the President and Secretary Zinke, I support an all-of-the-above energy approach, which includes renewable energy. There are tribes that choose not to develop energy resources, and I agree with the Secretary that we must respect that position, which is a true reflection of tribal sovereignty.

USGS and Water

Question 58: If confirmed, how will you support critical water information services including the United States Geological Survey (USGS) water-gauging infrastructure?

Response: Yes.

Question 59: Please describe your approach to ensuring that USGS matching funds used to complement state- and locally-sponsored water measurement gauges and associated information technology are not diverted to other Agency activities.

Response: Generally, collaboration among our local and State partners benefits Interior. I am not currently at the Department and cannot offer further insight until briefed, if confirmed.

Wild horse management

Question 60: Do you have plans to change or modify the Bureau of Land Management's wild horse management plan? If so, what changes would you recommend?

Response: I intend to work with Congress on finding a solution to this problem.

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Questions from Senator Al Franken

Question 1: I understand that under the new Administration the Department of Interior is undertaking a brief review of Cobell buy-back program strategies. It is also my understanding that the Department has made commitments to a number of tribes, including the Leech Lake Band of Ojibwe and other tribes in Minnesota, that they will be included in the next round of implementation. Should you be confirmed, would you be in a position to ensure a quick review of implementation strategies and ensure that the commitments made to tribes on this matter be maintained?

Response: Because I am not at the Department, I do not know if I will have any role in this process.

Question 2: Restoring tribal homelands rebuilds tribal land bases and strengthens the relationship between tribes and the federal government. It also makes administering justice and engaging in economic development easier by reducing checkboard landholdings. During your time at the Department of the Interior, many tribes were of the opinion that the Department had imposed what was essentially a moratorium on land into trust acquisitions.

- a. Can I get a commitment from you that your Interior Department will not put in place a land into trust moratorium?**
- b. If you cannot make the commitment requested in part (a), would you at least commit to a transparent process that prioritizes meaningful consultation with tribes and tribal organizations—on an open and fair basis—so their voices can be heard on any proposed changes to Interior’s land into trust procedures?**
- c. Can you please share your views on the importance the Administration will place on the land to trust process?**
- d. In 2008, the Department of the Interior, through then-Assistant Secretary Carl Artman, finalized guidance for restricting land to be taken into trust related to gaming. Yet the Department did not consult with tribes in drafting this guidance. Can I get a commitment from you that the Interior Department will consult with tribes on a government-to-government basis when developing any additional guidance or regulations as it pertains to land into trust acquisitions?**

Response: As I indicated in the hearing, I take consultation seriously and commit to consult with tribes on a government-to-government basis. I am not at the Department and therefore am unaware of the Administration’s current work on the land into trust process. If confirmed, I will need to be briefed on the state of land into trust procedures, and after that I would be happy to visit with you or your staff.

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Question 3: If you are confirmed as Deputy Secretary of the Interior, you will be responsible for overseeing the Bureau of Indian Affairs (BIA). With the multitude of problems in Indian Country today, from disturbingly high rates of youth suicide to a lack of sufficient economic opportunity and many others, we need a bipartisan commitment to address the living conditions on tribal lands. One of the most frustrating issues with the BIA has been the chronic underfunding of important programs and general lack of support from the federal government.

- a. As Deputy Secretary of the Interior, would you advocate for strong funding for federal programs that support American Indians?**

Response: As we discussed in your office, I know this is an issue you care about and so do I. I am committed to working with you to find ways to address these chronic challenges in Indian country.

- b. Do you have a timeline for filling BIA positions?**

Response: No, I am not aware of a timeline.

- c. Will you expand on your ideas for improving living conditions in Indian Country?**

Response: See my response to question 3a, above.

Question 4: As we discussed at the hearing, the federal government has moral and legal obligations to uphold its treaty and trust responsibilities to Native Americans and engage with tribes on a government-to-government basis. This government-to-government relationship is the basis for tribal consultation, the process by which the United States engages in a meaningful, good-faith dialogue with tribes. The Department of the Interior, by virtue of its role in Native American affairs, plays a prominent part in how the government engages in tribal consultation.

- a. You stated that you would “unequivocally commit” to consult with tribes. Yet as a part of the Administration’s review of Bears Ears National Monument, Secretary Zinke spent a total of one-hour meeting with tribal leaders. What would you consider meaningful consultation?**
- b. If confirmed, will you uphold the federal trust responsibility and ensure that Interior provides tribes with adequate government-to-government consultation on Bears Ears National Monument and any other lands issue that may affect them?**

Response to a. and b.: I am not at the Department, so I am unaware of the Secretary’s ongoing consultations. As I said in the hearing, I appreciate the importance of tribal consultation, take consultation seriously, and commit to consult with tribes, if confirmed.

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Question 5: At a recent tribal energy summit, Secretary Zinke made several statements that raised concerns to tribes including reexamining the Indian Reorganization Act and treating tribes like corporations. In a clarifying letter to the National Congress of American Indians, Acting Deputy Secretary James Cason stated that “at this time there are no plans to alter the Department’s current management of our trust responsibilities.”

Statements such as these have created uncertainty in Indian Country about this Administration’s view on the trust responsibility and whether there are plans to diminish the trust relationship among tribes and the federal government. Do you share the view that the trust relationship is up for reconsideration, and if so, in what areas would you seek changes to that relationship?

Response: I am not aware of these statements.

Question 6: Each agency head has been instructed to undertake a review of their agency to determine how to reorganize the departments. What will you do to ensure proper consultation is conducted with tribal governments prior to any decisions or actions regarding reorganization?

Response: I appreciate the importance of tribal consultation, take consultation seriously, and commit to consult with tribes as appropriate, if confirmed

Question 7: Economic development is vital for improving Indian Country, and one area of opportunity is the energy sector. For example, there is significant potential for clean energy development in Indian Country—like wind, solar, and biomass. I have been working to fund the Tribal Energy Loan Guarantee Program (TIELGP), which was included in the Energy Policy Act of 2005 but received its first funding in Fiscal Year 2017. This program would allow the DOE to guarantee up to 90 percent of the principal and interest of a loan issued to an Indian tribe for energy development. By leveraging federal resources, this program would encourage borrowers to partner with the private sector to develop energy projects. Will you commit to working with me to boost renewable energy generation on tribal lands, which would bring important funds and jobs to these communities?

Response: If confirmed, I commit to learning more about this program and working with you and Secretary Zinke, as appropriate.

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Question 8: A recent National Institute of Justice report found that more than half of American Indian and Alaska Native women—and more than one in four men—have experienced sexual violence in their lifetime. And among those who have experienced sexual violence, almost all—96% of women and 89% of men—have been victimized by a non-Indian partner. That is a horrific statistic. And despite their prevalence, crimes of sexual violence committed by non-Indians in Indian Country often go unprosecuted and unpunished, leaving victims without justice and offenders on the loose. So last Congress, Senator Murkowski and I introduced the Justice for Native Survivors of Sexual Violence Act, which would recognize and reaffirm Indian tribes' inherent power to exercise criminal jurisdiction over non-Indians who commit crimes of sexual violence in Indian Country. This commonsense legislation will lay the groundwork for tribes to address sexual violence in their communities in a meaningful way, and I'm looking forward to reintroducing the bill soon.

Mr. Bernhardt, I want to know from you how the Interior Department will work with tribes to strengthen their tribal justice systems and ensure that they have the resources they need to take on this critical work. I also understand that the Department of Justice has the primary responsibility for investigating and prosecuting crime in much of Indian country. When Senator Sessions came before the Judiciary Committee, I asked him about his views on these issues and was concerned by how much he has to learn about law enforcement in Indian Country. Can you assure me that you will coordinate and share information with the DOJ to ensure that there is a comprehensive understanding of how these crimes impact Indian Country?

Response: I completely agree these are horrible statistics and the situation is appalling. I will do everything I can to facilitate the sharing and coordination of information with the Department of Justice to ensure a better understanding of the impacts of these crimes.

Question 9: You spent nearly eight years at the Department of the Interior during the Bush Administration, and during that time you played key roles in overseeing the Department's relationship with Congress and in monitoring the ethical culture at the Department. Given your senior role in the Bush Department of the Interior, you had a front row seat to the numerous scandals that plagued the Department.

a. Can you describe your relationship with lobbyist Jack Abramoff? On what occasions did you meet him and what were the purposes of those meetings?

Response: I have no relationship and do not believe I ever met him.

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b. Can you describe your relationship with then-Deputy Secretary Steven Griles? At what point did you become aware of his involvement with illegal activities?

Response: He was the Deputy Secretary of the Department of the Interior. I became aware of his illegal activities when he was indicted.

c. Robert McCarthy was a DOI employee who became a whistleblower, exposing mismanagement of Indian Trust funds. Mr. McCarthy subsequently was forced to resign. Can you describe your role, if any, with regards to his resignation? How do you plan to deal with whistleblowers who reveal corruption at the agency if you are confirmed?

Response: I believe that anyone who reveals corruption up their chain of command or to the Inspector General should be protected, consistent with applicable law and practice. However, in general I do not believe Mr. McCarthy's actions were proper. Lawyers and auditors who have an additional set of ethical duties should take inappropriate matters up their chain of command or to the Office of Inspector General before they go to media. I understand that in a settlement of a challenge to his dismissal, he was allowed to resign.

d. When Senator Stabenow asked about the allegations that scientific information provided by USFWS scientists was altered in preparing Senate Testimony for Secretary Norton, you responded that you had not altered the science. Can you please elaborate?

Response: Yes, to the extent any documentation was modified, it was not modified by me, and I do not believe I was aware of it until it had been disseminated.

Question 10: While you were at the Department, the DOI Executive Resources Board, or ERB, recommended salary increases for top level employees. The ERB also gave out awards, called STAR awards, designed to recognize particularly outstanding accomplishments by DOI employees.

During the Bush Administration, the ERB distributed a substantial number of STAR awards to senior officials at the Department of the Interior, including several members of ERB itself. It appears that STAR awards, which were supposed to be used to reward exceptional work, were essentially used as a tool whereby DOI political appointees enriched themselves with taxpayer money. One particularly egregious example was a nearly \$10,000 award for Deputy Assistant Secretary Julie MacDonald in 2004. Routinely, these awards were given to political appointees without any written justification and without formal nomination.

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a. Were you on the ERB in 2004?

Response: I am not sure of the dates, but I did serve on the ERB for certain years.

b. Were you in any way involved in the awarding of the award to Ms. MacDonald? If so, what was your justification?

Response: If I was on the ERB when she received a reward, I could have been part of that process, along with others on the ERB and her supervisors. I do not recall the justification, but I believe there would be a written justification associated with the award, if it occurred.

c. You, yourself, received a \$7,000 STAR award in 2004. The guidance in place at the time capped awards at \$5,000. Did the size of your award surprise you?

Response: I have no recollection of my reaction. Money has not been motivating factor for my experience with public service.

Question 11: With a changing climate, we are seeing longer wildfire seasons and more extreme fires. At the same time, more and more people in the United States are living in and around forests, grasslands, shrublands, and other vegetated natural areas – places commonly referred to as the wildland-urban interface (WUI). Approximately 70,000 communities nationwide are considered to be at high risk from wildland fire, including some in Minnesota. Defense of private property – much of which is located in the WUI – accounts for a large percentage of fire suppression costs. How will you work with the United States Forest Service to mitigate the costs of these fires while ensuring the safety of vulnerable communities?

Response: The issues surrounding the prevention of forest fires and funding for fire suppression efforts are important. If I am confirmed, I will evaluate the Department's current role in fire prevention and suppression and work closely with USDA, the Forest Service, states, and Congress to ensure that these programs are appropriately managed.

Question 12: Do you believe that climate change impacts should be included in environmental reviews under the National Environmental Policy Act (NEPA)?

Response: As I indicated at my hearing, I will consider the science on climate change and the applicable law in recommending policy decisions that are consistent with the Administration's agenda and the law, should I be confirmed.

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Questions 13: Do you believe that climate change has a cost to society and that this social cost of carbon should be used in regulatory analyses?

Response: As I indicated at my hearing, I will consider the science on climate change and the applicable law in recommending policy decisions that are consistent with the Administration's agenda, should I be confirmed.

Question 14: If confirmed, what will do you do to promote renewable electricity generation—including wind and solar—on public lands?

Response: I am a supporter of an all-of-the-above energy policy that includes the development of renewable energy projects and transmission projects on federal lands.

Question 15: The Land and Water Conservation Fund has been a critical tool over the past 50 years to secure America's natural and historical treasures. In my state, LWCF has helped protect national icons like the Boundary Waters Canoe Area Wilderness and Voyageurs National Park as well as local parks and playgrounds. The Fund is paid for by a small portion of receipts collected from offshore energy extraction. Indeed the Fund was conceived with the understanding that we would permanently protect our outdoor recreation heritage for all Americans to use, in exchange for the depletion of another non-renewable national asset.

The Fund is supposed to receive \$900 million each year, but typically it receives substantially less than that. When the Secretary testified before this committee in January, he stated his support for full funding of LWCF. However, the initial budget release from the administration in March suggests that LWCF will likely be severely cut once the full budget is released.

Should you be confirmed, will you commit to an annual budget that allocates all of the annual \$900 million from the LWCF account to the programs identified by Congress each year in the appropriations bill?

Response: I share Secretary Zinke's support for the LWCF and look forward to working with you and your colleagues on the program, if confirmed.

Question 16: Under what circumstances would you support or oppose the transfer of public land to state governments? For example, if Congress passed a bill transferring large sections of public lands to the states, would you recommend that the President veto it?

Response: I support the Secretary's views.

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Question 17: Do you support allowing state and local governments to manage federal public lands? From a practical standpoint, how is this different from transferring federal lands to states?

Response: I share the Secretary's view that federal lands need to be managed with particular consideration of the people in local communities whose lives and livelihoods depend on the land.

Question 18: According to the Bureau of Land Management's statistics for Fiscal Year 2015, there are 32.1 million acres of public lands (approximately the size of Alabama) currently under lease for oil and gas activities. However, merely one-third of these acres are actually producing fuel. In fact, the United States has a record high 7,500 approved drilling permits that industry has yet to put to use.

- a. In light of this overcapacity, do you believe it is necessary for United States to open up additional public land for oil and gas production? If so, why?**
- b. How do you balance this with the need to maintain public access to federal lands?**

Response to a. and b.: If confirmed as Deputy Secretary, I would support the Secretary's efforts to foster responsible development of coal, oil, gas, and renewable energy on federal and tribal lands.

Question 19: The United States has been chronically underfunding our National Parks for years. As you know, the parks currently face a more than \$12 billion backlog in deferred maintenance, including \$47 million in Minnesota. I appreciate that you have committed to working with Congress to solve this unacceptable deferred maintenance backlog.

- a. What do you feel would be the best way to approach this issue?**
- b. Will you advocate to include deferred maintenance in any infrastructure package the new administration is planning?**

Response to a. and b.: I know Secretary Zinke is committed to prioritize and find innovative ways to address the maintenance backlog and enhance our parks' infrastructure.

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Question 20: Many of the communities in my home state of Minnesota cannot safely rely on the water currently supplied to their homes. These communities and my state have worked tirelessly, investing millions of dollars, in a tristate water system known as the Lewis & Clark Regional Water System. A successful state and federal partnership, Lewis & Clark is funded by local communities, states and expected annual funds from the federal government. Like two water projects in your home state of Montana, federal funding for Lewis & Clark is allocated through the Department of Interior's Bureau of Reclamation. Nearly completed, all communities and states involved have paid their share of the project and in numerous cases, prefunded the necessary dollars to complete this critical water project. However, the federal share of the project has fallen short year-after-year, putting the project far behind construction schedule causing an increase in cost to the project. Will you support prioritizing the Lewis & Clark Regional Water System through the water funds allocated by the Bureau of Reclamation?

Response: While I am not familiar with the specific details of the funding concerns pertaining to the Lewis & Clark Regional Water System, I am familiar with Bureau of Reclamation's rural water projects. These projects benefit rural communities and are important to supporting the livelihood of local economies. If confirmed, I look forward to learning more about the particular details of this project.

Question 21: Mr. Bernhardt, when we met, you told me that you will sign the ethics pledge required by the Trump Administration under Executive Order 13770. The ethics pledge requires that for two years, you will not, and I quote, "participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts." It also includes issues that you lobbied on.

a. Do you intend to sign the ethics pledge and recuse yourself for two years on relevant issues?

Response: Yes.

b. If so, will you share this document with the committee? And if not, why not?

Response: I have assumed the document would be public since my ethic agreement is public.

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- c. How will we know that you are sticking with the two-year recusal? Will you, on a quarterly basis, for two years, provide the committee a list of the matters from which you are recused?**

Response: Because I have agreed to do it and I will work with the Department's Designated Agency Ethics Official on a regular basis to ensure I am implementing best practices. I will not provide a list, but I will commit to visiting with you as often as you would like.

- d. Executive Order 13770 allows the president to grant waivers exempting lobbyists from this ban. This is not uncommon, but what stands out is the order's elimination of the requirement that such waivers be publically disclosed once they occur. Will you commit to publically disclose the issuance of any waivers you may receive from this administration so that the American people have greater transparency into potential conflicts of interest? If not, why not?**

Response: I do not know under what circumstances I might seek a waiver because I do not anticipate doing so. However, should I seek a waiver from the Designated Agency Ethics Official, I will discuss whether such a request should be made public.

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Questions from Senator Steve Daines

Question 1: I understand you have done a lot of work dealing with the Endangered Species Act. And, I know you are familiar with the Ninth Circuit Court’s misguided ruling in *U.S. Forest Service vs. Cottonwood Environmental Law Center*. The Obama administration argued that the ruling has the “potential to cripple” federal land management across Ninth Circuit states, and I have no doubt that Secretary Zinke shares this concern.

- a. Do you agree that the burdensome extra layer of consultation required in the *Cottonwood* decision could substantially slow forest management projects and is unnecessary to protecting at-risk species?**

Response: Yes.

- b. Now that the Supreme Court has declined to hear the *Cottonwood* case, Senator Jon Tester and I have introduced legislation to statutorily reverse the decision. Can I get your commitment to speedily work in a bipartisan manner to enact a legislative solution?**

Response: Yes, I will commit to working with you in a bipartisan manner.

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Questions from Senator Joe Manchin III

Question 1: The Land and Water Conservation Fund (LWCF) expired September 30, 2015. The fund was temporarily extended for 3 years in the Consolidated Appropriations Act, 2016, and will expire again September 30, 2018, if Congress fails to pass reauthorization. The 2017 omnibus funding bill funds LWCF at \$400 million - \$50 million less than the fiscal 2016 enacted level. West Virginia has received approximately \$233 million in LWCF funding over the past five decades, protecting places like the New River Gorge National River, and the Harpers Ferry National Historical Park, both of the National Park Service. West Virginia has 61,000 outdoor recreation jobs, and generates approximately \$272 million in annual state tax revenue. In 2016, several local governments in West Virginia received grants totaling \$418,473 from LWCF funds from the “state side.” Previously, funds from the “federal side” have been used to acquire lands at Canaan Valley National Wildlife Refuge. These are vital to the outdoor economy and heritage of West Virginia.

If you are confirmed, will you commit to working with Congress to find a permanent reauthorization of LWCF?

Response: I share Secretary Zinke’s support for the LWCF and look forward to working with you and your colleagues to reauthorize the program.

Are you willing to accept reforms to LWCF?

Response: As noted in the response to the previous question, I share Secretary Zinke’s support for the LWCF and look forward to working with you and your colleagues to reauthorize the program.

If so, what reforms are you willing to accept and not accept?

Response: Should I be confirmed, I would look forward to working with Secretary Zinke, you, and your colleagues to reauthorize the program, including identifying stable, diverse and long-term funding mechanisms to keep the fund viable for generations to come.

Question 2: If confirmed, you have pledged to recuse yourself for two years from matters involving your former clients per the ethics pledge that President Trump put forth for his nominees to sign.

If confirmed, do you plan to serve longer than two years as Deputy Secretary?

Response: If confirmed, I plan to serve at the pleasure of the President, and anticipate that could be through his term.

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How will you ensure you are avoiding all conflicts of interest if you indeed work on matters involving your former clients after the two-year pledge expires?

Response: If confirmed, I will follow my ethics agreement, and for the entire duration of my tenure I will consult, seek, and follow the guidance of the Department of the Interior's Designated Agency Ethics Official.

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Questions from Senator Martin Heinrich

Question 1: I continue to hear about problems arising from the large number of long-standing job vacancies in BLM's field offices in New Mexico. Of particular concern are significant vacancies in Farmington, the Federal Indian Minerals Office and Carlsbad. I understand there are as many as 21 vacant positions in Carlsbad alone, as well as the position of the Field Office Manager. Clearly the administration's hiring freeze contributed to the delay in filling these important federal jobs. If you are confirmed, what actions will you take to address promptly the need to fill the large number of job vacancies in New Mexico's various BLM offices?

Response: Although I am not aware of the status of current job vacancies within the Department's bureaus or efforts to fill those positions, Secretary Zinke has stressed one of his priorities is to get the right tools and resources out to the field, and I will look into this if confirmed.

Question 2: President Trump in his signing statement enacting the FY2017 Omnibus Appropriations Bill implied that some programs and services for American Indians and tribes may not comply with the Due Process Clause of the Constitution. The signing statement reads:

My Administration shall treat provisions that allocate benefits on the basis of race, ethnicity, and gender (e.g., Division B, under the heading "Minority Business Development"; Division C, sections 8016, 8021, 8038, and 8042; Division H, under the headings "Departmental Management Salaries and Expenses," "School Improvement Programs," and "Historically Black College and University Capital Financing Program Account"; Division K, under the heading "Native American Housing Block Grants"; and Division K, section 213) in a manner consistent with the requirement to afford equal protection of the laws under the Due Process Clause of the Constitution's Fifth Amendment.

Do you believe that programs and services for Indian tribes and their members, as currently implemented, are constitutional?

Response: As I indicated at the hearing, I am not familiar with this signing statement and I have assumed that many of these programs are constitutional.

Question 3: During the hearing, in response to a question about conducting full tribal consultation before making any changes to the land-into-trust process, you first said that you would "participate in some form of engagement", and in response to a follow up question, said that any distinction between "engagement" and "consultation" is a "distinction without a difference". However, as you know, "tribal consultation" has a particular meaning in U.S. law, involving specific commitments, processes, and procedures, while "engagement" could mean as little as a form letter or a phone call.

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If the Department of the Interior considers changes to the land-into-trust process, will you commit to engaging in a tribal consultation process before finalizing any such decision?

Response: As I stated to you at the hearing, I will support a full tribal consultation for any meaningful changes. However, because I am not at the Department, I cannot tell you what changes the Department of the Interior intends, if any, and I do not know what consultation process the Department currently intends to take.

Question 4: Good information is vital for good decision-making, and the government must act as an honest broker. Do you believe that the office of the Secretary of the Interior has the prerogative to interpret for Congress and the public the data and assessments of scientists at the FWS and other Interior science agencies?

Response: As I stated at my hearing, my view is that policy decisions should be predicated on the evaluation of science as it is and application of the law. I believe when scientific data is evaluated on its merits and used as a basis to make policy decisions that are honest to the science, conflicts will be reduced and those decisions will be reliable and legally sound. I believe when the Department picks and chooses between data, it is obligated to articulate a reason why it has done so, and it must be able to connect its conclusions to the facts it finds in a rational manner.

Question 5: The Bureau of Indian Education (BIE) is implementing a reorganization plan developed with minimal tribal input. Will you commit, moving forward, to engaging tribes in meaningful consultation on any reorganization, and any BIE policy changes that affect tribes?

Response: I am not familiar with the reorganization plan you reference and would need to learn more about it and the process to provide a meaningful response to your question.

Question 6: The Department of Interior's regulatory and scientific agencies invest taxpayer dollars to produce a wealth of data about the nation's energy and natural resources. Will you commit to maintaining the integrity and public accessibility of datasets produced by Interior staff?

Response: The integrity of scientific data and its application in decision making on behalf of the public are of paramount importance to me. Should I be confirmed, I commit to continuing this commitment and applying it to policy recommendations.

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Questions from Senator Mazie Hirono

Question 1: Mr. Bernhardt, beginning in April 2001 you directed the Department of Interior's Office of Congressional and Legislative Affairs. In this position, were you responsible for drafting, editing, or reviewing testimony for then-Secretary Norton?

Response: The generation of testimony for Congress generally involves a whole host of entities throughout the Department of the Interior, including individual bureaus, Solicitors office, senior advisors, Administration appointees, and the White House Office of Management and Budget. My office would have had engagement at each stage and ultimately transmitted the testimony to the Committee.

Question 2: (Follow-up to Question 1) If so, please describe your contribution to the drafting, editing, and review of Ms. Norton's testimony responding to questions submitted by then-Chair Frank Murkowski on U.S. Fish and Wildlife Service findings relating to the impact of drilling on caribou in the Arctic National Wildlife Refuge?

Response: As I stated in my previous response, the generation of testimony for Congress generally involves a whole host of entities throughout the Department of the Interior, including individual bureaus, Solicitors office, senior advisors, Administration appointees, and the White House Office of Management and Budget. My office had engagement at each stage and ultimately transmitted the testimony to the Committee.

Question 3: (Follow-up to Question 1) At the time the testimony was drafted and reviewed at the Department of Interior, were you aware of the use of information contained in a report funded by BP Oil in Ms. Norton's testimony?

Response: No, at the time I was just learning about ANWR and I was not then serving as the Secretary's primary policy counselor on the issue.

Question 4: Do you believe the Fish and Wildlife Service provides valuable scientific expertise in shaping policy for the Department of Interior?

Response: Yes.

Question 5: To what extent will you consider scientific data in shaping policy if it fails to align with the President's political agenda?

Response: As I stated at my hearing, my view is that policy decision should be predicated on the evaluation of science and application of the law. I believe when scientific data is evaluated on its merits and used as an information base to make policy decisions that are honest to the science and transparent regarding the policy choice, conflicts will be reduced

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and those decisions will be reliable and legally sound.

Question 6: During the hearing in your response to Senator Franken regarding the use of climate change science in shaping policy you said that you would “take the science as it comes.” Please explain what that means.

Response: Generally, we have to use the data we have available to make decisions in the context of the law and the discretion of the executive branch.

Question 7: (Follow-up to Question 6) As you may be aware, there is a substantial body of research conducted over multiple decades in multiple countries as to the causes, impacts, and effects of climate change. Given the data-driven scientific consensus regarding the current and future impacts of climate change on our communities, national security, and economy what additional scientific evidence would you be looking for to develop policy as Deputy Secretary?

Response: As I indicated in response to a similar question at my hearing, as a policymaker we must take the science as we find it, whatever it may be, and use it to make informed decisions, with the discretion we are given under the law.

Question 8: During the hearing you highlighted the concerns raised by the President on the impact activities to mitigate climate change would have on jobs, assuming that you were referencing jobs within the fossil fuel extraction industry. However, as you may be aware, there is a substantial body of evidence that climate change will negatively impact our broader economy in the long-term. In addition, as Sen. Franken pointed out, renewable energy jobs are a substantial and growing sector of American jobs which are less likely to be outsourced. As Deputy Secretary you will be second in line to assume the responsibility of protecting and managing natural resources for the U.S. public interest. In deciding policy matters how much weight will you give to protecting fossil fuels jobs versus protecting our nation’s long-term economic and environmental health?

Response: As I stated at my hearing, my view is that policy decisions should be predicated on the evaluation of science and application of the law. If confirmed, I will make decisions with an open mind, actively seeking input and listening to varied views and perspectives.

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Question 9: Do your business clients at Brownstein Hyatt Farber Schreck LLP have business interests in matters currently pending or that will likely come before the Department of Interior within the next few years?

Response: Yes, but to the extent they do, I will follow my ethics agreement.

Question 10: During the hearing in your response to Senator Stabenow you stated that you are certain that scientists at Interior are not under attack. Under this administration there have been reports of instances where National Park Service employees have been prohibited from publicly communicating climate facts and reprimanded for posting pictures of attendance at the inauguration. If not an “attack” how would you classify these directives?

Response: As I stated at my hearing, I do not believe that scientists at the Department are under attack. Although I am not at the Department, I understand that the directives you have identified, related to the National Park Service’s official twitter account, were already existing policies.

Question 11: If confirmed as Deputy Secretary, will you encourage a culture of transparency at the Department of Interior?

Response: Yes.

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Question from Senator Angus S. King, Jr.

Question: Do you believe that prior record of service and performance should be a factor when considering how the National Park Service awards concession contracts?

Response: Yes.

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Questions from Senator Catherine Cortez Masto

Question 1: You appear to have several conflicts of interests from representing oil, gas, and water clients as a lobbyist working at the firm Brownstein, Hyatt Farber Schreck, LLP. You have stated that you will recuse yourself from matters involving your former clients for a year. Which particular matters involving your clients are currently pending before the Department?

Response: I believe that public trust is a public responsibility and that maintaining an ethical culture is important. I will fully comply with the ethics agreement that I signed. In addition, for the duration of my service, I intend to actively seek and consult with the Department's Designated Agency Ethics Official regarding particular matters involving specific parties of former clients or entities represented by my former firm. Finally, I will install a robust screening process, should one not exist within the office.

That said, on May 4, 2017, the Committee on Energy and Natural Resources received correspondence from the General Counsel of the United States Office of Government Ethics, David J. Apol.

Mr. Apol's correspondence included an enclosure of the "ethics agreement outlining the actions that the nominee [David Bernhardt] will undertake to avoid conflicts of interest." Further, General Counsel Apol explained, "we [the Office of Government Ethics] believe that this nominee [David Bernhardt] is in compliance with the applicable laws and regulations governing conflicts of interest."

In addition, I have reviewed some of the prior ethics agreements provided to the Committee in the past. There is a striking degree of consistency between the ethics agreement provided by Mr. Apol and the prior agreements provided by other nominees to positions within the Department of the Interior who worked in large private law firms representing similar clients, and in some cases the same clients. Copies of two such ethics agreements are attached to this correspondence to give you a sense of the similarities.

Given General Counsel Apol's determination that the ethics agreement I signed complies with the Office of Government Ethics' regulations and the applicable laws governing conflicts of interest, as well as the obvious similarity between that ethics agreement and those the Committee previously found sufficiently clear to proceed with the nomination, I reaffirm that I will comply with the ethics agreement I signed.

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Question 2: After the year, what will your approach be as issues involving these clients arise?

Response: I will follow my ethics agreements in consultation with the Department's Designated Agency Ethics Official.

Question 3: Under what circumstances would you seek a recusal? Or a waiver from a recusal? How transparent will that process be?

Response: I do not anticipate seeking a waiver. However, should I do so, I will consult with the Department's Designated Agency Ethics Official on best practices.

Question 4: As Deputy Secretary, you will oversee the Bureau of Land Management and the National Park Service. What are your thoughts on the Antiquities Act?

Response: It was a significant grant of power to the President by the Congress.

Question 5: What would your approach be with respect to the review of our monuments?

Response: If confirmed, I do not know if I will have a role in the review process.

Question 6: As a part of the review, would you consider widespread support from the state?

Response: If I were part of such a review, yes.

Question 7: Do you believe that monuments are important for outdoor recreation and rural economies to thrive?

Response: In some instances, yes very important.

Question 8: Resource Advisory Councils (RACs) are a crucial way for DOI to get diverse community input on public land management issues. RACs have helped inform decisions on issues related to recreation, land use planning, wildfire management, etc. I am concerned that these meetings are being postponed until September 2017 due to a full scale review. Do you believe community input is essential?

Response: Yes.

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Question 9: Will you continue to postpone these meetings?

Response: I did not postpone the meetings.

Question 10: In Nevada, the Gold Butte National Monument Public Information forum has also been postponed. The shutting down of public input is disconcerting. What would your approach be with respect to the ongoing review of monuments and the measures taken to exclude our resource advisory councils and communities?

Response: As I am not at the Department, I am uncertain if I will play a role in either review process.

Question 11: Are you a strong supporter of states' rights?

Response: Yes.

Question 12: Do you believe a state should have a say in protecting its monuments?

Response: Yes.

Question 13: What are your thoughts on the protection of public lands?

Response: I think protecting certain lands is one of the Department's highest duties.

Question 14: There has been a push to privatize public lands, but the counties in my state cannot afford to properly manage these areas. Do believe in the agency's continued role in managing and protecting public lands?

Response: Yes.

Question 15: Do you support the BLM Methane rule? It has been reported that Secretary Zinke will be reviewing the rule internally. What would your approach be in reviewing the rule?

Response: I have no informed view of the final rule, but I would learn about it by reading the rule and its administrative record, evaluating prior comments, listening to the career staff that developed it, and reviewing the complaints about it.

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Question 16: Nevada is the driest state in the Nation. Please describe your approach in helping Western states address water scarcity and resiliency?

Response: I will do everything I can to ensure that the Department is a good neighbor, facilitating a collaborative approach to addressing scarcity and resiliency.

Question 17: How would you help to facilitate another water sharing agreement once Minute 319 under the U.S. Mexico water treaty expires this year?

Response: I would need to get up to speed on where the Department is at and where the Basin states are before I could answer this question.

Question 18: Because the lower basin states are all dependent upon the Colorado River, do you believe we also need to increase our water supply regionally by investing in recycling, groundwater storage, and stormwater capture?

Response: I think that these are good things to do.

Question 19: What about ensuring that refuges get the federal water supplies they need and are receive under the law?

Response: I think this is important.

Question 20: How would you approach wild horse management concerns that we have in my state?

Response: By working with you and your colleagues on the issue.

Question 21: Do you believe there should be a task force to facilitate consensus?

Response: I know that several administrations have made efforts here and failed, so before I suggest that a task force is a magic bullet, I would need to understand the scope of any previous review and how those reviewers were empowered. There have been many studies of the situation, and we need to find a pathway to fix it.

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Question 22: How will you protect agency scientific findings that may be politically challenging, but should be the basis for decisions and analysis from each Bureau and Department?

Response: I will not shrink from taking the evidence as I see it and developing a reasoned articulation of the conclusions I draw based upon the facts found and the legal framework I am working under.