

**HEARING ON THE NOMINATION OF KEN KOPOCIS
TO BE ASSISTANT ADMINISTRATOR FOR THE
OFFICE OF WATER FOR THE ENVIRONMENTAL
PROTECTION AGENCY AND REBECCA WODDER
TO BE ASSISTANT SECRETARY FOR FISH, WILD-
LIFE AND PARKS FOR THE DEPARTMENT OF
THE INTERIOR**

**HEARING
BEFORE THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
ONE HUNDRED TWELFTH CONGRESS**

FIRST SESSION

JULY 19, 2011

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ONE HUNDRED TWELFTH CONGRESS
FIRST SESSION

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HEARING ON THE NOMINATION OF KEN KOPOCIS TO BE ASSISTANT ADMINISTRATOR FOR THE OFFICE OF WATER FOR THE ENVIRONMENTAL PROTECTION AGENCY AND REBECCA WODDER TO BE ASSISTANT SECRETARY FOR FISH, WILDLIFE AND PARKS FOR THE DEPARTMENT OF THE INTERIOR

TUESDAY, JULY 19, 2011

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The full committee met, pursuant to notice, at 2:30 p.m. in room 406, Dirksen Senate Building, Hon. Barbara Boxer (chairman of the committee) presiding.

Present: Senators Boxer, Carper, Lautenberg, Cardin, Udall, Merkley, Gillibrand, Inhofe, Barrasso and Boozman.

**STATEMENT OF HON. BARBARA BOXER,
U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator BOXER. Good afternoon.

Today, the Senate Committee on Environment and Public Works will consider the nomination of Ken Kopocis to be Associate Administrator for the Office of Water at the Environmental Protection Agency and Rebecca Wodder to be Assistant Secretary for Fish, Wildlife and Parks at the Department of the Interior.

First, I would like to welcome Ken who is well known to members of this committee. From 2006 to 2008, Ken served on the EPW Committee Majority staff as Deputy Staff Director for Infrastructure. During his time here, Ken worked on a number of issues including playing a key role—that is understated—in the efforts to pass the Water Resources Development Act of 2007.

It was really a yeoman's job and I think we all enjoyed working with you. It was such a bipartisan effort and I remember all of the staff on Senator Inhofe's side as well, starting with Ruth and her team.

In addition to his time on the EPW Committee, Ken has held multiple positions on the House Transportation and Infrastructure Committee. His work on water issues spans over 25 years. This broad experience with our Nation's clean water and drinking water

laws makes him uniquely qualified to deal with the many challenges the EPA Office of Water faces today.

Mr. Kopocis, as you know, the office which you have been nominated to lead is very important, critically important. You work to ensure that families have safe drinking water and to keep our Nation's lakes and rivers clean. You will be responsible for implementing important programs that keep our children and families healthy and safe.

I believe your background has prepared you well for this position and I look forward to hearing how, if confirmed, you will work to uphold and implement the public health safeguards administered by the Office of Water.

Next, I would like to welcome Rebecca Wodder who is going to have a fuller introduction from Senator Cardin. Since 1995, Ms. Wodder has been President and Chief Executive Officer of American Rivers where she has led efforts to help dozens of communities restore the health of their rivers through innovation conservation measures.

Ms. Wodder, the Assistant Secretary for Fish, Wildlife and Parks helps oversee the work of the Fish and Wildlife Service. This agency is the guardian of our natural treasures and species in every State of the Union. In my own State of California, the Service manages dozens of wildlife refuges across our State. The Service also has a big responsibility for protecting iconic species like the bald eagle and the California condor and helps to manage the millions of migratory birds that migrate through or winter in California every year.

The Service's work to protect important species and manage critical wildlife refuges supports tourism and recreation that boosts our local economy in California and I know in many other States. In 2006, according to the National Survey of Fishing, Hunting and Wildlife Associated Recreation, we found those activities provided \$8 billion to our California economy and more than \$120 billion to the national economy equaling roughly 1 percent of the Nation's GDP.

Ms. Wodder, if you are confirmed, I will also look forward to your leadership in working with the State of California, stakeholders and other Federal agencies as they seek to develop and implement a plan for restoration of the California Bay Delta that achieves the co-equal goals of restoring this precious ecosystem and improving water supply reliability.

This ongoing effort is critical to the future of my State and it will only succeed if the Fish and Wildlife Service and other Federal agencies are strong and supportive.

Strong leadership is needed in both positions we are considering today. From protecting and preserving the Nation's national treasures to ensuring that our water is safe to drink and our lakes and rivers are clean, the positions for which you have been nominated have significant responsibilities. Your jobs will not be easy. There will be controversy, there will be difficult decisions, but I do expect that you will follow the law and the best available science in all your decisionmaking. I look forward to hearing more from you today and into the future.

With that, I will call on our Ranking Member, Senator Inhofe.

**STATEMENT OF HON. JAMES M. INHOFE,
U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator INHOFE. Thank you, Madam Chairman.

First, there are a lot of things that will come up the two of you will be working with that I have a great concern with in my State of Oklahoma. We are looking at some of the ozone standards that will be of concern.

Ken, I have worked with you for a long time. In fact, a lot of the time when you were here, I couldn't remember whether you were on my staff or her staff, but nonetheless, we worked closely together in the past even though philosophically, we have a few areas where we are not going to be together. I think probably there will be more so, Ms. Wodder, in your area judging from the background and some of the statements you have made concerning the Clean Water Act. It seems we have gone through quite a few experiences where the Congress will speak, if it is cap and trade.

This is the thing I like about this committee. You can totally disagree with everything the other guy stands for and love him anyway.

Such things as the Clean Water Restoration Act, we went through that and it was not just rejected but the two authors, Oberstar and Feingold were also rejected in the same election. Now we are looking at things like cap and trade and other areas we will be working with in terms of regulation.

That is my concern, Ms. Wodder. Some of the statements you have made about hydraulic fracturing concern me and I will be going over this during question and answer. We are going to be asking for a balanced approach to the positions for which you are nominated.

In addition, I expect you to abide by the terms of the agreement worked out with the Fish and Wildlife Service with Dan Ashe. We spent a long time with Dan Ashe as well as the Secretary of the Interior in my office talking about what should Fish and Wildlife be doing, what their mission should be. Is this something that is again going to try to be used to promote something that was rejected in terms of cap and trade and some of the other issues.

I have four things to discuss during questions and answers ranging from hydraulic fracturing, the lesser prairie chicken and we will cover all those and I look forward to visiting with you, getting to know you better and trying to get some clarification as to what your commitment is relative to some of the other people in the Administration.

Thank you very much.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR
FROM THE STATE OF OKLAHOMA

We are here today to consider two nominations: Ken Kopocis to be Associate Administrator of the Office of Water as well as Rebecca Wodder to be Assistant Secretary for Fish, Wildlife, and Parks.

First and foremost in my mind is certainly the upcoming announcement by the EPA to tighten the ozone standard, which would ruin Oklahoma's and the broader American economy. The decision will be announced next week and I will be tracking it very closely.

Turning our attention back to the nominees, I am pleased to see Mr. Kopocis, a former EPW Committee staffer, here in our committee room again. We have worked

together on a number of important bills, and while we may differ on our politics, I know he would make a valuable addition to the Office of Water.

I do have serious concerns about Ms. Wodder's nomination: she is the CEO of a far-left environmental organization and was a staunch supporter of the Clean Water Restoration Act, a bill that would have given the Federal Government authority over practically every body of water in the country, no matter how small. She is also an active proponent of Federal regulation of hydraulic fracturing—a practice that is efficiently and effectively regulated by states.

The selection of Ms. Wodder is a clear departure from her predecessor, Tom Strickland, who in testimony before the EPW Committee said that we should actively and aggressively develop our energy resources. Unfortunately, Ms. Wodder's support for regulatory advancement suggests that she would do the opposite.

As President of American Rivers for more than 15 years, Ms. Wodder provided leadership and direction on policies and activities related to the Army Corps of Engineers Civil Works Program. Other water resources stakeholders have validly expressed serious concerns with these policies and activities. I share their apprehension.

An Assistant Secretary must be able to appreciate and understand differing perspectives in order to make evenhanded and well-reasoned policy decisions. Today, I would like your assurance that you will bring an objective and balanced approach to the position for which you are nominated.

Let me further say that the Obama-EPA's water policies represent an aggressive, heavy handed, top down approach to regulation, which is equivalent to the efforts we are seeing with EPA's air office.

Today, EPA is proposing to completely change the rights and responsibilities of individuals under the Clean Water Act through their new draft guidance. Just as the Obama-EPA is attempting to implement a backdoor cap-and-trade through regulation, they are using this water guidance document to implement the Clean Water Restoration Act through regulation. Remember, both of these bills were resoundingly rejected last Congress when Democrats held overwhelming majorities.

By re-interpreting the Rapanos Supreme Court decision and incorporating only the expansive language in an attempt to gain jurisdictional authority over new waters, EPA is ignoring both justices' clear limitations on Federal CWA authority. Not only do I believe their interpretation is inappropriate, but furthermore, it is completely improper to attempt to change people's rights and responsibilities under a law through a guidance document. EPA is casting a wide interpretation through which they will attempt to legalize through an equally broad rulemaking. I strongly oppose EPA's actions here and sincerely hope that they listen to the 40 other members who joined me in requesting that they abandon any additional actions on this document.

In addition to trying to assert jurisdiction over nearly every drop of water in the United States, EPA is issuing a host of new regulations in stormwater, strict numeric runoff controls and drinking water, all while requesting cuts in water programs. I recently released a report exposing the high costs of EPA's Water Regulations and the impacts on State and local governments called Clouded Waters. This report explores the Chesapeake Bay TMDL and Florida Numeric Nutrient Criteria which are poised to be expanded to the Mississippi River and other major water bodies around the country. These strict regulatory approaches are costly and have questionable environmental gains attached to them. Additionally, the report looks at EPA's new stormwater rules, which have the potential to put EPA in control of all land use planning decisions in regulated areas and generate mandates that will cost billions of dollars.

EPA's Office of Water has shown a stunning lack of transparency in their decisionmaking in a number of programs, most recently highlighted by the GAO report that went public just last week discussing the Office of Water's unregulated contaminant monitoring program. I know we all share the desire for clean, safe, affordable water, but after reading that report, it is clear that this lack of transparency has led to an incredible amount of distrust with the program. Whether you are advocating for or against regulation, we simply do not know how EPA is even making decisions about regulating contaminants.

Additionally, in 2009 when EPA finalized their Construction and Development Effluent Limitations Guidelines Rule (ELG), it included an arbitrary turbidity limit that was based on faulty analysis. The rule ultimately had to be vacated. Additional transparency and openness in developing this rule could have prevented this. Furthermore, the Chesapeake Bay model and EPA's inability to allow enough time for review of how the TMDL load allocations were calculated is a major part of the current legal challenges. It is simply inappropriate for EPA to make major regulatory

decisions in the kind of opaque system that currently exists. It completely undermines the credibility of every regulatory decision EPA makes.

In addition, I expect Ms. Wodder to abide by the terms of a deal that I worked out with Fish & Wildlife Service Director Dan Ashe in order to enable his nomination to move forward. Here, Dan Ashe clarified that climate change is not the overarching consideration driving the Service's day-to-day operations. He went on to State that FWS is not responsible for the regulation of greenhouse gases, nor is it the Service's role to address these causative factors through any of its statutory or regulatory authorities. Last, he agreed to personally attend multiple stakeholder meetings in Oklahoma to discuss the impact of listing the Lesser Prairie Chicken under the Endangered Species Act. Oklahomans are rightfully concerned about this likely action as it will shut down hundreds of millions of dollars of wind development and harm private property values.

I look forward to hearing from both nominees and having the opportunity to discuss many of the concerns I have expressed about the direction of the Obama-EPA as it relates to ensuring we are taking the right approach to balancing economic and environmental needs.

Senator BOXER. Senator, it is Rebecca's birthday today, so I want to say happy birthday to you.

Senator INHOFE. Were you going to sing to her?

Senator BOXER. I was not but I wanted to say, best to you.

Senator Lautenberg.

**STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator LAUTENBERG. Thank you very much.

I thank Senator Cardin for the courtesy. I know that he wants to introduce the witness.

I thank the witnesses for agreeing to be of service to our country. If confirmed, Rebecca Wodder and Ken Kopocis will become two of America's most important environmental stewards. Protecting public lands and water is always important, especially now when our natural resources are under assault from pollution, a warring planet and industries that want to dismantle long-standing environmental protection.

Ms. Wodder, President Obama's choice to become the Interior Department's Assistant Secretary for Fish, Wildlife and Parks, this position is charged with helping to lead our country's efforts to conserve and protect fish, wildlife, plants and their habitats. Ms. Wodder also would be responsible for helping our country deal with the very serious problem, White Nose Syndrome, a deadly fungus that could wipe out much of our bat population.

Make no mistake, this is a serious threat. Bats are some of the Nation's most important exterminators. They help to protect our Country's crops from pests, so if we don't stop this disease from spreading, it could trigger a major environmental and economic crisis.

Ms. Wodder would also have the duty to help preserve and maintain America's critically important national wildlife refuges which too often are overburdened and understaffed. These responsibilities dovetail well with Ms. Wodder's experience which includes working with environmental groups grappling with the issues that would fall under her jurisdiction at the Interior Department.

For example, for the past 16 years, Ms. Wodder has led American Rivers, a national, nonprofit conservation group that strives to protect and restore the Nation's waters. In other words, Ms. Wodder has dedicated her career to fight for clean water and protecting

public lands, the same missions that she is nominated to carry out as the head of Fish, Wildlife and Parks. Her experience will be an asset, not a liability, as some on the other side of the aisle have suggested.

Similarly, Mr. Kopocis is nominated to become the Environmental Protection Agency's Assistant Administrator for Water and would bring welcome experience to the position. The EPA's Office of Water is responsible for making sure that drinking water is clean and our country's oceans and watersheds are healthy and safe. Mr. Kopocis has worked on water issues for more than a quarter of a century, including several years of service as the top staff member of this committee.

I look forward to hearing from both our witnesses today about why we must strengthen our country's environmental defenses and how they would fulfill their duties if confirmed.

I will just take one more moment to talk about the bats. In New Jersey, we have old mine shafts. Some years ago, I went down with one of my people into the mine shafts. I love those little bats. I didn't realize how strong they were and how meaningful it was but I knew that they were important in the scheme of things.

At one point in this mine shaft, we had almost 30,000 bats. Now there are something close to 1,000 left. That is an indescribable blight on what the effects are in terms of their pollination responsibilities in consuming half their weight in insects each and every day. I won't say it has been trivialized but I do think these things are important when a species like that is on the verge of disappearance. We are endangering the lives of humans down the line.

We have excellent candidates here, Madam Chairman, and I hope that we will be able to deal promptly, effectively and positively with them.

Thank you for being here.
 Senator BOXER. Thank you.
 Senator Barrasso.

**STATEMENT OF HON. JOHN BARRASSO,
 U.S. SENATOR FROM THE STATE OF WYOMING**

Senator BARRASSO. Thank you very much, Madam Chairman.

Today we have a hearing on two nominees who are candidates to fill key positions in the Administration. To fill these positions, we need nominees who have a record to me that demonstrates an ability to be fair and impartial. Most importantly, we need nominees who have a record of understanding environmental issues are also economic issues and that we have 9.2 percent unemployment in this country today.

That is why I am troubled by some of the statements made by one of the nominees, Ms. Wodder, while she was President of American Rivers. I realize she is no longer a spokesperson for American Rivers and she may hold differing personal views, but I can only go by the record of statements made and try to clarify the meaning of those statements through this nomination process.

On August 5, 2007 in an interview with E, the environmental magazine, the nominee praised the economic philosophy of Bill McKibben in his book *Deep Economies* stating that, "I'm a strong supporter of his call for a new economic model based on sustain-

ability. I would like to get my food, power, et cetera, much more locally than I do now.'

In chapter one of this book, *Deep Economies*, he states "growth at least as we now create it is producing more in equality than prosperity, more insecurity than progress.' He says "growth is no longer making us happy.'

In that same interview when asked which environmental group did she most admire, she responds, "I am a huge fan of the work of the Center for the New American Dream which is offering practical choices for living a more sustainable and high quality of life in the United States.'

The Center for the New American Dream's website has a whole section dedicated to prosperity without growth. The Center's website has many anti-economic quotes not widely accepted, "the case is strong that growth in the affluent U.S. is now doing more harm than good.' It goes on with "but even if the GDP growth could solve the unemployment problem, it shouldn't solve the unemployment problem because the cost in greenhouse gas emissions is prohibitive.'

In the same interview, the nominee stated her position on commercial American agriculture saying "I object to factory farms.' In April 2001, the nominee stated her opposition to any form of mining, oil and natural gas extraction and increased traditional domestic energy production saying in the *Environmental News Service* that "damming, drilling, digging and burning to produce energy pollute drinking water, deny the public recreational opportunities and drive river wildlife to extinction.' She stated the congressional stopgap measures to increase domestic energy production "will exacerbate these problems without resulting in long term solutions.'

In fact, Madam Chairman, American Rivers opposes hydraulic fracturing, the key method of extracting America's abundant domestic supply of natural gas. The extraction of natural gas can create thousands of jobs, not just in the west but in the east as well. American Rivers supports the removal of hydroelectric dams on the Columbia and Snake Rivers, which will further weaken our power grid and businesses that rely on it for affordable power.

Our nominee has campaigned for the Clean Water Restoration Act which would give the Federal Government virtually total control over any wet area of a State. That bill would have regulated everything from prairie potholes to dry creek beds, negatively impacting farms and small businesses across the country. If confirmed, the nominee would be in a unique position to have a major say in what economic activities would be allowed to occur in our States.

It is for this reason that I am going to seek clarification of the nominee's statements regarding her feeling about balancing environmental concerns while trying to grow our economy given that we are at 9.2 percent unemployment in this country today. The nominee's views toward agriculture, mining, oil and natural gas exploration, and energy production need to be clear. With 9.2 percent of the Country looking for employment, looking for someone to hire them, they need to be assured that this nominee is not opposed to economic growth, especially in the important job sectors mentioned above.

Thank you, Madam Chairman. I look forward to the testimony and the chance to clarify the nominee's statements.
 Senator BOXER. Senator Cardin.

**STATEMENT OF HON. BENJAMIN CARDIN,
 U.S. SENATOR FROM THE STATE OF MARYLAND**

Senator CARDIN. Thank you very much, Madam Chair. I very much look forward to this hearing with two important positions to be filled, the Assistant Administrator for the Office of Water for the Environmental Protection Agency and the Assistant Secretary for Fish, Wildlife and Parks for the Department of the Interior.

Both positions are critically important to our Nation. My top priority in this committee is the Chesapeake Bay, a body of water about which I care deeply, because of its economic impact on the people of Maryland, because of its environmental importance to our way of life, our culture, our history and our future. It is very much tied up with the continuation of our partnerships to clean up the Chesapeake Bay for all the reasons that I have stated. The two positions being filled here both play a very important part in that program.

To Ken Kopocis, let me say it is a pleasure to see you again. I have worked with you not only in this committee but when I was in the House of Representatives when I first started in Congress, and I have had nothing but deep respect for your commitment to public service. You brought your expertise to those of us serving in Congress and we know you will continue in that great line of public service.

To Ms. Rebecca Wodder, I am going to officially welcome and introduce you to this committee. I really have the honor to do this.

First, I want to thank you and your families for your commitment to public service. We know this is not easy. Ms. Wodder, you have an interesting way of celebrating your birthday to be able to subject yourself to the questioning by our committee. You have already heard some of the preliminaries. We know this is exactly what you want to do, to continue your commitment to our community in your willingness to move forward with this position, but also doing this on your birthday.

I really want to underscore the point Senator Barrasso made that we want to judge our nominees based upon their records and based upon their commitment. I look forward to this hearing.

One thing I would take exception to is that I hope we are not going to be judged on every individual we have given recommendations to over our careers because I think we should be very careful about association and placing too much credence on statements we make about third parties.

However, it is absolutely appropriate for us to question as to the commitment of each of you to the responsibilities you are seeking to ensue.

I am particularly pleased to introduce Rebecca Wodder. I have come to know Rebecca as we have worked together over the last few years on a number of critical issues relating to restoring the health of America's rivers and streams. By nominating Ms. Wodder, President Obama has chosen a most capable and experi-

enced candidate for Assistant Secretary for Wildlife and Parks for the Department of Interior.

Since 1995, Ms. Wodder has served as President and CEO of American Rivers. Madam Chair, I really want to compliment her in that role. American Rivers has played a critical role in preserving America's rivers which in many cases are the fresh water supply for our water quality in our great water bodies. Yes, I do remember times when our rivers caught fire and thanks to organizations such as American Rivers, we now have a healthier river system. She did an excellent job as the CEO of that organization. Obviously, she brings to the talent from that position but also understands the responsibilities of the position for which she has been nominated.

Under her skillful leadership, American Rivers has helped dozens of communities implement innovative conservation measures. Her success is due to her ability to build effective partnerships among government officials and diverse private sector stakeholders to protect our Nation's rivers and fresh water resources. These are skills that will serve her well at the Department of Interior.

Ms. Wodder has been recognized as one of the top 25 outstanding conservationists by Outdoor Life Magazine and was named Woman of the Year by American Sport Fishing Association.

As Assistant Secretary for Wildlife and Parks, Ms. Wodder will oversee the management of the Nation's magnificent national wildlife refuge systems including five in Maryland, notably the 27,000 acre Blackwater Refuge which we will be talking about after your confirmation. In addition, she oversees the work of the National Park Service which writer, Wallace Stegner, rightfully called "America's best idea."

I look forward to working with Ms. Wodder on the establishment of a new national historical park on Maryland's eastern shore to commemorate and celebrate the outstanding life of one of America's greatest heroes, Harriet Tubman. That park is included not only in Maryland but in the great State of New York.

I appreciate our witnesses being here and I look forward to this hearing.

[The prepared statement of Senator Cardin follows:]

STATEMENT OF HON. BENJAMIN CARDIN, U.S. SENATOR
FROM THE STATE OF MARYLAND

Madame Chairman, thank you for holding this hearing today.

I look forward to hearing from the nominees, each of whom is being considered for a role that is critically important to the protection of our environment, with implications for human health and safety, economic growth, and countless other issues of vital importance to our Nation.

Both nominees have impressive backgrounds in environmental issues. In fact, I have known Ken Kopocis since I was first elected to Congress, and have worked personally with him on a number of water-related issues. I look forward to hearing from him today, and to working closely with him on clean water issues going forward.

I am also particularly pleased to introduce Rebecca Wodder. I have come to know Rebecca as we have worked together over the last few years on a number of critical issues relating to restoring the health of America's rivers and streams. In nominating Ms. Wodder, President Obama has chosen a most capable and experienced candidate for Assistant Secretary for Wildlife and Parks for the Department of Interior.

Since 1995, Ms. Wodder has served as President and CEO of American Rivers. Under her skillful leadership, American Rivers has helped dozens of communities

implement innovative conservation measures. Her success is due to her ability to build effective partnership among government officials and diverse private sector stakeholders to protect our nation's river and freshwater resources. These are the skills that will serve her well at the Department of Interior: a passion for the work and a collaborative style.

Ms. Wodder has been recognized as a Top 25 Outstanding Conservationists by Outdoor Life Magazine and was named Woman of the Year by American Sportfishing Association.

As Assistant Secretary for Wildlife and Parks, Ms. Wodder will oversee the management of the nation's magnificent National Wildlife Refuge system, including 5 in Maryland, notably the 27,000 acre Blackwater Refuge.

In addition, she will oversee the work of the National Park Service, which the writer Wallace Stegner rightly called America's Best Idea. I look forward to working with Ms. Wodder on the establishment of a new National Historical Park on Maryland's Eastern Shore to commemorate and celebrate the outstanding life of one of America's greatest heroes, Harriet Tubman.

I appreciate the opportunity to hear from both nominees. Thank you.

Senator BOXER. Thank you, Senator.

We are joined by Senator Gillibrand. Welcome.

**STATEMENT OF HON. KRISTEN GILLIBRAND,
U.S. SENATOR FROM THE STATE OF NEW YORK**

Senator GILLIBRAND. I just want to welcome the nominees.

Thank you, Madam Chairman.

Senator BOXER. Thank you very much.

We are going to hear from you but I thought before you each speak, you would like to introduce your families, so Ken, do you want to start and Rebecca, you can follow.

Mr. KOPOCIS. With me today is my wife, Chris, she has been my wife for 31 years, and our daughter, Kim. We also have a son, Jeff, who is currently working in Massachusetts who couldn't be with us today.

Senator BOXER. Rebecca.

Ms. WODDER. Chairman Boxer, I would like to introduce my husband, James Van Erden and our daughter, Jayme. We have another daughter as well, Jennifer, who can't be here today because she is in Panama serving as a Peace Corps volunteer.

Senator BOXER. We thank her for her great service. We thank both of you and your families for being willing to go through the process and to work for your country.

Mr. Kopocis, why don't we start with you. You have 5 minutes to address us and we will move on to Ms. Wodder.

**STATEMENT OF KEN KOPOCIS, NOMINATED TO BE ASSISTANT
ADMINISTRATOR, OFFICE OF WATER, ENVIRONMENTAL
PROTECTION AGENCY**

Mr. KOPOCIS. Thank you.

Good afternoon, Chairman Boxer, Ranking Member Inhofe, and other members of the committee. I am honored and humbled to appear before you today.

I have many memories of being in this room as either a Senate or House committee staff member over my 26 years on Capitol Hill, engaging in debates that were often lively, robust and resulted in advancing national policies. While I have sat at this table scores of times, this is a distinct perspective.

To date, the greatest rewards of my career have been in assisting both Senators and Representatives in developing bicameral, bipar-

tisan legislation to address the Nation's critical water resources and water quality needs. However, despite all those memories, it is my greatest privilege to appear before you as the President's nominee to Assistant Administrator for the EPA Office of Water. I only hope that if I am confirmed, I can fulfill the President's and Administrator Jackson's confidence in me.

I have spent the majority of my professional life working to address some of the Nation's most critical needs. These include eight Water Resources Development Acts, the Water Quality Act of 1987 which strengthened the Nation's commitment to clean water, protecting and restoring the Everglades and the Florida Keys, ending the practice of using our oceans as dumping grounds for sludge and garbage, oil pollution prevention, preparedness and response following the *Exxon Valdez* spill in 1989 and developing targeted programs for California's Bay Delta, Chesapeake Bay, the Great Lakes, Long Island Sound, Lake Pontchartrain and the Gulf of Mexico, the Tijuana River Valley, San Diego's beaches and the U.S.-Mexico border region.

I am proud to have had a role in protecting the Nation's beaches and restoring our economically vital estuaries; addressing the impacts of invasive and non-indigenous species; cleaning up hazardous waste and returning areas affected by our Nation's industrial legacy to productive use through the Superfund and Brownfields program, all while protecting public health and the environment and advancing economic opportunity.

While the Nation has made great strides in protecting public health and the environment, we have yet to achieve the objective established by Congress in 1972 of restoring and maintaining the chemical, physical and biological integrity of the Nation's waters. If approved by this committee and confirmed by the Senate, it is my intent to work with all of you toward achieving that objective for this and future generations.

In my work on the committees, I counseled members on how to develop and achieve strategies for legislation in a manner that assures cooperation and collaboration among all interested and necessary parties. I have always attempted to approach issues with an open mind, interacting with members of the public, State and local officials and interest groups on legislative and program development and implementation.

I have sought to analyze facts, the law and consequences in developing solutions to national and local problems. I have had the privilege of working on legislation that while not always non-controversial, always enjoyed bipartisan support regardless of the majority party in Congress or the White House. Chairman Boxer, Ranking Member Inhofe, your work on the Water Resources Development Act of 2007 was a tangible demonstration of how you can work together toward a common goal.

One of the lessons I have learned from my work on Capitol Hill is that the allies on your side of the issues do not always have the correct answer and the advocates on the other side of an issue are not always wrong. It can be possible to address issues in a manner that achieves one's stated goals and respects the legitimate perspectives of others in the debate.

I have observed that too often people hear but do not listen. If approved and confirmed, you can count on me to listen to all perspectives in the debate. I believe that we all share a common goal of clean and healthy water. We demand the confidence that when we turn the tap anywhere in the United States, there will be an abundant and safe supply of drinking water.

We can restore and protect our precious resources, such as the California Bay Delta, Everglades, Chesapeake Bay, Lake Pontchartrain, Long Island Sound, Narragansett Bay. We should be able to swim at our beaches without fear of illness or infection. We can have productive and economically vital fisheries and eat the fish that we catch. We can create opportunities for the next generation that exceed those that were available for us.

Thank you and I welcome any questions you may have.

[The prepared statement of Mr. Kopocis follows:]

**STATEMENT OF KEN KOPOCIS
NOMINEE FOR ASSISTANT ADMINISTRATOR FOR THE
OFFICE OF WATER
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
JULY 19, 2011**

Good Morning Chairman Boxer, Ranking Member Inhofe, and other members of the Committee.

I am honored and humbled to appear before you today. I have many memories of being in this room as either a Senate or House committee staff member over my 26 years on Capitol Hill – engaging in debates that were often lively, robust, and which resulted in advancing National policies. While I have sat at this table scores of times, this is a distinct perspective.

To date, the greatest rewards in my career have been in assisting both Senators and Representatives in developing bicameral, bipartisan legislation to address the Nation's critical water resources and water quality needs.

However, despite all those memories, it is my greatest privilege to appear before you as the President's nominee as Assistant Administrator for the EPA Office of Water. I only hope that if I am confirmed I can fulfill the President's and Administrator Jackson's confidence in me.

I have spent the majority of my professional life working to address some of the Nation's most critical water resources needs. This includes eight Water Resources Development Acts; the Water Quality Act of 1987, which strengthened the Nation's commitment to clean water; protecting and restoring the Everglades and the Florida Keys; ending the practice of using our oceans as dumping grounds for sludge and garbage; oil pollution prevention, preparedness and response following the *Exxon Valdez* spill in 1989; and developing targeted programs for

California's Bay-Delta, Chesapeake Bay, the Great Lakes, Long Island Sound, Lake Pontchartrain and the Gulf of Mexico, the Tijuana River Valley and San Diego's beaches, and the U.S.—Mexico border region.

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In my work on the committees, I have counseled Members of Congress on how to develop and achieve strategies for legislation in a manner that assures cooperation and collaboration among all interested and necessary parties. I have always attempted to approach issues with an open mind, interacting with members of the public, State and local officials, and interest groups on legislative and program development and implementation. I have sought to analyze facts, the law, and consequences in developing solutions to national and local problems.

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I believe that we all share a common goal of clean and healthy waters; we demand the confidence that when we turn the tap anywhere in the United States, there will be an abundant and safe supply of drinking water; we can restore and protect our precious resources such as the California-Bay Delta, the Everglades, Chesapeake Bay, Lake Pontchartrain and the Gulf Coast, Narragansett Bay, and Long Island Sound; we should be able to swim at our beaches without fear of infection or illness; we can have productive and economically vital fisheries and eat the fish that we catch; and we can create opportunities for the next generation that exceed those that were available for us.

Thank you and I welcome any questions you may have.

**Environment and Public Works Committee Hearing
July 19, 2011
Follow-Up Questions for Written Submission**

Questions for Kopocis

Questions from:

Senator Barbara Boxer

Infrastructure Funding

1. Mr. Kopocis, the office of water is responsible for administering two of the nation's most important infrastructure investment programs – the Clean Water and Safe Drinking Water State Revolving Funds (SRFs). Unfortunately, despite increased investment in the SRFs in recent years, infrastructure in this country continues to decline. The American Society of Civil Engineers rates our wastewater and drinking water infrastructure a D-.

Do you commit to work with this Committee to ensure that we are adequately investing in the Nation's wastewater and drinking water infrastructure?

Even in the tight budget times that we face, will you work to ensure EPA continues to place a priority on investment in the State Revolving Funds?

Answer: Yes, if confirmed I will work with this Committee and with states, tribes and local government partners to provide funding, guidance and technical assistance to implement water quality programs.

Use of Best Available Science

2. Mr. Kopocis, it is critical that EPA use the best available science when implementing federal laws, such as the Safe Drinking Water Act, and carrying out policies to protect water quality in lakes and rivers.

Could you please describe the importance that you place on ensuring the use of the best available science in making decisions under the Clean Water Act and Safe Drinking Water Act?

If you are confirmed, will you ensure that the Agency continues the use of the best available science in making decisions about safe drinking water and clean rivers and lakes?

Answer: I believe in the importance of using the best available science and if confirmed I will work with this Committee, with the Office of Water and with other office in EPA to ensure that we use the best available science when making decisions in implementing water quality programs.

Importance of Following the Law

3. Mr. Kopocis, Congress passed the nation's bedrock public health and environmental laws, such as the Clean Water Act and Safe Drinking Water Act, with strong bipartisan support.

These laws are designed to help ensure that the EPA plays a strong role in protecting our families and children when they turn on the tap for a glass of water in the morning, or when they take a family trip over a weekend to go swimming.

Can you please describe the approach that you will take to faithfully and transparently ensure that such federal public health and environmental safeguards are implemented?

Answer: If confirmed I will work with this Committee and with federal, state, tribal and local government partners to ensure compliance with the water quality laws and regulations.

Unregulated Contaminant Program

4. Mr. Kopocis, last week the Government Accountability Office issued a report that found serious problems with EPA's implementation of safeguards to address unregulated drinking water contaminants.

Deputy Administrator Perciasepe described some of the steps that EPA is taking to address such problems and said that the Agency is committed to working with this Committee and the GAO to build a strong unregulated contaminant drinking water program.

If you are confirmed, do you agree to work with my staff and the GAO to implement the reforms needed to strengthen public health safeguards and the transparency of EPA's unregulated contaminant program?

Answer: Yes, if confirmed I will work with this Committee and the GAO to strengthen our water quality programs including the unregulated contaminant program.

Drinking Water Data Quality

5. Mr. Kopocis, the Government Accountability Office recently released a report that found problems with the data that states submit to EPA to help ensure compliance with Safe Drinking Water Act protections.

Among other actions, the GAO recommended that EPA conduct audits of this data to verify that it is accurate.

If confirmed, do you agree to meet with my staff on the issue of drinking water data quality problems and work to address such problems, including through implementation of the GAO recommendations?

Answer: Yes, if confirmed I will work with this Committee and the GAO to strengthen our water quality programs including drinking water data issues.

Senator James M. Inhofe

1. Will you treat requests from minority parties in Congress with the same urgency and respect as majority party requests?

Answer: Yes

2. Do you believe that if an agency were to change the rights and responsibilities under a law, they should go through notice and comment rulemaking prior to making that decision?

Answer: Yes, as required by the Administrative Procedure Act, when an agency undertakes a legislative rulemaking, it should seek public comment on any proposal and consider and respond to comments in making a final decision on the proposal.

3. EPA estimates in their most recent water needs surveys that drinking water necessitates \$334.8 billion and clean water \$298.1 billion. In your opinion, how important is infrastructure funding to the delivery of clean water? How important are the SRF program funds in helping states comply with unfunded mandates?

Answer: Infrastructure funding is crucial to the delivery of clean water and for helping states and cities comply with federal, state and local laws. If confirmed, I will work with this Committee and with states, tribes and local government partners to provide funding, guidance and technical assistance to implement water quality programs.

4. EPA Office of Water had a number of issues raised regarding the transparency and accountability in their decision-making process in recent decisions. If confirmed, will you commit to being open and transparent concerning how decisions are made by the Office of Water? What specifically will you do to ensure that these transparency issues do not continue?

Answer: I believe in the importance of transparency and accountability in decision-making. If confirmed, I will work with this Committee to ensure that decisions are made in a transparent manner so that decision makers are held accountable.

5. I understand that you worked on Mr. Oberstar's staff when he was pushing the Clean Water Restoration Act. In spite of the Clean Water Restoration Act being resoundingly defeated last Congress, it appears that EPA is attempting to gain the jurisdiction that it would have received through that Act through their new Draft Guidance document. I am extremely concerned about this course of action for a number of reasons. While I do not expect the President to nominate someone who shares my views on the limits of jurisdiction, I am concerned that you may not think *any* waters fall outside of the scope of Federal jurisdiction. Please tell me, in your opinion, should any water features not be federal? Please describe those features.

Answer: The scope of “waters of the United States” does not include all waters in the United States. EPA and the U.S. Army Corps of Engineers have described types of features the agencies believe are generally not considered to be a water of the United States under the Clean Water Act. I believe that complying with the law is crucial, and any interpretation of the scope of the Clean Water Act must fully recognize relevant judicial decisions. If confirmed, I will work to ensure that federal jurisdiction over water quality programs is implemented in a manner consistent with the Clean Water Act, regulations, and existing case law.

6. If you are confirmed, please describe how the office of water would use guidance documents and what the proper use of a guidance document is.

Answer: Guidance documents do not create or impose binding legal requirements, change applicable law, or constrain agency discretion. In fact, agencies often use this flexibility to depart from their guidance documents in light of relevant facts and law. The EPA’s decisions, including its permitting decisions, must be based on applicable law and the EPA’s discretion under the law.

If confirmed, I will work within the EPA Office of Water to use guidance documents primarily in two ways. Guidance documents could be used to provide EPA staff with information on the policies and procedures that they are expected to follow in carrying out their jobs. Other guidance documents could be used to provide states, the regulated community, and the public with additional clarity regarding how the EPA expects to apply relevant laws and regulations.

The EPA’s use of guidance documents is an important tool for communicating with states, regulated entities and the public. One particularly important use of guidance is to explain the EPA’s understanding of scientific developments that may affect its review of permits. Guidance can be a timely and productive means to inform the EPA regions, states and regulated entities of how new data and studies, where appropriate and when based on the specific facts, can be used to meet applicable laws and regulations.

7. On April 22, 2011, the Florida Department of Environmental Protection filed a petition with the EPA asking the federal agency to withdraw its nutrient rulemaking in Florida. EPA responded to this petition on June 14th by “not granting or denying the petition;” instead, EPA is holding the petition in “abeyance pending the results of Florida’s intended rulemaking.” In short, EPA failed to give Florida the “yes” or “no” answer that was requested. This non-response has created a cloud of uncertainty. The essence of the Florida petition was for EPA to revoke its federal rulemaking, so Florida could move forward with its own nutrient policies while on a level playing field with the other 49 states (i.e. while not under an EPA necessity determination and federal rulemaking). It would be extremely difficult for Florida to refine its state nutrient rules while EPA also continues to develop and implement conflicting federal rules for Florida. Florida deserves a simple “yes” or “no” answer.
- a. Will EPA give the state a “yes” or “no” answer to the Florida petition?

- b. By what date will EPA give Florida a “yes” or “no” answer?

Answer: Because I have not yet been confirmed, I am not aware of EPA’s plans for responding to Florida’s petition. It is my understanding that Acting Assistant Administrator Nancy Stoner’s letter to Florida Department of Environmental Protection (FDEP) Secretary Herschel Vinyard Jr. on June 13, 2011 was described as EPA’s initial response to FDEP’s petition, pending an intended rulemaking by FDEP. EPA’s letter encouraged FDEP to adopt protective nutrient criteria, and stated that if such criteria are sufficient to address the concerns underlying EPA’s determination and rule, are approved by EPA, and enter into legal force and effect in Florida, EPA would promptly initiate rulemaking to repeal the corresponding federally promulgated numeric nutrient criteria. If confirmed, I will work with this Committee and the State of Florida on nutrient water quality standards.

8. As you know, EPA and the Army Corps are now in the process of taking public comment on their latest proposed guidance to define the term “Water of the United States.” Do you think a given feature in the landscape could simultaneously be both a “water of the U.S.” and a “point source”? Should the upcoming EPA and Corps guidance provide clear criteria to distinguish between “point sources” and “waters of the U.S.”?

Answer: I understand that EPA’s proposed guidance does not address the definition of point source, but instead is intended to provide clearer and more predictable guidelines for whether a waterway, water body, or wetland is a water of the United States subject to the Clean Water Act. If confirmed, I will work with this Committee on these jurisdictional issues to ensure that decisions are made consistent with the Clean Water Act, regulations, and existing case law.

9. The “point source” definition in the CWA states that such a feature is a pollutant conveyance “including but not limited to any ditch.” The CWA does not define “ditch.” How would you define a “ditch”? Do you think the upcoming EPA/Corps final guidance should specifically give regulators and land owners direction on the jurisdictional status of ditches under the CWA?

Answer: I agree that the agencies’ guidance should help provide clarity and predictability in making decisions about what waters are protected by the Clean Water Act. My understanding is that EPA’s proposed guidance does not define “ditch,” and instead continues the agencies’ longstanding approach to ditches based on Section 404(f) of the Clean Water Act and existing agency policies. If confirmed, I will work with this Committee on these jurisdictional issues to ensure that decisions are made consistent with the Clean Water Act, regulations, and existing case law.

10. MS4s are “point sources” under the CWA. In fact, section 402(p) sets up requirements where MS4s, which discharge stormwater, must get NPDES permits. Do you think that a permitted MS4 –which is clearly a “point source” – is also a “water of the US?” Do you

think the upcoming EPA/Corps final guidance should specifically give regulators and landowners' direction on the jurisdictional status of MS4s under the CWA?

Answer: I understand that EPA's proposed guidance is focused on defining the term "waters of the United States" and not clarifying the definition of the term "point source." If confirmed, I will work with this Committee on these jurisdictional issues to ensure that decisions are made consistent with the Clean Water Act, regulations, and existing case law and toward ensuring certainty and predictability for regulators and owners of MS4s.

11. The Supreme Court ruled, in *Entergy Corporation v. Riverkeeper, Inc. et al.* (April 1, 2009), that it was permissible for EPA to require cost-benefit analysis when considering what fish protection technology must be deployed to meet the requirements of Section 316(b) of the Clean Water Act. I understand that the EPA allows consideration of cost-benefit analysis in its draft rule, but only for entrainment of fish. Conversely, the impingement standard in the draft rule has a one-size-fits-all regulatory approach, with no allowance for cost-benefit analysis. Please describe your views on the omission of cost benefit analysis from the impingement requirements. What might the rationale be for different approaches to the entrainment and impingement parts of the draft rule? Will you commit to consider the probability that a substantial number of facilities may not be able to comply with the draft impingement requirements?

Answer: As you indicated, the Supreme Court in *Entergy* ruled that it was permissible, but not required, for EPA to consider costs and benefits in establishing 316(b) technology requirements. It is my understanding that the Office of Water has already received a number of comments about the impingement standard in the proposed rule, including the role of cost. If confirmed, I will work with this Committee to ensure that EPA adequately considers these comments as it develops a final rule.

12. As you know, in December, the Environmental Working Group reported that cities around the country had hexavalent chromium in their drinking water. Following that report, EPA began looking at regulating hexavalent chromium separately from total chromium under the SDWA.
- a. On March 29, 2010, EPA published its 6-year review of the drinking water regulation for total chromium and stated, "The Agency does not believe a revision to the NPDWR for total chromium is appropriate at this time." Since EPA based the total chromium drinking water standard, in large part, on a total hexavalent chromium level, what has changed?

Answer: I understand that the current drinking water standard for total chromium includes all forms of chromium and was based on the best science at the time. To keep up to date with the best available science, I understand that EPA is finalizing a new health effects assessment. If confirmed, I will work with this Committee and within EPA to carefully review the conclusions to determine if the current standard should be revised or a new standard should be promulgated.

- b. Since the current National Drinking Water Standard for total chromium is 100 parts per billion and EPA established this standard based upon a consideration of chromium 6, is our US drinking water supply safe? How much chromium 6 did you assume was in the 100 ppb? Are there any US drinking water systems that are unsafe because of chromium 6 levels?

Answer: I understand that data reported to EPA from states show that all water systems are in compliance with the current total chromium standard. The current standard has been as protective and precautionary as the science has allowed. If confirmed, I will work with this Committee and within EPA to keep the standard consistent with the best available science.

- c. In 2009, EPA indicated that it would publish its draft IRIS Toxicological Review for hexavalent chromium in 2012. I understand that in 2009, the Agency scientists were aware of mode of action research that would extend the research performed at high chromium 6 doses by the National Toxicology Program and use more environmentally-relevant doses as well. Since this research will be available in 2011 and will provide the data specified in EPA guidance documents, as EPA prefers, for the evaluation of chemicals for regulations, including mode of action, pharmacokinetics, genomics, and tissue specific concentrations at drinking water doses, why did EPA move up the release of the draft IRIS Toxicological Review to 2010? Additionally, while I appreciate EPA's sensitivity to the importance of acting deliberately and in a timely manner to address chromium 6 in drinking water, I understand that in the expedited timeline, EPA plans to release its final IRIS Toxicological Review in the second quarter of 2011 before it considers the mode of action study results. Shouldn't EPA consider the results from this important study in their risk assessment rather than rush to finalizing its assessment as critical information becomes available?

Answer: IRIS assessments are human health assessments. They are not full risk assessments and they are not regulatory decisions. This health assessment could be one piece of information considered by the Office of Water in making decisions about water related regulations. It is a scientific assessment made by the Office of Research and Development and not by the Office of Water. Additionally, because I have not yet been confirmed and do not have access to deliberative information, I am not aware of EPA's plans for using the health assessment.

If confirmed, I will work with this Committee and with other offices at EPA to ensure that IRIS human health assessments are based on the most current and best available independently peer-reviewed published scientific information.

- d. Getting the science right the first time is a high priority for our regulatory decision-making process. Hexavalent chromium in water at concentrations of more than 1 part per million (1,000 ppb) makes water turn yellow. Additionally, it is my understanding that the National Toxicology Program's Study used

concentrations of 5,000 ppb (low dose) to 18,000 ppb (high dose) in their rodent study. In fact, the chromium 6 levels in the drinking water of the NTP study was so concentrated that many animals had noticeably reduced intake of water.

Answer: If confirmed, I will work with this Committee and with other offices at EPA to ensure that water quality decisions are based on the most current and best available independently peer-reviewed published scientific information.

- e. As described in the EPA cancer guidelines, extrapolating results in animal studies should ideally be based upon an understanding of the mode(s) of action underlying the development of tumors in an animal study. If additional studies providing more information relative to mode of action were available soon, shouldn't EPA consider such information in its risk assessment?

Answer: Scientific determinations must be made based on the best available science. If confirmed, I will work with this Committee and with other offices at EPA to ensure that water quality decisions are based on the most current and best available independently peer-reviewed published scientific information.

- f. Since EPA's own guidelines [cancer risk guidelines, mode of action guidelines, and pharmacokinetic guidelines] indicate a preference for data at doses closer to human exposures, wouldn't EPA's IRIS Toxicological Review be improved if it included information on low-dose exposures to better extrapolate results from laboratory animals to human exposures?

Answer: If confirmed, I will work with this Committee and with other offices at EPA to ensure that water quality decisions are based on the most current and best available independently peer-reviewed published scientific information.

- g. While I know that EPA scientists are aware of ongoing mode of action research at drinking water levels, are you aware that research on low-dose exposures and mode of action is underway?

Answer: If confirmed, I will work with this Committee and with other offices at EPA to ensure that water quality decisions are based on the most current and best available independently peer-reviewed published scientific information.

- h. Utilities have raised concerns with my office about EPA's decisions regarding the technical assistance to monitor for chromium 6, including the lack of a fully validated analytical method, inability for the agency to collect and use the data generated and lack of explanation of how to communicate the health effects to the public. Please explain EPA's decision-making regarding the technical assistance and how EPA is responding to the concerns raised by utilities.

Answer: It is my understanding that EPA is working with state and local officials to better determine how wide-spread and prevalent hexavalent chromium is in

public drinking water systems. The Agency has provided guidance to systems about how to test for hexavalent chromium and if confirmed, I will work with this Committee and with states to help address utilities' concerns.

- i. On May 12, 2011 EPA convened a panel of scientific experts on hexavalent chromium to review the agency's draft risk assessment and the studies on which it is based. What were the conclusions of the panel? How will EPA be responding to the suggestions and comments?

Answer: I understand that EPA convened an external scientific peer review for hexavalent chromium. Because I have not yet been confirmed and do not have access to deliberative information, I am not aware of EPA's plans for responding to the panel's report. If confirmed, I will work with this Committee to address the panel's report.

Senator David Vitter

1. If confirmed, will you work to affirm and defend the Agency's 35 year old nonpoint source regulation and actively work to restore the 35 year treatment of forest roads and storm water management systems as nonpoint?

Answer: In August 2010, the U.S. Court of Appeals for the Ninth Circuit decided in Northwest Environmental Defense Center (NEDC) v. Brown that stormwater runoff from certain logging roads that is collected by and discharged from a system of ditches, culverts and channels is a point source for which a National Pollutant Discharge Elimination System (NPDES) permit is required. Historically, logging roads were intentionally designed to direct stormwater into streams via ditches, channels and culverts. More recent design standards seek to direct drainage onto porous forest soils for infiltration, so they do not discharge into waters of the United States. If confirmed, I will work with this Committee and with stakeholders to develop collaborative approaches for responding to the court decision.

2. Please discuss whether you believe the decisions in *Rapanos* and *SWANCC* were consistent with the Clean Water Act's federal jurisdiction and if they should be defended by the EPA?

Answer: If confirmed, I will implement the EPA water quality programs consistent with the Clean Water Act, regulations, and existing case law including decisions of the U.S. Supreme Court.

3. Please discuss your overall view of the economic impact of the citizen suit provisions of the Clean Water Act.

Answer: To supplement federal and state enforcement of the Clean Water Act, Congress provided citizen suit authority under section 505 of the Clean Water Act. I am not aware of any analysis of the overall economic impact of the citizen suit provisions and do not have adequate information on which to base a response.

4. Please discuss your thoughts, and intended actions if confirmed, on how the agency can rectify the challenges as a result of *National Cotton Council*, and specifically NPDES permitting?

Answer: I understand that in response to the the Sixth Circuit Court's 2009 decision on National Cotton Council, EPA has been working with a wide range of government, industry, and nongovernmental stakeholders to develop a general permit for applicators that apply pesticides directly to water. If confirmed, I will continue EPA's work to fulfill its obligation under the court's decision and work with stakeholders to ensure that the Agency complies with the decision while minimizing any burdens.

Senator John Boozman

1. I am concerned about a perceived “sue and settle” alliance between the agency and environmental groups. These settlement agreements allow policy to be made without public and stakeholder input. Aspects of the Chesapeake Bay TMDL and new regulations governing Combined Animal Feeding Operations (CAFOs) are just two examples of EPA commitments that have emerged from settlement agreements with environmental groups. Do you agree that a “sue and settle” approach to policy making is inappropriate and, if confirmed, what steps would you take within the Office of Water to ensure that there is stakeholder input when potential settlement agreements would commit the agency to significant policy changes?

Answer: Under more than a dozen environmental statutes, Congress has tasked EPA with scores of duties, many with associated statutory deadlines. Each year, EPA takes a large number of actions classified as “final rules” and a broad array of permitting and other final agency actions. A substantial proportion of these actions are challenged in court. In addition, each year EPA is subject to numerous “mandatory duty” lawsuits alleging that that the Agency has failed to take an action it is required by law to take.

The U.S. Department of Justice (DOJ) represents EPA in defending these suits, and the Agency litigates many cases to final judgment. In some cases, however, EPA determines, with DOJ’s concurrence, that it is in the best interests of the federal government and the public to resolve the litigation through settlement. The determination whether to settle a lawsuit is based principally on EPA’s assessment, with DOJ’s advice, of the Agency’s duties under the relevant statute and the legal risks presented by the litigation. These factors are applied in an evenhanded manner, without regard to the identity of the plaintiff or petitioner in the case. The Assistant Attorney General for DOJ’s Environment and Natural Resources Division must concur in any decision to enter into a settlement agreement or consent decree. In addition, a court generally will enter a consent decree only if the court has determined that the decree is fair, reasonable, and consistent with the public interest.

EPA does not commit to the substance of final rules during settlement negotiations. The substance of a final rule is the result of the rulemaking process, which includes notice and comment.

2. I am also concerned with the EPA’s issuance of guidance documents on key issues instead of engaging in the standard rulemaking process. A recent example of this is the agency’s release of draft guidance concerning Clean Water Act permitting authority earlier this year. This draft guidance document suggested a significant expansion of federal authority under the Clean Water Act. Given the potential impacts, the EPA should not create confusion and uncertainty by issuing guidance that appears to change established policy. If confirmed, would you commit to ensuring that any significant policy changes within the jurisdiction of the Office of Water are conducted through the formal rulemaking process?

Answer: Guidance documents and policy statements do not create or impose binding legal requirements, change applicable law, or constrain agency discretion. In fact, agencies often use this flexibility to depart from their policy statements and guidance documents in light of relevant facts and law. When the EPA seeks to change existing or impose new legally binding requirements, under the Administrative Procedure Act, it must do so through notice and comment rulemaking.

The proposed guidance concerning the scope of "waters of the United States," cannot expand federal authority. Binding legal requirements are established by the Clean Water Act, federal regulations, and relevant case law.

If confirmed, I will work with this Committee to ensure that decisions are made consistent with the Clean Water Act, regulations, and existing case law.

Senator BOXER. Thank you very much.
Ms. Wodder.

STATEMENT OF REBECCA WODDER, NOMINATED TO BE ASSISTANT SECRETARY FOR FISH, WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR

Ms. WODDER. Thank you, Chairman Boxer, Senator Inhofe and members of the committee.

I am deeply honored to appear before you today as President Obama's nominee for Assistant Secretary for Fish, Wildlife and Parks.

I would like to begin with a personal introduction. I am from a farming family, born and raised in Nebraska. My parents grew up during the Depression and survived grasshopper plagues in the Dust Bowl. Hardships had eased a bit by the time I was born but I learned the value of hard work early on and never took any good fortune for granted. I spent the weekends and summers of my youth on my grandparents' farm helping with chores and developing my love of barnyards, farm animals and cornfields.

My parents were both teachers and my father taught at every level from a one room schoolhouse to the University of Nebraska. Public service and education were important values in my family and I have spent most of my career working for public interest organizations. My lifelong commitment to conservation was awakened by an experience in the spring of 1970.

As a senior in high school, my chemistry teacher tapped me to organize activities for the first Earth Day. Inspired and eager to play a role in cleaning up pollution, I went on to get under graduate degrees in Biology and Environmental Studies and Master of Science Degrees in Landscape Architecture and Water Resources Management.

In graduate school, I led a study of the Lower St. Croix Wild and Scenic River. I spent a summer exploring the river, talking to power boaters and paddlers, anglers and campers about their experiences and how to minimize conflicts with other users. A lasting memory from that time is discovering a cache of sepia-toned, turn-of-the-century photographs of the St. Croix.

On both sides of the river as far as the eye could see, the land was completely cut over and the river itself was choked with logs. It was the kind of devastation that inspired 19th century conservationists. What hit me, though, was the resilience of nature and how far the river corridor had come in restoring itself, thanks to those who had the foresight to protect it.

When I became President and CEO of American Rivers, I saw an opportunity to connect people to nature through rivers. We explored, settled and built America by river. Rivers are relevant to things that every American cares about: clean drinking water, health and safety, prosperity and a high quality of life. Most important, rivers are resilient and with a little help, like the St. Croix, they can recover and be valuable assets, the centerpiece of a vibrant community.

Among many river restoration projects that were undertaken during my tenure, one that stands out was a creative approach to improving conditions on the Penobscot River in Maine. A collabo-

rative effort between a power company, State and Federal agencies, tribes, fishermen and conservationists succeeded in maintaining all of the project's hydropower generating capacity while removing two dams to open nearly a thousand miles of historic river habitat for endangered Atlantic salmon.

To be asked by President Obama and Secretary Salazar to oversee the conservation of this Nation's wildlife, natural and cultural resources, parks and refuges is the greatest honor of my long career. If confirmed, I will approach my responsibilities with deep humility and a commitment to work closely with the members of this committee, the fine staff of the National Park Service, the Fish and Wildlife Service and with the many stakeholders who are affected by the Service's programs.

I will seek balanced approaches that take into account the needs of all stakeholders. I believe the best way to achieve lasting conservation solutions is through a collaborative process. I look forward to promoting the many vehicles for partnership that have been developed to implement our Nation's conservation laws.

I will reach out proactively, especially to those whose livelihoods are at stake, and listen carefully to their concerns and ideas. I will aim for clear policy guidance based on the best science. I will commit to fully transparent decisionmaking.

Most fundamentally, I believe that conservation is a widely held American value, grounded in two quintessentially American principles, being a good steward and being a good neighbor. The Nebraska farmers I knew growing up worked hard to protect their soil and water and when a neighbor needed help, everyone pitched in.

In closing, I would be greatly honored to serve as the Assistant Secretary for Fish and Wildlife and Parks. I believe wholeheartedly in the missions of the National Park Service and the Fish and Wildlife Service. If confirmed, I will do my best to provide the leadership, secure the resources, engage the stakeholders and together, with the dedicated men and women of these two Services, make measurable progress against the great conservation challenges of our time.

Thank you.

[The prepared statement of Ms. Wodder follows:]

PREPARED STATEMENT OF REBECCA WODDER
NOMINEE FOR
ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS
BEFORE THE
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Thank you, Chairman Boxer, Senator Inhofe, and Members of the Committee. I am deeply honored to be here with you today as President Obama's nominee for Assistant Secretary for Fish and Wildlife and Parks.

I am joined here today by my husband, James Van Erden, and one of our two daughters, Jayme. Our younger daughter, Jennifer, cannot be here because she is teaching English in a remote village in Panama, as a Peace Corps volunteer. I am deeply grateful for their love and support.

Background

I would like to begin with a short, personal introduction that helps to explain my background and why I am here today. I'm from a Midwest farming family, born and raised in Nebraska. My parents grew up during the Depression and my mother's family lost their farm. They fought plagues of grasshoppers and the Dust Bowl, planting windbreaks and hauling water to keep the trees alive.

Hardships had eased a bit by the time I was born in the early 50's, but I learned the value of hard work early on and never took any good fortune for granted. I spent the weekends and summers of my youth on my grandparents' farms, helping with chores and developing my love of barnyards, farm animals and endless fields of corn. Those windbreaks planted during the Dust Bowl were some of my favorite places to hide in the hot Nebraska summers.

My father enlisted in the Army at the start of World War II. When he came back from the war, he finished his education on the GI Bill and became a teacher. He taught at every level from a one-room schoolhouse on the prairie to the University of Nebraska. My mother also taught school. Public service and education were very important values in my family, and I have spent most of my career working for public interest conservation organizations.

My lifelong commitment to conservation was awakened by an experience in the spring of 1970. As a senior in high school, my chemistry teacher tapped me to organize activities for something new called Earth Day. Inspired and eager to play a role in cleaning up polluted rivers, I went on to get two undergraduate degrees from the University of Kansas, in Biology and Environmental Studies; and two Master of Science degrees from the University of Wisconsin-Madison, in Landscape Architecture and Water Resources Management.

While studying at Wisconsin, I designed and led the first visitor study of the Lower St. Croix Scenic River. I spent an entire summer exploring the river, talking to power boaters and paddlers, anglers and campers about their recreational experiences and how to minimize conflicts with other users. A lasting memory from that time is discovering a cache of sepia-toned, turn-of-the-century photographs of the St. Croix. On both sides of the river, as far as the eye could see, the land was completely cutover, a moonscape, and the river itself was choked with logs. It was that kind of devastation that inspired 19th century conservationists. What hit me, though, was the resilience of nature and how far the river corridor had come in restoring itself, thanks to those who had the foresight to protect it.

The next turning point came while working as a research assistant to a University of Wisconsin professor who was writing a book on the Wild and Scenic Rivers Act. I was sent to Washington, D.C. to interview Senator Gaylord Nelson for the book, and was offered a job as his Legislative Aide on Environment and Energy. This was a great place to start a conservation career in national public policy. My years as a staffer to Senator Nelson taught me many things, among them, that conservation is not a partisan issue, that conservationists should reach out and engage all Americans, and that we must commit to this effort for the long haul. He liked to point out that “economy” and “ecology” have the same Greek root, *ecos*, which means “house” and that taking care of the planet is essential to both a strong economy and healthy ecosystems.

After the 1980 elections, I went to work for The Wilderness Society. I directed the Alaska program for three years and spent time in many parts of the state, including a memorable three week canoe trip on the Kobuk River which runs along the south flank of the Brooks Range. My time in Alaska imprinted me with a love of wilderness and wildlife, and gave me a much fuller appreciation for the majesty of America’s natural resources.

When I was recruited to be President and CEO of American Rivers, in 1995, I saw an opportunity to connect people to nature. Every community in America can trace its’ story to a river. We explored, settled and built America by river. Rivers are relevant to things every American cares about – clean drinking water, health and safety, prosperity, and a high quality of life. Most important, rivers are resilient and with a little help, like the St. Croix, they can recover and be valuable assets, the centerpiece of a vibrant community. Senegalese poet and naturalist, Baba Dioum, says, “In the end, we will protect only what we love.” It seemed to me that rivers are a perfect medium for Americans to discover their love of the great outdoors.

Collaborative and Constructive Problem-solving

To be asked by President Obama and Secretary Salazar to oversee the conservation of this Nation’s wildlife, natural and cultural resources, and parks and refuges is the greatest honor of my long career. If confirmed by the Senate to the position of Assistant Secretary for Fish and Wildlife and Parks, I will approach my responsibilities with deep humility and a commitment to

work collaboratively with you, the fine staff of the National Park Service and the Fish and Wildlife Service, and with the many stakeholders who are affected by the Services' programs.

The conservation challenges of the 21st century loom large, alongside many other key issues affecting the wellbeing of Americans. I believe solutions to our conservation challenges can also contribute to a sound economy and a healthy, safe and thriving future for our Nation. I have seen this in action in many places across America. In Harmony Junction, Pennsylvania, the removal of an old dam to restore fish and wildlife habitat also solved serious flooding problems and created a recreational resource that supports the community's economy and quality of life.

In presenting my qualifications to you, I would like to highlight five key attributes that I bring to this assignment:

First, I am an experienced chief executive officer, having successfully led American Rivers for 16 years of substantial growth and accomplishment.

Second, I have 20 years of training and experience in developing and implementing strategic plans. When obstacles are many and resources few, having a good strategy is an absolute necessity.

Third, I am a good listener and am open and interested in different points of view.

Fourth, I am a collaborative, constructive and patient problem-solver.

I have led many effective public outreach and involvement efforts, including serving for several years as Conservation Chair for the National Council of the Lewis & Clark Bicentennial and partnering with federal, state, local, and tribal governments, as well as grassroots organizations and corporations to engage the public in this coast-to-coast commemoration.

Among many river restoration projects that were undertaken during my tenure, one that reflects these characteristics is a creative approach to improving conditions on the Penobscot River in Maine. A collaborative effort between a power company, tribal, state and federal governments, angler organizations and conservation groups succeeded in maintaining all of the hydropower generating capacity in the project area, while removing two dams to open nearly 1,000 miles of historic river habitat for endangered Atlantic salmon.

The experience I would bring to this position includes three decades working with federal policies and programs related to natural resource management, fish and wildlife protection, and land and water conservation. As President of the nation's pre-eminent river conservation organization, I have had the privilege of working with hundreds of grassroots groups, local, state, federal and tribal governments, and many different sectors of business and industry, to develop solutions to complex problems with multiple stakeholders. During my tenure, American Rivers played a significant role in adding more than 100 rivers to National Wild and Scenic River System; restoring thousands of miles of rivers; demonstrating natural or nature-mimicking

infrastructure solutions to water quality and supply problems in dozens of cities across America; and working with partners to find consensus solutions to conflicts between fish, water, and energy needs in the Pacific Northwest.

Having spent 30 years in the public interest sector, I share with each of you a deep commitment to public service and, if confirmed, I will approach my responsibilities with humility and dedication. I will aim for balanced solutions that take the needs of all stakeholders into account. I believe that the best way to achieve lasting conservation solutions is through a collaborative process and I look forward to promoting the many vehicles for partnership that have been developed to implement the Endangered Species Act and other key laws and Congressional mandates. I will reach out proactively, especially to those whose livelihoods are at stake, and listen carefully to their concerns and ideas. I will ask my colleagues for robust analyses of all alternatives and aim for clear policy guidance based on the best science. And, I will commit to fully transparent decision-making.

Most fundamentally, I believe that conservation is a widely-held American value, grounded in two quintessentially American principles – being a good steward and being a good neighbor. The Nebraska farmers I knew growing up worked hard to protect their soil and water year after year, so that their sons and daughters could make a good living. And, when a neighbor needed help, everyone pitched in.

These principles are part of President Obama's 21st century conservation initiative, *America's Great Outdoors*. Built on a strong bi-partisan foundation that goes back 100 years to the conservation legacy of President Theodore Roosevelt, the fact that more than 10,000 Americans took time to participate in more than 50 listening sessions across the nation last summer suggests a strong base of interest to build on today. Many compelling goals were raised and discussed at these public events and they provide a unique opportunity for conservation progress that deeply interests me, should I be confirmed.

For example, the idea of empowering communities to connect with America's great outdoors through their rivers and other waterways is a goal that is near and dear to my heart. I have seen this work first hand in places like Columbia, South Carolina, where the Congaree River Blueway connects an urban community to Congaree National Park and underserved youth to the outdoors.

I am also eager to learn about and contribute to the idea of catalyzing large-scale land conservation partnership projects through economic incentives and technical assistance. Large landscapes offer opportunity to improve both the productivity and environmental performance of industries that provide food, energy, and material goods and the natural systems that provide clean air and water, productive soils, flood protection and natural beauty that sustains our spirit.

Conclusion

In closing, I would be greatly honored to serve as the Assistant Secretary for Fish and Wildlife and Parks. I feel a strong connection to the American landscape and a deep responsibility to future generations of Americans. I believe wholeheartedly in the missions of the National Park Service and the Fish and Wildlife Service. Should I be confirmed by the Senate, I will do my best to provide the leadership, secure the resources, engage the stakeholders, and together with the dedicated men and women of these two Services, make measurable progress against the great conservation challenges of our time.

**Environment and Public Works Committee Hearing
July 19, 2011
Follow-Up Questions for Written Submission**

Questions for Wodder

Questions from:

Senator Barbara Boxer

Scientific Integrity

1. Ms. Wodder, I believe a commitment to scientific integrity is critical to successfully carrying out the responsibilities of the Assistant Secretary for Fish, Wildlife and Parks. President Obama and Secretary Salazar have both committed to a policy of scientific integrity at the Interior Department.

What role do you believe science should play in the work of the Department of the Interior, and in particular, the Fish and Wildlife Service?

Response: I agree that a commitment to scientific integrity is critical to carrying out the responsibilities of the Assistant Secretary for Fish, Wildlife and Parks. If confirmed to this position, I will share the commitment of President Obama and Secretary Salazar to uphold the policy of scientific integrity at the Department of the Interior.

The Department's managers must apply strong science to all its natural resource obligations. The Congress and public stakeholders demand that the Department's natural and cultural resource decisions are based in science and that they can be supported by the most up-to-date scientific understanding about the best use and conservation of these resources.

Because science is investigative, not conclusive, it does not represent policy, but informs policy. It supplies information gathered and evaluated through a process that is designed to remove as much manager bias as possible from its outcome. Therefore, it not only supplies managers with valuable information, but it also helps instill greater confidence in the Department's constituents, who depend upon or benefit from the natural resource decisions made by the Department and its Bureaus. I support the foundational role for science in the work of the Department and the Fish and Wildlife Service and the National Park Service.

If confirmed, how do you intend to fulfill the President's commitment to scientific integrity in your role as Assistant Secretary for Fish, Wildlife and Parks?

Response: If confirmed, I will uphold the principles of Scientific Integrity in Secretarial Order 3305, *Ensuring Scientific Integrity within the Department of the Interior*. I will work with the Department's very strong team of scientists to strengthen and improve the implementation of the Scientific Integrity Policy, established by the Secretary in February of this year, as necessary. I will also work with colleagues in the Office of the Secretary to identify and develop formal and informal training opportunities to ensure that the Department's scientists are able to learn about and apply the best available science in the range of natural resources for which they are responsible within their Bureaus and work with the Department's science team, Science Integrity Officer, Bureau Science Integrity Officers, and scientists to (1) expand capacities to acquire, apply, and communicate scientific information, (2) promote active involvement of the Department and its employees in the larger scientific community, (3) strengthen partnerships between the Service and other scientific organizations, and (4) support the recruitment and training of the next generation of scientists within the Department. I will also help sustain the strong peer review process within the Department and ensure effective science coordination among Bureaus and between the Department and other federal agencies, states, tribes, non-profit organizations, and scholarly institutions.

Endangered Species Act

2. Ms. Wodder, the ESA's decades-long track record of success is built on the use of the best available science. It is important that the Assistant Secretary be committed to following and upholding this landmark law and using the best science in all decision-making.

Do you believe upholding the ESA is important, and if confirmed, will you commit to implement the law based on the best available science?

Response: By enacting the Endangered Species Act, Congress made the prevention of species extinction a national priority. I believe the record is clear that the law has saved many species from extinction and has promoted a more sustainable management of our nation's vital natural resources. I believe upholding the ESA is important, and if confirmed, I will commit to implement the law based on the best available science.

California Bay-Delta

3. Ms. Wodder, the California Bay-Delta is the largest estuary on the West Coast, providing habitat to an array of species. The Delta is also critical for supplying water to much of the State. The State of California, water users, environmental interests, and the Federal agencies have been working toward developing a plan for restoration of the Delta that achieves the co-equal goals of protecting this critical ecosystem and improving water supply reliability.

Will you commit, if confirmed, to make restoration of the California Bay-Delta a top priority and to work collaboratively with state of California and California stakeholders as they develop a solution to the issues facing the Delta?

Response: If confirmed, yes, I will commit to making California Bay-Delta restoration issues a top priority.

Senator Tom Udall

If you are confirmed as Assistant Secretary for Fish, Wildlife and Parks, the proposed Middle Rio Grande National Wildlife Refuge in Albuquerque, including the protection of the 570 acre Price's Dairy property, will be within your purview. I look forward to working with you on it, as the proposed refuge provides a significant opportunity to protect one of the last remaining undeveloped properties along the Rio Grande in Albuquerque, restore bosque and silvery minnow habitat, and provide educational opportunities to nearby residents, students and visitors.

The proposed Middle Rio Grande NWR, now in the final stages of internal planning at the US Fish and Wildlife Service is the USFWS Regional Director's top priority, and is broadly supported by local residents and the other members of the New Mexico Congressional delegation.

The Price's Dairy landowner has provided a reasonable but limited time frame for completing the property's protection. Additionally, a significant expression of public support has come from Bernalillo County, whose County Commission on September 28, 2010, approved an allocation of \$5 million dollars from its open space fund for the permanent protection of the Price's Dairy property. This is a very significant step forward and provides much-needed local match and support to the USFWS efforts to establish the new refuge. However, this commitment expires on September 28, 2012 unless federal funds are in place.

1. If confirmed, will you work to complete all the necessary evaluation and public outreach to ensure that the Middle Rio Grande NWR moves forward and is approved in a way that recognizes these critical timing and funding issues?

Response: The FWS implements a land acquisition planning process for the establishment of new refuges and the expansion of existing refuges that includes a comprehensive public involvement process as described in policy. In the case of the proposed Middle Rio Grande NWR, I am told that the FWS is currently in the process of soliciting public comments on its draft Land Protection Plan and the associated National Environmental Policy Act document. I am informed that the process is currently on track for final approval of the LPP by the Director before the end of this calendar year. It is after this approval that the FWS is able to seek funding to acquire property that will officially establish the refuge. If confirmed, I will work with the FWS to ensure that this process stays on track and would be happy to meet with you to discuss the issues involved, including the funding commitment from Bernalillo County.

2. If confirmed, will you work with the President to help ensure that adequate funding for acquisition of lands for the Middle Rio Grande NWR is included in his next budget?

Response: I am mindful of the current economic situation this country faces and respectful of the roles of the President and the Congress in the Federal budget process. If confirmed, and if the administrative process for creating the refuge is complete, I will work with the FWS to identify funding for this project.

Senator Jeff Merkley

I have heard from many of my constituents regarding your previous position with American Rivers, and specifically the position you and your organization took with respect to the removal of four dams on the lower Snake River.

I have heard from rural electric co-ops, a number of businesses and rural community groups who are concerned that removal of these dams will economically impact surrounding communities already hard hit in the recession, and that it will remove a source of clean energy.

I have also heard from conservation groups who support removal of these dams due to their concern over salmon populations, and they argue that thriving salmon populations would also bring new jobs to the region.

1. What is your response to these concerns?

Response: If confirmed, I will voluntarily recuse myself from participating in any Interior Department decisions regarding the Columbia-Snake River System for the full time I serve as Assistant Secretary for Fish and Wildlife and Parks. I will abide by the terms of my ethics agreement, including the applicable ethics rules and the Administration's ethics pledge, and I will regularly seek the assistance and guidance of the Department's Ethics Office. I have consulted with the Department's Ethics Office and understand that, as provided by the terms of my ethics agreement and the Administration's ethics pledge, I will not participate for two years in any particular matters involving specific parties in which American Rivers is a party or represents a party. It is important to note that, should I be confirmed as Assistant Secretary, federal management of the lower Snake River dams would not fall under my purview.

2. How do you see your role as Assistant Secretary for Fish, Wildlife and Parks for the Department of Interior on this issue?

Response: If confirmed, I will voluntarily recuse myself from participating in any Interior Department decisions regarding the Columbia-Snake River System for the full time I serve as Assistant Secretary for Fish and Wildlife and Parks. I will abide by the terms of my ethics agreement, including the applicable ethics rules and the Administration's ethics pledge, and I will regularly seek the assistance and guidance of the Department's Ethics Office. I have consulted with the Department's Ethics Office and understand that, as provided by the terms of my ethics agreement and the Administration's ethics pledge, I will not participate for two years in any particular matters involving specific parties in which American Rivers is a party or represents a party. It is important to note that, should I be confirmed as Assistant Secretary, federal management of the lower Snake River dams would not fall under my purview.

3. How would you balance the concerns of various stakeholders in your new position if you were confirmed as Assistant Secretary for Fish, Wildlife and Parks for the Department of the Interior?

Response: If confirmed, I will voluntarily recuse myself from participating in any Interior Department decisions regarding the Columbia-Snake River System for the full time I serve as Assistant Secretary for Fish and Wildlife and Parks. I will abide by the terms of my ethics agreement, including the applicable ethics rules and the Administration's ethics pledge, and I will regularly seek the assistance and guidance of the Department's Ethics Office. I have consulted with the Department's Ethics Office and understand that, as provided by the terms of my ethics agreement and the Administration's ethics pledge, I will not participate for two years in any particular matters involving specific parties in which American Rivers is a party or represents a party. It is important to note that, should I be confirmed as Assistant Secretary, federal management of the lower Snake River dams would not fall under my purview.

In general, my approach to resolving controversial natural resource issues would be to reach out proactively, especially to those whose livelihoods are at stake, and listen carefully to their concerns and ideas. I would seek balanced approaches that take the needs of all stakeholders into account. I believe that lasting conservation solutions are best achieved through an open and transparent collaborative process that includes a robust analysis of all alternatives.

4. On this and other controversial natural resource issues, how would you, as Assistant Secretary, reach out to stakeholders to ensure that all voices and concerns are heard?

Response: In general, my approach to resolving controversial natural resource issues would be to reach out proactively, especially to those whose livelihoods are at stake, and listen carefully to their concerns and ideas. I would seek balanced approaches that take the needs of all stakeholders into account. I believe that lasting conservation solutions are best achieved through an open and transparent collaborative process that includes a robust analysis of all alternatives.

Senator James M. Inhofe

1. Will you treat requests from minority parties in Congress with the same urgency and respect as majority party requests?

Response: If confirmed, I commit to working respectfully and constructively with Members of Congress regardless of party affiliation.

2. Regarding the Endangered Species Act (ESA):

- a. Do you believe the Endangered Species Act, in its current form, works effectively to recover species?

Response: I believe that the ESA has worked effectively to prevent a many species from going extinct and recovering others to the point where they no longer need ESA protection.

With that said, I know that the FWS is working to improve the implementation to make it less complex, less contentious, and more effective. The FWS is working to improve the implementation of the ESA by considering appropriate changes to the practices, guidance, policies, or regulations to enhance conservation of listed species.

For example, I understand that the FWS and National Marine Fisheries Service (NMFS) are looking for ways to update ESA implementation based on experiences gained to add clarity to the process for designating critical habitat. This will be part of a public process. Another example relates to improving tools for landowners who take actions to conserve species, and providing them with regulatory certainty as a result of those actions. If confirmed, I commit to working within the Administration to improve implementation of the ESA.

- b. Do you believe ESA needs to be modernized? If so, which parts specifically?

Response: As mentioned above, the Department, through the FWS, is working to improve the implementation of the Act to make it less complex, less contentious, and more effective. The Department intends to improve the efficiency and effectiveness of designation of critical habitat, improve the FWS's landowner tools to provide certainty, and expand opportunities for state and public engagement and participation. If confirmed, I would fully support these efforts and pursue them as a top priority.

- c. Do you believe the delisting saga surrounding gray wolves in the Northern Rocky Mountains and the Western Great Lakes has highlighted severe ESA deficiencies to actually delist species?

Response: I do not believe that the wolf delisting highlights inherent deficiencies in the ESA. Perhaps more than any other listed species, people have strong emotions regarding the gray wolf and that means that everything the FWS does with this species is examined very closely. While the FWS has tried to delist this species in the Northern Rocky Mountains and the western Great Lakes on multiple occasions, I understand that the fundamental objective of the ESA has been achieved—gray wolves are now recovered in the Great Lakes and Northern Rocky Mountains. I also understand that the FWS has proposed a rule to delist wolves in the Great Lakes and has agreed in principle on a management plan that would lead to delisting wolves in Wyoming. If I am confirmed, I will ensure that the FWS will use the best scientific and commercial information available in making determinations about the listing status of all species.

- d. Do you support a legislative solution that would delist wolves throughout their range?

Response: The ESA provides a critical safety net for America's native fish, wildlife and plants. It is my understanding that the Administration generally does not support legislative action delisting ESA protected species as it may potentially undermine the scientific integrity of the Endangered Species Act and I concur with this position. It is my understanding that the Northern Rocky Mountain gray wolf delisting was a unique situation given its recovered status, history of detailed administrative reviews, and related litigation.

- e. When species are listed under ESA, should specific benchmarks be set to determine when species have recovered? Should these benchmarks trigger an actual delisting?

Response: The ESA requires the FWS to develop and implement recovery plans for the conservation and survival of the species. My understanding is that these recovery plans include objective, measurable criteria which, when met, would result in a review of the status of the species.

- f. Do you believe litigation abuses that are prevalent under ESA should be modified to ensure taxpayer funded attorney's fees are directed to species conservation as opposed to filling the coffers of legal firms and funding environmental NGOs?

Response: I am aware that there is pending legislation in the House and Senate regarding this issue. I am not yet familiar enough with this issue to have formed an opinion. If confirmed, I can assure you that I will examine this issue further and familiarize myself with these various legislative proposals.

- g. Section 6 of the Endangered Species Act suggests states have the authority to take over administration of ESA. What is your interpretation of this section? Would you support the ability of states to take on a greater role in ESA administration?

Response: Section 6 of the Act provides for the cooperation with States. I am pleased that the FWS is fully committed to enhancing State involvement. The FWS and the Association of Fish and Wildlife Agencies have established a State/Federal Joint Task Force on ESA policy to provide better opportunities for State involvement. Furthermore, I understand that FWS Director Dan Ashe recently sent a memorandum to all Service Regional Directors, reaffirming the FWS's commitment to a 1994 FWS/NMFS policy regarding cooperation with the States in ESA activities.

- h. Arrangements such as *Candidate Conservation Agreements with Assurances*, lauded by the Fish & Wildlife Service and other Conservation NGOs, have been shown to effectively protect listed species without stripping private property owners of land values or shutting down development. In the past, private landowners have invested significant monies to implement these collaborative solutions only later to be told by FWS that a listing would still occur. Would you commit to looking for administrative solutions to provide greater certainty in the use of these agreements? Would FWS signing on to the conservation agreements be a solution or entering into an agreement that it meets all PECE (Policy of Evaluation for Conservation Efforts) elements?

Response: I understand that the FWS fully supports the agreements mentioned to conserve candidate species. If confirmed, I will commit to looking for ways to make these administrative tools more effective in engaging private landowners in the conservation of at risk species.

- i. Would you agree that the listing of a species as endangered under the Endangered Species Act is an admission by the FWS of its failure to protect the species using the range of other productive tools available to the agency, such as Resources Management Plans, Candidate Conservation Agreements, and Candidate Conservation Agreements with Assurances?

Response: Ordinarily, States possess primary authority and responsibility for protection and management of fish, wildlife, and plants and their habitats in the U.S. In the spirit of positive federal-state relationships, if confirmed, I would strongly support working with State agencies and other partners to stabilize and improve the condition of species that may warrant listing.

- j. Would you agree that before the agency proposes to list a species as endangered, every reasonable effort should be made by the agency to work with landowners,

farmers, cattlemen, industry, local governments and conservation organizations, and other elements of the private sector in the affected region to craft effective measures using RMPs, CCAs, and CCAAs that protect the species in order to avoid a listing?

Response: As stated above, I understand the FWS is committed to working with its partners to stabilize and improve the condition of these species. The Service supports efforts that provide assurances to landowners who take steps to protect species, including conservation agreements that are sufficient to preclude the need for listing, when possible. If confirmed, I would share that commitment and support those efforts.

- k. Do you agree that before listing a species, RMPs, CCAs, and CCAAs that are entered into must be given a fair opportunity to deliver the conservation benefits they were designed to achieve so that a listing can be avoided altogether?

Response: I strongly support early use of these voluntary conservation agreements, but I understand that the Act requires the FWS to make listing determinations in a timely manner using the information that is available at that time. In these cases, having conservation agreements in place before listing continues to be beneficial because the landowners can be assured that they can continue to manage their lands in accordance with the agreement even if the species should become listed in the future.

- l. Would you agree that the proposed listing of the Sand Dune Lizard was premature in that it did not allow the CCAs and CCAAs that have been entered into with the private sector specifically to conserve that species sufficient time to provide the conservation results that would obviate a listing in that case?

Response: While I am not familiar with the details of the proposed listing of the sand dune lizard, I am informed that it was a high priority candidate for listing for nearly a decade before the FWS published its listing proposal. While the Act does not allow the FWS to postpone listing determinations indefinitely, it is my understanding that the CCAs and CCAAs that have been developed will help to both conserve the species and provide certainty to participating landowners in the event that the lizard is ultimately listed.

3. As you are aware, there are a number of efforts underway on both the state and national levels to impose restrictions on the utilization of traditional ammunition and fishing tackle by sportsmen and recreational shooters. I believe that many of these proposed restrictions lack a demonstrated need supported by science while ignoring the extraordinary contributions that sportsmen and the hunting and fishing industries make to conservation through excise taxes, license sales, donations, and volunteer efforts. In addition, I am very concerned about how arbitrary restrictions in this area will be detrimental to our efforts to recruit and retain new hunters, shooters, and fishermen due to

the prohibitive increases in costs of participation that will result. As Assistant Secretary, how would you ensure that these concerns are addressed on lands and waters administered by the Fish and Wildlife Service and the National Park Service? As Assistant Secretary would you pledge to continue to permit the use of traditional ammunition and fishing tackle (where hunting and fishing are permitted) on National Wildlife Refuges, National Parks, Historical Parks, National Monuments, National Parks, National Battlefields, National Preserves, National Recreation Areas, National Seashores, Parkways, lakeshores, and reserves?

Response: Hunters and anglers have indeed made extraordinary contributions to the conservation of the nation's fish and wildlife, through the use of revenues and license fees to acquire and manage habitat valuable for game and non-game species alike. Moreover, they have been willing to adjust their own practices when necessary to address problems such as lead poisoning of waterfowl and bald eagles from the use of traditional lead shot in waterfowl hunting. This year marks the 20th anniversary of the nationwide phase-in of the requirement to use non-toxic shot in the hunting of migratory waterfowl, coots, and certain other birds.

Thanks in part to that successful transition, and the cooperation of waterfowl hunters, both waterfowl populations and hunter harvest levels have been sustained, while the once endangered bald eagle has fully recovered. If confirmed as Assistant Secretary, I will work with both the Fish and Wildlife Service and the National Park Service to ensure that their decisions regarding hunting and fishing on lands under their jurisdiction are based on strong science.

4. What is your position on the use of hunters' as agents for the lethal culling of excess deer and elk in national parks including but not limited to Rocky Mountain National Park, Theodore Roosevelt National Park, and Valley Forge National Historical Park?

Response: If confirmed, I would support the use of skilled volunteers, including hunters, where appropriate and compatible with existing law, regulations, and National Park Service policy.

I am told that Park units that are evaluating and addressing overabundant ungulate populations are evaluating the use of skilled volunteers in the range of alternatives in management planning. The use of skilled volunteers has been implemented on a short-term basis at Rocky Mountain National Park. In addition, Theodore Roosevelt National Park successfully implemented its first year of elk reduction in 2010 with assistance from 199 skilled volunteers from 19 states. While this model works well in some locations, it is not a one size fits all solution. For instance, Valley Forge deer reduction efforts were contracted through the Animal Plant Health Inspection Service (APHIS) because of the close proximity to an urban area.

I have also been informed that the NPS is evaluating a Service-wide approach to managing overabundant wildlife, which includes both native and exotics species, such as deer, elk, feral pigs, etc. and hopes to have that evaluation completed by

early 2012. The use of skilled volunteers is one tool available to parks for managing overabundant wildlife that welcomes and utilizes the experience and abilities of volunteers.

5. The Convention on International Trade in Endangered Species (CITES) is the international treaty that governs trade in endangered species. Currently there are two specific issues where the U.S. is out of step with the rest of the international community.
- a. The countries who are party to CITES require a non-detriment finding for the trade in endangered species. The US currently has a further onerous enhancement finding on top of CITES requirements that is necessary to allow the import of endangered species into the U.S. Would you support legislative changes to ESA in order to bring U.S. law in harmony with CITES?

Response: My understanding of CITES is that the enhancement requirement of the Endangered Species Act is not out of step with the rest of the international community. I am told that all 175 countries that are currently Parties to CITES have agreed to its terms, and CITES itself, in Article XIV, provides that Parties may enact stricter domestic measures regarding the conditions for trade, taking, possession, or transport of specimens of species listed under CITES, up to and including a complete prohibition on such activities.

I am also told that the Endangered Species Act (ESA) constitutes a stricter domestic measure, its existence and provisions are fully consistent with CITES, and the United States is not the only country with such stricter domestic measures. There is also flexibility in the ESA for relaxing the permitting requirements for some CITES-listed species. The requirement for an enhancement finding is generally limited to species that are under a more immediate threat of extinction and therefore in need of active measures to assist in their recovery.

I understand that the Department would not support the amendment of the ESA to weaken protections for species that are in the greatest need of actions to prevent their extinction, and that the reason for this is the flexibility that is built into the ESA, and because the permitting of U.S. imports can be used to provide incentives to assist in species' recovery. If confirmed, I would support that position.

- b. The current definition of a "hunting trophy" by CITES allows for all reasonable products from a harvested trophy to be traded internationally, but the US has a more restrictive definition that prevents the trade, characterizing items as "worked." Would you support the international definition of hunting trophies?

Response: Although I am not yet fully informed on this issue, I have been told that the Fish and Wildlife Service developed a definition of "sport-

hunted trophy" in its CITES-implementing regulations prior to the adoption of a definition by the CITES Parties. The Service actively participated in the negotiations on this issue at the 15th Meeting of the CITES Conference of the Parties (CoP15) and did not oppose the definition that the CITES Parties agreed to at that meeting. The Service is currently in the process of revising its CITES-implementing regulations to incorporate changes agreed to at CoP14 and CoP15, including changes relating to the definition of "hunting trophy." I understand that the Service intends to have a proposed rule published in the Federal Register within the next few months which will be made available to the public for review and comment.

6. What is your position on climate change? Do you agree with environmental groups utilizing ESA to promote reductions in greenhouse gases?

Response: Climate change is significantly affecting, and will increasingly affect, the resources for which the FWS and NPS are authorized and obligated by statute to conserve. If confirmed, I will ensure that the FWS and NPS continue to faithfully and respectfully implement the law; acquire and apply the best available science; and takes actions that reflect a commitment to transparency and accountability.

Regarding use of the ESA to address climate change, I agree with Secretary Salazar, Deputy Secretary David Hayes, and the other nominees that have appeared before you that the Endangered Species Act was not intended to be used as a tool for regulation of greenhouse gas emissions. While I understand that the FWS is required to consider the effects of climate change in analyzing various alternative actions, it is not a mechanism that the FWS should or would use to regulate greenhouse gas emissions because it is not the responsible authority.

7. EPA and the Services do not agree on fundamental scientific issues at the heart of pesticide consultations. Unable to resolve differences on critical issues, EPA Administrator Lisa Jackson and the Secretaries of the United States Department of Agriculture, Department of Interior, and Department of Commerce recently asked the National Research Council (NRC) of the National Academy of Sciences (NAS) to provide guidance on six key scientific issues to overcome this impasse. How do you plan to work with your counterparts at EPA and National Marine Fisheries in the meantime to not only protect endangered species but ensure that American agriculture is not jeopardized? When writing biological opinions for pesticides, how will you ensure your agency receives information from relevant stakeholders such as the state agriculture departments and/or other non-federal experts in developing your conclusions? What value do you give to "on the ground" information that you can receive from those involved directly in the use of crop protection products?

Response: I am not yet familiar with all the history, procedures, and challenges involved in ESA consultations with EPA on pesticide registration. However, if

confirmed, I will work to see that these consultations are informed by the best scientific and commercial data available, give opportunities for stakeholders and experts to provide information to help the consultation process, and consider the effects of any protective measures on American agriculture.

8. Your nominated position will require you to be willing to work closely with U.S. Army Corps of Engineers staff to ensure that water resources studies and projects and other Corps priorities can advance under the appropriate policies with as few impediments as possible. The Interior Department and the Army Corps should work collaboratively to solve any issues that arise instead of creating a hindrance. If confirmed, how will you ensure that Army Corps studies and projects do not face unnecessarily burdensome delays?

Response: I am aware that the Fish and Wildlife Service has a long-standing program that focuses on working with the Corps of Engineers on water resource studies and projects through shared responsibilities under the Fish and Wildlife Coordination Act (FWCA). The FWCA gives the FWS the opportunity to provide an official statement on the impacts and/or benefits to fish and wildlife from proposed Federal water projects. It is a cooperative process wherein Congress sought to accommodate both economic development and the maintenance or restoration of productive habitats and environmental quality. The Corps and other Federal action agencies are to include justifiable measures for fish and wildlife conservation in their projects. There is a long history of working cooperatively to achieve these multiple ends.

If confirmed, I am committed to continuing this practice by ensuring that the Service conducts its reviews in a timely manner consistent with statutory requirements under the FWCA and Clean Water Act and to seek the resources needed to accomplish this work. If confirmed, I will also encourage the Department to continue its efforts to facilitate permit review through interagency coordination and to reduce delays.

9. I have concerns about American Rivers' policies and activities as it relates to the Army Corps of Engineers. For example, I am concerned with the publication "A Citizen's Guide to the Corps of Engineers" which was released by American Rivers and the National Wildlife Federation last year. The guide provides, among other things, "a detailed overview of the Corps and of the laws, policies, and strategies that can be used to stop or improve destructive projects..." What was your role in the conception and development of this guide?

Response: I had no direct role in the conception or development of this guide. I supervised the senior staff member who supervised the staff member who worked with a partner organization on its development.

10. American Rivers is a member of the Water Protection Network (WPN). The WPN's website lists projects that its "members are working to influence." One of those projects is very important to Oklahoma – the deepening of the McClellan-Kerr Arkansas River Navigation System. The website includes a fact sheet on the project that is extremely troubling to me. There are economic benefits associated with the project that were not captured in the Corps benefit cost ratio analysis. In addition, the project has environmental mitigation components that were developed in cooperation with the Fish and Wildlife Service. As Assistant Secretary, how will you ensure that these authorized Corps projects, such as this one, move forward once funding is provided?

Response: In coordinating on Federal water projects, the Corps and the FWS have joint responsibilities under multiple authorities, including FWCA, Endangered Species Act and the Clean Water Act. I have been informed that the Service's engagement assists the Corps in designing viable projects that provide the intended economic benefits while conserving or improving fish and wildlife resources. The earlier the Service can engage, the more likely it is that the construction of Federal water projects that satisfy multiple objectives are facilitated. If confirmed, I will stress early engagement as a means of avoiding potential conflicts or delays before they affect project completion timelines. I will also seek to ensure that the relevant Fish and Wildlife Service programs are positioned so that this proactive work takes place.

11. American Rivers has a history of filing litigation against Corps projects.

- a. How many lawsuits has American Rivers filed during your tenure as President?

Response: As I stated during my confirmation hearing before the Senate Environment and Public Works Committee, it was my understanding that American Rivers was the plaintiff or co-plaintiff in 16 cases during my tenure. I have attached a spreadsheet provided by American Rivers that describes these cases. This spreadsheet also identifies cases in which American Rivers was a petitioner in Federal Energy Regulatory Commission (FERC) proceedings, cases in which American Rivers submitted an amicus brief, and cases in which American Rivers intervened primarily on behalf of the Federal government as an intervenor defendant. Not all of these cases were brought against Corps projects.

I believe strongly that a transparent collaborative approach to problem-solving and looking for ways to resolve environmental concerns while balancing the need for development is more productive than costly, contentious and time-consuming litigation-driven decision making.

Consistent with that belief, shortly after my arrival at American Rivers, the organization opened a dialogue with members of the hydropower industry, as well as federal agencies and other stakeholders, to facilitate collaboration and settlement. The result has been 160 settlements in

which American Rivers was a signatory, advisor, or funder of grassroots partners. During that time, the organization also worked to negotiate new regulations for Federal Energy Regulatory Commission known as the Integrated Licensing Process, which set up new timetables, streamlined permitting, and supported better, more integrated decisions among the various agencies with statutory responsibility.

- b. Approximately what percentage of those lawsuits stopped a Corps project from being completed?

Response: To the best of my knowledge, no Corps project was stopped from completion as consequence of these lawsuits.

- c. Do you think that this was an effective tactic to accomplish American Rivers' policy goals? If so, why?

Response: As President and CEO of American Rivers, my role was to represent the mission of the organization to promote healthy rivers and clean water. As I have previously stated, my philosophy is to engage early in order to avoid potential conflicts or delays. I believe that litigation should only be used as a last resort if there is no other way to avert irreparable harm to rivers and clean water.

12. An Assistant Secretary must appreciate and understand differing perspectives in order to make even-handed and well-reasoned policy decisions. If confirmed, how will you bring an objective and balanced approach to the position for which you are nominated?

Response: Should I be confirmed, my approach to resolving controversial natural resource issues will be to reach out proactively, especially to those whose livelihoods are at stake, and listen carefully to their concerns and ideas. I will seek balanced approaches that take the needs of all stakeholders into account. I believe that lasting conservation solutions are best achieved through an open and transparent collaborative process that includes a robust analysis of all alternatives.

13. My home state of Oklahoma and many other states, including Texas, have adopted water plans. The Department of Interior recently established a wildlife refuge within the footprint of a planned water supply project in Texas. This water supply project was not only documented in the State's Water Plan, but it was also vetted thoroughly in public meetings and public hearings. Still, Fish and Wildlife Service made a unilateral decision to designate a wildlife refuge within the footprint of the planned project, without any contact, coordination or consultation with state and local interests. How would your administration handle this issue differently?

Response: I have been told that your specific question pertains to the Neches NWR, which was approved by the Service's Director on June 11, 2006. Although I am unfamiliar with the details of this particular situation, I am aware that in

general the process for creating a new National Wildlife Refuge is a transparent process that involves a number of steps that can take years to complete and involves extensive study and public input. I support this transparent process, which seeks to fully engage the public. If confirmed, I will expect this public process to be followed for new refuges. Should I be confirmed, I would be happy to meet with you to discuss the specific issues you ask about in more detail.

14. Do you believe that if an agency were to change the rights and responsibilities under a law, they should go through notice and comment rulemaking prior to making that decision?

Response: While I am not an attorney and would have to rely on the Department's legal staff for technical application of the existing law to a particular set of facts, it is my view that federal agencies must faithfully and respectfully implement the statutes and regulations under which they operate and that all agency actions should reflect a commitment to transparency and accountability.

15. I understand that you are a strong supporter of greater federal control over water and you personally went so far as to speak last year at the press conference where Mr. Oberstar unveiled his version of the Clean Water Restoration Act. In spite of the Clean Water Restoration Act being resoundingly defeated last Congress, it appears that EPA is attempting to gain the jurisdiction that it would have received through that act through their new Draft Guidance document. I am extremely concerned about this course of action for a number of reasons. While I do not expect the President to nominate someone who shares my views on the limits of jurisdiction, I am concerned that you may not think *any* waters fall outside of the scope of Federal jurisdiction. Please tell me, in your opinion, should any water features not be federal? Please describe those features.

Response: It is my understanding that the determination of whether or not a water feature falls under the jurisdiction of the Clean Water Act is a determination to be made by the U.S. Environmental Protection Agency not the Department of the Interior.

16. At our hearing you said "should I be confirmed, the Clean Water Act would be outside my jurisdiction. It would not be up to the Assistant Secretary for Fish and Wildlife and Parks to implement the Clean Water Act." As a Senior Official in the Obama Administration, however, you will play a critical role in the interagency review process, particularly through ESA Section 7 consultations. Please elaborate on your role in this process.

Response: Under section 7 of the ESA, the FWS consults with federal agencies on proposed actions that may affect threatened and endangered species. The FWS uses section 7 as well as other programs authorized by the ESA to collaboratively solve conservation challenges related to threatened and endangered species. If confirmed, I will support the efforts of the Service and other federal agencies to carefully review the potential impacts of proposed actions early in the planning

process, and to identify reasonable measures to avoid and minimize any negative impacts to imperiled species.

17. The position of Assistant Secretary for Fish, Wildlife and Parks for the Department of the Interior is influential as to oil and gas leasing and development of both federal and private lands, especially as issues relate to consultations under Section 7 of ESA, compliance for non-federal actions under 10(a) of ESA, and FWS comments in Environmental Impact Statements under NEPA.

- a. In your oral response on July 19th to my question regarding your statements on America's oil and gas industry, you stated, "*I had a job to do*". To further clarify your views on America's oil and gas industry and hydraulic fracturing, please answer each of the following questions separately and directly. Did you make the following statements, yes or no?

"Unless we stop the threat of rampant shale fracking, the drinking water for 17 million people across the Northeast will be threatened by toxic pollution. We can't let natural gas companies fatten their profits by putting our precious clean water at risk."

"Fracking has a nasty track record of creating a toxic chemical soup that pollutes groundwater and streams, threatening public health and wildlife..."

Response: Yes. My comments while CEO of American Rivers referred to hydraulic fracturing activities, specifically the disposal of produced hydraulic fracturing fluids in Pennsylvania and New York.

- b. Merriam Webster defines rampant as, "*marked by a menacing wildness, extravagance, or absence of restraint*". Do you believe hydraulic fracturing, as is currently regulated in the United States, is "*rampant*" or is under the threat of becoming "*rampant*", yes or no? If yes, please explain.

Response: Pennsylvania State University projects that more than 2,300 wells will be drilled in Pennsylvania in 2011, with the number of wells drilled increasing in subsequent years. Ultimately, industry estimates that more than 400,000 natural gas wells may be drilled throughout the Marcellus Shale in the coming decades.

- c. Do you believe "*natural gas companies fatten their profits by putting our precious clean water at risk*", yes or no? If yes, please explain.

Response: Many companies operate responsibly and take numerous precautions to avoid impacts to drinking water sources. However, there have been documented cases where a few companies have violated the law, including illegal dumping of wastewater from hydraulic fracturing.

- d. Do you believe "*fracking has a nasty track record*", yes or no? If yes, please provide that track record.

Response: While many companies operate responsibly, there have been many documented problems caused by accidental and intentional spills into surface waters and gas leaks into groundwater. A Duke University study published in May 2011 in the Proceedings of the National Academy of Sciences examined groundwater obtained from 68 wells in Pennsylvania and New York. Researchers found that groundwater near wells that have been hydraulically fractured contained, on average, methane concentrations 17 times higher than wells located more than 1 kilometer from hydraulically fractured natural gas wells.

- e. Do you believe hydraulic fracturing, as is currently regulated in the United States, threatens “public health and wildlife”, yes or no? If yes, please explain.

Response: Hydraulic fracturing was exempted from the Safe Drinking Water Act by the Energy Policy Act of 2005. As I noted in response to a previous question while most companies operate responsibly, some are not as diligent about using best practices. Safe drinking water regulations are intended to set a minimum standard that will protect public health.

- f. Do you have reason to disagree with the statement of EPA Administrator Lisa Jackson, who two months ago before a House Committee said, “I’m not aware of any proven case where the fracking process itself has affected water”, yes or no? If yes, what is the reason to disagree with that statement?

Response: Like Administrator Jackson, I am not aware of any proven case where the fracking process itself has affected water, although there are investigations ongoing. My understanding is that the EPA is undertaking a comprehensive study of the possible impacts of hydraulic fracturing on water sources.

- g. Do you support the statement of Assistant Secretary for Fish, Wildlife and Parks Tom Strickland who in 2009 before the EPW Committee said, “It is the position of the Administration, and Secretary Salazar supports this position, as do I, that we should actively and aggressively develop our conventional resources”?

Response: At the outset I note that the potential development of policies regarding hydraulic fracturing would fall within the primary auspices of the Assistant Secretary for Land and Minerals Management and the Bureau of Land Management, and not the position for which I have been nominated. Domestic energy development is a top priority of both President Obama and Secretary Salazar and, if confirmed, I would support the Administration’s efforts in this regard. I believe that, in most cases, a safe and responsible approach to balancing energy and environmental needs can be found.

Senator David Vitter

1. During your nomination hearing you indicated that during your time at American Rivers (AR) there were only 13 lawsuits in which the organization was a party. This is clearly inaccurate. Please provide a list of all legal actions taken by AR, or which AR was a party to during your tenure.

Response: As I stated during my confirmation hearing before this Committee, it is my understanding that American Rivers was the plaintiff or co-plaintiff in 16 cases during my tenure. I have attached a spreadsheet provided by American Rivers that describes these cases. This spreadsheet also identifies cases in which American Rivers was a petitioner in Federal Energy Regulatory Commission (FERC) proceedings, cases in which American Rivers submitted an amicus brief, and cases in which American Rivers intervened primarily on behalf of the Federal government as an intervenor defendant.

I believe strongly that a transparent collaborative approach to problem-solving and looking for ways to resolve environmental concerns while balancing the need for development is more productive than costly, contentious and time-consuming litigation-driven decision making.

Consistent with that belief, shortly after my arrival at American Rivers, the organization opened a dialogue with members of the hydropower industry, as well as federal agencies and other stakeholders, to facilitate collaboration and settlement. The result has been 160 settlements in which American Rivers was a signatory, advisor, or funder of grassroots partners. During that time, American Rivers also worked to negotiate new regulations for Federal Energy Regulatory Commission known as the Integrated Licensing Process, which set up new timetables, streamlined permitting, and supported better, more integrated decisions among the various agencies with statutory responsibility.

2. Please provide a list of all confirmed instances of groundwater contamination you are aware of as a result of hydraulic fracturing.

Response: I am not aware of any proven case where the hydraulic fracturing process itself has affected water, although there are investigations ongoing. My understanding is that the EPA is undertaking a comprehensive study of the possible impacts of hydraulic fracturing on water sources. Outside of the fracturing process itself, there are documented instances of spills of wastewater from hydraulic fracturing into surface water, as well as leaking of methane or produced/flowback water into groundwater via cracked well casings. Compilation of a comprehensive list of all instances is beyond my current capacity, but I have provided several recent examples below.

1. Massachusetts Institute of Technology researchers reported 20 instances of groundwater contamination by natural gas, as the result of drilling

operations. They noted that most of the cases resulted from improper cementing and casing of wells (July 2011).

2. Duke University researchers found that groundwater near active hydraulically fractured wells contained, on average, methane concentrations 17 times higher than drinking water wells located more than 1 km from a natural gas well (May 2011).
 3. Pennsylvania Department of Environmental Protection fined Chesapeake Energy nearly \$1.09 million for contaminating the drinking water of 16 families with natural gas, and, separately, for an explosion at a condensate storage tank. It was determined that the contamination resulted from improper casing and cementing (May 2011).
 4. The Pennsylvania Land Trust issued a report discussing drilling company citations for 1,435 violations by the Pennsylvania Department of Environmental Protection over a period of 2.5 years. Nearly half of the violations addressed improper erosion and sedimentation plans and inadequate construction of wastewater impoundments that were not properly lined or not structurally sound. There were 155 citations for discharging industrial waste onto the ground or into commonwealth waters, and there were 100 violations of the state Clean Streams Law (August 2010).
 5. The Denver Post informed that oil and gas companies have reported almost 1,000 spills to Colorado regulators over a period of 2.5 years, totaling 5.2 million gallons of drilling liquids and oil. Produced water and hydraulic fracturing fluids used for natural gas extraction were the most common substances spilled, accounting for nearly half of the spills, 461, and about 85 percent of the amount spilled, 106,000 barrels. One hundred eighty-two spills got into groundwater and 82 into surface water. Garfield County had the most material spilled, 66,386 barrels, mostly drilling liquids and water used in natural-gas exploration (June 2010).
 6. Ohio Department of Natural Resources issued a report documenting the natural gas invasion of aquifers in Bainbridge Township due to natural gas well casing failures (September 2008).
3. Please provide at least three examples of the positive and negative economic impacts that were a result of litigation to which American Rivers was a party.

Response: I no longer work at American Rivers and as a result, do not have access to the data required to answer this question with specificity. In general, however, under my tenure, American Rivers consistently considered the costs as well as the means of replacing lost public benefits in its advocacy activities, including litigation.

For example, in the case of hydropower licensing settlements the settlements resulted, on average, in less than five percent of the generating capacity of any one project being impacted and, in most cases, that capacity was made up through improvements in turbine efficiency and other changes in project operation to enhance power generating capacity.

4. Through your experience with AR have you thought of an novel ways in which to expedite environmental actions at federal agencies to streamline the permitting process or to strengthen the economic analysis done prior to agency action?

Response: During my tenure at American Rivers, the organization worked with the Federal Energy Regulatory Commission to facilitate and streamline hydropower relicensing. The licensing of non-federal hydropower dams is something that American Rivers has been involved with since its founding. In the early to mid 1990s, the licensing process was characterized by litigation and conflict. Shortly after my arrival at American Rivers, the organization opened a dialogue with members of the hydropower industry, as well as federal agencies and other stakeholders, to facilitate collaboration and settlement. The result has been 160 settlements in which American Rivers was a signatory, advisor, or funder of grassroots partners. During that time, the organization also worked to negotiate new regulations for Federal Energy Regulatory Commission known as the Integrated Licensing Process, which set up new timetables, streamlined permitting, and supported better, more integrated decisions among the various agencies with statutory responsibility. This includes coordination with the Clean Water Act, Endangered Species Act, National Environmental Policy Act, as well as the Federal Power Act. It has been applauded by industry, agencies, and NGOs alike.

5. Under the National Environmental Policy Act (NEPA), a federal agency is required to look at the "human impact". Please provide a list of what you see as the breadth and definition of "human impacts".

Response: I am aware that the purpose of the National Environmental Policy Act (NEPA) process is to consider what effects a proposed project may have on the environment. If confirmed as Assistant Secretary, I would become familiar with the Department's role in this process and the issues associated with the process and would look to the Council on Environmental Quality, which administers NEPA, for its input and guidance on this issue.

6. Please discuss your understanding of the economics of why it is important for federal agencies to operate their permitting processes/responsibilities smoothly and with certainty and timeliness. Please also discuss the economics of resource development and how a nation generates wealth through the extraction and development of its natural resources.

Response: I am not an economist and therefore I am able to provide only a general response to this question. My understanding is that federal agencies often rely on a system of regulations, including the issuance of permits, to implement the authority they are provided under applicable statutes. At the Department of the Interior, this could be permits under the Endangered Species Act or permits for energy development activities. While the authority to issue permits for mineral extraction activities fall under the Assistant Secretary for Land and Minerals Management and not the position for which I have been nominated, I am aware that these processes not only protect the public's health, welfare, safety, and the environment, but also serve to promote economic growth, innovation, and job creation. Therefore, it is important that the regulatory process is efficient, effective, and that it provides predictability and certainty to the regulated community. I am aware that President Obama, government-wide, and Secretary Salazar, at the Department, have supported efforts to improve regulatory functions to protect the environment, manage the natural resources under the Department's jurisdiction, and promote energy independence.

Senator Mike Crapo

1. In a recent meeting with my staff you indicated that your responsibilities under the Endangered Species Act would be limited to matters directly within the jurisdiction of the Fish and Wildlife Service (FWS) and the National Park Service (NPS). However, the FWS has broad authority to protect species under its purview, and that authority can impact the decisions of other agencies. As such, the authorities of the individual in this particular position are quite substantial. Considering this broad authority that you would have to influence decisions across a broad range of federal agencies, what assurances can you provide that you will not seek to influence the actions of agencies other than the FWS and NPS?

Response: The FWS's role under section 7 of the Endangered Species Act is to assist other federal agencies in ensuring that their actions are not likely to jeopardize the continued existence of federally listed species or destroy or adversely modify designated critical habitat for those species. The Act's prohibitions against jeopardy and adverse modification apply to the action agency, and the Service's role is to assist the action agency in determining how they may move forward in accordance with the Act. If confirmed, I will support that consultative role of the Service and recognize that the decisions on how to proceed rest with the action agencies.

2. In 2003, I convened a series of collaborative talks in Boise to see if the parties that were litigating the biological opinion for the upper Snake River Basin would be willing to take a break from litigation and undertake a collaborative process instead. Everyone around the table with the exception of environmental groups, including American Rivers, agreed to try and withhold further litigation, and those talks fell apart as a result. However, you stated at a recent meeting with my staff that collaboration should always be the way forward and that "litigation should be a last resort." How do you reconcile your statement on collaboration with the decision of the environmental groups to walk away from the 2003 collaborative talks and to instead continue litigating?

Response: If confirmed, I will voluntarily recuse myself from participating in any Interior Department decisions regarding the Columbia-Snake River System for the full time I serve as Assistant Secretary for Fish and Wildlife and Parks. I will abide by the terms of my ethics agreement, including the applicable ethics rules and the Administration's ethics pledge, and I will regularly seek the assistance and guidance of the Department's Ethics Office. I have consulted with the Department's Ethics Office and understand that, as provided by the terms of my ethics agreement and the Administration's ethics pledge, I will not participate for two years in any particular matters involving specific parties in which American Rivers is a party or represents a party. It is important to note that, should I be confirmed as Assistant Secretary, federal management of the lower Snake River dams would not fall under my purview.

I believe that collaborative approaches are the best way to achieve lasting solutions to difficult natural resource issues and that litigation should be a last resort. I believe that to achieve success, such collaborative approaches should be open and transparent, and include a robust analysis of all alternatives.

I also believe that resolving environmental concerns while balancing the need for development is more productive than costly, contentious and time-consuming litigation-driven decision making. In the early to mid 1990s, the licensing process was characterized by litigation and conflict. Shortly after my arrival at American Rivers, the organization opened a dialogue with members of the hydropower industry, as well as federal agencies and other stakeholders, to facilitate collaboration and settlement. The result has been 160 settlements in which American Rivers was a signatory, advisor, or funder of grassroots partners. During that time, the organization also worked to negotiate new regulations for Federal Energy Regulatory Commission known as the Integrated Licensing Process, which set up new timetables, streamlined permitting, and supported better, more integrated decisions among the various agencies with statutory responsibility.

I know that your efforts in 2003 to convene discussions between the various parties interested in the operations of the upper Snake River projects was appreciated by American Rivers. However, American Rivers and other environmental groups were excluded from the confidential Snake River Basin Adjudication Settlement talks which were discussing some of the same issues, and which were closing in on a final settlement that would be ratified by the Senate without the input or pre-decisional review of American Rivers or other environmental organizations. Therefore it was difficult and in the end impossible, for these groups to continue discussions with other interested parties.

3. American Rivers is on record stating that a variety of energy and resource development activities contribute to the "endangerment" of rivers in some way. What assurances can you provide that you will not utilize this position, and the broad authorities it carries, to hinder or preclude energy and resource development throughout the United States?

Response: As President and CEO of American Rivers, my role was to represent the mission of the organization to promote healthy rivers and clean water. Should I be confirmed as the Assistant Secretary for Fish and Wildlife and Parks, I would have a new role and responsibilities to implement the policies and positions of the Administration and to administer the laws and directives of Congress impartially

Domestic energy development is a top priority of both President Obama and Secretary Salazar. If confirmed, I would support the Administration's efforts in this regard. I believe that in most cases, a safe and responsible approach to balancing energy and environmental needs can be found.

4. The FWS has argued that candidate conservation agreements, while commendable, simply do not provide enough certainty to preclude listings of certain species. Recent examples relevant to Idaho are the Slickspot Peppergrass listing as a threatened species and the warranted but precluded finding for the Greater Sage Grouse. Several groups that have participated in these efforts are now asking why they put in so much work on these agreements in the first place, since the government went ahead and listed these species anyway. Please provide your view on the merits of and reasons for state and local governments and others to continue investing substantial energy and resources into these voluntary efforts, especially considering the FWS' recent commitment to issue ESA determinations on 261 species over the next six years.

Response: My understanding is that Candidate Conservation Agreements with Assurances (CCAAs) provide participating property owners with assurances that if they engage in certain conservation actions for species included in the agreement, they will not be required to implement additional conservation measures beyond those in the CCAA and additional land, water, or resource use limitations will not be imposed on them should the species become listed in the future, unless they consent to such changes. I am aware that the Department supports efforts that provide assurances to landowners who take steps to protect species, including conservation agreements that are sufficient to preclude the need for listing, when possible. If confirmed, I would share that commitment and support those efforts.

Senator John Boozman

(re: tenure at American Rivers and the consequences of dam/levee removal)

During your time as CEO at *American Rivers*, the organization advocated dam and levee removal. Some dams are dangerous and/or no longer serve significant, useful purposes. However, *American Rivers* is known to have targeted safe dams and levees that provide tremendous benefits to our country, such as affordable, emissions-free hydropower.

1. The office of Assistant Secretary for Fish and Wildlife and Parks within the Department of Interior has the power to influence federal government activities relating to the construction, operation, and maintenance of reservoirs. In order to help the Committee review your previous involvement with dam removal efforts, please provide a detailed list of dams and levees that *American Rivers* publicly sought to have removed during your tenure at the organization.

Response: As I am no longer associated with the organization, I do not have access to the specific and detailed information that is requested in these questions. *American Rivers* was involved in approximately 250 dam removals during my 16.5 year tenure. To my knowledge, *American Rivers* did not advocate for the removal of any existing levees during my tenure.

However, I am able to answer in general that:

The majority of dam removals undertaken by *American Rivers* during my tenure were done at the request of the dam owner to resolve some public problem created by the dam, such as flooding, danger of dam failure, public safety issues such as drownings, etc. These dams were uniformly old and obsolete and were providing little, if any, economic or public benefits. One example is the Embrey Dam on the Rappahannock River in Virginia.

American Rivers cooperated with federal, state, and local officials, including former U.S. Senator John Warner to remove a dam which had not generated power in more than 30 years and had caused numerous drownings and was an impediment to navigation, recreation, and migratory fish important to sport and commercial fishing.

American Rivers advocated dam removal against the wishes of the dam owner in a very small number of instances, most prominently, four dams on the lower Snake River in Idaho. In those few instances where the dam owner was originally opposed to removal, a mutually satisfactory result was achieved. An example is the removal of the 165-year-old Edwards Dam on the Kennebec River in Augusta, Maine which generated a usually small amount of hydropower. Since removal of this dam in 1999, the city of Augusta has benefited from increasing tourism based on a re-established sport fishery.

Other than the four Lower Snake river dams, the dams that American Rivers remove were beyond their design life and provided little benefit to society while imposing significant costs to the public (such as lost revenue and jobs associated with commercial and sport-fishing).

In terms of hydropower, American Rivers consistently considered the cost to replace lost generating capacity and worked to identify means of replacing that generating capacity as part of its advocacy efforts. For example, on the Penobscot River in Maine, a collaborative effort between a power company, state and federal agencies, tribes, fishermen and conservationists succeeded in maintaining the project's hydropower generating capacity while removing two dams to open nearly 1,000 miles of historic river habitat for endangered Atlantic salmon.

In terms of drinking water, I am not aware of any dam removals that would have impacted reservoirs that were significant sources of drinking water.

In terms of flood damage reduction benefits, I am not aware of any dam removals that would have lessened flood protections. In fact, in the case of several dam removals in which AR was involved, the likelihood of future flood damages were reduced by dam removal. In Harmony Junction, Pennsylvania, the removal of an old dam to restore fish and wildlife habitat also solved serious flooding problems and created a recreational resource that supports the community's economy and quality of life.

In terms of navigation, the only case where navigation would be significantly impacted is the lower Snake River dams. During my tenure, American Rivers consistently called for, as a pre-condition to dam removal, that rail and highway capacity be upgraded to support grain shipping.

In terms of preventing ingress of water for business, manufacturing, recreation, and farming, I am not aware of any such instances pertaining to American River's dam removal advocacy. In fact, American Rivers worked with state and federal dam safety officials to determine effective approaches to protecting people, homes, and businesses from high hazard dams that could fail and would be catastrophic to communities below them.

I cannot recall any instances during my tenure where American Rivers advocated levee removal. American Rivers occasionally advocated levee setbacks to provide more area within levees to contain floodwaters. American Rivers advocated closing of the Mississippi River Gulf Outlet (MRGO) after it caused levee failures in New Orleans during Hurricane Katrina.

2. Please specify which of the dams (on your list of dams that *American Rivers* publicly sought to have removed during your tenure at the organization) impound reservoirs that supply water to hydroelectric power stations, and please list and rank these stations by their generating capacity. For each dam on your list that impounds water for the purpose

of power generation, did you consider the cost to replace lost hydropower generating capacity before determining whether to advocate for dam removal? If so, in each case, what type of analysis did you use to determine the cost? Please provide any data or analysis *American Rivers* used or which you can currently locate regarding the projected cost to ratepayers to replace lost power generation benefits from the dams that *American Rivers* publicly supported removing.

Response: Please see my response above.

3. On a related issue, during your time as CEO at *American Rivers*, was the organization involved in efforts to reduce greenhouse gas emissions or to influence public opinion regarding the importance of greenhouse gas emissions reductions? If so, please explain. Please provide any data or analysis *American Rivers* considered or which you can currently locate regarding the projected greenhouse gas emissions that would occur in order to replace lost power generation benefits from dams that *American Rivers* publicly supported removing. Please be specific with regard to each dam on the list.

Response: During my tenure, American Rivers publicly supported efforts to reduce greenhouse gas emissions and to inform the public of the importance of greenhouse gas reductions. Likely impacts of increased earth temperatures include changes in precipitation that lead to increased frequency and severity of floods and droughts, as well as higher water temperatures. Floods, droughts, and increased water temperatures impact the health of rivers and the communities which depend on them, which is the mission of American Rivers.

In terms of hydropower generation, American Rivers consistently considered the cost to replace lost generating capacity and identified means of replacing that generating capacity as part of any advocacy efforts. For example, on the Penobscot River in Maine, a collaborative effort between a power company, state and federal agencies, tribes, fishermen and conservationists succeeded in maintaining all of the project's hydropower generating capacity while removing two dams to open nearly 1,000 miles of historic river habitat for endangered Atlantic salmon.

4. How will you be involved in agency decisions, administration discussions and deliberations, or official activities that could impact our nation's capacity to produce clean, affordable, renewable, emissions-free, hydroelectric power?

Response: Domestic energy development is a top priority of both President Obama and Secretary Salazar and I support the Administration's efforts in this regard. The President has said that we must look into possible negative impacts, especially on water sources, and I believe that, in most cases, a safe and responsible approach to balancing energy and environmental needs can be found.

If confirmed, I would commit to undertaking efforts to evaluate current practices to ensure that they are consistent with the Administration's goal of promoting

renewable energy sources, including hydroelectric power, while conserving fish and wildlife in development and operational processes.

I would also commit to working with States, Tribes and other federal agencies to ensure that the Service conducts its reviews and processes under the Federal Power Act in a timely manner consistent with statutory requirements to the maximum extent allowed by funding and workload constraints.

5. Please specify which of the dams (on your list of dams that *American Rivers* publicly sought to have removed during your tenure at the organization) provide drinking water supplies to municipalities or other community water systems. For each dam on this list, did you consider the cost to replace lost drinking water supplies, including the cost to construct alternative infrastructure or other potential environmental costs for alternative water supplies, before deciding whether to advocate for dam removal? If so, in each case, what type of analysis did you use to determine the cost? Please provide any data or analysis *American Rivers* used or which you can currently locate regarding the projected cost to replace lost drinking water supplies that would occur as a result of removal of each dam that *American Rivers* publicly supported removing. Please be specific with regard to each dam on the list.

Response: Please see my response to question number 1 on this issue.

6. Please specify which of the dams (on your list of dams that *American Rivers* publicly sought to have removed during your tenure at the organization) provide flood damage reduction benefits. For each dam on this list, did you consider the cost of lost flood damage reduction benefits before deciding whether to advocate for dam removal? If so, in each case, what type of analysis did you use to determine the cost? Please provide any data or analysis *American Rivers* used or which you can currently locate regarding the projected loss of flood damage reduction benefits that would occur as a result of removal of each dam that *American Rivers* publicly supported removing. Please be specific with regard to each dam on the list.

Response: Please see my response to question number 1 on this issue.

7. Please specify which of the dams (on your list of dams that *American Rivers* publicly sought to have removed during your tenure at the organization) provide navigation benefits. For each dam on this list, did you consider the cost of lost navigation benefits before deciding whether to advocate for dam removal? Please provide any analysis *American Rivers* used or which you can currently locate regarding the projected loss of navigation benefits that would occur as a result of removal of each dam that *American Rivers* publicly supported removing. Please be specific with regard to each dam on the list.

Response: Please see my response to question number 1 on this issue.

8. Finally, please specify which of the dams and levees (on your list of dams and levees that *American Rivers* publicly sought to have removed during your tenure at the organization)

provide benefits by preventing ingress of water into areas that could otherwise not be used for their current beneficial economic purposes, such as business, manufacturing, recreation, and farming. For each dam or levee on this list, did you consider such economic impacts before deciding whether to advocate for dam or levee removal? Please provide any data or analysis *American Rivers* used or which you can currently locate regarding the projected economic impact due to loss of current beneficial land uses that would occur as a result of removing dams or levees that prevent ingress of water into areas that are now developed for other uses.

Response: Please see my response to question number 1 on this issue.

Series of Follow-Up Questions for Ms. Rebecca Wodder
(*re: Litigation involving American Rivers*)

In response to a question I asked during the Hearing on July 19, 2011, you stated the following:

“...I certainly understand and have been advised by the ethics office that I will be recused from any matter that would have been in litigation that *American Rivers* was involved in. I certainly would do that. Actually the organization that I used to lead has been only involved in a very small number of cases -- over my 16-and- a-half years, only 16 cases. So it would be a small number to be recused from.”

9. My office is reviewing records, but it seems that *American Rivers* has been “involved in” far more than 16 lawsuits over the course of your tenure in the organization, including as a lead plaintiff, as a listed party, through filing amicus briefs, or in any other manner. Please provide a complete list of lawsuits that *American Rivers* was a party to or “involved in” during your tenure at *American Rivers*, so that we can clear up this discrepancy.

Response: If confirmed, I will abide by the terms of my ethics agreement, including the applicable ethics rules and the Administration’s ethics pledge, and I will regularly seek the assistance and guidance of the Department’s Ethics Office. I have consulted with the Department’s Ethics Office and understand that, as provided by the terms of my ethics agreement and the Administration’s ethics pledge, I will not participate for two years in any particular matters involving specific parties in which *American Rivers* is a party or represents a party.

As I stated during my confirmation hearing before this Committee, it is my understanding that *American Rivers* was the plaintiff or co-plaintiff in 16 cases during my tenure. I have attached a spreadsheet provided by *American Rivers* that describes these cases. This spreadsheet also identifies cases in which *American Rivers* was a petitioner in Federal Energy Regulatory Commission (FERC) proceedings, cases in which *American Rivers* submitted an amicus brief, and cases in which *American Rivers* intervened primarily on behalf of the Federal government as an intervenor defendant.

I believe strongly that a transparent collaborative approach to problem-solving and looking for ways to resolve environmental concerns while balancing the need for development is more productive than costly, contentious and time-consuming litigation-driven decision making. Consistent with this belief, shortly after my arrival at American Rivers, the organization opened a dialogue with members of the hydropower industry, as well as federal agencies and other stakeholders, to facilitate collaboration and settlement. The result has been 160 settlements in which American Rivers was a signatory, advisor, or funder of grassroots partners. During that time, the organization also worked to negotiate new regulations for Federal Energy Regulatory Commission known as the Integrated Licensing Process, which set up new timetables, streamlined permitting, and supported better, more integrated decisions among the various agencies with statutory responsibility.

Also, the *Equal Access to Justice Act* (EAJA) is a well-intentioned law that helps level the playing field between the federal government and opposing litigants. However, there have been cases of abuse, including patterns of lawsuits involving organizations that repeatedly “sue-and-settle” with the federal government over minor procedural issues. Also, EAJA payments are made with a stunning lack of transparency.

10. In order to provide more transparency and to help the Committee review the involvement of *American Rivers* in lawsuits against the federal government, please provide: (1) a list of all lawsuits against the federal government to which *American Rivers* was a party over the course of your tenure, (2) the court’s judgment in each such case, if applicable, (3) a list of all such cases that were settled or otherwise disposed of, (4) the amount of any award to *American Rivers* under EAJA for each such case, and (5) any other federal resources that were awarded to *American Rivers* as a result of each such case.

Response: With respect to questions (1), (2) and (3), please see my response to the previous question.

With respect to questions (4) and (5), to the best of my knowledge, I am not aware of any awards under the Equal Access to Justice Act or other federal resources that were awarded to American Rivers as result of each such case.

(re: National Fish Hatchery Issues)

11. The Administration’s FY2012 budget proposes to cut Fish and Wildlife Service (FWS) Hatchery funding by \$6.288M. This funding is associated with the production of fish for the purpose of mitigating the effects of federal water development projects. In 2009, national fish hatchery mitigation facilities produced a total of 12,786,600 fish and 15,924,000 eyed eggs, which directly supported 3,500 jobs and nearly \$325 million in total economic benefit to local and state economies from Service operated mitigation facilities, as cited in the Service report *Economic Effects of Rainbow Trout Production by NFHS*. In the same FY2012 budget, the U.S. Army Corps of Engineers has requested an increase in its budget of \$3.8 million to fund mitigation fish production at FWS facilities.

American Rivers Litigation, 1994 to Present

Citation	Date	AR's Role	Defendant(s)	Issue
Am. Rivers v. FERC, 129 F.3d 99 (2d Cir. 1997)	1997	Plaintiff	FERC	Plaintiffs sought judicial review of FERC orders which issued hydropower licenses to several projects but refused to incorporate several conditions imposed by VT pursuant to certification authorized by Clean Water Act.
Oregon Natural Desert Ass'n v. Green, 953 F. Supp. 1133 (D. Or. 1997)	1997	Coplaaintiff	Michael GREEN, in his official capacity as Burns District Manager, Bureau of Land Management	Environmental groups brought action against Bureau of Land Management (BLM) and two officials, alleging that management plan for river violated Wild and Scenic Rivers Act (WSRA), National Environmental Policy Act (NEPA), and Administrative Procedure Act (APA).
Am. Rivers v. FERC, 170 F.3d 896 (9th Cir. 1999); In re Am. Rivers and Idaho Rivers United, 372 F.3d 413 (D.D.C. 2004).	1999	Plaintiff	FERC	Parties petitioned the court to review the refusal of FERC to initiate consultation pursuant to section 7(a)(2) of the ESA, 16 U.S.C. § 1536(a)(2), with NMFS on FERC's ongoing regulatory authority over Idaho Power Company's operations of the Hell's Canyon Complex. After waiting six years for a response AR requested a writ of mandamus compelling FERC to act formally on the 1997 petition.
Am. Rivers v. Nat'l Marine Fisheries Serv., 168 F.3d 497 (9th Cir. 1999)	1999	Plaintiff	NMFS; US Army Corps of Engineers; US Bureau of Reclamation; and State of Montana, Defendant-Intervenor; and Columbia River Alliance, Defendant-Intervenor-Appellee.	Appellee federal agencies provided a biological opinion addressing the effects of proposed dam operations on three listed snake river salmon species. Appellants, environmental groups, claimed that the Endangered Species Act, 16 U.S.C.S. § 1536(a)(2) required more rigorous and stringent standards for achieving both survival and recovery.

This funding source is insufficient and unreliable. I do not oppose the Fish & Wildlife Service's efforts to work with the Corps and other partners, in all budget climates, to determine equitable reimbursable agreements to satisfy these responsibilities. However, without sufficient, long-term agreements, there will be a harmful reduction of mitigation activities, and the federal government will fail to keep its commitment to mitigate the effects of its projects. As the Arkansas Delegation, and other concerned members of House and Senate, work to address these concerns, will you commit to be personally engaged and to work with us (and with OMB), to the best of your ability, to address our concerns?

Response: If confirmed, I will commit to personally being engaged in working with you, the Arkansas delegation, other concerned members of the House and Senate, and the Office of Management and Budget to seek appropriate long-term agreements regarding funding associated with the production of fish for the purpose of mitigating the effects of federal water development projects.

American Rivers Litigation, 1994 to Present

<p>Am. Rivers v. FERC, 201 F.3d 1186 (9th Cir. 2000).</p>	<p>2000</p>	<p>Plaintiff</p>	<p>FERC</p>	<p>At issue was the continued operation of two hydroelectric power facilities located in Oregon along a twenty-five mile stretch of the McKenzie River. The petitioners, a coalition of conservation/environmental organizations and the Oregon Department of Fish and Wildlife, challenge FERC's decision to reissue a hydropower license to the incumbent licensee, the Eugene Water and Electric Board ("EWEB"). Petitioners contended that the Commission granted the disputed license (i) without conducting the requisite environmental analysis under relevant provisions of the Federal Power Act ("FPA"), 16 U.S.C. § 791a et seq., and the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq., and (ii) in violation of sections 10(j) and 18 of the FPA.</p>
<p>Am. Rivers v. Glickman (2000). This case cannot be located. It may be the same as Am. Rivers v. Towns, CIV-00-1921</p>	<p>2000</p>	<p>Plaintiff</p>	<p>United States Forest Service; Daniel Glickman (Sec. of USDA); Eleanor Towns (Regional Forester for the USFS)</p>	<p>Plaintiffs allege that the US Forest Service violated the Wild and Scenic Rivers Act by operating without a comprehensive management plan to protect the Verde River.</p>
<p>Wilderness Soc'y v. Norton. CV S-02-2375 GEB GGH (E.D. Cal. 2002)</p>	<p>2002</p>	<p>Plaintiff</p>	<p>Gale A. Norton, Secretary of the Department of Interior</p>	<p>Action against US Fish and Wildlife Service related to their June 2002 decision to continue to allocate large amounts of water for irrigation within the Lower Klamath and Tule Lake Refuges</p>

American Rivers Litigation, 1994 to Present

<p>Riverhawks v. Zepeda, 228 F.Supp.2d 1173 (D. Ore. 2002). Also see: 2004 WL 3092747, 2005 WL 913127.</p>	<p>2002</p>	<p>Plaintiff</p>	<p>Gilbert Zepeda, District Ranger, Gold Beach Ranger District; Ann Venemen, Secretary of USDA; U.S Forest Service</p>	<p>The Forest Service allowed jet-boating on the wild and scenic Rogue River to increase markedly over the years. The river management plan specified that jet-boating usage would be limited to 1968 levels. The Forest Service also failed in this regard to "protect and enhance" the outstandingly remarkable values of the river, and failed to observe NEPA's requirements in establishing the river management plan. Plaintiffs alleged that jet-boating levels threaten the viability of the northwestern pond turtle and Chinook salmon as "sensitive species."</p>
<p>Nat'l Wildlife Fed'n v. U.S. Army Corps of Engineers, 384 F.3d 1163 (9th Cir. 2004).</p>	<p>2004</p>	<p>Plaintiff</p>	<p>US Army Corp of Engineers</p>	<p>Issue is whether Corps met its obligation to comply with state water quality standards, as required by the CWA. Plaintiff-appellants claim Corps's issuance of a May 2001 "Record of Consultation and Statement of Decision" (2001 ROD), regarding Corps's operation of four dams on the lower Snake River in was arbitrary and capricious and contrary to law in violation of the Admin. Procedure Act. The lawsuit claimed the Corps violated the APA because 2001 ROD did not address properly the Corps's obligations to comply with Washington's water quality standards for temperature, as required by CWA's incorporation of state water quality law.</p>
<p>Umpqua Valley Audubon Soc'y v. FERC, 149 Fed. Appx. 598 (9th Cir. 2005).</p>	<p>2005</p>	<p>Petitioner - Appellant</p>	<p>FERC</p>	<p>Peitioners challenged the Forest Service's terms and conditions in the North Umpqua FERC license as arbitrary, capricious, an abuse of discretion and contrary to law.</p>

American Rivers Litigation, 1994 to Present

<p>Am. Rivers v. U.S. Army Corps of Engineers, 421 F.3d 618 (8th Cir. 2005)</p>	<p>2005</p>	<p>Coplaaintiff</p>	<p>Parties involved include: (1) N. Dakota, S. Dakota, Montana, Nebraska, and Missouri; (2) Blaske Marine, Coalition to Protect the Missouri River, Conopco Phillips Company, Ergon Asphalt & Emulsions, Inc., Magnolia Marine Transport Company, Midwest Area River Coalition 2000, and Midwest Terminal Warehouse Company, Inc.; (3) MO-ARK Association and Missouri River Keepers; (4) Am. Rivers, Environmental Defense, NWF, various state Wildlife Federations, and Izaak Walton League of America; (5) Missouri River Energy Services; (6) Nebraska Public Power District; (7) the Mandan, Hidasta and Arikara Nation; and (8) the Corps, Fish and Wildlife Service, and various directors, secretaries and officers. Because of their competing interests, it is difficult to classify each party as a Plaintiff, Defendant, or both.</p>	<p>This case involves the interplay of the Corps' obligations under the FCA, ESA and NEPA. The FCA authorizes the Corps to operate the Missouri River by balancing a variety of river interests. The ESA seeks to protect and conserve endangered and threatened species and their habitats. NEPA requires agencies to consider and evaluate the potential environmental consequences that may result from an agency action. The Corps must consider both competing river interests and its legal obligations in the operation of the Missouri River.</p>
<p>Am. Rivers v. US Department of Interior, 2006 U.S. Dist. LEXIS 72428 (W.D. Wash. Oct. 3, 2006).</p>	<p>2006</p>	<p>Plaintiff</p>	<p>US Department of Interior</p>	<p>American Rivers challenged regulations issued jointly by DOI, DOC, and DOA to implement the 2005 Energy Policy Act in a manner inconsistent with APA notice and comment requierements.</p>
<p>Am. Rivers v. NOAA Fisheries, 2006 U.S. Dist. LEXIS 10576 (D. Or., Feb. 27, 2006)</p>	<p>2006</p>	<p>Plaintiff</p>	<p>NOAA Fisheries; Bureau of Reclamation</p>	<p>Plaintiffs allege the 2005 Upper Snake BiOp's no-jeopardy conclusion is arbitrary and capricious because the BiOp fails to comply with the consultation requirements of Section 7 of the Endangered Species Act (ESA), 16 U.S.C. § 1536(a)(2)</p>

American Rivers Litigation, 1994 to Present

<p>NWF et al. v. NMFS et al., 524 F.3d 917 (9th Cir. 2008).</p>	<p>2008</p>	<p>Plaintiff</p>	<p>NMFS; Army Corps of Engineers; U.S. Bureau of Reclamation; Donald L. Evans, in his official capacity as Secretary of Commerce; NOAA Fisheries; D. Robert Lohn, in his official capacity as Regional Director of NOAA Fisheries</p>	<p>Environmental organizations brought action alleging that NMFS violated requirements of the ESA in its issuance of biological opinion (BiOp) that proposed operations of Federal Columbia River Power System (FCRPS) dams and related facilities would not jeopardize listed salmon and steelhead in the lower Columbia and Snake Rivers or adversely modify their critical habitat. After the District Court, 2005 WL 1278878, held the BiOp invalid, and subsequently, 2005 WL 1398223, granted in part organizations' motion for a preliminary injunction, the Court of Appeals, 422 F.3d 782, affirmed and remanded. The United States District Court for the District of Oregon, James A. Redden, Senior District Judge, 2005 WL 2488447, remanded to NMFS, with instructions. NMFS appealed, and the appeals were consolidated.</p>
<p>Trout Unlimited v. Lohn, 559 F.3d 946 (9th Cir. 2009).</p>	<p>2009</p>	<p>Plaintiff</p>	<p>D. Robert Lohn (Regional Administrator of NMFS Northwest Regional Office); NMFS</p>	<p>Case involves question regarding whether the National Marine Fisheries Service may distinguish between natural and hatchery spawned salmon and steelhead when determining the level of protection the fish should be afforded under the ESA.</p>
<p>Georgia River Network v. US Army Corps of Engineers, 2011 U.S. Dist. Lexis 44090 (S.D. Ga. 2011)</p>	<p>2011</p>	<p>Plaintiff</p>	<p>US Army Corps of Engineers; and Grady County Board of Commissioners, Intervenor</p>	<p>Case involves a challenge to the Corps issuance of a permit to construct a fishing lake. The Corps improperly approved the Permit based on a flawed angler demand study, an inaccurate wetlands delineation, and an insufficient environmental analysis.</p>
AR Amicus Briefs:				
<p>Friends of Yosemite Valley v. Kempthorne, 520 F.3d 1024 (9th Cir. 2008).</p>	<p>2008</p>	<p>Amicus Brief</p>		

American Rivers Litigation, 1994 to Present

<p>Coeur Alaska, Inc. v. SE Alaska Conservation Council, 129 S. Ct. 2458 (2009); SE Alaska Conservation Council v. U.S. Army Corps of Eng'rs, 580 F.3d 873 (9th Cir. 2009).</p>	<p>2009</p>	<p>Amicus Brief</p>	<p>US Army Corp of Engineers, et. al.</p>	<p>Army Corps issued a CWA Section 404 permit to Coeur Alaska for its proposed Kensington Gold Mine. The permit would allow the mine to dump 210,000 gallons daily of wastewater from its mill facility into the Lower Slate Lake. U.S. Dist. Court for the Dist. of AK upheld issuance of permit. Environmental groups appealed. Ninth Circuit, 486 F.3d 638, reversed. Certiorari granted. AR, in cooperation with Clean Water Action Network, Cook Inletkeeper, Earthworks, Friends of the Earth, National Wildlife Federation, National Resources Defense Council, Oxfam America, U.S. Public Interest Research Group, and Waterkeeper Alliance, filed Amicus Brief opposing permit.</p>
<p>Hughes River Watershed Conservancy v. Glickman, 81 F.3d 437 (4th Cir. 1996).</p>	<p>1996</p>	<p>Amicus Brief</p>	<p>Daniel R. Glickman (Sec. of Agriculture); Charles B. Felton (Director of WV Division of Natural Resources); Paul W. Johnson (Chief Administrator of the Soil Conservation Service, USDA); Arthur E. Williams (Chief of Engineers, US Army Corps of Engineers); Robert L. Bensey (State Conservationist, Natural Resources Conservation Service, USDA); Fred Fields (Chairman of the Board of Supervisors of the Little Kanawha Soil Conservation District)</p>	<p>Plaintiffs brought action seeking judicial review of decisions of Natural Resources Conservation Service (NRCS) and Army Corps of Engineers approving construction of dam on river. Plaintiffs argued that NRCS and the Corps advance an interpretation of section 5(d)(1) of the Wild and Scenic Rivers Act, 16 U.S.C. section 1276(d)(1), that is contrary to its plain language and long standing interpretations.</p>
<p>Rapanos v. United States, 547 U.S. 715 (2006).</p>	<p>2006</p>	<p>Amicus Brief</p>	<p>U.S. Army Corps of Engineers, et. al.</p>	<p>SCOTUS is considering whether wetlands, near ditches or man-made drains that eventually emptied into traditional navigable waters, were "waters of the United States" under CWA. If the court decided these wetlands were not "waters of the US" it could significantly narrow the jurisdictional reach of the CWA. AR filed Amicus Brief opposing this interpretation of the statute.</p>

American Rivers Litigation, 1994 to Present

<p>S. Fla. Water Mgmt. Dist. v. Miccosukee Tribe of Indians, 541 U.S. 95 (2004).</p>	<p>2004</p>	<p>Amicus Brief</p>	<p>South Florida Water Management District</p>	<p>Plaintiffs argue the SWFWMD violated the CWA by failing to obtain a NPDES permit for pumping already polluted water from one navigable water (a water control canal) through a pumping station into another navigable water. The CWA requires an NPDES permit before discharging pollutants from a point source into a navigable water. The District Court rejected the Defendant's argument that it wasn't not an addition of pollutants because the point source did not add pollutants from the "outside world."</p>
<p>Simmons v. U.S. Army Corps of Engineers, 120 F.3d 664 (7th Cir. 1997)</p>	<p>1997</p>	<p>Amicus Brief</p>	<p>US Army Corps of Engineers; Togo West (Sec. of the Army); Maj. Gen. Patrick Stevens (Chief of Engineers, U.S. Army Corps of Engineers.); Ralph Greico (Commander and Dist. Engineer, U.S. Army Corps of Engineers); City of Marion, IL; Robert Butler, Mayor</p>	<p>Opponents of plan to build water reservoir to supply both city and water district sued Army Corps of Engineers, alleging that Corps, in issuing permit, violated NEPA by failing to consider all reasonable alternatives in its final EIS. The District Court for the S.D. of Illinois entered judgment for Corps. Opponents appealed. The Court of Appeals, Cudahy, Circuit Judge, held that Corps failed to comply with its duty under NEPA to consider all reasonable alternatives.</p>
<p>Pub. Util. Dist. No. 1 of Pend Oreille County v. State, Dept. of Ecology, 146 Wash. 2d 778, 783, 51 P.3d 744, 747 (2002).</p>	<p>2002</p>	<p>Amicus Brief</p>	<p>Washington Dept of Ecology; Center for Environmental Law and Policy (Intervenor/Respondent)</p>	<p>At issue in the instant case is whether a state, in issuing a certification under section 401 of the CWA in a license amendment proceeding, can impose in-stream flow requirements that reduce flows available for power generation under an appropriated water right. This is a companion case to 511 U.S. 700 (1994), which did not squarely address the issue.</p>
<p>S. Yuba River Citizens League v. NMFS, et al., 723 F.Supp.2d 1247 (E.D. Cal. 2010)</p>	<p>2010</p>	<p>Amicus Brief</p>	<p>NMFS</p>	<p>Environmental groups brought various claims against National Marine Fisheries Service (NMFS), United States Army Corps of Engineers (USACE), and federal officials arising from operation of two dams on the South Yuba River. Plaintiffs moved for preliminary injunction, and cross-motions for summary judgment were filed.</p>

American Rivers Litigation, 1994 to Present

<p>(1) S. D. Warren Co. v. Me. Bd. of Env'tl. Prot., 547 U.S. 370 (U.S. 2006); (2) S.D. Warren Co. v. FERC, 164 Fed. Appx. 1 (D.C. Cir. 2005).</p>	<p>2005</p>	<p>Intervenor (on behalf of Defendant, FERC)</p>	<p>(1) Maine Department of Environmental Protection; (2) FERC</p>	<p>(1) In April, 2003 the Commissioner of the Maine Department of Environmental Protection issued water quality certification requirements for 5 dams owned and operated by S.D. Warren Co. on the Presumpscot River in Maine. Warren challenged the authority of the DEP to require compliance with its water quality standards under Section 401 of the Clean Water Act. (2) In the second case, initiated in Federal Court, FERC issued 40-year licenses to S.D. Warren Co. for 5 dams on the Presumpscot River in Maine. The licenses required the company to create expensive upstream and downstream fishways for anadromous species. S.D. Warren Co. requested a rehearing, was denied, and subsequently filed suit in the D.C. Circuit Court of Appeals.</p>
<p>City of Bluefield et al v. Division of Water and Waste Mgmt. et al, Civ. Action No. 10-AA-71, Circuit Court of Kanawha County, WV</p>	<p>2010</p>	<p>Intervenor-Respondent</p>	<p>Division of Water and Waste Management, WV Dept. of Environmental Protection</p>	<p>Case involves question under CWA 402(p), which requires stormwater be regulated under a series of permits for municipalities, industrial, and construction sites. WVDEP released draft permit addressing water efficiency and providing credits for smart growth. Question is whether permit was within bounds of federal and state law.</p>
<p>County of Okanogan v. NMFS, 347 F.3d 1081 (9th Cir. 2003).</p>	<p>2003</p>	<p>Defendant-Intervenor-Appellee</p>	<p>DEFENDANT-APPELLEES: NMFS; FWS; U.S. Forest Service; Harv Forsgren, Regional Forester; Sonny J. O'Neal, Supervisor Okanogan Nat'l Forest. DEFENDANT-INTERVENOR-APPELLEES: Am. Rivers; Washington Env'tl Council; Okanogan Wilderness League; Center for Env'tl Law and Policy; Trout Unlimited; Defenders of Wildlife</p>	<p>Plaintiffs, permit holders, brought suit challenging the U.S. Forest Service's decision requiring reduced use of water from ditches in time of low flow, intended to protect certain endangered species of fish. District Court granted summary judgment for government. Plaintiffs appealed.</p>

American Rivers Litigation, 1994 to Present

<p>City of Klamath Falls, OR v. Babbitt, 947 F.Supp. 1 (D.D.C. 1996).</p>	<p>1996</p>	<p>Defendant-Intervenor (on behalf of Interior Sec. Babbitt)</p>	<p>Bruce Babbitt, Secretary, US Dept. of the Interior</p>	<p>Plaintiff alleged that Sec. Babbitt's designation of the Upper Klamath as a federal wild and scenic river was unlawful. Plaintiff alleges that Babbitt failed to comply with NEPA because he prepared an Environmental Assessment rather than a full EIS, and since the Klamath River was included in the OR state wild and scenic river system by an initiative, it doesn't meet the statutory requirement of section 2(a)(ii) that a river be designated "by or pursuant to an act of the (state) legislature."</p>
<p>FPL Energy Me. Hydro LLC v. FERC, 287 F.3d 1151 (D.C. Cir. 2002)</p>	<p>2002</p>	<p>Defendant-Intervenor</p>	<p>FERC Note: AR intervened on FERC's behalf</p>	<p>The question before the court was whether or not the Messalonskee Stream was a "navigable" waterway. If yes, the four FPL Energy Me. Hydro Dams on the stream were subject to FERC regulation. If not, they were only subject to less-stringent state regulations.</p>
<p>Brd. of Mississippi Levee Comm'rs v. EPA, 2011 U.S. Dist. LEXIS 32676 (N.D. Miss. 2011); on appeal case no. 11-60302; 2011 WL 2444032(C.A.5) (Appellate Brief 5th Cir.)</p>	<p>2011</p>	<p>Defendant-Intervenor</p>	<p>Environmental Protection Agency Note: AR intervened on EPA's behalf</p>	<p>Case involves a challenge to EPA's authority under the CWA section 404 to veto the Yazoo Pumps Project. Court held project was not exempt from regulation under the CWA. Case currently on appeal in the 5th Circuit.</p>

Senator BOXER. Thank you so much.

Senator Inhofe has asked if he could open the questioning because he has another appointment. I said yes, so the floor is yours for 5 minutes.

Senator INHOFE. Thank you, Madam Chairman.

I do have an Armed Service commitment I can't get out of, so let me real quickly cover four things: hydraulic fracturing, the Clean Water Restoration Act, the Prairie Chicken, I am sure you are all anxious to hear about that, and fish and wildlife.

The year 2009 was a great discovery year in terms of recoverable reserves. That is when we first recognized, and no one is going to argue with this, the United States of America has the largest recoverable reserves in oil, natural gas and coal than any country in the world. Quite often, people will say we only have 2 percent of the reserves. Those are proven reserves. In order to prove reserves, you have to drill. We are talking about recoverable reserves.

The major change has been in natural gas. With this big movement, people want to use natural gas, not just because it is plentiful and clean but for we have incredible shale deposits. The problem is we can't get one cubic foot of natural gas out of these deposits without the process called hydraulic fracturing.

Ms. Wodder, I thought my colleague, Senator Barrasso, was going to quote but he didn't quote a statement you made "unless we stop the threat of rampant shale fracking, the drinking water for 17 million people across the northeast will be threatened by toxic pollution. We can't let natural gas companies fatten their profits by putting our precious, clean water at risk."

Later in the Huffington Post, you said, "Fracking has a nasty track record of creating toxic chemical soup that pollutes groundwater and streams, threatening public health and wildlife."

We know something about hydraulic fracturing because that started 60 years ago in my State of Oklahoma, not far from Duncan, Oklahoma. We have statements from virtually every State in the Union that has shale deposits. To the knowledge of the Colorado Oil and Gas Conservation Commission and staff, there has been no verifiable instance of harm of groundwater caused by hydraulic fracturing in Colorado.

For Michigan, the same statement, there is no indication that hydraulic fracturing has ever caused damage to groundwater and so forth. In my State of Oklahoma, the same thing is true. When we had the Administrator, Lisa Jackson, we asked the same question and she said, "I am not aware of any proven case where the fracking process itself has affected water."

The first question is, Ms. Wodder, are all these people wrong and you are right?

Ms. WODDER. Thank you for your question, Senator Inhofe.

Let me begin by saying that in my prior position as President and CEO of American Rivers, I had a job to do, I was representing my board and my members. There was a mission for the organization of protecting clean water and healthy rivers. I recognize very clearly that the job I have been nominated for is an entirely different job and that responsibilities and the role of that position would be to implement the policies of this Administration and im-

partially administer the law. That would be my intention should I be confirmed.

Specifically, with respect to natural gas, I certainly agree that it is an important part of the Nation's future energy security. As the President has said, the main thing we need to do is proceed carefully so that in developing that resource, we don't have unintended consequences of damaging the clean water that we all depend upon.

Last, I would say this is in the jurisdiction of the BLM and would not be in my purview should I be confirmed.

Senator INHOFE. So you don't necessarily believe that these four statements I read are accurate statements or do you think they are accurate statements?

Ms. WODDER. The four statements?

Senator INHOFE. The statement by Lisa Jackson and all the States who support hydraulic fracturing? My concern is, and I don't have time for a long answer because my time is expiring rapidly, that you can't get natural gas shale deposits without hydraulic fracturing and there has never been a case of groundwater contamination as a result of that practice.

In answering for the record in writing, would you respond to that? I would appreciate it.

When Dan Ashe came up for his nomination as Director of Fish and Wildlife, we talked about how they had developed this Fish and Wildlife Strategic Climate Change Plan. I asked him, are you going to be trying to use Fish and Wildlife to promote one of the positions, in this case cap and trade, and his response was that climate change is not an overreaching consideration driving the Service's day-to-day decisionmaking processing. He went on to say, "We do not believe Fish and Wildlife is responsible for the regulation of greenhouse gases." Do you agree with that statement, yes or no?

Ms. WODDER. Yes.

Senator INHOFE. Thank you.

The third area is water. I mentioned in my opening statement that not only did we overwhelmingly defeat the Clean Water Restoration Act but also the two authors, Congressman Oberstar and Senator Feingold. My concern is that in spite of the Clean Water Restoration Act being defeated, it appears the EPA is attempting to gain the jurisdiction the Clean Water Restoration Act would give them through draft guidance documents. I am extremely concerned about this course of action for a number of reasons. Could we depend on you to not try to use this for that purpose?

Ms. WODDER. Senator, should I be confirmed, the Clean Water Act would be outside my jurisdiction. It would not be up to the Assistant Secretary for Fish, Wildlife and Parks to implement the Clean Water Act.

Senator INHOFE. The rest of the questions, I will submit for the record and would appreciate your responses.

Thank you.

Senator BOXER. I want to note that the person who marked that law up, I did win my reelection.

Senator INHOFE. You did. You were the exception. That is right.

Senator BOXER. I know, I was, and a bit of a symbol for environmental protection and so on.

Any way, I am back and before you leave, my friend, I want to say I do appreciate your concerns about the issues you raised, as well as the concerns raised by Senator Barrasso. Honestly, if you look at the portfolio Ms. Wodder has, she won't have any direct role at all in fracking and some of these other things. I hope you will take a look. This is a good woman and I think one who would be very responsive to your concerns.

Again, before I got elected, I did other things in my life. I was a stockbroker. That is what I did. That was then and this is now. You were a mayor and you took some of those things with you. I think it is important that we not saddle her with issues that are not in her portfolio.

Senator INHOFE. I appreciate that. I would respond by saying being a mayor is the hardest job in the world but there is a pattern here of appointments that is disturbing to me. We talked about John Bryson and several of the others. I want to be sure that these departments are not used to keep us from developing our resources so that we can reach independence. I would be very concerned about these efforts in all of the various regulatory bodies.

Thank you, Madam Chairman.

Senator BOXER. I am very sad you view it this way. I don't.

Let me just say Senator Barrasso talked about a book that you once read, liked and quoted from. I wanted to straighten that out. You said after you read this book, you said, you know what, I would like to get my energy a little more locally, which I think is great because I have a solar roof in my house in California and I don't have to pay for it, so I like the fact that I get it locally.

The other point I wanted to make is if you embrace the quote of somebody, that doesn't mean you agree with every single thing the person says. Am I right on that?

Ms. WODDER. I would agree with that, Senator.

Senator BOXER. For example, I love what Ronald Reagan said about the debt ceiling. He said in 1983, "The full consequences of a default or even the serious prospect of a default"—let the record show my colleague is walking away from me on a Ronald Reagan quote. "The full consequences of a default or even the serious prospect of a default by the United States are impossible to predict and awesome to contemplate. Denigration of the full faith and credit of the U.S. would have substantial effects on domestic financial markets and on the value of the dollar in exchange markets. The Nation can ill afford to allow such a result."

I embrace this comment by Ronald Reagan. Some other comments he made, I would distance myself from. He made some statements that I don't agree with. The fact is, I don't think we should go around here criticizing nominees who happen to agree with an idea in a book of which there were a hundred ideas. I think it is reminiscent of some bad, ugly times we had in this Country, so I want to move on from there.

I would like to ask both of you to answer the following question that have to be asked and answered. First, I will ask Mr. Kopocis and then I will ask Ms. Wodder for the answers.

Do you agree, if confirmed by the Senate, to appear before this committee or designated members of this committee and other appropriate committees of the Congress and provide information sub-

ject to appropriate and necessary security protection with respect to your responsibilities?

Mr. KOPOCIS. Yes, I do.

Ms. WODDER. Yes, I do.

Senator BOXER. Do you agree to ensure that testimony, briefings, documents, electronic and other forms of communication are provided to this committee, its staff and other appropriate committees in a timely fashion?

Mr. KOPOCIS. Yes, I do.

Ms. WODDER. I do.

Senator BOXER. Do you know of any matters which you may or may not have disclosed that might place you in any conflict of interest if you are confirmed?

Mr. KOPOCIS. No, I do not.

Ms. WODDER. I do not.

Senator BOXER. Let me say because I am going to move on and let others question, I have a series of questions I will submit for the record.

I cannot imagine two more well qualified people to come before us. I am so grateful to both of you because these confirmations have headaches attached to them both in terms of everything you have to fill out and answer and all the rest of it. It is hard on the families who sit there and have to hear some of these comments. That is the way it is.

I just want to thank both of you. I certainly will do everything in my power, and I know others feel the same way, to get your confirmations moving forward.

Senator BOOZMAN, do you have any questions?

Senator BOOZMAN. Yes.

Senator BOXER. Go right ahead.

Senator BOOZMAN. Thank you, Madam Chair.

I echo what the Chairman just said. The process is really very difficult and I do admire both of you for being willing to put yourself through the process. These are very, very important positions and I appreciate you in that regard.

One of the things, Ms. Wodder, that I am concerned about is we have a number of levees in Arkansas and in the past, it appears you opposed and have a history of filing lawsuits to prevent upgrades and improvements to the levee system. A classic case I think while you were leading the organization, a lawsuit was filed to block improvements over 300 miles of levees in Arkansas, Mississippi and Louisiana.

What I would like to know is due to your forceful advocacy in this regard, would you commit to recuse yourself for the entirety of your time in this position from any agency decisions that could impact the ability of stakeholders in Arkansas such as the core State agencies, levee boards, county governments, farmers and other private landowners to maintain or improve flood risk management structures such as levees?

That is pretty broad, but again, it is of great concern. We feel the levees have done a great job of flood control and when you look at American Rivers, they have a history of not being very friendly in that regard.

Ms. WODDER. Senator Boozman, I appreciate the question. Certainly, we are seeing more and more floods in this Country, they are more severe and more frequent. Levees are an important part of an overall solution to protect our communities combined with other non-structural approaches like wetland restoration and providing rivers some room to spread out.

To say that levees are not part of it would not be something I would agree with. I believe they are a critical part of the overall solution to protecting our communities.

With respect to recusing myself from any possible decisions regarding levees, I certainly understand and have been advised by the Ethics Office that I will be recused from any matter that would have been in litigation that American Rivers was involved in, I certainly would do that.

Actually, the organization that I used to lead has only been involved in a very small number of cases, over my 16 and a half years, only 16 cases, so it would be a small number from which to be recused.

Senator BOOZMAN. Again, we do have concern about that with the history of lawsuits filed by American Rivers.

Let me ask you about irrigation. American Rivers also worked to stop projects important to the survival of farming and rural communities in Arkansas. One example is irrigation projects in the State that will allow farmers and other stakeholders to partner with each other and provide surface water in a responsible way for irrigation.

American Rivers has worked to halt these efforts. The problem is, do we damage our aquifers and let them be depleted causing permanent damage, or would the organization prefer to see our rural way of life in eastern Arkansas come to an end? I would have the same concern of you jumping forward and making important decisions in that regard.

You have commented as to why you wouldn't recuse yourself in that regard, can you comment a bit about irrigation and some of these types of projects?

Ms. WODDER. I can. Again, let me reiterate that in my prior position as American Rivers President I had a job to do and the job for which I have been nominated is quite different. With that understanding, I would say American Rivers has a history of working collaboratively with irrigation districts. There are projects that have been undertaken that have come to very good solutions that have met the water security needs of irrigators along with the water needs of fish and drinking water. I think there is a balance we can strike and with enough effort and goodwill, sitting around a table, we can find a solution that works in everyone's interest.

Senator BOOZMAN. Thank you, Madam Chair.

Senator BOXER. Thank you.

Senator CARDIN.

Senator CARDIN. Thank you, Madam Chair.

Just as a response to some of the questions that have been raised, I want to put in the record at your request, we held a hearing in the subcommittee on fracking. To respond to Senator Inhofe's point, we do know of damage that has been caused to our water supply by the manner in which fracking fluids were handled

once they returned to the surface. It caused significant challenges in Pennsylvania, leading to Senator Casey filing legislation, which I have co-sponsored.

I want the record to reflect that we are concerned that the water qualities are maintained through the entire fracking process including how fracking fluids are disposed of.

Second, if I might respond to the point that Senator Barrasso raised on the removal of dams because as I read some of the material, the economic impact of the salmon industry on the west coast of the United States is pretty dramatic. There has been a significant decline. Part of that is the belief that the migration of salmon has been restricted by dams that have been put up and bringing down a limited number has helped salmon regenerate.

I think we need to take a look at the total economic impact including an industry that is important to our country, the salmon industry. I just mention it because I think the record should reflect that the actions taken have helped our economy and there is a concern as it relates to fracking.

To my two questions, first to Mr. Kopocis, I appreciate both your written and oral statements concerning the great water bodies. I am working on the next generation of the Chesapeake Bay bill from the experiences of the last Congress trying to work out some of the issues raised. We came close to getting that done, along with other great water body bills sponsored by members of this committee.

Once you are confirmed, will you work with this committee for a workable strategy so that we can advance these great water bodies and try to get them done? I know it is a tough political environment but as you point out in your statement, this is one of the highest priorities, to protect our great water bodies.

Mr. KOPOCIS. Yes, Senator. I look forward to working with you, your office and other Senators interested in working on the great water bodies within the EPA Office of Water.

Senator CARDIN. Thank you.

To Ms. Wodder, I mentioned in my opening statement the Harriet Tubman Park where we are very proud of being able to preserve the countryside in which Harriet Tubman operated her underground railroad. It is adjacent to the Blackwater Wildlife Refuge which is an incredible asset to our community.

The good news is the local community on the eastern shore of Maryland strongly supports the efforts we are making both at Blackwater and to establish the Harriet Tubman Park. They look at it as an economic advantage, bringing tourists to the eastern shore of Maryland, as well as preserving the environmental heritage and the cultural heritage of the eastern shore of Maryland.

We came close to getting that legislation enacted in the last Congress and I would like to just bring that to your attention and ask for your help once you are confirmed to advance those types of projects that can add to the great heritage of America and our national park system.

Ms. WODDER. Senator Cardin, I look forward to working with you, your staff, and other members of the committee to advance both of the cases you just mentioned.

Senator CARDIN. Thank you.

Thank you, Madam Chair.
 Senator BOXER. Thank you.
 Senator Lautenberg.

Senator LAUTENBERG. Thank you, Madam Chairman.

As I listened to the criticism of Ms. Wodder's experience, I want to tell the families, don't feel offended by the criticism because here no good deed goes without punishment.

I also have to reflect for a moment on the information we have about Ms. Wodder's experience, the 30 years of being with American Rivers and the Wilderness Society. It is established that American Rivers helped dozens of communities restore river health through conservation projects including river trails.

I have a letter here that I would like entered into the record.

Senator BOXER. Without objection.

[The referenced information was not submitted at time of print.]

Senator LAUTENBERG. This letter is from Eli Lehrer, Vice President of the Heartland Institute. He says the Heartland Institute is a national, free market think tank devoted to free markets, limited government and sensible regulatory policy. "I write to you in support of the nomination of Rebecca Wodder as the Assistant Secretary of Interior. I first became familiar with Ms. Wodder's organization in the debate over national flood insurance program. At all times, I found American Rivers staff willing to work for the right of central organizations like my own in open, new ideas, and supportive of many free market values.' It goes on extolling your abilities and the organizations you worked with. "Quite simply, Ms. Wodder's views on a large number of issues are, in my judgment, exactly those that conservatives concerned about our natural environment should endorse.'

I come away with this conclusion, that a doctor who is a resident might be excluded from using that knowledge, the knowledge gained in serving patients, so you have to be careful. Don't have too much experience because it is not always a good thing. You are better off to get a doctor who doesn't have any experience and take a chance.

The white nose syndrome talked about moments ago is killing bats across the country at an unprecedented rate, wiping out more than a million bats since first discovered as a disease in 2006. What might the consequences be in terms of our economy and environment if we fail to stop the white nose syndrome?

Ms. WODDER. Senator Lautenberg, I agree with you that bats are a very important part of our economy and the ecological fabric of the country and this is a serious issue. I know the Fish and Wildlife Service is working hard on it and coordinating with partners in other agencies to look into the research, public education, and management plans. I think it is an important priority and should I be confirmed, I would look forward to working with you and other members of the committee on that very important issue.

Senator LAUTENBERG. I authored legislation establishing the Great Falls National Historic Park in Patterson, New Jersey. This park will serve as an important historic landmark and catalyst to the local economy. While the legislation became law in 2009, very little progress has been made and I am concerned that in this tough budget climate, new parks like Great Falls may not receive

the attention they deserve. If confirmed, can you help with new parks like the Great Falls, move forward?

Ms. WODDER. I have just begun to be briefed on the Great Falls Park. It sounds like a wonderful community that is behind this new unit of the National Park system. You are right, we are in tough budget times and the resources have to be spread very far. I would certainly commit to working with you, with other members of the committee, and with people in the community to see if there are some creative ways to bring resources to bear to make sure that this park gets off to a good start as you hope.

Senator LAUTENBERG. Thank you.

In my closing seconds, I don't ask that question because I was born in Patterson, New Jersey but also, Alexander Hamilton came there to start the industrial revolution and used that river water very efficiently. Unfortunately, since that time, it has been abused and filled with all kinds of bad things. We want to clean up these rivers, keep up the work you did with American Rivers and fight hard.

You said in your opening remarks you would serve in all humility and I want you to serve with all aggression.

Thank you very much, Madam Chairman.

Senator BOXER. Thank you.

Senator BARRASSO.

Senator BARRASSO. Thank you, Madam Chairman.

Ms. Wodder, you recently left American Rivers, do you agree with all the public statements you made during your tenure there?

Ms. WODDER. Again, Senator Barrasso, I had a job to do. I was President of an organization, a non-profit organization that advocates for healthy rivers and clean water for all Americans. The positions that I took represented that mission and were on behalf of the members of the organization. It was a fairly specific mission, just for rivers and clean waters.

I would like to distinguish between the work I have done in the past and the work that I would do should I be confirmed. I do not bring an agenda with me. I look forward to the possibility of serving the conservation interest of the Nation.

Senator BARRASSO. So in terms of some of the statements you made, even though to me they may have seemed extreme, you don't really stand by all of them, this was just in that position and that job, is that correct?

Ms. WODDER. I stand by the work that I did in my position as President of American Rivers, yes.

Senator BARRASSO. On August 5, 2007, you were interviewed by E, the environment magazine. In the interview, you stated, "I eat almost no beef or pork because of the amount of resources consumed in producing food via cattle or pigs and because I object to factory farms." Is that your personal view, that you object to factory farms or is that the viewpoint expressed by you as a spokesperson for American Rivers in terms of your dietary life and issues there?

Ms. WODDER. There are various elements in your question, Senator. In terms of my dietary preferences, those are personal views, but the comment on factory farms would be a comment on behalf of American Rivers.

Senator BARRASSO. On August 5 when asked which environmental groups you most admired and why, you said, "I'm a huge fan of the work of the Center for the New American Dream which is offering practical choices for living a more sustainable and high quality of life in the United States.'

That is an organization that discusses prosperity without growth. Though not widely accepted, they say the case is strong that growth in the affluent U.S. is now doing more harm than good. You also stated in the same interview that you supported Bill McKibbens' book *Deep Economies* and said, "I am a strong supporter of his call for a new economic model,' not for his philosophy. You said, "I am a strong supporter of his call,' not the organization but you are "a strong supporter of his call for a new economic model based on sustainability.'

The President talks about growth, a lot of people here in Washington talk about growth and about the 9.2 percent of unemployment in the Country, but you are a strong supporter of a different model, a new economic model based on sustainability.

In his book, he states, "Growth, at least as we now create it, is producing more inequality than prosperity, more insecurity than progress.' I am questioning your support of this new economic model and how we have prosperity without economic growth, in your opinion.

Ms. WODDER. Senator, when I had the good fortune of being an aide to Senator Gaylord Nelson, he would often say that the same concepts underlie both the word economy and ecology. They both come from the Greek root word *ecos*, meaning that to have a strong, healthy economy, a thriving country, we need to have the natural resources that support that in a sustainable way. I was referring to those kinds of positions in those comments.

I certainly believe as a mother I want this Country to be strong into the future and have both a healthy environment and a strong economy.

Senator BARRASSO. If confirmed, are you going to make decisions with the intention of limiting economic growth? Is that the mindset you are going to bring?

Ms. WODDER. If I were to be confirmed that would not be my mindset. My two responsibilities, the National Park Service and the Fish and Wildlife Service, I would have carefully defined responsibilities through laws passed by the Congress and through policies of the Administration. It would be my job to implement the policies of this Administration and impartially administer the laws.

Senator BARRASSO. Yesterday, I got a letter from the National Rural Electric Cooperative Association which opposes your nomination. The letter highlights what they describe as "misguided efforts to dismantle our Federal hydropower resource.' It says you spent your "professional career attempting to eliminate this reliable, affordable, renewable resource from our energy portfolio.'

Given American Rivers' strong objection to hydropower under your tenure, how can you make objective decisions at the Interior Department regarding hydropower?

Ms. WODDER. First of all, hydropower is an important part of our Nation's energy source and it can, if it is properly sited and operated and mitigated, can be a green source of energy. My former or-

ganization, American Rivers, worked collaboratively with the National Hydropower Association on legislation that would double the amount of hydropower generating capacity in this country. I believe that hydropower can and will be an important part of the overall energy mix.

Senator BARRASSO. Thank you, Madam Chairman.

Senator BOXER. Thank you.

I think it is important to note that if we had more sustainable energy, we wouldn't have to import oil from some of those nations that harbor terrorists who attack us, so good for you for pushing for sustainability. That is where I am at.

Now, I am going to call on Senator Gillibrand.

Senator GILLIBRAND. Thank you, Madam Chairwoman.

Thank you, nominees, for being here and for your willingness to serve. I want to direct a few questions to Mr. Kopocis first.

Mr. Kopocis, it has come to my attention that under EPA's long term to enhance surface water treatment rule, New York City would be required to build a \$1.6 billion cover over the 90-acre Hillview Reservoir as a measure to reduce micro-bio pathogens such as cryptosporidium and giardia in the water supply.

New York City already undertakes an aggressive water testing program with half a million tests on their water supply each year for pathogens such as cryptosporidium and giardia. In addition, the city's Department of Environmental Protection has a host of water protection programs including multiple chemical treatments, water-fowl management and land and farm planning within the watershed.

This unfunded requirement would be in addition to the one that New York City is already undertaking to install a \$1.6 billion ultraviolet treatment system which would kill the very same pathogens. In fact, according to the New York City Department of Health, approximately 100 cases of cryptosporidium illness are reported in a given year in a city of over 8 million people. A 2010 study performed by the New York City Department of Health into this issue did not cite the Hillview Reservoir as a source of concern.

I support aggressive efforts to protect the public health and well being of all New Yorkers, but given the President's call to ease overly burdened regulations, do you support amending rules like LT-II, the Surface Water Treatment Rule when the evidence clearly suggests there is little public health benefit to compliance?

Mr. KOPOCIS. Thank you for the question, Senator.

I have recently become aware of the situation in New York. I have worked with representatives from New York City and New York State concerning New York City's water supply, the protection of the watershed, how it has served as a model for protecting watersheds used as drinking water, and for other sources as well, and how communities can take matters into their own hands to make sure their water supplies are provided in a safe and sufficient quantity as well for the community.

The application of the LT-II rule I am not particularly familiar with but I would be happy to work with you and your office to become more familiar with the circumstances in New York, and would welcome that opportunity if I am confirmed.

Senator GILLIBRAND. Thank you very much. I look forward to working with you on that.

The second issue I want to bring your attention to is obviously we are in a very grave economic climate and we all have to tighten our belts and reduce spending where we can, but some investments provide short term and long term growth. One of those investments very important to New York is the investment in sewer systems and water infrastructure systems.

New York State has billions of dollars of unmet sewer and water treatment system needs that are going unmet today. We have had sewer failure, we have had water main breaks from aging, we have had overflow issues and we do suffer from an aging infrastructure with many of the sewers built between 50 and 75 years ago.

I just want to urge you to be mindful of the great need we have with water infrastructure in New York State. Such investments can be significant economic engines, both for short term and long term growth, and water quality and sustainability for each community.

Mr. KOPOCIS. Thank you.

Senator GILLIBRAND. To Ms. Wodder, I wanted to thank you again for your testimony and thank you for your public service and your interest in serving in our Administration.

I wanted to just echo the comments of my colleague, Senator Cardin, on the importance of the Harriet Tubman Park system. I think it is going to make an extraordinary difference to our communities, for historic preservation and also for education of our children and the next generation. It is also a great economic engine for our regions because of the tourism that is created, the tourism opportunities to a part of these historic sites.

I just want to echo his comments on the importance of establishing this historic site and this park. I look forward to working with you on that.

The second issue I wanted to highlight for you is that Congressman Hinchey and I have been working over the last couple Congresses on a natural resource study for the Hudson Valley as a Federal initiative to look toward preservation and a national park for this study. I am hoping you can work with us on that as another project of significance for both preservation and accessibility and have a Federal role in that establishment.

Last, I just want to work with your office to make sure that we can be a resource since your mandate is so important to New York State.

Ms. WODDER. Thank you.

Senator GILLIBRAND. Thank you.

Thank you, Madam Chairwoman.

Senator BOXER. Senator Carper.

Senator CARPER. Welcome to both of you and thanks so much for your willingness to take on these responsibilities if confirmed. Thanks for being willing to go through the nomination process. Having been nominated as Governor to serve on the Amtrak Board of Directors, I remember frankly, it wasn't a lot of fun, filling out all the paperwork and all the disclosures. It took a long time and I appreciate your willingness to go through the process, including today's hearing and your preparation for that.

I feel our two nominees today have been nominated for positions that are important to EPA and important to the Department of Interior and I think important to our country. It is my sincere hope that we can move forward expeditiously on both.

Mr. Kopocis is a familiar face, a welcome face. So is yours, but you are not as familiar to us, as you know, but we have worked with this guy for a long time. I think I speak for most of my colleagues in believing that you would offer to the position for which you have been nominated a lot of experience in water issues and also in the history of getting things done here in Washington. On a good day, it is hard to get anything done as you know.

I am pleased to say that I appreciate the time you spent with us yesterday and am pleased to be able to support your nomination. If you do get confirmed, and there is a good chance you will, hopefully we will have a chance to work with you.

For Ms. Wodder, as I said earlier, I think you have been nominated to work in an important position. I think you would oversee two divisions, as I understand it, within the Department, the Fish and Wildlife Service and National Park Service, is that correct?

Ms. WODDER. Yes.

Senator CARPER. Which one is the more important? You can tell me later at the end. I think we both agree they are both important.

I was a naval flight officer years ago, a House member and Governor of Delaware, and now I have supported efforts to protect endangered species like horseshoe crabs and protection of their habitat. I am confident that you will work to protect the spirit of the letter of the Endangered Species Act.

As you may know, Ms. Wodder, Delaware is the only State that doesn't have a national park. I don't know if anyone has mentioned that to you. I just want to say that I hope with your help and the help of my colleagues here in the Senate and over at the House, we hope to change that.

A couple of years ago the National Park Service was good enough to, I think in the previous George W. Bush administration, finish the special resources study that recommended a national park in Delaware. They came up with a theme. He said what makes Delaware unique is the early colonial settlement leading up to the ratification of the Constitution in 1787. He said, that is your schtick, that is what makes you stand out, the early settlement by the Swedes, by the Dutch, by the Finns, the work by William Penn which led to the establishment of the town of Newcastle.

In fact, the penman of the revolution lived in Dover. Caesar Rodney rode his horse all the way from Dover, Delaware to Philadelphia I think on July 1, 1776 in order to cast the tie-breaking vote in favor of the Declaration of Independence. We ratified the Constitution in 1787 before anyone else. For one whole week, Delaware was the entire United States of America. Then we opened it up and let in the others.

Some days we question whether we should have done that. No, for most days, we think it worked out pretty well.

I have introduced legislation again in this Congress with the Department of Interior, actually with the support of Ken Salazar, a former colleague, to try to create a national park in our State. We

look forward to working with you to make this national park in the first State a reality.

If I can, a question for Ms. Wodder, Secretary Salazar has stated he supports creating a national park in the first State. I would ask Ms. Wodder if you would work with us, with me and my colleagues and our delegation, if you are confirmed to see how we can make this park a reality in this Congress?

Ms. WODDER. Should I be confirmed, I would look forward to working with you toward that end.

Senator CARPER. That was a really good answer.

If confirmed as the Assistant Secretary, what would be your top priorities during your tenure besides the national park for Delaware?

Ms. WODDER. Other than that, within the Fish and Wildlife Service, I have been receiving briefings and learning about the issues and challenges before the Service. One of the things that seems to be a top priority for the Service is determining how to do a better job of implementing the Endangered Species Act, to make it less complex and less contentious and thereby, more effective. That seems to me to be an important thing to do. We have a great backlog of species threatened with extinction.

The Service is clearly a dedicated group of individuals who are committed to doing the job well and need to have the ability to do that based on the best science and in conjunction with their partners in State and local agencies and other stakeholders. That would be a priority to make sure the Endangered Species Act is working well.

With respect to the National Park Service, I would say that I really can't put a top priority on that, I have been learning about so many different important issues, including the one you raised of Delaware not having a national park. They all strike me as highly worthy and I hope to be supportive of the great work of the National Park Service as well.

Senator CARPER. Madam Chairman, thank you for that extra 1 minute and 19 seconds.

Senator BOXER. Thank you very much.

We are going to do only one round of questioning. Senator Inhofe had to leave at 3 p.m. and I have to leave now and get to a 4 p.m., so I am not going to ask my questions, I am going to put them in the record and we will leave room for all colleagues to put their questions in the record.

Senator BOOZMAN. I would like unanimous consent that this letter from the coops be in the record and also a statement in the record.

Senator BOXER. Yes, sir.

[The referenced information follows:]



Glenn English
Chief Executive Officer

July 19, 2011

Senator Barbara Boxer, Chairman
Committee on Environment and Public Works
410 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Senator Jim Inhofe, Ranking Member
Committee on Environment and Public Works
456 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Dear Senators:

On behalf of America's electric cooperatives, I am writing today opposing the nomination of Rebecca Wodder for Assistant Secretary for Fish, Wildlife and Parks.

The National Rural Electric Cooperative Association (NRECA) represents more than 900 not-for-profit electric cooperatives providing retail electric service to more than 42 million consumers in 47 states. Millions of electric cooperative consumers rely on the affordable, renewable hydropower marketed by the federal Power Marketing Administrations (PMAs). The PMA hydropower projects serve multiple purposes that help drive the economies of many states. As Assistant Secretary for Fish, Wildlife and Parks, Ms. Wodder would have great influence over the positions taken by the Department of Interior, which has broad jurisdiction over many areas impacting dam operations.

Because of the importance of the Power Marketing Administrations to our economy, we are strongly opposed to the nomination of Ms. Wodder. Since 1995, Ms. Wodder has served as President of American Rivers, an organization that has made dam removal a central part of its mission. During her tenure, she led efforts to remove the Lower Snake River dams in the Pacific Northwest and opposed the Obama Administration's Biological Opinion for salmon recovery in the Columbia and Snake Rivers. Given her long tenure at an organization with a strong bias for dam removal, her objectivity on issues affecting federal hydropower facilities is questionable.

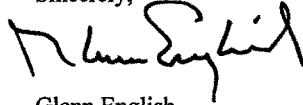
NRECA has long opposed misguided efforts to dismantle our federal hydropower resource. Unfortunately, Ms. Wodder has spent her professional career attempting to eliminate this reliable, affordable, renewable resource from our energy portfolio.



Accordingly, we urge you to oppose the nomination of Ms. Wodder for Assistant Secretary for Fish, Wildlife and Parks.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn English". The signature is written in a cursive style with a large, prominent initial "G".

Glenn English

cc:

Senator Lamar Alexander
Senator John Barrasso
Senator Max Baucus
Senator John Boozman
Senator Ben Cardin
Senator Tom Carper
Senator Mike Crapo
Senator Kirsten Gillibrand
Senator Mike Johanns
Senator Frank Lautenberg
Senator Jeff Merkley
Senator Bernard Sanders
Senator Tom Udall
Senator Jeff Sessions
Senator David Vitter
Senator Sheldon Whitehouse

Senator BOXER. So here is where we are. I am looking forward to your swift confirmation. I want to tell you something. The National Park Service runs an incredible program surrounding Alcatraz, a national park. I have never seen anything so fabulous and the amount of tourism that comes there, so you are in a position to really help this economy by preserving the parks, by preserving the wildlife.

Let me say I apologize for some of the questions you were asked, frankly, because I think they were confusing your personal views with the role you had. As I said, I was very different when I was a stockbroker. My whole goal was to make money for my clients. My goal now in my new job is public service, so it is very different.

When you are in an advocacy role, it is very different when you work for the President where you carry out his priorities in the way he wants you to, according to the law and the science. We thank you very, very much.

We also honor your families.

We stand adjourned.

[Whereupon, at 3:48 p.m., the committee was adjourned.]

[Additional material submitted for the record follows.]

STATEMENT OF HON. JEFF SESSIONS, U.S. SENATOR
FROM THE STATE OF ALABAMA

We have two significant nominations before our committee today.

The first, Mr. Kopocis, has been nominated to lead the EPA's Office of Water. If confirmed, he would have primary responsibility over the Clean Water Act, the Safe Drinking Water, and various other important laws.

The second, Ms. Wodder, has been nominated to be Assistant Secretary of the Department of Interior, where she would oversee the U.S. Fish & Wildlife Service and the National Parks Service. Second only to Secretary Salazar, she would have significant control over the Endangered Species Act and other Federal laws and policies.

I look forward to hearing from both witnesses today.

As the Ranking Republican on the Subcommittee on Water and Wildlife, both of these nominations are very important to me. They are also important because both positions are critically important to, and can have serious implications for, my state.

Mr. Kopocis, you are stepping into a difficult task. There are several controversial issues about which you will be required to make decisions. As you know, Congress has repeatedly refused to enact legislation that would expand the scope of the jurisdictional term, "waters of the United States," which is so fundamental to the framework of the Clean Water Act.

The Supreme Court has ruled on the matter several times, and each time it has recognized that the Clean Water Act does not give the EPA or the Corps unlimited jurisdiction over the waters in our Nation.

However, EPA has decided to go around the Congress by proposing a guidance document that, in my view, vastly expands what should be considered "waters of the United States."

Last month, I joined over 40 senators in a letter to EPA Administrator Lisa Jackson urging her to abandon any further action on this guidance document.

In addition, Mr. Kopocis, you are aware of EPA's efforts to regulate pesticides through the Clean Water Act.

I understand that this effort was brought on by a Federal court decision, but I still believe that the use of FIFRA-compliant, government-approved pesticides should not require EPA permitting under the Clean Water Act.

This issue is very important to farmers, foresters, public health agencies, small businesses, and others who use pesticides.

The House of Representatives recently passed a bill, by a vote of 292-130, clarifying that the use of these pesticides does not require EPA permitting under the Clean Water Act. And just a few weeks ago, the Senate Agriculture Committee voted the same bill out of committee with bi-partisan support. I am urging my colleagues to allow this important bill to come to the floor for a vote.

Ms. Wodder, you have been nominated to an important position. As you may know, Alabama also has several national parks, such as the Little River Canyon National Preserve; dozens of national historic landmarks; and more than 1,200 places on the National Register of Historic Places. Your role in overseeing the National Parks would be very important to my state.

But perhaps more important to my State would be your role in overseeing the Fish & Wildlife Service.

My constituents in Alabama have frequent interactions with the Fish & Wildlife Service. Alabama has more species on the Endangered Species List than any other state, except California and Hawaii.

We have over 120 species on the list. As a result, many Federal, state, and even private activities in my State require some degree of interaction and consultation with your agency.

I need to be sure that the person who oversees the Fish & Wildlife Service is qualified, fair and impartial, and does not have a far-left agenda that would prevent them from faithfully fulfilling the law, without unreasonable delay.

Ms. Wodder, I am very concerned about your nomination. You have spent the past 30 years as an environmental activist. You have never managed a large budget or large organization. You have not demonstrated the kind of experience and background that is normally expected for this job. And many of your past statements call into question whether you can fairly and impartially fulfill the obligations of the position to which you have been nominated.

But I am open to considering your nomination and learning more about your background this morning.

I look forward to the opportunity to ask questions.

Thank you.

