United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

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The Honorable John Fleming
Chairman
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the U.S. Fish and Wildlife Service to questions submitted following the Subcommittee's June 24, 2014, oversight hearing on *"U.S. Fish and Wildlife Service's Plan to Implement a Virtual Ban on the Commercial Trade in Elephant Ivory and the Consequences of that Policy."*

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

Sincerely,

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

Enclosure

cc: The Honorable Gregorio Kilili Camacho Sablan
Ranking Member

Committee on Natural Resources
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
Oversight Hearing
1324 Longworth House Office Building
June 24, 2014

Questions from the Honorable John Fleming

Question 1: In a September 2012, the U.S. Fish and Wildlife Service fact sheet entitled, "U.S. Efforts to Control Illegal Elephant Ivory Trade and Internal Markets" stated that, "Since the vast majority of seizures in the United States were small quantities, we do not believe that there is a significant illegal ivory trade into this country." Please precisely describe why this conclusion is no longer accurate and what new policies, apart from the Director's Order 210, have been implemented to stop illegal ivory from entering the United States?

Response: The September 2012 U.S. Fish and Wildlife Service (Service) fact sheet was based solely on analysis of seizures that occurred upon import or export. The analysis, conducted by the wildlife trade monitoring program TRAFFIC, did not take into account the significant commercial volumes of ivory seized in long-term investigations involving ivory successfully smuggled into the United States, such as the more than one ton of ivory seized in the Victor Gordon case. In addition, we have seen a continuing escalation of poaching and illegal ivory trade over the past few years. Based on this additional information, we believe that stronger actions are necessary to ensure that the United States is not contributing to ongoing poaching and illegal ivory trade, and to position the United States to encourage other significant ivory-consuming countries to act to address their role in the illegal ivory trade.

In addition to Director's Order 210, we finalized revisions to implementing regulations for the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), including revisions to the "use after import" provisions. The revised regulations require sellers of elephant ivory and specimens of other CITES Appendix-I species to demonstrate that their items were imported prior to Appendix-I listing or imported with a CITES pre-Convention certificate. Strengthening domestic ivory controls is just part of our overall effort to combat wildlife trafficking. The Service is also devoting resources to outreach and education, demand reduction, protected area management, increased law enforcement effort at home and abroad, and other activities that further the goals of the National Strategy for Combating Wildlife Trafficking.

Question 2: In Mr. Dreher's testimony, he mentioned two cases: *U. S. v Zhifel* and *U. S. v Victor Gordon.* Please provide the Subcommittee with the specific details in these two cases. Isn't it true that both of these cases were decided before the Director issued his Order in February 2014?

Response: During his testimony, Mr. Dreher mentioned *U.S. v Zhifei Li* and *U.S. v Victor Gordon*. Zhifei Li was one defendant in a broader investigation that is ongoing. Similarly,

Victor Gordon was one defendant in a broader and unrelated investigation that is also ongoing and we cannot release specific details of the broader ongoing investigations. However, the Department of Justice has issued the following press releases on both defendants (see: http://www.justice.gov/usao/nye/pr/June14/2014June4.php and http://www.justice.gov/usao/nj/Press/files/Li,%20Zhifei%20Sentencing%20PR.html).

Sentencing of Zhifei Li occurred on May 27, 2014, and sentencing of Victor Gordon was on June 4, 2014. Neither of these cases was affected by changes resulting from the Director's February 2014 Order. However, both cases illustrate the role that U.S. markets play in increasing elephant poaching and the illegal ivory trade and the need for stronger actions to eliminate this role. Information gathered during the course of both of these investigations illustrated that even the United States was playing a role in the illegal market for ivory and that trading in illegal ivory was becoming increasingly lucrative. History has shown us again and again that an increase in the black market value of commodities derived from wildlife directly results in increased poaching on the ground. Therefore action was and is needed to address the United States' role in the illegal ivory trade.

Question 3: What elephant ivory cases have been prosecuted and decided in 2014 and how much illegal ivory was seized? Please provide the details.

Response: Many of our investigations span multiple years and it is rare for a case to be "prosecuted and decided" within one year. To answer this question we queried the last five years of cases involving ivory. In the last 5 years, 548 investigations involving ivory were opened. Between January 1 and July 15, 2014, 71 of those investigations were closed in 2014 while 84 remain open. Of the 71 investigations closed in 2014, 244 pieces of ivory were seized including tusks, carvings, and jewelry. An unspecified number of additional pieces of ivory were refused clearance and re-exported from the United States. It is unknown how much illegal ivory entered the United States in undeclared shipments that were not detected.

Question 4: How much illegal ivory is currently in the United States? Has the Service made any effort to find out?

Response: The Service does not have data specifically on the volume or percentage of the ivory in the domestic market that is legal vs. illegal. However, the United States remains a significant ivory market, and we must continue to be vigilant in combating illegal ivory trade. This was demonstrated in the recently concluded Victor Gordon case, which involved the seizure of one ton of ivory. Market survey work conducted in 2008 by Martin and Stiles documented 24,000 ivory items in 657 outlets in 16 cities. The authors estimated that as much as a third of that ivory was imported after the 1989 African Elephant Conservation Act import moratorium. The authors also noted that, "there are no effective internal ivory transport or retail market controls." These administrative actions are intended to address that problem.

Question 5: Over the past few months, the Fish and Wildlife Service has been loudly arguing that a virtual ban is necessary because 35,000 elephants are being killed every year. How do you respond to the June 13th CITES press release that 20,000 elephants were killed in 2013, which is a significant decrease from the past two years? According to the

Secretary-General of CITES, "we are seeing better law enforcement and demand-reduction efforts across multiple countries." Wouldn't you agree that the solution to this crisis is to stop poaching in Africa?

Response: We have indicated that as many as 35,000 elephant were killed annually in recent years. This figure is based on documented declines particularly of forest elephants. The CITES press release did not document "a significant decrease" but rather a leveling off of recent poaching. Though we believe that this estimate may be conservative, we agree with their conclusion that poaching levels remain alarmingly high and continue to far exceed the natural elephant population growth rates, resulting in a further decline in elephant populations across Africa. We agree that stopping poaching in range countries of African elephants is a critical part of the larger effort to combat wildlife trafficking. However, efforts must be made all along the illegal trade chain, from poacher to middleman to consumer, and must include stronger law enforcement and prosecution, demand reduction, and international cooperation.

Question 6: The New York Times has an article entitled, *"The wrong way to protect elephants."* In this article, the authors state that the new Obama Administration policies, "will merely cause the price to balloon and the black market to flourish, pushing up the profit potential of continued poaching. These new rules proposed by the Fish and Wildlife Service may well end up doing more harm than good to the African elephant." Why is the New York Times wrong?

Response: The New York Times piece to which this question refers was an opinion piece by two authors and not, to our knowledge, the view of the New York Times. One of the authors represents the International Ivory Society, a trade group with a vested interest in keeping commercial ivory going. In fact, the current president, Robert Weisblut, was convicted in 2004 in connection with the trafficking of hornbill ivory – a case in which he also surrendered several pieces of elephant ivory illegally imported into the United States. Given that we have had a moratorium since 1989 on commercial imports of African elephant ivory (except for certain antiques) and have no evidence of the ill effects that the authors describe, we disagree with their assertions. The 1989 moratorium did not result in a dramatic rise in ivory prices or a flourishing black market, and there is no reason to believe that strengthening existing regulatory controls will do so. However, in recent years, we have seen a continuing, pervasive illegal trade that requires action to close existing loopholes, particularly regarding domestic trade.

Question 7: Specifically, where in the African Elephant Conservation Act of 1988 does the Director find the legal authority to ban the import, export, interstate and intrastate sale of elephant ivory? Please describe the specific provision.

Response: The AECA (16 USC 4222 and 4223) grants specific authorities to impose an import moratorium and to prohibit the import and export of certain types of African elephant ivory. In particular, 16 USC 4222 (a) and (b) provide that the Secretary of the Interior "shall establish a moratorium on the importation of raw and worked ivory" upon a making a determination that specific statutory criteria have not been met. 16 USC 4223 contains prohibitions, including a prohibition on the export of raw ivory from the United States. In addition, the African elephant is listed under the Endangered Species Act (ESA). The Service has jurisdiction under the ESA

(16 USC 1538 and 1540) to regulate import, export, and sale within the United States. The ESA is the implementing legislation for CITES. Trade contrary to CITES and possession of any specimen traded contrary to CITES is prohibited. In line with this prohibition, the "use after import" prohibition in our regulations focuses on ensuring that specimens that may not be traded commercially under CITES are not subsequently commercialized. This helps to ensure that all activities with such CITES specimens remain consistent with the CITES principle that the trade was not for primarily commercial purposes. The ESA also gives the Service authority to promulgate regulations "to enforce this Act," which would include regulations to enforce this prohibition.

Question 8: Are you familiar with Dr. Samuel Wasser and the Center for Conservation Biology? Dr. Wasser has recently issued a report to Interpol in which he identified three major hot spots in Zambia, Tanzania and the Republic of the Congo as being responsible for the overwhelming majority of elephant poaching. How much is the United States contributing to the arrest, capture, and imprisonment of poachers in these hot spot regions?

Response: Yes, we are familiar with Sam Wasser's method of estimating origin of ivory based on extracting DNA from seized ivory and comparing the DNA to elephant genetic patterns from known locations. In fact, the Service through the African Elephant Conservation Fund has funded this work since the inception of the idea more than a decade ago. We continue to fund Dr. Wasser and other geneticists to try to pinpoint the sites of origin of poached ivory in order to identify which countries are not effectively protecting elephants and to better understand (and intercept) trafficked ivory. The Service also oversees the importation process for samples to be imported to forensics and genetics laboratories, including Dr. Wasser's.

Unfortunately, most illicit ivory shipments from Africa to Asia are never detected or reported or intercepted and Dr. Wasser's lab has only been able to sample a small portion of the ivory seized worldwide, so the conclusions mentioned in the question are from a few specific seizures that were recently analyzed. The Service believes the problem is widespread and well beyond just Tanzania, Congo, and Zambia. For example, geographic placement of ivory from the Republic of Congo is likely derived from the TRIDOM area, which includes portions of Cameroon and Gabon. We are very familiar with this issue on the ground and are working with the Government of Gabon to investigate the trafficking networks that move ivory from TRIDOM to foreign markets. The Service's support to the EAGLE Network and to the Government of Gabon represents essential assistance to the arrest and convictions of wildlife criminals in what can be described as the most significant 'hotspots' for the poaching of forest elephants.

On a larger scale, the Service contributes to the arrest, capture, and imprisonment of poachers in these hot spot regions and others through funding support, capacity building, technical assistance, and law enforcement. From 2011 to 2013, the Service awarded 189 new grants to support anti-poaching efforts in Africa, totaling $19,722,199 in Service funds and matched by approximately $26 million in additional leveraged funds. This total represents approximately 87 percent of total Service support awarded through the Multinational Species Conservation Funds, including African elephants, African rhino species, great apes, and marine turtles, as well as the Wildlife Without Borders - Africa Program, which focuses on capacity building.

In 2013, the Service awarded 67 new grants to support anti-poaching efforts in Africa, totaling $9,433,390 in Service funds and matched by an estimated $12 million in additional leveraged funds from other donors. The Service is supporting anti-poaching field projects in twenty or more African countries, in addition to numerous projects that are regional or involve all range countries. Upon request of the government of Togo, the Service dispatched a Senior Special Agent to west Africa to assist Togo's investigation of an ivory dealer. The Senior Special Agent and the Service's National Fish and Wildlife Forensic Laboratory assisted with the transfer of ivory samples from Togo to Dr. Wasser's lab. The Service is in the process of establishing foreign attachés at global locations that are strategic to anti-wildlife trafficking, including at least two in Africa and two in Asia. These will be staffed by FWS Senior Special Agents and will assist host nations to build their investigative capacity to better interdict wildlife trafficking.

In regard to other work of the U.S. Government, USAID has provided long term (20+ years) support to protected area authorities and community-based management in many key elephant ranges in Kenya, Tanzania, Mozambique, Namibia and the Congo Basin, among others. USAID's conservation programs regularly report lower poaching rates in target communities than found in other areas.

Question 9: Wouldn't you agree that unless the range states are able to effectively stop the poaching, African elephants will simply continue their march toward extinction?

Response: We agree that securing protected areas and on-the-ground efforts to combat poaching are a critical component of the larger effort to combat wildlife trafficking, and we are working in a variety of ways to support those efforts, particularly through our grants programs and by providing technical expertise. But, as the National Strategy for Combating Wildlife Trafficking makes clear, the entire trade chain must also be addressed, including stronger enforcement and prosecution in intermediary and consumer countries, and efforts to reduce demand, including within the United States.

Question 10: In the final analysis, you can close the U.S. market and destroy the value of millions of legally obtained ivory products but unless we stop the poaching, isn't it likely that those who traffic in this illegal wildlife will simply find another market?

Response: As we have noted in several responses above, the efforts to strengthen domestic controls are just a small part of our larger effort to combat wildlife trafficking. In addition, by ensuring that we are not contributing to poaching and illegal trade, we are better positioned to push other countries to take more decisive actions to address their domestic markets. This is already bearing fruit. At the 65th Meeting of the CITES Standing Committee, the United States and European Union pushed Thailand to commit to several critical actions to address their domestic market, which has long been seen as a significant destination for illegal ivory. If Thailand fails to meet a March 2015 deadline, they could be subject to a suspension of trade in specimens of CITES-listed specimens, potentially valued in millions of dollars annually.

Question 11: Will this ban stop poaching of elephants in Africa?

Response: Stronger domestic controls over ivory trade will ensure that the United States is not contributing to elephant poaching and illegal ivory trade. Recent examples, such as the cases noted above, indicate that these actions are necessary to eliminate the United States as a market for illegally sourced ivory. It will also position us to push for stronger actions in other significant consumer countries, such as China, Thailand, and Viet Nam. Poaching for ivory will only continue as long as markets exist for it, so eliminating these markets should result in fewer elephants dying.

Question 12: When will the proposed final rules be printed in the Federal Register and will this be a permanent ivory ban?

Response: We anticipate publishing a proposed rule to prohibit interstate commerce in African elephant ivory, with certain exceptions, later this year. We will publish a final rule following consideration of the public comments received.

Question 13: What direct evidence do you have that the proceeds from the illegal sale of elephant ivory are being used to finance terrorist activities?

Response: We know that poaching operations have expanded beyond what were once small-scale, opportunistic actions to coordinated killing commissioned by armed and organized criminal syndicates. Wildlife trafficking robs local communities of the benefits provided by wildlife and generates millions of dollars in illicit revenues each year, which contributes to the illegal economy, fuels instability, and undermines security. For these reasons, it is in the national interest of the United States to combat wildlife trafficking. With regard to direct connections to terrorist groups and the financing of their activities, we would defer to other agencies with more direct involvement in those issues.

Question 14: One of the provisions of P. L. 100-478 was the establishment of the African Elephant Conservation Fund. This fund allows the Secretary of the Interior to request up to $5 million per year for grant projects to conserve elephants in the 26 range states. There have been 467 approved grants and $1.5 million is available for the current fiscal year. Would you say this fund and the approved grants have been a major reason why African elephants are still found throughout Africa?

Response: We believe, as do many of our partners, that the support from the African Elephant Conservation Fund has been the most consistent and effective mechanism for providing relatively modest but well-focused assistance to key projects. Since 1990, the African Elephant Conservation Fund has provided a lifeline to African elephant populations. Our assistance provides key support for elephant surveys, protected area designation, park operating costs, anti-poaching equipment and operating expenses, ranger training, and community based conservation projects in key elephant areas. However, elephants are under threat throughout their remaining range. They have already been extirpated from several countries and now occur in a fraction of their natural range. Where elephants have survived, the African Elephant Conservation Fund provides a crucial lifeline. In 2013, legitimate proposals to the African Elephant Conservation Fund exceeded $6.4 million. Requests to the fund continue to increase.

The work of the African Elephant Conservation Fund directly supports elephant-focused conservation. This work complements other U.S. Government work including that of USAID and its work with landscape conservation in key elephant range states.

Question 15: Can you speculate on what the population of wild African elephants would be if the African Elephant Conservation Fund had never been established? Isn't this the only continuous source of funding for this species?

Response: By the 1980's, elephant populations in Africa had dropped from as many as 10 million animals to fewer than half a million when the 1990 CITES ivory ban was put in place. With decreased illegal trade and increased protection, in part funded by the African Elephant Conservation Fund, elephants began to recover in some parts of Africa in the 1990's and early 2000's, reaching an estimated 650,000 elephants in 37 countries. However, in spite of the African Elephant Conservation Fund and the efforts of numerous courageous people, poaching has taken a toll on elephants throughout Africa in the past five years, particularly in Central Africa, but also in parts of East and Southern Africa where they were previously safe and increasing. For example, poaching and other human pressures have eliminated forest elephants from 62 percent of their range in Central Africa since 2009. The continent-wide estimate for all African elephants is now down to 420,000 ("definite" confirmed by counts) to 500,000 ("definite" plus "probable") (African Elephant Database 2013 update).

It is impossible to say how much worse the impact of poaching on elephants would have been if the African Elephant Conservation Fund had never been established, but the African Elephant Conservation Fund has often been the first source of outside support for key wildlife areas in Africa and it is relied upon to respond to emergencies and poaching threats throughout Africa. Without financial support from the African Elephant Conservation Fund, some areas would never have been established as parks; some park authorities would be unable to pay rangers salaries; some would not have airplanes or vehicles for surveillance; and many areas would not have the fuel to operate their vehicles or the rations to provide their staff while on patrol.

As mentioned above, the work of the African Elephant Conservation Fund is a cost-effective and key part of the U.S. Government role in conserving elephants. Long-term support on landscape conservation and community conservation by USAID and other international partners is also a critical component to the long-term conservation of the African elephant.

Question 16: Since you recognize that the fund has been extremely beneficial in saving African elephants, why did the Obama Administration request level funding for this account in FY'15?

Response: The Administration places the requested funding level within the larger set of priorities that are determined by current needs and fiscal constraints.

Question 17: How many U. S. law enforcement personnel are currently on-the-ground assisting range states in their battle against heavily armed poachers? How many would be required to stop the poaching of African elephants?

Response: The Service's Office of Law Enforcement currently has no personnel on the ground assisting range states in their battle against heavily armed poachers. The Office of Law Enforcement conducts two trainings annually at the International Law Enforcement Academy in Botswana aimed at improving the skills of African Park Rangers. It is not possible to answer the hypothetical question of how many U.S. enforcement personnel would be required on the ground to stop the poaching of African elephants in range states, which includes most of the African continent.

Question 18: On page 4, you mention that CITES recognized eight countries --- China, Kenya, Malaysia, Philippines, Tanzania, Thailand, Uganda and Vietnam --- as, "significant source, transit, or designation ports for illegal ivory trade." If this country has become, according to the Service, such a huge market for illegal ivory, why wasn't the United States on this list?

Response: We believe the United States is a significant consumer of elephant ivory. The analysis that led to the identification of these eight countries focused on a variety of factors, including recently documented "large-scale" ivory seizures. Because recent high-volume seizures in the United States had not been adjudicated, they were not included in this analysis. By strengthening our ivory trade controls and continuing to take strong enforcement action against illegal trade, we hope to continue to be excluded from this list.

Question 19: Did the Service send a letter to the U. S. Postal Service asking them to extend the availability of the Save the Vanishing Species Stamp? If yes, please provide a copy of the letter. What was their justification for stopping its availability?

Response: No, the Service did not send a letter to the U.S. Postal Service asking them to extend the availability of the Save the Vanishing Species Stamp, however, the National Strategy for Combating Wildlife Trafficking, which was released by the Administration on February 11, 2014 notes that "By reproposing the retailing of the Save Vanishing Species Semi-Postal Stamp, we can provide the public an avenue to participate in financing antitrafficking efforts."

Question 20: What specific provision in the African Elephant Conservation Act of 1988 allows the federal government to destroy the value of millions of legally obtained products that were purchased, in some cases, long before the passage of this law?

Response: Though we disagree with the premise that these actions "destroy the value of millions of legally obtained products," our legal authority is explained in our response to question 7 above.

Question 21: The Fish and Wildlife Service published a Federal Register Notice on May 12, 2014, concerning the importation suspension for Zimbabwe. Will the agency be publishing a similar notice for Tanzania and will the public be given an opportunity to participate in the decision making process?

Response: The Service posted a notice on its website and issued a press release announcing the suspension of elephant trophy imports for both Zimbabwe and Tanzania on April 4, 2014. A Federal Register Notice was published for Zimbabwe because the Service had previously committed to do so, and because no permitting process is involved for imports of elephant trophies from Zimbabwe whereby individual applicants would be advised of the import suspension. For Tanzania, elephants are classified differently from those in Zimbabwe under CITES, and elephant trophy imports from Tanzania require the issuance of a CITES import permit. Consequently, anyone applying to import an elephant trophy from Tanzania will receive information directly from us regarding the import suspension. The public has an opportunity to participate in the decision-making process by providing any information they may have regarding the status of elephants in Tanzania and Zimbabwe, including the effects of sport hunting. We have also engaged directly with the wildlife agencies of both countries to obtain information directly from them.

Question 22: The May 12, 2014 Federal Register Notice states for Zimbabwe's importation suspension that, "[a]fter the Service has an opportunity to review new information and obtain additional information, if necessary, we will make a final decision." Has the Service decided whether the information it received from Zimbabwe is sufficient to make a final decision or will it be necessary to obtain additional information from Zimbabwe?

Response: The Service has received a substantial amount of information directly from the Government of Zimbabwe as well as from other sources (including publicly available reports and published documents) regarding the status of elephants in that country, how sport-hunting programs are managed, and how sport hunting contributes to the management and conservation of elephants. The Service completed its review of this information and is unable to find that the killing of an elephant whose trophy is intended for import into the United States would enhance the survival of the species in the wild. Following evaluation of all available information, on July 22, 2014 (announced on July 23, 2014), the Service confirmed the suspension of the import of elephant trophies harvested in Zimbabwe on or after April 4, 2014.

Question 23: As part of the record, there is a Memorandum of Understanding between the Department of the Interior and the Ministry of Natural Resources and Tourism for Tanzania. It is dated January 15, 2009 and signed by then Secretary Dirk Kempthorne. In 2009, the DOI/FWS and the government of Tanzania signed a memorandum of understanding (MOU) on bilateral cooperation and exchange in wildlife and natural resources conservation. Article 3 of that MOU states that the parties agree to cooperate by exchanging or transferring information that is needed to make the necessary findings required under domestic laws or international agreements for the issuance of import and export permits for wildlife. Did the FWS consider this MOU before deciding to prohibit elephant importation from Tanzania?

Response: We are aware of this MOU and a more recent version signed in January 2013, and we continue to offer our assistance and cooperation to the Tanzanian government. In the case of information sharing, significant information has been published on the status of African elephants in Tanzania, and reports have been released by the Tanzanian government, which indicated a significant decline in populations there and a lack of a sufficient response to poaching

or even a reduction in hunting quotas in response to the reduced populations. We were therefore legally obligated under both CITES and the ESA to evaluate the situation in Tanzania, which resulted in our inability to make the positive findings required to allow imports. We note, however, that the Service has cooperated with Tanzania on wildlife and natural resource conservation, and provides significant financial and technical support to halt or reverse the decline of elephants, rhinos, chimpanzees and other rare species in Tanzania including nearly half a million dollars of funding to support anti-poaching, ranger equipment and training, and core support to National Parks, Game Reserves, and Wildlife Management Areas in the last fiscal year.

Question 24: Since the April 4th announcement of the importation ban from Zimbabwe and Tanzania, has the FWS submitted any additional requests for information to Tanzania?

Response: The Service has written to the Government of Tanzania to make clear what additional information is needed and what measures must be taken to address our concerns with regard to the high levels of poaching and elephant mortality in their country, and we have also advised them of the need to review the basis for their export quota for African elephant trophies, since the current quota has been in place since before the current poaching crisis and significant decline in their elephant population. We have also had high-level face-to-face meetings between our agency and the wildlife authorities in Tanzania.

Question 25: Is there any information that would convince the FWS to reconsider or reevaluate their decision for Tanzania?

Response: As we have advised the Government of Tanzania, we would need to see significant measures taken to address the rampant poaching of elephants that has occurred in Tanzania, including an actual reduction in poaching and stabilization of elephant populations in the country. As stated above, we have also advised them to reconsider current hunting and export quotas and other management measures to ensure that sport hunting is contributing to the management and conservation of elephants and not merely adding to the mortality.

Question 26: On February 26, 2014, Kerri-Ann Jones, Assistant Secretary for the Bureau of Oceans and International Environmental and Scientific Affairs at the U. S. State Department, testified before the House Committee on Foreign Affairs. In her testimony, Ms. Jones explained that United States Agency for International Development (USAID) has funded the Tanzanian conservancy model and the use of Wildlife Management Areas in Tanzania for more than a decade. The USAID funding focuses on the communities that live with the wildlife and rely on healthy populations of elephants and other species for tourism specifically. It allows communities to benefit from wildlife on their land and aligns local incentives in favor of long-term conservation management. Do you think the Fish and Wildlife Service's decision to suspend the importation of elephants from Tanzania and deprive them of the revenues generated by sport hunting is at cross-purposes with the goals of the USAID program?

Response: No. The benefits that the USAID-funded programs intend to provide to local residents can only be achieved if elephant populations are stable, and not under

conditions of dramatic population declines, and particularly where tourists themselves might be put at risk. Further, the revenue from sport hunting can be an important source of support for conservation programs, but as we learned for Tanzania, a significant portion of the hunting revenue goes to the general treasury and is not used for elephant conservation and management. For example, the Selous Game Reserve in Southern Tanzania brought in an estimated $8 million in revenues in a single year, but was allocated only $2.5 million for operating costs. The fraction of hunting revenue that is returned to protected area management has not been sufficient to address the current needs for protective measures dictated by the current poaching crisis, which is being promulgated by much more sophisticated, organized groups seeking high-volume, high-value amounts of ivory to fund their criminal activities.

Question 27: In making the decisions to suspend importation of elephants from Tanzania and Zimbabwe, did the Fish and Wildlife Service consider the impact that these decisions would have on the United States Agency for International Development program and other similar programs that rely on tourism for community support and local conservation management?

Response: Our permit decisions are based on the legal requirements of the ESA and CITES, and are not incompatible with tourism. Healthy wildlife populations are essential for wildlife-based tourism. Our legal obligation is to decide whether allowing imports will be for purposes that are not detrimental to the survival of the species (a CITES requirement applicable to specimens from Tanzania) or whether the killing of the animal whose trophy is intended for import would enhance the survival of the species (an ESA requirement for specimens from both Tanzania and Zimbabwe). We do indeed consider local conservation management in our decision-making, but in the case of these two countries, we were unable to determine that trophy hunting, particularly in the area of protective measures and anti-poaching, was being conducted in a manner that would ensure the continued existence of African elephants in these countries.

We work closely with USAID and regularly discuss conservation programming and needs with our colleagues in Washington and in the field.

Questions from the Honorable Peter A. DeFazio

Question 1: In his testimony, Mr. Tendaupenyu claimed that Zimbabwe's elephant population is increasing. This is in spite of the fact that – as noted in the Service's recent ESA Enhancement Finding – the estimated number of elephants in Zimbabwe fell from 84,416 in 2007 to 47,366 in 2013. Does the Service have information to support Mr. Tendaupenyu's statement?

Response: According to the "2013 Africa" report produced by the IUCN Species Survival Commission, based on data from the African Elephant Database, the elephant population in Zimbabwe in 2007 was 99,107, of which 85 percent (84,416) was classified as "definite" and only 0.3 percent (291) was classified as "speculative." While the total population in 2012 was estimated at 100,291, only 47 percent (47,366) was classified as "definite" and 45 percent (45,375) was classified as "speculative." Only 304 "definite" animals were counted by aerial or

ground counts, while the remaining 41,840 "definite"' animals were counted through sample counts or dung counts, a less accurate measurement than properly conducted aerial surveys, and the remainder was classified by IUCN as "other guesses." According to this report, half of the population estimates included in 2012 are older than 10 years, resulting in a degradation of the quality of data. Very few new surveys have been conducted since 2007 and the new surveys only cover a small percentage of the overall population. Further, according to the report, only 8 of estimates used in the "2013 Africa" report were the result of repeated surveys. As noted in that report, "this lack of systematic and updated monitoring data is of serious concern for possibly the third largest elephant population in Africa." While the Government of Zimbabwe continues to state that elephant population estimates exceed 100,000 elephants, this number is clearly based on outdated information.

In addition to the lack of current population data, there are indicators that poaching levels within Zimbabwe have increased significantly based on data from international monitoring programs. The CITES MIKE program, or Monitoring the Illegal Killing of Elephants, has monitoring sites throughout Africa to collect data on poaching levels. Poaching levels are measured as the Proportion of Illegally Killed Elephants (PIKE) at each site (i.e., the number of illegally killed elephants out of the total number of carcasses encountered). For the monitoring site in Zimbabwe, from 2002 to 2010, the PIKE value was 0.24, whereas in 2011 it was 0.67, a 180% increase. For comparison, the PIKE value for the Selous area in Tanzania had increased from 0.50 to 0.64 in the same time period, and we know that the elephant population in the Selous has decreased by about 66% from 2009 to 2014. Therefore, given that ratio of illegally killed animals at the monitoring site in Zimbabwe is now at or above the ratio of illegally killed elephants in the Selous in Tanzania, there is reason for concern, beyond the lack of current census data, about the elephant population in Zimbabwe.

Question 2: Witnesses at the hearing argued that hunters are the first line of defense against elephant poaching, and that reducing trophy hunting will harm elephant populations. However, sport hunting has been allowed the entire time that the poaching crisis has developed and escalated out of control. Given the documented military and professional nature of contemporary poaching operations, it seems clear that the presence of hunters is not a significant deterrent. Is there any evidence to suggest that trophy hunting is reducing elephant poaching?

Response: This is precisely one of the concerns of the Service in taking its decision to suspend imports of elephant trophies from Tanzania and Zimbabwe. Despite ongoing sport-hunting operations in Tanzania, for elephants as well as other game species, there have been documented, substantial declines of elephant populations in Tanzania—documented by the Government of Tanzania itself. This is an indication to us that the presence of sport hunters, while it may serve to deter poaching in their immediate vicinity while a hunt is occurring, is not having a significant impact at the country scale. Furthermore, at the time of our finding, it did not appear that the revenue from sport hunting was being used or augmented at sufficient levels to mount an effective anti-poaching effort to halt the decline in Tanzania's elephant population. Although recent developments in Tanzania to address poaching are encouraging, we are waiting for more information on the results of these recent efforts. In Zimbabwe, where hunting for elephants and other game species has also been occurring for many years, the picture is less clear. There have

been few recent elephant population surveys to compare to past population estimates, and international monitoring programs have indicated a significant up-tick in poaching levels in Zimbabwe, similar to other African elephant range countries. We also have questions regarding how the revenue from sport hunting is used in Zimbabwe and the status of elephant management programs there. We are engaging with both countries directly to make sure we have current information.

Question 3: In his testimony, Mr. Tendaupenyu claimed that the Service's recent decision to suspend elephant trophy imports from Zimbabwe came as a surprise, saying that his country has cooperated with the Service in the past. Did the Service ask Zimbabwe for information regarding that country's elephant population and management program over the past few years? Has Zimbabwe cooperated in providing or allowing for the collection of data necessary to monitor elephant populations? Has Zimbabwe provided information to support its assertion that elephant populations are growing?

Response: The Service had not received any information in writing from the Government of Zimbabwe since a U.S. inquiry in 2007. At that time, the Service received a response consisting of three undated and unsigned papers, which seemed to rely on somewhat dated information, and a 1997 elephant management plan. Between that time and April 2014, we had received no additional written information from the Government of Zimbabwe, but we had received various anecdotal reports and information provided in documents presented at various CITES meetings. Service representatives have met in person with representatives of Zimbabwe at various times in the past 6 years, usually in the context of annual meetings of hunting organizations in the United States. Little new or additional information has been provided during those meetings. Therefore, on April 4, 2014, a letter was sent to the Zimbabwe Parks & Wildlife Management Authority (ZPWMA) with a series of questions designed to assist the Service in making a final determination on trophy imports. On April 14, 2014, the Director-General of ZPWMA sent a letter to the Service expressing concerns over our decision to establish a temporary suspension. On April 17, 2014, the Director-General sent a response (herein referred to as ZPWMA response) to the Service inquiry. Several weeks later, the Service received a number of additional documents, including copies of Zimbabwean laws, and other supporting documentation that was referenced in the ZPWMA response. In addition, on June 6, 2014, the Service received additional relevant information from Conservation Force, a U.S.-based conservation and hunting NGO. The Service has also received a number of comments from individuals and associations connected to the hunting industry in Zimbabwe or southern Africa. The Service has updated its finding based on an analysis of this more recent information from Zimbabwe and other sources.

While Zimbabwe did provide additional information regarding their assertion that elephant populations are growing, most of this information is dated due to the fact that there have been very few elephant population surveys in Zimbabwe over the last 10 years. There is hope that the Pan African Elephant Aerial Survey, a multi-country effort to survey the majority of elephant habitat in Africa using standardized methodology, will provide more accurate population estimates. This survey has already started in several countries and should be completed by the end of the year.

Question 4: You mentioned in your testimony the case of Victor Gordon, an art dealer who was recently found to be disguising ivory from the ongoing elephant slaughter in Africa as "antique" and pawning it off on the public. Is this type of activity rare in the United States? Do you think the claims that the demands of the U.S. ivory market have nothing to do with today's poaching crisis are supported by the facts?

Response: Because disguising ivory as "antique" is a means to circumvent law enforcement whether by falsely claiming it to be that of extinct elephant species such as mammoths or by attempting to alter it chemically or otherwise, we believe that it is a common practice among criminals. Any ivory market, including the United States, has a direct impact upon today's poaching crisis. This is why the CITES Conference of the Parties has called upon all parties to control their domestic ivory markets. While we recognize that the U.S. market is smaller than the Asian market, we firmly believe that demand reduction in this country and abroad is an important component of our national strategy on wildlife trafficking.

Question 5: Last December, I sent Secretary Jewell a letter asking her to certify Vietnam under the Pelly Amendment and impose trade sanctions on that country for facilitating the poaching and trafficking of African rhinos. The letter I received from Director Ashe in January indicated that the Fish and Wildlife Service was "thinking about it." I have heard nothing since. Is the Service still considering that action? Why has no decision been made?

Response: In addition to your letter, we also received a petition requesting that the Department of the Interior certify that nationals of Viet Nam are diminishing the effectiveness of CITES because of their role in the illegal rhinoceros horn trade. The petition is currently under review by the Fish and Wildlife Service. As part of that review, we have been in contact with officials in Viet Nam as well as non-governmental organizations that work in Viet Nam in order to gain a full understanding of the steps Viet Nam is taking with regard to rhinoceros horn trade and CITES implementation as a whole. Viet Nam was the subject of considerable attention at the 16th Meeting of the Conference of the Parties to CITES, and the CITES Parties adopted a number of decisions concerning rhinoceroses and elephants that are specifically addressed to Viet Nam, including development of time-bound action plans. Viet Nam's actions in response to these decisions were the subject of considerable discussion at the CITES Standing Committee meeting in July, and we are incorporating this information into our analysis. We anticipate that the Service will be concluding its evaluation within the next several weeks.

Question 6: The Service has been criticized for taking steps this year to restrict the domestic ivory trade, after saying in September, 2012 that a ban on commercial elephant ivory trade was not warranted. What changed since that time to make the Service reconsider its position?

Response: This question presumably refers to a Fish and Wildlife Service fact sheet on U.S. efforts to combat illegal ivory trade. The fact sheet indicated that, because the vast majority of seizures in the United States were small quantities, we did not believe that there was a significant illegal ivory trade in the United States. However, that statement was based solely on analysis of seizures that occurred upon import or export. The analysis, conducted by the wildlife trade monitoring program TRAFFIC, did not take into account the significant commercial volumes of

ivory seized in long-term investigations involving ivory successfully smuggled into the United States, such as the more than one ton of ivory seized in the Victor Gordon case. In addition, we have seen a continuing escalation of poaching and illegal ivory trade over the past few years. Based on this additional information, we believe that stronger actions are necessary to ensure that the United States is not contributing to ongoing poaching and illegal ivory trade, and to position the United States to encourage other significant ivory-consuming countries to act to address their role in the illegal ivory trade.

Question 7: In addition to restricting commercial trade in elephant ivory, what other actions are the Service and the Administration taking to address the poaching crisis?

Response: The actions to further control ivory trade in the United States are just one element of the Administration's National Strategy for Combating Wildlife Trafficking (http://www.whitehouse.gov/sites/default/files/docs/nationalstrategywildlifetrafficking.pdf). The national strategy focuses on three pillars: strengthening enforcement and prosecution, reducing demand for illegally traded wildlife, and international cooperation. The Service is actively working at home and abroad in all of these areas.

The Service has a long history of providing technical assistance and grants to build in-country capacity for conservation of wildlife species. Through the Multinational Species Conservation Funds, the Service provides funding in the form of grants or cooperative agreements to projects benefiting African and Asian elephants, rhinos, tigers, great apes, and marine turtles in their natural habitats. A substantial portion of the funding awarded through the Multinational Species Conservation Funds is invested in projects aimed at combating wildlife crime through improved law enforcement, anti-poaching patrols, demand reduction, and economic alternatives. Several of the Service's global and regional programs, including Africa, Asia, and the Western Hemisphere, also directly address wildlife conservation efforts, including combating wildlife crime.

With regard to funding, the FY 2015 President's budget request for the Multinational Species Conservation Funds is about $9 million, which is level with the amount Congress appropriated in FY 2014. In the FY 2015 budget, the Service is requesting $3 million in increases for its Law Enforcement and International Affairs programs to address wildlife trafficking.

Most of the FY 2015 Law Enforcement Operations requested increase would go to strengthening forensic capabilities needed to address wildlife trafficking, and expanding the capacity of the Special Investigations Unit so that it can maximize the scope and effectiveness of Service efforts to respond to the elephant poaching crisis and shutdown trafficking in elephant ivory.

The increase in the FY 2015 budget request would also allow the Service's International Affairs program to work with key countries where demand for illegal wildlife products is high, to support demand reduction campaigns. The increase in the FY 2015 budget request would support the effective implementation of ivory trade action plans and other actions agreed to at the last CITES Conference of the Parties, and enable the Service to develop and implement a comprehensive outreach and education strategy targeting U.S. consumers of illegally traded wildlife.

Question 8: How would the Save the Vanishing Species Semipostal Stamp help benefit conservation and does the Administration support the continued sale of the stamp? What steps has the Service taken to reverse the Postal Service's decision to discontinue sale of the stamps?

Response: The funds generated from the Save Vanishing Species Semipostal Stamp have been of enormous benefit to the Multinational Species Conservation Funds by providing more than $2.5 million for 47 projects in 31 countries in Africa, Asia, and Latin America that will help conserve tigers, elephants, rhinos, great apes, and marine turtles. These funds have been leveraged by an additional $3.6 million in matching contributions—making the stamp a key part of the United States' efforts to protect wildlife and address the ongoing worldwide epidemic of poaching and wildlife trafficking.

The Administration supports the continued sale of the stamps and the National Strategy for Combating Wildlife Trafficking, issued this year, specifically calls for the continued sale of the Save the Vanishing Species Semipostal stamp. Continuing to sell the stamp would extend an opportunity for the American public to support wildlife conservation abroad.

Regarding your question about the steps the Service has taken to reverse the Postal Service's decision to discontinue sale of the stamps, we have met with key legislators and provided testimony to Congress regarding the importance of the stamp and our recommendation that it continue to be offered for sale.

Question 9: There were concerns expressed at the hearing that the domestic ban on commercial trade in elephant ivory places the burden of proof on the seller or importer of the item. Is this requirement unique to ivory and the May 15th, 2014 Director's Order 210? Are there other instances when our government requires a seller or importer to make similar shows of authenticity, certification, or ownership before allowing the item to be brought into the country or placed in the stream of commerce?

Response: It is not at all unusual under U.S. wildlife laws and regulations to place the burden of proof on the seller or importer to show that the item was lawfully acquired or otherwise meets an exception to a prohibition before the individual can engage in an activity that is otherwise prohibited. CITES generally requires a finding that a specimen of a CITES-listed species was lawfully acquired before a permit to export can be issued. Under the ESA, which implements CITES, the permit applicant bears the burden of demonstrating lawful acquisition. The ESA includes an exception for antiques, and under the statute an importer, exporter, or seller of an antique item bears the burden of demonstrating that the item meets the requirements of that exception. Director's Order 210 provides guidance about the documentation that we will accept (see http://www.fws.gov/policy/do210A1.pdf) including a qualified appraisal, a detailed history of the item (which may include family photos, or other information that authenticates the item and assigns it to a particular period of time or known artist) or scientific testing, if appropriate. This legal regime is not unique to wildlife laws and regulations either. Proof of age to purchase alcohol, proof of a driver's license to operate a motor vehicle, proof of title to a vehicle before it

can be registered or operated, and proof of residency to gain in-state tuition rates are all examples of placing the burden on the individual who seeks the benefits of a regulated activity.

Question 10: Before the May 15th, 2014 Director's Order 210, what documentation was an importer required to obtain to legally import antique elephant ivory or any other CITES listed species? How long have these requirements been in place?

Response: Prior to Director's Order 210, importers were required to show that an item met the ESA definition of antique, including: the items was 100 years old or older, was composed in whole or in part of an ESA-listed species, was not repaired or modified with any such species after December 27, 1973, and was being imported through an endangered species antique port. These requirements have been in place since 1982. Director's Order 210 requires importers to meet these same requirements for ESA antiques, but provides additional guidance about the documentation that we will accept (see http://www.fws.gov/policy/do210A1.pdf). This guidance ensures more uniform application of the ESA antique exception across the United States.

Director's Order 210 also clarifies that, under the African Elephant Conservation Act moratorium, which was established in 1989, we will not allow the commercial import of any African elephant ivory, regardless of age.

Question 11: Before the May 15th, 2014 Director's Order 210, what were the requirements and exemptions for musicians and musical instrument manufacturers wishing to sell, import, export, or travel with instruments containing elephant ivory?

Response: Prior to Director's Order 210, we allowed the commercial import of musical instruments containing African elephant ivory if the items met the ESA definition of antique as described in the response to Question 10 above. We also allowed a broader array of musical instruments to be imported for non-commercial purposes and have narrowed the scope of those imports to instruments that are accompanied by a valid CITES musical instrument certificate or equivalent CITES document. The instrument must be for non-commercial use and may not be sold, traded or otherwise disposed of outside of the certificate holder's country of usual residence. Director's Order 210 does not affect the sale within the United States or the export of an instrument containing African elephant ivory. We have been engaged in significant outreach and consultation with musicians, musical instrument manufacturers, and other musical groups to ensure that we understand their concerns and that they understand how to comply with current requirements for instruments containing elephant ivory.

Questions from the Honorable Glenn 'GT' Thompson

Question 1: Mr. Dreher, antique ivory is being sold legally in markets like London, Paris and Berlin. Shouldn't there be exemptions in place for historical objects or artwork containing ivory that can be clearly proven to be hundreds of years old?

Response: Such an exception exists in the ESA, which provides a specific exception for items that meet certain requirements, including being 100 years old or older, composed in whole or in part of an ESA-listed species, and not repaired or modified with any such species after December

27, 1973. The African Elephant Conservation Act (AECA) contains provisions for an ivory import moratorium, and we have had a moratorium in place under the AECA since 1989. The only exception created by Congress in the AECA is for the import of sport-hunted trophies. There is no exception for ivory items that meet certain age requirements, as is the case under the ESA.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

OCT 1 4 2014

TAKE PRIDE IN AMERICA

The Honorable Mary Landrieu
Chair
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Chair Landrieu:

Enclosed are responses prepared by the Department of the Interior to the questions for the record submitted following the June 25, 2014, legislative hearing on S.1971, the Nexus of Energy and Water for Sustainability Act of 2014.

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

Sincerely,

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

Enclosure
cc: The Honorable Lisa Murkowski, Ranking Member
Committee on Energy and Natural Resources

FROM SENATOR MURKOWSKI

For Mr. Iseman (DOI):

1) In the NEWS Act, as in my energy-water nexus whitepaper, I call for better and closer collaboration with external stakeholders – and especially with the private sector – to promote and develop innovative and advanced technologies and scientific tools for water for energy and energy for water systems. Could you please share with us the current state of affairs and how would you envision expanding and enhancing such collaborations?

   ANSWER: The Department of the Interior (Department) shares the Committee's goal of close collaboration with stakeholders around the energy-water nexus. Several existing programs and activities that relate directly to the energy-water nexus within the Department are focused on collaboration with states and non-federal entities. For example, the Bureau of Reclamation (Reclamation) is conducting Basin Studies to evaluate water supplies and demands over time, including under climate change, and to identify adaptation strategies to meet future water demands. The Basin Studies are cost-shared and co-led by state and local stakeholders and have spotlighted emerging clashes between competing demands, including energy, and limited supplies of water. Additionally, WaterSMART Grants provide cost-shared funding to States, tribes, and other entities with water or power delivery authority for water efficiency improvements, with a priority for those proposals that describe the estimated energy savings from those improvements. These grants provide one vehicle for implementing on-the-ground solutions to energy-water issues.

   Likewise, through the Cooperative Water Program and other activities, USGS is supporting state priorities in better understanding water budgets associated with unconventional oil and gas development. One recent example of USGS working with state geological surveys, academia, and industry to build better tools for the water for energy and energy for water systems referenced in your question is the compilation and release of an updated produced waters database. Produced waters are those volumes of water that are typically recovered during oil and gas exploration, development, or production. This database is an update of the 2002 USGS Produced Waters Database, adding more than 100,000 new samples with greater spatial coverage and from both conventional and unconventional oil and gas development. Scientists studying produced waters and their geochemical and environmental impacts have a powerful new tool in the newly released USGS Produced Waters Geochemical Database. This database is publicly available to all scientists and interested members of the public.

   As mentioned during the roundtable convened by the Committee in July 2013, states play a key role in allocating and administering water, and they must be a partner in energy-water efforts. Although the base grants program is under spending pressure, we see an opportunity to engage the state Water Resources Research Institutes (WRRI) as a federal-state bridge. WRRIs exist in every state, they have relationships

with local players, and they have a strong functional relationship with USGS. WRRIs could serve as a local hub and contribute to a national, USGS-managed database on water use and its intersection with the energy sector.

2) As we've heard today, the DOE and DOI have been working together in the past on data collection related to, for example, hydropower development in the U.S. and perhaps on other issues as well.

How do you envision the expansion of such collaborative efforts in the near future, given that the NEWS Act calls for the Secretaries of Energy and Interior to work closely together as the co-chairs of the proposed Nexus of Energy and Water for Sustainability federal coordination committee (the NEWS Committee)?

ANSWER: Expansion of collaborative efforts could be accomplished through the Department expanding direct collaboration with the Department of Energy (DOE) and the energy sector. Currently the Department collaborates with DOE on the collection of consistent information on withdrawals of water for use in thermoelectric power plants. We need to find more effective ways to link DOE's detailed information on the status and trends in energy production with comprehensive information on water supply and use. The DOE-funded project with the Western Governors' Association provides a leading example of integrating energy and water information to shape regional decisions.

Coordination often occurs on a project-by-project or as-needed basis. This process allows for coordination around the full array of energy-water issues, not just within our two Departments but across the federal agencies that deal with the energy-water nexus.

3) I understand that the Water Census activity under the WaterSMART initiative is meant to expand, improve and streamline data collection on water use in the U.S. Does water "use" include consumption as well as withdrawals? I know, for example, that the USGS currently only collects water withdrawal data.

ANSWER: Yes. The USGS defines water use in the following way: "...water use pertains to the interaction of humans with and influence on the hydrologic cycle, and includes elements such as water withdrawal, delivery, consumptive use, wastewater release, reclaimed wastewater, return flow, and instream use." (Page 49, USGS Circular 1344 - *Estimated Use of Water in the United States in 2005*, Kenny, J.F. et al, 2009)

It is true that the USGS 2005 water use circular, referenced above, only provides water withdrawal information for the Nation, and the USGS has not provided consumptive use information since its water use circular for 1995, primarily because consumptive use is frequently not reported or is reported inconsistently from state to state. However, the USGS is reinstating consumptive use reporting for thermoelectric

cooling water for year 2010 in a report that was issued in September 2014. This consumptive use information will be based on a model that the USGS has developed and published in a report entitled "Methods for estimating water consumption for thermoelectric power plants in the United States" (Diehl, T.H.,et. al., 2013, U.S. Geological Survey Scientific Investigations Report [SIR] 2013–5188, 78 p.). That report (SIR 2013-5188) was released to the public in November 2013. The USGS is striving to reinstate consumptive use reporting for other water use sectors. Consumptive use information is important in water availability management and central to the energy-water nexus. The next sector of water use that we will tackle for consumptive use information will be the public water supply sector.

FROM SENATOR JEFF FLAKE

WITNESS NAME: Tom Iseman

Question 1. In your testimony you raise an important issue regarding the role of states and state regulators with regard to both water supplies, which are largely governed by state water law, and energy supplies, which (at least for investor-owned utilities in Arizona) are overseen by state regulators. Yet, you note that S.1971 does not address this important state responsibility. How could this bill be improved to better account for the role that states play in regulating and managing water and energy supplies?

ANSWER: States play a key role in allocating and administering water, and the Department will continue to work with the states and other stakeholders in energy-water efforts. S. 1971 may be improved by directing the Committee to consult with states and stakeholders as it fulfills its duties.

Question 2. Given the Department of the Interior's role as trustee for Native Americans, I was surprised to see that your testimony did not include any discussion of how S.1971 would impact Native Americans. Arizona is home to 22 federally recognized Indian tribes and communities. It is critically important that any conversation about the energy-water nexus include those communities. For example, over the course of the last few years, EPA has sought to impose a regional haze plan on a power plant in Arizona that is located on the Navajo Reservation. The Bureau of Reclamation partially owns the plant. It uses the power output to pump water from the Colorado River to central Phoenix, where some of the water is used to satisfy Indian water settlement delivery obligations. Can you explain how the Department would represent the critical energy-water nexus issues as they relate to Native American communities, such as those in Arizona?

ANSWER: The Department recognizes and is fully engaged in its federal trust responsibility to Native American tribes. Native American communities are valuable partners to the Department, and the Department is committed to working with tribes on a government-to-government basis. Reclamation is committed to actively seeking

partnerships with Native American tribes to ensure that tribes have the opportunity to participate fully in the Reclamation programs that affect the development and management of tribal water and related resources. We have worked closely with the Navajo Nation and other affected tribes to address the energy-water issues you identify at Navajo Generating Station. If S 1971 is enacted, the Department would look forward to the opportunity to engage in a more systematic information and data exchange on energy-water issues with our tribal partners, as described under Section 3 of the legislation. Tribes would also likely benefit from the identification and documentation of Federal and non-Federal programs and funding opportunities called for in S. 1971.

Question 3. EPA is specifically mentioned among the departments and agencies that would be part of the coordinated effort outlined in S.1971. What role would the Department envision for the energy-water nexus committee relative to EPA's rulemaking process, specifically EPA's promulgation of regulations that impact energy and water production and deliveries?

ANSWER: New water treatment, thermoelectric cooling, and other technologies have the potential to increase the array of options to protect the environment while also saving energy and/or water. EPA's current long term engagement with DOI and other interagency collaborators pursuing research into such technologies helps inform EPA'S rulemaking process.

Question 4. How does the Department believe the coordinated approach in S.1971 will enhance federal policy, as opposed to leading to another layer of bureaucracy?

ANSWER: The Department supports the type of coordination and data exchange called for in S. 1971 and already has a number of programs in place that involve coordination with other federal agencies to address the energy-water nexus, as discussed in the testimony. This ongoing coordination will continue to help close existing data gaps, provide a more systematic and comprehensive view of energy-water issues, and increase our understanding of water supply availability to benefit water and energy decision makers. As indicated in the testimony, the Department would need to more closely evaluate the commitments and reporting requirements in the bill and the additional resources that may be required to carry them out.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

OCT 15 2014

The Honorable Benjamin L. Cardin
Chairman
Subcommittee on Water and Wildlife
Committee on Environment and Public Works
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the U.S. Fish and Wildlife Service to questions submitted following the Subcommittee's July 16, 2014, legislative hearing on S. 1153, S. 1175, S. 1202, S. 1232, H.R. 1300, S. 1381, S. 1650, S. 2530, and S. 2560.

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

Sincerely,

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

Enclosure

cc: The Honorable John Boozman
Ranking Member

Questions for the Record
Environment and Public Works Committee Hearing
July 16, 2014

Questions from Senator Ben Cardin

Question 1: Would the Service Resource Protection Act apply to someone who illegally poaches wildlife on lands adjacent to USFWS lands, but not on Refuge lands?

Response: No. S. 2560, the U.S. Fish and Wildlife Service Resource Protection Act, would authorize the U.S. Fish and Wildlife Service (Service) to seek damages for injury caused to wildlife and resources on Service managed lands from those who illegally cause the injury. This legislation only applies to Federal lands administered by the Service, and does not apply to private or State managed lands or lands under local government.

Question 2: What recourse does the USFWS currently have when they catch a perpetrator harming resources or property on USFWS lands or property?

Response: Currently, criminal penalties (fines) and, in some cases, civil and criminal restitution, are available for injuries occurring on Service lands. The fines levied are limited, and rarely provide for the recovery of the injured resources or destroyed property. This is unlike other federal land management agencies, which have specific authorities to recover damages -- the National Park Service (NPS) exercises a similar authority under the Park System Resource Protection Act (PSRPA - 16 U.S.C. 19jj-l), and the National Oceanic and Atmospheric Administration (NOAA) exercises a similar authority under the National Marine Sanctuaries Act (16 U.S.C. 1443). The Service uses 16 U.S.C. 668dd (National Wildlife Refuge System Administration Act (and all amendments)) to enforce criminal violations on Service managed land.

Question 3: Is there a limit (maximum) on the fines that the USFWS may levy against a perpetrator who damages or destroys USFWS property or resources?

Response: In general, for criminal violations by statute, up to $100,000 in fines can be levied for knowing violations, and $5,000 can be levied for strict liability violations. In most cases, the imposed fines for violations of the Refuge Act are remitted to the U.S. Treasury and do not go toward the restoration of injured resources. Often, the injuries far exceed any fines recovered by the United States Government, and as a result, the taxpayer, through the appropriated operations and maintenance budget, bears the burden. There are no civil provisions to the National Wildlife Refuge System Administration Act. The criminal penalty provisions found in the Act differentiate between knowing violations (class A) and strict liability offences (class B).

Question 4: What guarantee does the USFWS have that these fines will come back to the Service to help restore or repair the resource that was damaged or destroyed?

Response: There is currently no way to guarantee criminal fines will come back to the Service for restoration or repair of injury to a system resource. In general, criminal fines collected for

violations of the Refuge Act are sent to the U.S. Treasury. The Service does not have the authority to collect civil damages if injury is caused to a system resource. Under this legislation, the recovery of damages for injury to Service resources is not intended to be a punitive action, such as a fine. The recovered damages will be used only to repair, replace or acquire the equivalent resources for those injuries that were caused by the responsible party. In other words, a third party will be responsible for fixing the problem that they created, not American taxpayers. Recovered damages do not add to the Service budget. By using the DOI Natural Resource Damage Assessment and Restoration (DOI NRDAR) account as a place to house the money until restoration projects can begin, the Service will be able to track, account for, and expend the money under tight fiscal constraints. The DOI NRDAR program is responsible for tracking expenditures for several agencies' restoration programs, which have recovered monies under the Oil Pollution Act of 1990 and Comprehensive Environmental Response, Compensation, and Liability Act. The National Park Service uses this account for their program which has been in place since 1991, and the Service would use this program as a model.

Question 5: Even if the fines did come back to USFWS, would these fines be adequate to cover the restoration costs?

Response: Current criminal penalties/fines do not cover the costs or are dramatically insufficient to cover the assessments and restoration costs of most injuries. In many cases, particularly related to our easement agreements, the profit gained by engaging in the injury, (e.g. draining of the wetlands to facilitate commercial farming) far exceed the fines that can be levied against the offender. The offender views these fines as the cost of doing business.

Question 6: Do these fines sufficiently deter bad actors from repeatedly destroying or degrading USFWS lands?

Response: The criminal fines rarely provide deterrence of large scale destruction of resources and property. In many cases, the commercial gain of the illegal commercial activity far exceeds the fine amount. For example, in a large scale arson case, the farmer faced minimal criminal fines yet had the opportunity to gain commercially by burning protected habitat in order to increase drainage of his farm lands. This case occurred in south Texas. A local land owner made the decision to burn protected ocelot habitat on a National Wildlife Refuge. The farmer stated that he felt burning the habitat would assist with his agricultural practices. The financial benefit from burning the land exceeded the amount of the criminal fine he paid (i.e., 'the cost of doing business'). The Service had no civil remedies to restore the lost habitat.

Question 7: Without the authority to sue, how does the Service budget for the restorative activities?

Response: Currently, the Service must rely on appropriated operations and maintenance budgets to assess and restore injuries caused by third party, illegal activity. Whereas illegal injuries are unpredictable, they often exceed the operational capacity of the Service to address them.

Question 8: Does this take appropriated resources away from other regular Operations and Maintenance activities?

Response: Yes, the Service must use operations and maintenance funding to address assessment and restoration of injuries caused by third parties and illegal activities. This places a strain on operations and maintenance activities, often causing a backlog effect on other needs.

Question 9: Is the inability to sue for adequate damages adding to the USFWS maintenance backlog and increases the service's budget deficit?

Response: Yes, the inability to recover damages for injuries to the Service's resources impacts our operations and maintenance funds. Currently, these operations and maintenance funds are used to pay for assessment and restoration of injuries caused by third parties and illegal activities.

Question 10: Please explain how damages awarded under the Resource Protection Act would be legally limited to cover the expense or reimbursement of activities necessary to restore or replace damaged resources?

Response: The bill, in Section 3, limits the liability of a person who injures or destroys system resources to the cost of responding to or recovering from that action. Accordingly, the Service would have no authority to seek recovery of amounts in excess of those costs. Based on the proposed legislation, recovered funds would be directed specifically to the assessment and restoration of injuries incurred at a specific site and could not be used as another general source of income. This would decrease the use of operations and maintenance funds to restore or replace any damage and would relieve the impact on the taxpayer generated budget.

Question 11: How are the awards sought under this legislation guaranteed to be expended towards restoring or replacing the specific damaged or destroyed resources?

Response: The legislation requires that funds be only used for restoring or replacing the specific injured or destroyed resource. Additionally, in order to use the funds, a Refuge would develop a restoration plan that outlines how the money will be spent. This plan would enable the DOI NRDAR fund managers to track how the money is spent and ensure the proper use of the funds.

Questions from Senator David Vitter

Question 1: As you may know, LSU's mascot is Mike the Tiger, a live Bengal-Siberian tiger. Mike lives in a specially constructed tiger habitat that is approximately 13,000 square feet. Recognizing that there is an exception for universities in the underlying Captive Wildlife Safety Act, I want to better understand the potential impacts of S. 1381, the Big Cats and Public Safety Protection Act. Please provide me with specific answers to the following questions:

a. Would S. 1381 have any impact on LSU's ability to maintain its current tiger?

Response: No. It is our understanding that as currently drafted, S. 1381 would not impact LSU's ability to maintain its current mascot.

b. Would S. 1381 have any impact on LSU's ability to acquire a new tiger in the future?

Response: As the legislation is currently drafted, LSU, as well as any university or state college, would be exempt from the prohibitions of the Captive Wildlife Safety Act and S. 1381, and would therefore be able to obtain additional tigers (provided that the tigers were obtained from someone who was also exempt from the prohibitions).

c. Are there any rulemakings that FWS would do associated with the legislation that would have an impact on LSU's ability to maintain its current tiger or to acquire a new tiger in the future?

Response: On August 22, 2011, the Service published a proposed rule that would remove the current exemption for generic tigers (crosses between different subspecies or unknown genetic origin) under the Captive-bred Wildlife Registration program (50 C.F.R. 17.21(g)). The final determination has not been published yet. This exemption would require anyone buying or selling generic tigers across state lines to obtain either an interstate commerce permit or register under the Captive-bred Wildlife (CBW) program. For FWS to issue an interstate commerce permit, or approve of a registrant under the CBW program, the applicant must use the tiger in a manner that enhances the survival of tigers in the wild. This revision to Service regulations would not affect LSU's ability to maintain their current tiger, but could affect them if they were attempting to obtain a new tiger from outside Louisiana.

d. The current LSU Tiger was acquired from Great Cats of Indiana. Would this type of acquisition be possible under S. 1381?

Response: Without more information about Great Cats of Indiana, it is not be possible to determine if that facility would be exempt from the prohibitions of S. 1381. However, given the limited scope of the exemptions provided in S. 1381, it is possible that they would not qualify for an exemption and LSU would be unable to obtain another tiger from them.

e. How would S. 1381 impact a facility similar to Great Cats of Indiana (recognizing that some reports suggest that Great Cats of Indiana has closed) in its ability to house tigers like the one it donated to LSU?

Response: S. 1381 would prohibit the possession or breeding of tigers at facilities that are not exempted from the prohibitions of the bill. If Great Cats of Indiana or a similar institution did not qualify for an exemption under S. 1381, they would be unable to house tigers.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

OCT 16 2014

The Honorable John Fleming
Chairman
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the U.S. Fish and Wildlife Service to questions submitted following the Subcommittee's July 23, 2014, legislative hearing on *H.R. 3109, H.R. 3409, H.R. 5026, and H.R. 5069.*

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

Sincerely,

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

Enclosure

cc: The Honorable Gregorio Kilili Camacho Sablan
Ranking Member

Committee on Natural Resources
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
1334 Longworth House Office Building
July 23, 2014
2:00 p.m.

AGENDA

Legislative Hearing on:

- **H. R. 3109 (Young of AK)**, to assist Alaskan Native Handicrafts.
- **H. R. 3409 (Fincher)**, To amend the National Wildlife Refuge System Administration Act of 1966 to require that any expansion of a national wildlife refuge must be expressly authorized by statute. *"the National Wildlife Refuge Expansion Limitation Act"*
- **H. R. 5026 (Gosar)**, To prohibit closing or repurposing any propagation fish hatchery or aquatic species propagation program of the Department of the Interior unless such action is expressly authorized by an Act of Congress, and for other purposes. *"the Fish Hatchery Protection Act"*
- **H. R. 5069 (Fleming)**, To amend the Migratory Bird Hunting and Conservation Stamp Act to increase in the price of Migratory Bird Hunting and Conservation Stamps to fund the acquisition of conservation easements for migratory birds, and for other purposes. *"the Federal Duck Stamp Act"*

Questions from Chairman Fleming

U. S. Fish and Wildlife Service:

H. R. 3109 – Alaskan Native Handicrafts

(1). What is the number of Alaskan natives that participate in the subsistence hunting of migratory birds during the so-called 'closed season?'

Response: The exact number of Alaska natives that participate in the subsistence hunting of migratory birds during the "close season" is unknown. However, based on the 2010 census, there are approximately 150,000 people in the designated rural areas of Alaska; and of that population, approximately 50 percent are Alaska Native peoples who could participate in subsistence hunting.

The term "close season" refers to a subsistence season for Alaskan residents, Alaska Native and Non-Native alike, living in the designated rural parts of Alaska during specific spring and summer dates. This is independent of the fall season for all residents and non-residents.

(2). What kinds of non-edible parts would be used if the exemption is approved?

Response: Only non-edible parts harvested for nutritional needs may be utilized. Examples of parts that may be used are feathers, claws/talons, feet, bones, beaks, and skulls.

(3). In 1997, the Senate approved Protocols to the Migratory Bird Treaties with Canada and Mexico. How did these Protocols address non-edible parts of migratory birds?

Response: The U.S. – Canada Protocol Article II, Section 2 prohibits the sale or offer for sale of any protected migratory bird species, except as provided below. Article II, Section 4(a)(i) contains a specific exemption from this prohibition for the "down and inedible by-products" of protected birds and their eggs, but they may be offered for barter, exchange, trade or sale only within Aboriginal communities in Canada. Section 4(b), which addresses the harvest of protected birds and their eggs by indigenous inhabitants of the State of Alaska, includes no such specific exemption from the prohibition in Section 2. Article II, Section 4(b) does provide for the "non-wasteful" taking of migratory birds and the collection of their eggs by indigenous inhabitants of Alaska for "their own nutritional and other essential needs."

However, whether or not this Protocol language provides sufficient legal authority for the limited sale of protected birds, bird parts or eggs remains unclear. The Department of the Interior and the Department of State are working together and with the Alaska Migratory Bird Co-Management Council to determine the nature and scope of such activities that may be allowed within the scope of the existing treaties.

(4). In the testimony of Mr. Steve Guertin there was a statement that the Migratory Bird Treaty obligations "greatly limit such activities." What are the allowable commercial uses of non-edible migratory bird parts?

Response: Each of the four migratory bird conventions implemented by the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-712) (MBTA) treats the taking and use of protected species by indigenous people differently. It is our understanding that the sale of birds, parts, eggs or nests, if permitted under any of the four treaties, would be greatly limited. U.S. courts have held that the statute implementing the various migratory bird conventions should be interpreted to require application of the most restrictive policy when the conventions have conflicting provisions regarding any area of policy covered by two or more conventions. See Alaska Fish & Wildlife Fed'n & Outdoor Council, Inc. v. Dunkle, 829 F. 2d 933, 941 (9th Cir. 1987). The Department of the Interior and the Department of State are working to determine more precisely the boundaries of the treaties with regard to sale of birds, parts, eggs and nests.

(5). Would the Fish and Wildlife Service support further refining the Migratory Bird treaties to allow Alaskan natives to use non-edible parts of migratory birds in a range of handicraft products?

Response: Alaska Native peoples in recognized tribes may currently possess and incorporate non-edible parts of migratory birds taken for subsistence purposes to make traditional handicrafts.

H. R. 3409 – National Wildlife Refuge Expansion Limitation Act

(6). During the current fiscal year, how many acres will the Fish and Wildlife Service add to the National Wildlife Refuge System by expanding existing refuge units?

Response: The Service did not expand or create any new boundaries in Fiscal Year 2014; therefore, no acres were added. All acquisitions were within existing refuge boundaries utilizing funds appropriated by Congress.

(7). What is the proposed cost of those land acquisitions?

Response: No new boundaries were created or previously approved boundaries expanded in FY 2014.

(8). Please provide to the Subcommittee a detailed list of all land including acreage and cost added to the National Wildlife Refuge System during the past five years and the mechanism used to acquire this property, in other words, whether fee title, conservation easements, donations or land exchanges were used.

Response:

USFWS Acres Conserved in the Past 5 Years (By Year) 7/31/2009 - 7/31/2014

	PUBLIC LANDS (FEE TITLE)							CONSERVATION EASEMENTS					
		Transferred From Other Federal Agency											
Period	Public Domain	Primary Jurisdiction	Secondary Jurisdiction	Purchased by FWS	Purchase Cost ($)	Acquired via Exchange	Donated	Purchased by FWS	Purchase Cost ($)	Acquired via Exchange	Donated	AGREEMENT OR LEASE	TOTAL ACRES
July 2014 - July 2013	2,211.89	0.00	0.00	7,178.61	$19,552,206	2,037.26	5,534.35	92,747.64	$51,179,831	307.02	11,892.78	42.59	121,952.14
July 2013 - July 2012	0.00	0.00	0.00	21,860.00	$49,516,057	37,272.50	9,285.21	83,259.71	$52,342,817	15.00	185,724.66	198.59	337,615.67
July 2012 - July 2011	0.00	253.68	0.00	33,355.74	$68,276,310	11,005.03	8,903.87	53,672.68	$27,713,033	216.80	26,453.58	4,628.63	138,490.01
July 2011 - July 2010	266.00	7,029.24	0.00	26,974.29	$54,511,114	409.55	2,317.26	46,830.06	$22,716,757	209.09	32,975.82	7,102.77	124,114.08
July 2010 - July 2009	27,219.62	7,851.33	A 6,628.10	21,518.07	$67,781,295	312.35	9,720.06	57,236.25	$32,411,893	0.80	16,863.16	2,338.13	149,687.87
Grand Total:	29,697.51	15,134.25	6,628.10	110,886.71	$259,636,982	51,036.69	35,760.75	333,746.34	$186,364,330	748.71	273,910.00	14,310.71	871,859.77

Footnotes

A = U.S. Army Corps of Engineers retains primary jurisdiction.

Compiled by the USFWS Headquarters Division of Realty on 8/21/2014.

H. R. 5026 – Fish Hatchery Protection Act

(9). How many additional propagation programs will be terminated in FY'15 and what is the criteria for their elimination? Please provide for the Record a detailed list of proposed terminations.

Response: When the *National Fish Hatchery System Strategic Hatchery and Workforce Planning Report* (Report) was released in November 2013, the Service announced that no hatcheries would be closed in FY 2014, and we have maintained that commitment. In fact, the Service has suspended only four of nearly 300 propagation programs since October 2012, and those were suspended for reasons unrelated to the Report.

The Service has not made any recommendations or decisions regarding the status of any individual propagation programs for FY 2015. The President has requested $48.617 million for operation of the National Fish Hatchery System in FY 2015, approximately $2 million more than

Congress appropriated in FY 2014. We will evaluate the status of our programs once final funding is received.

(10). Since the vast majority of the federal water projects – including dams – are still in operation, how has the statutory authority for this mitigation been lessened or been removed?

Response: Over the past 40 years, our many partners, Congress, the Office of Management and Budget (OMB), and the Department of the Interior (DOI), have directed the Service to secure mitigation reimbursement from the entities responsible for the respective water development project. Over the past decade, Congress, OMB, DOI, and our partners have asked the Service to intensify our efforts to obtain full reimbursement costs for fish mitigation production from these agencies. The Service is making every effort to comply with that direction and to shift the funding for this mitigation work to the responsible party. We understand that the fish supplied by our hatcheries provide important economic opportunities to the states and the recreational community, and we support the continuation of mitigation work on a reimbursable basis.

H. R. 5069 – Federal Duck Stamp Act

(11). How many federal duck stamps were purchased in 2012-2013?

Response: The number of Federal duck stamps purchased in 2012-2013 was 1,738,425.

(12). How many acres of land were acquired using fee title or conservation easements?

Response: In Fiscal Year 2012, 64,470 acres were acquired with Migratory Bird Conservation Fund (MBCF) dollars – 14,747 fee title acres and 49,723 conservation easement acres. In Fiscal Year 2013, 60,305 acres were purchased – 7,433 fee title acres and 52,872 conservation easement acres.

Of the more than 5.6 million acres of waterfowl and migratory bird habitat acquired with the Migratory Bird Conservation Fund (MBCF), 3.1 million acres were purchased in fee title and 2.5 million acres in conservation easement. The MBCF includes revenues generated from the sale of Federal Duck Stamps, import duties on arms and ammunition, Rights-of-Way application fees, and reverted Federal Aid grant dollars.

(13). What is the total number of acres that have been acquired since the issuance of the first federal duck stamp in 1934? What have been the total expenditures from these receipts?

Response: To date, receipts deposited into the MBCF, including proceeds from the sale of the Federal Duck Stamp, have facilitated the protection of more than 5.6 million acres of waterfowl and migratory bird habitat purchased outright or through the acquisition of easements. The total expenditures from all MBCF fund sources are just shy of $1.3 billion.

(14). It has been more than 20 years since the price of the stamp has been increased. What has happened to the buying power of this funding mechanism?

Response: Since the last Duck Stamp price increase in 1991, land prices have soared in many parts of the nation that support important nesting, migration and wintering habitat for waterfowl and wetland and associated habitats for other species. Between 1991 and 2013, the Service's average cost per fee acre increased from $450 to $1590, and the Service's average cost per easement acre increased from $112 to $765. In 1991, revenue from the Duck Stamp enabled the Service to protect 91,000 acres of waterfowl habitat for the Refuge System. However, in 2013, the Service was able to protect significantly less habitat, despite allocating nearly 80 percent of the funding to easement acquisition, because land values in important migratory bird areas have increased by up to 600 percent.

The Service focuses its acquisition efforts – with state review and approval and the approval of the Migratory Bird Conservation Commission – to benefit waterfowl species most in need of habitat protection. Each year, the Service identifies fee-title and permanent-easement acquisition priorities in each of the four major migratory bird flyways. In reviewing these priorities and based on previous years' acquisition efforts and current trends and projects, the Service anticipates that the increased revenue could allow the Service to permanently protect an estimated 10,000 additional acres in easements and an additional 7,000 acres in fee per year across the nation.

(15). Has the Fish and Wildlife Service undertaken a study on the impacts of the proposed increase and at what level does the price become a major deterrent to migratory bird hunters? Please share the results of those studies.

Response: The Service has not undertaken any study on the impacts of proposed increases in price on participation in migratory bird hunting.

(16). How much money will the $10 increase raise each year? What are the advantages of conservation easements?

Response: Increasing the price of the Federal Duck Stamp would bring an estimated $14 million over revenues generated by the current $15 price per stamp.

Conservation easements protect habitat while keeping the land in private ownership. The land remains on the tax rolls, and the landowner receives money in exchange for the commitment to maintain it for waterfowl and other wildlife. Easements are often less costly than fee title acquisition, but because they remain in private hands, they are often not available for hunting or other public use.

(17). How many acres of conservation easements can be obtained with these additional funds? What is the price difference of an acre of property purchased under fee title versus a conservation easement?

Response: With the additional receipts that would be generated from the proposed price increase, the Service anticipates additional annual acquisition of approximately 7,000 acres in fee and approximately 10,000 acres in conservation easement.

A price comparison between an acre protected by easement and an acre of fee title property is a complex undertaking, since both easement and fee prices vary widely, depending on type of easement, location of the property, quality, highest and best use, and many other factors. On the average, in 2013, easements bought with MBCF cost $765 per acre and fee purchases cost $1,590 per acre.

(18). What are the sale figures for those who obtain their annual federal duck stamp electronically? Is there any evidence that the availability of electronic stamps is having a significant negative impact on the printed stamp?

Response: The total number of Federal Duck Stamps sold electronically in 2014 is 461,338. There has been no impact on the printed stamp as the program requires that the individual be sent a physical stamp within 45 days of purchase. The initial endorsement expires at that time.

(19). What steps can the Fish and Wildlife Service take to encourage non-hunters and those who observe wildlife to purchase an annual duck stamp?

Response: With its many conservation partners, including Friends of the Duck/Migratory Bird Stamp, the Service has undertaken a number of initiatives to increase the number of stamps sold, particularly to non-hunters. The Service is exploring ways to connect with those that have an affinity with the stamp and to find the best way to compel them to join the effort as we plan ahead for promoting the stamp and its benefits in celebration of the centennial of the Migratory Bird Treaty Act of 1918.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

OCT 2 2 2014

The Honorable Mary Landrieu
Chair
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Chair Landrieu:

Enclosed are responses prepared by the Department of the Interior to the supplemental questions for the record submitted following the June 3, 2014, legislative hearing on S.2379, the Klamath Basin Water Recovery and Economic Restoration Act of 2014.

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

Sincerely,

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

Enclosure
cc: The Honorable Lisa Murkowski, Ranking Member
Committee on Energy and Natural Resources

FROM SENATOR DEAN HELLER

Mr. John Bezdek - Senior Advisor to the Deputy Secretary at the Department of the Interior

Over the past couple months, California Senator Dianne Feinstein and I have teamed up to navigate the Emergency Drought Relief Act (S.2198) to Senate-passage. On the Thursday, May 22nd, that bill cleared the Senate by unanimous consent.

Sec.4(C)(7) of that bill requires the Secretary of the Interior to pursue pilot projects that would facilitate water conservation efforts in the basin states aimed at increasing levels at Lake Mead and other regional reservoirs in the Colorado River Basin.

Question 1. If enacted, what types of projects can the Department implement to improve levels at these important reservoirs? How can this authority assist region drought relief? What can we realistically accomplish?

Answer: If enacted, Sec. 4(c)(7) of S. 2198 would provide the Secretary with statutory authority, direction and prioritization with respect to pilot projects that could facilitate water conservation by assisting state efforts designed to increase water levels at Lake Mead and Lake Powell, the primary regional storage reservoirs in the Colorado River Basin. If enacted and funded, Reclamation would seek to implement this section in partnership with states and other local governments in a way that ensures the most beneficial and most cost-effective projects are funded. Requiring a non-Federal cost share for any Federal grants or funds provided, such as the Reclamation and Colorado River partners' recent $11 million funding announcement under the Colorado River System Conservation program to fund new Colorado River water conservation projects, is often an effective way to ensure these goals are met, and to stretch the impact of Federal funds further.

This authority could be used to facilitate voluntary water conservation actions (e.g. pay existing water users to not use water) in the Colorado River Basin and would build on previous efforts undertaken in the Lower Basin of the Colorado River that have led to considerable conservation and retention of water supplies that have enhanced the elevation of Lake Mead. By enhancing system storage in Lake Mead and Lake Powell the likelihood and severity of shortages in the Lower Basin or disruptions of operations in the Upper Basin can be partially reduced. Disruptions to recreational opportunities at Lake Powell and Lake Mead National Recreation Areas could also be reduced if these efforts are successful.

Question 2. Many people believe the drought is primarily impacting Las Vegas because of our dependence upon Lake Mead for southern Nevada's water supply, however isn't it

the case that if a shortage is declared by the Secretary, the States of Arizona and even California will suffer major water cuts?

Answer: Depending on conditions and water availability in the Lower Basin, it is correct that the States of Arizona, California and Nevada could be subject to decreases in water allotment, and depending on the extent of the shortage could all experience significant water shortages. Under current operational guidelines, reductions in the annual amount of water available for delivery to Lower Basin users would be triggered if the projected January 1 elevation of Lake Mead is at or below 1075' above sea level. A shortage condition is not anticipated for calendar year 2015. However, as of August 2014, the best available indication is that there is a 36% probability that a Lower Basin shortage condition could occur in calendar year 2016. This percentage estimate may have changed slightly since that date, but we are confident that the probability remains significant.

Question 3. What will happen if the basin states do not work together to improve the water supply in the Colorado River?

Answer: Although it is difficult to foreshadow with any certainty the hydrologic conditions of future water years, there would be a significant possibility that continued low water conditions could trigger reductions in the annual amount of water available for delivery to Lower Basin users. Under the Colorado River Interim Guidelines for Lower Basin Shortages, signed by the Secretary in 2007, various water elevations at Lake Mead trigger incremental reductions in water deliveries to the Basin States. For example, at elevation 1075', water deliveries to the lower Basin states would be reduced from 7.5 million acre-feet to 7.167 million acre-feet, a reduction of 4.4%. At elevation 1050, water deliveries would be further reduced to 7.083 million acre-feet, a total reduction of 5.6%. At elevation 1,025 water deliveries would be restricted to 7.0 million acre-feet, a total reduction of 6.7%.

Under such shortages, further reductions in lake elevation would partially be forestalled, depending on Colorado River inflows; however, the Colorado River system would not be able to fully meet currently scheduled water deliveries, and there would be significant diminishment of system benefits to power generation, environmental, and recreational purposes. Water managers and water users in the Colorado River Basin have long recognized the benefit of adapting to and mitigating for the impacts of shortfalls between water supply and demand, and further cooperation and communication throughout the Basin, among and between Basin States, will be beneficial towards enhancing the reliability of the system.

In order to allow for management flexibility, the seven Colorado River Basin States have recommended an operational program for the creation and delivery of intentionally created surplus water. In furtherance of this recommendation, numerous major water users within the Lower Basin have identified their willingness, under specified circumstances, to participate in such an operational program. Such a program could help to make the most cost-effective use of water in the basin and would likely partially

mitigate against the most detrimental effects of shortage – or low reservoir conditions at Lake Mead.

Question 4. In an earlier version of the legislation, we specifically included a provision that prohibited the Department from utilizing the Upper Colorado River Basin Fund or the Lower Colorado River Basin Development Fund to pay for the authorized projects. In working with the Department, we ultimately determined this express prohibition was not necessary. But I want to ask now that the bill that has passed --- will the Department commit to not utilizing either of the Basin Funds to fund authorized drought activities, without the express, prior approval of the power customers, in accordance with the intent of the revised bill?

Answer: The Department recognizes the modifications that were made to the bill during consideration in the Senate. It is our intent to work within our existing authorities and practices of consultation and concurrence with respect to funding any authorized drought activities. The type of authorized activities would differ and be subject to the distinct statutory provisions applicable in the Upper and Lower Basins. While we do not anticipate any undertakings that would not garner the support of key stakeholders, and would in fact be designed to protect ongoing power operations, the particular types of approvals applicable to any potential drought activities would depend on the proposed activity, and would be undertaken in close consultation with, among others, the affected states, power customers, Tribes and our colleagues in the Western Area Power Administration.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

OCT 3 0 2014

The Honorable Cynthia Lummis
House of Representatives
Washington, DC 20515

Dear Ms. Lummis:

In accordance with your request to the National Park Service (NPS) of September 17, 2014, the NPS has prepared the enclosed draft bill to require studies of Yellowstone National Park, Grand Teton National Park, and the John D. Rockefeller, Jr. Memorial Parkway to evaluate the effects of permitting the use of hand-propelled vessels on certain waters in those parks.

This draft has been prepared as a service to you. It has not been reviewed within the Department of the Interior or cleared by the Office of Management and Budget. We can, therefore, make no commitment at this time concerning the position of the Department on this matter.

Sincerely,

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

Enclosure

113th Congress
2nd Session

A Bill

To require studies of Yellowstone National Park, Grand Teton National Park, and the John D. Rockefeller, Jr. Memorial Parkway to evaluate the effects of permitting the use of hand-propelled vessels on certain waters in those parks, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Yellowstone and Grand Teton Paddling Study Act".

SEC. 2. DEFINITIONS.

In this act:

(1) SECRETARY.— The term "Secretary" means the Secretary of the Interior.

(2) STUDIES.—The term "studies" means the studies authorized by subsection 3(a) of this Act.

SEC. 3. STUDIES.

(a) STUDIES.—The Secretary shall conduct studies to evaluate the effects of permitting the use of hand-propelled vessels on certain waters within—

(1) Yellowstone National Park in the States of Idaho, Montana, Wyoming; and

(2) Grand Teton National Park and the John D. Rockefeller, Jr. Memorial Parkway in the State of Wyoming.

(b) CONTENTS.—

(1) APPLICABLE LAWS.—The studies shall be conducted in accordance with laws, regulations and policies generally applicable to units of the National Park System.

(2) EXCLUSIONS.—The Secretary may exclude from the studies—

(A) waters that are open to use by hand-propelled vessels on the date of enactment of this Act, and

(B) waters within the Teton Range in Grand Teton National Park west of an approximate north-south line that generally defines the base of the mountains following the western shore of Jackson Lake from the northern Grand Teton National Park boundary with the John D. Rockefeller, Jr. Memorial Parkway along the western shores of Leigh, Jenny, Bradley, Taggart, and Phelps lakes, and extending to the southern Grand Teton National Park boundary at the base of Apres Vous Peak.

(3) COMMERCIAL USE.—

(A) NO EXPANSION OF USE.—The studies shall not consider any expansion of commercial uses of hand-propelled vessels in the parks.

(B) SAVINGS PROVISION.—Nothing in this Act shall be construed as authorizing the commercial use of hand-propelled vessels in the study areas.

(c) EXISTING REGULATIONS.—Nothing in this section shall be construed as amending or rescinding any regulations affecting hand-propelled vessels within the parks, including Sections 7.13(d)(4)(ii) and 7.22(e)(3) of Title 36, Code of Federal Regulations.

SEC. 4. REPORT.

Not later than 3 years after the date on which funds are first made available for each study under this Act, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report containing the results of each study and any conclusions and recommendations of the Secretary.

SEC.5. MANAGEMENT

(a) REGULATIONS.—If the Secretary determines, based on the results of the studies, that the use of hand-propelled vessels is appropriate on certain waters within the parks, the Secretary shall amend the regulations referred to in section 3(c) or promulgate new regulations to manage such use.

(b) COST RECOVERY.—The Secretary is authorized to recover all costs, in accordance with Section 3a of Title 16 of the U.S. Code, associated with permitting the use of hand-propelled vessels, including the cost of inspecting and decontaminating vessels to prevent the introduction or spread of invasive or injurious species in Yellowstone National Park, Grand Teton National Park, and the John D. Rockefeller, Jr. Memorial Parkway.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV - 4 2014

The Honorable Don Young, Chairman
House Natural Resources Subcommittee on
Indian and Alaska Native Affairs
Washington, DC 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Assistant Secretary-Indian Affairs in response to questions received following the April 03, 2014, hearing before your Committee regarding *"Implementing the Cobell Settlement: Missed Opportunities and Lessons Learned"*

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

Sincerely,

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

Enclosure
cc: The Honorable Colleen Hanabusa
Ranking Member

Committee on Natural Resources Subcommittee on Indian and Alaska Native Affairs Oversight Hearing
1324 Longworth House Office Building
April 3, 2014

Oversight hearing titled *"Implementing the Cobell Settlement: Missed Opportunities and Lessons Learned"*

Questions from Chairman Don Young for Mr. Lawrence S. Roberts, Principal Deputy Assistant Secretary- Indian Affairs, U.S. Dept. of Interior

1. **In March the Buy-Back Program made more than $100 million in offers to owners of fractional interests at the Pine Ridge Reservation and these individuals have 45 days to accept or reject the offers. What is the acceptance rate so far for these offers?**

   Response:
   As of September 29, 2014, the Department has an approximate acceptance rate of 48% based on the three sets of offers to landowners with interests at the Pine Ridge Reservation. The Program's acceptance rate on all of the offers that have been sent to landowners with interest is 36%.

2. **In the hearing, you heard from Chairman Finley that four years ago the Administration opposed changing the *Cobell* Settlement Agreement to allow tribes to contract the Buy-Back program under the Indian Self-Determination Act. Is this still the Administration's position?**

   Response:
   The Department strongly supports the spirit of self-determination and self-governance. Although the Cobell Settlement Agreement (Settlement) and the Claims Resolution Act do not allow the use of Indian Self-Determination and Education Assistance Act (ISDEAA) agreements to operate Buy-Back Program activities, the Buy-Back Program gains the benefit of tribal participation by entering into cooperative agreements and more informal arrangements with tribes to undertake land consolidation tasks.

   The Department and the Administration are strong supporters of the ISDEAA. However, any proposed changes to the Buy-Back Program must take into account the progress we have made in the Program and the potential delays and additional implementation costs that a new process may cause.

   In comparison to other federal programs, the Land Buy-Back Program's limited, ten-year time frame and its 15 percent cap on implementation costs (for outreach, land research, valuation, and acquisition activities) are unique. The parameters in the Settlement necessitate relatively intense, short-term activity at each location to maximize the number of the 150 locations and the some 245,000 individual land owners that may participate in the Program. If the ISDEAA were extended to the Buy Back Program, the ten-year deadline established by the Settlement would likely need to be extended to provide the Program, and tribes, the additional time necessary:

   - to consult with tribes to determine an appropriate method for allocating

implementation costs under ISDEAA agreements;

- to provide training and conduct security clearances for tribal staff at each location that seeks to accept responsibility for the Program's acquisition phase through an ISDEAA agreement;

- for tribes that choose to use a site-specific appraisal approach rather than a mass appraisal approach; and

- for the Buy-Back Program to transition to any amendment to ensure that it has proper staff and intra-agency agreements in place to implement the law. Even if every tribe chose to utilize ISDEAA agreements, the Program would need to maintain staff to provide final approval of appraisals and land transfers.

Moreover, acquisition and payment processing time may vary from tribe to tribe under ISDEAA agreements. Currently, the Department is able to print and mail 2,000 offers per day and pay owners promptly that sell their fractional interests (since December 2013, the Program has paid owners an average total of $667,000 per day). The process integrates land title and trust fund systems of record, which enables landowners to receive their offer packets shortly after appraisal completion. Payments for accepted offers are deposited directly into their Individual Indian Money accounts typically within an average of five business days of receiving a complete, accepted offer package.

In addition, and as indicated above, additional funding could be necessary, should the ISDEAA be extended to the Buy Back Program, for:

- tribal and Interior administrative costs associated with any extension of the current 10 year implementation deadline;

- tribes to prepare proposals and negotiate with Program representatives, including resources to provide technical assistance to tribes for the development of agreements;

- implementation of changes to processes that have already been established;

- appraisal work, which may increase (the Buy-Back Program uses primarily mass appraisal methods whereas most tribes in ISDEAA programs use site-specific appraisals); and

- full contract support costs, which would need to be provided under ISDEAA agreements (the Buy-Back Program currently provides up to 15 percent in indirect costs through cooperative agreements to minimize implementation expenses consistent with the Settlement).

Existing Buy-Back Program costs and functions for tribes not interested in utilizing ISDEAA agreements would remain the same; consequently, the Buy-Back Program would continue to need funds to maintain capacity for the Department to implement the program.

If the ISDEAA was extended to the Buy-Back Program without additional funding, it is

likely that the $285 million administrative cost cap would be reached well before the fund available to purchase land is exhausted. Thus, any increase in costs associated with an ISDEAA extension would need to be authorized and appropriated so that such costs do not diminish the funds available to return lands to tribes.

3. **The Committee has received testimony that CGI Federal, the same federal contractor that developed the healthcare.gov website, is also involved in the Buy-Back program and may even have an ownership interest in the TAAMS system. What involvement does CGI Federal have with the program?**

Response:
CGI Technologies and Solutions, Inc. is a subsidiary of CGI Federal. CGI Federal was the lead contractor on the website for the Affordable Care Act. The Bureau of Indian Affairs (BIA) awarded CGI Technologies and Solutions, Inc. the contract for ADP Systems Development Services and Automated Information System Design and Integration Services. The result of that contract is the Trust Asset Accounting Management System (TAAMS). In 2013, BIA requested that a new TAAMS module be developed specifically to manage Land Buy-Back land purchases. BIA also approved a Task Order for CGI to manage the Print/Mail/Scan/Review portion of the acquisition process.

4. **The Committee is aware that some tribes have expressed a desire for the Buy-Back funds to be able to be invested or otherwise earn value to maximize the number of interests that can be purchased. Does the Department agree with this concept? If so, can it provide the Committee with a proposal on how this could be accomplished?**

Response:
The Department has no authority to invest the Trust Land Consolidation Fund (Fund). The Cobell Settlement sets forth the precise purpose and use of the Fund. It states, in pertinent part, as follows:

"The Trust Land Consolidation Fund shall be used solely for the purposes of (1) Acquiring fractional interests in trust or restricted lands; (2) Implementing the Land Consolidation Program; and (3) Paying the costs related to the work of the Secretarial Commission on Trust Reform, including costs of consultants to the Commission and audits recommended by the Commission. An amount up to a total of no more than fifteen percent (15 percent) of the Trust Land Consolidation Fund will be used for purposes 2 and 3." (*Cobell* Settlement Agreement at ¶ F(2).)

Under the terms of the Settlement, any unexpended funds revert to the Department of the Treasury if not expended within ten years. The Department has no authority to utilize, disperse, retain, or invest any portion of the Fund in a manner inconsistent with the mandates of the Settlement, as ratified by the United States Congress through the Claims Resolution Act of 2010.

If legislation were enacted either authorizing investment of or providing for the payment of interest on the Fund, such authority should be granted to either the Department or to the U.S. Treasury. All interest income earned from investment of the Fund should inure to benefit of the Fund.

5. **What amendments can be made to the *Cobell* Settlement Agreement or other applicable federal law to improve the success of the Buy-Back Program for Indian tribes?**

Response:

We are pleased with the success of the Program thus far. Thus far, we have successfully concluded transactions worth almost $146 million, restoring the equivalent of nearly 280, 000 acres of land to tribal governments.

From the lessons we have learned thus far there is one area for improvement. The Settlement established the $1.9 billion Trust Land Consolidation Fund for the purchase of fractional interests. Despite the large size of the Fund, it is unlikely to contain sufficient capital to purchase all fractional interests across Indian country.

In terms of amendments to the Cobell Settlement Agreement or other applicable federal law, Congress may want to consider amendments that would clarify a State's ability to share appraisal information with the Buy Back Program. We have observed this to be a hurdle in some states and clarifying language could address such situations.

Questions from Ranking Member Colleen Hanabusa, for Mr. Lawrence S. Roberts, Principal Deputy Assistant Secretary - Indian Affairs, U.S. Dept. of Interior

1. **Mr. Roberts - The Claims Resolution Act of 2010 states that the Secretary has 10 years from the date of the final settlement to spend the $1.9 billion of the Trust Land Consolidation Fund. By my calculation, we are already about 4 years in and the Department has just recently sent purchase offers to 3 tribes. At this rate, do you expect the 10 year window to be long enough to enable you to spend all of the $1.9 billion?**

   Response:
   The Department is committed to implementing the Program in the most efficient and cost-effective manner. The Settlement was confirmed by the Claims Resolution Act of 2010 and approved with finality on November 24, 2012, after appeals were exhausted through the U.S. Supreme Court. The ten-year period occurs from November 24, 2012 (the date of Final Approval of the Settlement) to November 24, 2022.

   During the first year of the Program, the Department focused on joint planning with tribes, cooperative agreements, staffing, and designing and laying out the strategy, methods, and key systems for this ten-year Program. Tribal involvement, transparency, flexibility, timely decision making, and ongoing communication throughout the life of the Program are critical to its success.

   In less than one year we have successfully concluded transactions worth almost $138million, restoring the equivalent of nearly 277,000 acres of land to tribal governments (these transactions relate to eight different locations). Deputy Secretary of the Interior Michael Connor announced a schedule through 2015 for the continued implementation of the Program that identified locations representing more than half of all the fractional interests and unique owners across Indian Country. The Department is planning to announce additional locations before the end of the calendar year.

   One approach that the Department is using to expend the Fund in a timely manner is the use of mass appraisal techniques. The breadth, scale, limited funding, and bounded life span of the Program necessitate the use of mass appraisal methods where appropriate. The Department intends to implement the Program fairly and equitably, moving quickly to reach as much of Indian Country as possible during this ten-year period. Mass appraisal is an efficient way to quickly determine fair market value for a significant number of fractionated tracts. By using the mass appraisal method where applicable, the Program can maximize the number of owners that can receive payments for the interests they decide to sell, and therefore the interests that will be immediately restored to the tribes.

2. **Mr. Roberts – When can members of the Trust Administration Class expect their payments? Why have there been delays in issuing them?**

   Response:
   The Cobell v. Salazar lawsuit ended in a settlement agreement approved by Congress and by the United States District Court for the District of Columbia, where the case was filed.

Under the settlement agreement, the Federal Government paid approximately $1.5 billion into a settlement fund in a private bank. The Plaintiffs administer that account under the supervision of the district court and have responsibility for distributing the funds. The government does not control the distribution of the settlement funds.

Pursuant to the Cobell Settlement Agreement as approved by Congress and signed by the President on December 8, 2010 (Settlement Agreement), specific notice and process provisions must be met before payments can be made to the Trust Administration Class (TAC), also identified as Stage 2 payments. Plaintiffs are required to identify all the TAC members because that number will affect the calculation of the settlement payments. See Settlement Agreement, at sec. E.4.a ("No Stage 2 [TAC] payments shall be made until all Stage 2 Class Members have been identified in accordance with this Agreement and their respective pro rata interests have been calculated.").

Plaintiffs hired (and the court approved) the Claims Administrator, Garden City Group (GCG), to make the distribution. In late 2012, the district court approved the first round of settlement payments to the Historical Accounting Class (HAC), also identified as Stage 1 payments. In the Stage 1 payments, each class member was paid $1,000. On January 23, 2014, the district court granted a motion by Plaintiffs to add almost 13,000 members to the HAC.

Plaintiffs are now preparing to make the Stage 2 settlement payments to members of the TAC. This part of the settlement calculation is more complicated because the dollar amount paid to class members will vary according to how much money was deposited in his or her Individual Indian Money (IIM) account over time.

Trust Administration Class members who had no IIM account, or who had no money deposited to an IIM account, will receive a minimum payment. That minimum amount is based on: (1) the total number of class members; and (2) the amount of money left in the settlement fund after paying the Stage 1 settlement payments (plus the expenses of administering the settlement). Plaintiffs cannot perform these calculations for Stage 2 until they can identify the final number of class members and reasonably estimate the amount of money available in the settlement account after expenses.

Pursuant to the Settlement Agreement, a Special Master was appointed to make determinations regarding the eligibility of individuals to participate as members of the TAC. Before the TAC can be finalized, the Special Master must resolve the appeals that "self-identifying" putative TAC members made after they were denied inclusion into the class by GCG. The Special Master is still considering those appeals, and we have no time frame for when the appeals will be resolved. Once the universe of TAC members has been identified, the calculation of TAC settlement payments can be completed.

3. **Mr. Roberts – A private firm, the Garden City Group, is arranging to send out payments to the Trust Administration Class, but ultimately, executing this duty is a federal responsibility. Who in the Department is responsible for overseeing the work of the Garden City Group and how are they addressing class member concerns that expected payment dates keep getting pushed back?**

Response:

Plaintiffs, not the federal government, have the responsibility to disburse payments to the members of the Cobell classes pursuant to the Settlement Agreement and the legislation authorizing its implementation. Payments to individual class members are not considered trust unless and until they are transferred to the Department pursuant to the settlement provisions noted below. They are aided in that task by the appointed Claims Administrator, Garden City Group (GCG). The government's limited involvement includes supplying the "best and most current" contact information for each beneficiary class member and indicating if the class member is a minor, non-compos mentis, an individual under legal disability, in need of assistance, or whose whereabouts is unknown, as well as receiving and holding proceeds for individuals with IIM accounts who are identified in DOI's data as "whereabouts unknown." See, e.g., Settlement Agreement at E.1.g ("Defendants' Limited Role. Except as specifically provided in this Agreement, Defendants shall have no role in, nor be held responsible or liable in any way for, the Accounting/Trust Administration Fund, the holding or investment of the monies in the Qualifying Bank or the distribution of such monies.").

With the settlement funds in a private bank, the settlement distribution is entirely a private task, with the government merely providing data (i.e., contact information, whereabouts unknown information, etc.) to support Plaintiffs' (and GCG's) effort. Although the federal government is not in charge of the Cobell settlement distributions, the Department of the Interior does have program responsibility for another part of the Cobell settlement: use of the $1.9 billion Congress appropriated to buy back highly sub-divided allotments on a voluntary basis from individual land owners. In contrast to the monetary payments to class members, this "Land Buy Back" portion is the responsibility of the Department of the Interior.

The Department of the Interior is not charged (by the Settlement Agreement or otherwise) with overseeing the work of the Claims Administrator GCG. With that in mind, individuals within the Department (specifically, officials within the Office of the Special Trustee and Office of the Solicitor) are working collaboratively with GCG for the delivery of the contact information and to help resolve any questions or concerns that may arise about the data. Supervision and oversight of the Claims Administrator, however, remains with the district court.

4. **Mr. Roberts - Does the Department have enough personnel to ensure the timely implementation of the Land Buy-Back Program?**

Response:

The Program currently employs 56 full-time employees (Program Office 10, Bureau of Indian Affairs 14, Office of Minerals Evaluation 13, and Office of Appraisal Services 19). In addition, tribes may hire approximately up to 29 tribal staff through funding available under cooperative agreements. The Program is also utilizing contractors, particularly for acquisition (print/mail/scan) and appraisal services.

Tribes will also continue to have an active role in implementing the Program, particularly with respect to outreach activities. It is critical that the Buy-Back Program and tribal leaders work together to ensure that landowners are made aware of the opportunity to sell their interests for the benefit of both the landowner and tribal communities. The Department hopes to enter into cooperative agreements with as many interested tribes as

possible to take advantage of tribes' ability to minimize administrative costs and to improve the overall effectiveness and efficiency of the Buy-Back Program. The Department currently has formal or informal agreements in place with 12 tribes: Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Confederated Tribes of the Umatilla Indian Reservation, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana, Fort Peck Assiniboine and Sioux Tribes, Gila River Indian Community of the Gila River Indian Reservation, Makah Indian Tribe of the Makah Indian Reservation, Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Oglala Sioux Tribe of the Pine Ridge Reservation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Standing Rock Sioux Tribe of North and South Dakota, and the Crow Tribe.

5. **Mr. Roberts - I have heard that the Department is focusing on only 40 tribes to conduct the land buy-back program even though there are 150 tribes with fractionated land shares. Are those claims accurate? If so, why are you focusing on only 40 tribes?**

Response:

It is not accurate that we are only focusing on the top 40 tribes. It is true that approximately 90 percent of the purchasable fractional interests are located within 40 of the 150 locations with purchasable fractional interests. As a result, as a practical matter, the Department must focus a great deal of its *initial* efforts among these highly fractionated locations. While the Program will be implemented at locations that hold the highest amount of purchasable fractional interests, the Department will also pursue implementation activities with tribes at locations that represent the approximately 110 locations with the remaining 10 percent of the fractionated land. Efforts are already underway at several less-fractionated locations including the Makah, Coeur d'Alene, Squaxin Island, Swinomish, Prairie Band, Quapaw, and Lummi Reservations.

6. **Mr. Roberts – Many tribes already implement their own fractionated shares buy-back programs with their own funds. These tribes are eligible for the Cobell Settlement's Land Buy-Back program, but they have had to wait in a long line to access settlement funds. Meanwhile, they have been continuing to implement their own programs with their own funds. Is the Department open to using the Trust Land Consolidation Fund for reimbursing tribes for fractionated land purchases from November 2012, the time the Cobell Settlement was officially final, to the time Interior is able to make them an offer?**

Response:

The Department is open to exploring every possible avenue to efficient, timely, and cost effective purchases of fractionated interests consistent with the requirements of the Settlement, the Indian Land Consolidation Act, the Claims Resolution Act of 2010, and all other applicable laws.

We have also made tribes not immediately slated for implementation in the next year aware of the opportunities and tasks that they can undergo right now to help prepare for the smooth transition when the Program moves to their location.

7. **Mr. Roberts- Some tribes have expressed concerns with the Department's one-size-fits-all approach to implementing the land buy-back program. How do you respond to that criticism and can you understand the need for the Department to take a more tailored approach?**

Response:

The Department recognizes the uniqueness of each location and tribal government, will continue to consult with tribes individually, and will continue to evaluate tribal proposals individually before initiating Buy-Back Program activities on the respective reservations. The Program's Tribal Relations Advisors are responsible for working closely with each tribe to understand its concerns and unique goals. Each cooperative agreement between the Program and individual tribes is unique in time, scope, and responsibilities based on the expressed interests of the tribe.

Cooperative agreements present an opportunity for tribes and the Program to move forward together by providing funding for tribes to perform certain tasks, such as outreach to the landowners. While much can be accomplished through these agreements, cooperative agreement funding should be viewed as a short-term resource to achieve the much larger and more valuable goal of land consolidation. Accordingly, the Program must award agreements with an eye toward efficiency without engaging in protracted cooperative agreement negotiations that detract from the objective of providing individual landowners with offers of fair market value for their fractionated interests in trust or restricted land.

A Scope of Work Checklist has been developed in response to tribal feedback requesting details about the work involved and templates to streamline the process for entering into agreements. While this checklist outlines baseline parameters and tasks, it does not preclude tribes from proposing other pertinent tasks or activities given the unique circumstances of their locations.

The Program has worked diligently to facilitate and expand tribal involvement in land consolidation efforts, in part by hiring staff dedicated to those goals. It also strives for a cooperative agreement process that is as streamlined as possible, while still meeting all Federal and Departmental regulations and requirements associated with the awarding of any financial assistance. These requirements, such as completing the mandatory SF-424 Application for Federal Financial Assistance forms and complying with the applicable procurement regulations and cost principles, apply to all financial assistance awards, including grants, unless statutorily exempted.

8. **Mr. Roberts– Chairman Berrey claims that the Department refused to work with his tribe to purchase fractionated shares in a Superfund site. Is this true? If so, why is this? Shouldn't the tribe be able to use Settlement funds to consolidate shares on any of its lands it sees fit?**

Response:

The Department recently announced a list of locations where it would implement the program and the Quapaw Tribe is included on that list. The Department has in fact already sent offers to Quapaw that are outside the Superfund site and is working to finalize those purchases. Although fractionated shares within the Superfund site present complex legal

and practical challenges, the Department is working with the Department of Justice on whether and how the Department can purchase such parcels. The Department continues to keep the Tribe apprised of its efforts.

9. **Mr. Roberts – Our tribal witnesses today universally support Indian Self-Determination Act contracting over other cooperative agreements. If Congress worked on a bill to permit tribes to enter into ISDEAA contracts to administer the Buy-Back Program, would the Department support it?**

Response:

Please see page 1, answer 2 in response to the Chairman's similar question

Questions from Rep. Raul Grijalva, for Mr. Lawrence S. Roberts, Principal Deputy Assistant Secretary– Indian Affairs, U.S. Dept. of Interior

1. **Mr. Roberts, I understand there are 5 tribes that have successfully entered into Cooperative Agreements with the Department already, can you share with us how has the Department concluded the Agreements with those 5 tribes?**

   Response:
   The Department has entered into agreements with ten tribes (Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Confederated Tribes of the Umatilla Indian Reservation, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana, Fort Peck Assiniboine and Sioux Tribes, Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Oglala Sioux Tribe of the Pine Ridge Reservation, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Standing Rock Sioux Tribe of North and South Dakota, and Crow Tribe). The Department also has a Memorandum of Agreement with Gila River Indian Community of the Gila River Indian Reservation, and an informal working agreement with Makah Indian Tribe of the Makah Indian Reservation. The Department expects to finalize additional agreements in the near future.

   In order to negotiate an agreement, the Program's Tribal Relations Advisors, in coordination with field staff, work closely with tribal leadership to define a scope of work that will enable the tribe to accomplish its goals for the Program. The time it can take to reach each agreement is dependent on each tribe's procedures, which can vary dramatically in terms of needed approvals. The tribal point of contact and the Tribal Relations Advisors are in regular contact via email and in-person meetings throughout the process.

2. **Mr. Roberts, let me turn your attention away from the land Buy-Back Program and to the initial aim of the Cobell Settlement, can you give me the latest update and progress on the Historical Trust Administration established to compensate Individual Indian Money (IIM) Account Holders?**

   Response:
   The Cobell v. Salazar lawsuit ended in a settlement agreement approved by Congress and by the United States District Court for the District of Columbia, where the case was filed. Under the settlement agreement, the Federal Government paid approximately $1.5 billion into a settlement fund in a private bank. The Plaintiffs administer that account under the supervision of the district court and have responsibility for distributing the funds. The government does not control the distribution of the settlement funds.

   Pursuant to the Cobell Settlement Agreement as approved by Congress and signed by the President on December 8, 2010 (Settlement Agreement), specific notice and process

provisions must be met before payments can be made to the Trust Administration Class (TAC), also identified as Stage 2 payments. Plaintiffs are required to identify all the TAC members because that number will affect the calculation of the settlement payments. See Settlement Agreement, at sec. E.4.a ("No Stage 2 [TAC] payments shall be made until all Stage 2 Class Members have been identified in accordance with this Agreement and their respective pro rata interests have been calculated.").

Plaintiffs hired (and the court approved) the Claims Administrator, Garden City Group (GCG), to make the distribution. In late 2012, the district court approved the first round of settlement payments to the Historical Accounting Class (HAC), also identified as Stage 1 payments. In the Stage 1 payments, each class member was paid $1,000. On January 23, 2014, the district court granted a motion by Plaintiffs to add almost 13,000 members to the HAC.

Plaintiffs are now preparing to make the Stage 2 settlement payments to members of the TAC. This part of the settlement calculation is more complicated because the dollar amount paid to class members will vary according to how much money was deposited in his or her Individual Indian Money (IIM) account over time.

Trust Administration Class members who had no IIM account, or who had no money deposited to an IIM account, will receive a minimum payment. That minimum amount is based on: (1) the total number of class members; and (2) the amount of money left in the settlement fund after paying the Stage 1 settlement payments (plus the expenses of administering the settlement). Plaintiffs cannot perform these calculations for Stage 2 until they can identify the final number of class members and reasonably estimate the amount of money available in the settlement account after expenses.

Pursuant to the Settlement Agreement, a Special Master was appointed to make determinations regarding the eligibility of individuals to participate as members of the TAC. Before the TAC can be finalized, the Special Master must resolve the appeals that "self-identifying" putative TAC members made after they were denied inclusion into the class by GCG. The Special Master is still considering those appeals, and we have no time frame for when the appeals will be resolved. Once the universe of TAC members has been identified, the calculation of TAC settlement payments can be completed.

3. **Mr. Roberts, I am also interested in the investment on the education of Indian Youth side of the Cobell Settlement. I believe that $60 million of $1.9 billion dollars Trust Land Consolidation was contributed to Indian Education Scholarship (aiming at improving access to higher education for Indian youth), can you give us an update and progress of this Scholarship Program? And how many Indian youth have benefited from this fund already?**

Response:

In accordance with the terms of the Settlement the Department of the Interior will contribute up to $60 million to the Scholarship Fund. Contributions to the Scholarship Fund are based upon the formula outlined in the Settlement setting aside a certain amount of funding based on the value of the fractionated interest sold. As the offer sets for the individual reservations receiving offers are completed, scholarship funds are transferred to the Indian Education Scholarship Holding Fund (Holding Fund). At the end of each

quarter, the funds are transferred from the Holding Fund to the American Indian College Fund. The first payment was made at the end of March 2014 and the second at the end of June 2014. To date, the Department has transferred more than $3.4 million to the American Indian College Fund. Another transfer of approximately $1 million will occur in the near future.

The American Indian College Fund, headquartered in Denver, Colorado, administers the Scholarship Fund and provides students with the resources to succeed in tribal colleges and technical and vocational certifications as well as traditional undergraduate and graduate programs. A five-member Board of Trustees is responsible for the oversight and supervision of the College Fund's administration of the Scholarship Fund and for developing and adopting a charter outlining its role and responsibilities. The American Indian College Fund is responsible for establishing the eligibility criteria for the award of scholarships as well as for managing and administering the Scholarship Fund. Twenty percent of the Fund's portfolio will be directed to support graduate students through the American Indian Graduate Center in Albuquerque, New Mexico. Benefits to Indian students as a result of these scholarships are anticipated in the near future.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 1 0 2014

The Honorable Don Young, Chairman
House Natural Resources Subcommittee on
Indian and Alaska Native Affairs
Washington, DC 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Indian Affairs in response to questions received following the May 07, 2014, hearing before your Committee regarding H.R. 409, The Indian Trust Reform Act and H.R. 4350, the Northern Cheyenne Lands Act.

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

Sincerely,

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

Enclosure
cc: The Honorable Colleen Hanabusa
Ranking Member

Questions for Mike Black
Subcommittee on Indian and Alaska Native Affairs
House Natural Resources Committee
Regarding H.R. 409 and H.R. 4350
May 7, 2014

Chairman Young:

1. **Do the provisions of Section 102 accurately state or reflect the status of current law regarding the proper discharge of the United States' fiduciary responsibility to Indians? If the answer is "no," please state which of the provisions of that section do not accurately reflect the status of current law.**

Response: The language of Section 102 suggests that the common law fiduciary standards that govern private trustees also govern the United States, rather than the United States being governed by the terms of Congressionally-enacted statutes and regulations implementing those statutes. Such a standard would conflict with certain holdings of the U.S. Supreme Court.

In modern times, the Court has opined on the scope of the United States' trust responsibility. *See, e.g., United States v. Mitchell*, 445 U.S. 535 (1980); *United States v. Mitchell*, 463 U.S. 206 (1983); *United States v. Navajo Nation*, 537 U.S. 488 (2003); *United States v. White Mountain Apache Tribe*, 537 U.S. 465 (2003); *United States v. Navajo Nation*, 556 U.S. 287 (2009) (*Navajo Nation II*). Generally speaking, in the context of cases seeking monetary damages, the Court has held that an Indian tribe must "identify a specific, applicable, trust-creating statute or regulation that the Government violated, … [and absent that,] neither the Government's 'control' over [assets claimed by Indians] nor common-law trust principles matter." *Navajo Nation II*, 556 U.S. at 302. The Supreme Court has further held that, where appropriate, common law fiduciary standards can inform the conduct of carrying out trust duties, but are not the source of trust duties. *See United States v. Jicarilla Apache Nation,* 131 S.Ct. 2313, 2325 (2011) (*citing White Mountain Apache*, 537 U.S. at 475-476). Thus, under current Supreme Court jurisprudence, common law fiduciary standards can be used to fill a gap left by Congress but are not the origin for establishing the United States' trust duty.

Section 102(3) also states that, "the fact that the United States simultaneously performs another task for another interest that Congress has obligated it by statute to do does not compromise or limit the United States enforceable fiduciary obligations to Indians." Under controlling Supreme Court case law, the United States must balance the Indian trust responsibility with other responsibilities mandated by Congress: "The Government does not 'compromise' its obligation to one interest that Congress obliges it to represent by the mere fact that it simultaneously performs another task for another interest that Congress has obligated it by statute to do." *Nevada v. United States*, 463 U.S. 110, 128 (1983).

In sum, Section 102 could potentially be interpreted as altering certain holdings of the U.S. Supreme Court by providing that the United States is subject to common law fiduciary duties in all circumstances.

2. **The Administration's testimony states that, in the Department's view, some of the provisions in Section 102 of the bill as introduced are "more a redefinition than a reaffirmation." If enacted, would Section 102, as written, change existing law? If the answer is "yes," what specific U.S. Supreme Court decisions and legal doctrines would be affected?**

Response: Given the breadth of case law and varying fact patterns, it is difficult to specify which decisions would be affected if Section 102 was enacted. The previous response discusses the current state of the law and how Section 102 would potentially modify that law.

3. **Would the enactment of Section 102 potentially affect the extent of liability of the United States in pending litigation? If so, please explain how the enactment of that section would affect the extent of that liability.**

Response: It is possible that enactment of Section 102 would impact the extent of the United States' liability in pending litigation, depending on the claims of each case and the stage of the litigation. However, it is difficult to conclude with certainty how each case would be affected, and it would also be important to consider the procedural posture of any particular case.

4. **Would the enactment of Section 102 potentially affect the extent of liability of the United States in future litigation? If so, please explain how the enactment of that section would affect the extent of that liability.**

Response: Section 102 could potentially affect future liability, but it would be premature to make a blanket statement about potential future liability with no factual context. For instance, it is not clear how courts would interpret Section 102, and it is not certain that in all cases the Department would have increased liability when its actions are evaluated under an arguably different standard. In some cases, there may be increased liability and in other cases it may have no impact at all. Inclusion in the legislation of language clarifying that Congress meant only to reaffirm the existing general trust responsibility between the United States and Tribes could address this concern, but it still would be difficult to make predictions regarding future liability.

5. In its comments on Title II, the Administration's testimony discusses at length how the trust asset demonstration project will allow tribes to develop individual IT systems, that will, in turn, force the Department to "interface with what could be incompatible systems and incur additional administrative support costs that are likely to increase and gaps in the data for both the federal and tribal systems." What specific provisions of Title II would allow tribes to develop individual IT systems?

Response: Sec. 204 of H. R. 409 states the following:

> (3) AUTHORITY OF INDIAN TRIBES TO DEVELOP SYSTEMS, PRACTICES, AND PROCEDURES.— For purposes of preparing and carrying out a management plan under this section, an Indian tribe that has compacted or contracted activities or functions under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), for purposes of carrying out the activities or functions, *may develop and carry out trust asset management systems, practices, and procedures that differ from any such systems, practices, and procedures used by the Secretary* in managing the trust assets if the systems, practices, and procedures of the Indian tribe meet the requirements of the laws, standards, and responsibilities described in subsection (c). [emphasis added]

The trust asset management system used by the Department is the Trust Funds Accounting System (TFAS), which is an IT system. This language in section 204 would authorize tribes to develop and employ alternative systems, including IT systems, to manage their trust assets.

6. Much of the Administration's testimony is devoted to describing purported successes and accomplishments of the Office of the Special Trustee, specifically implementation of reforms related to the management of tribal trust funds. What major reforms, if any, remain for the Office of the Special Trustee to implement?

Response: One of the lessons learned by the Department during the course of implementing trust reform is the importance of continual reform. While many of the large systemic reforms were accomplished in the early years of OST's existence, the Department has continued to address residual issues. Most important, the Department is committed to maintaining best practices in Indian trust management, thus preventing lapses that might lead to a pre-*Cobell* environment. The level of care required of a fiduciary does not permit the Department to suffer a gradual build-up of trust management problems; it requires aggressive, constant monitoring and correction. As with the private industry, it is essential that there be a degree of separation or independence between the fiduciary (OST) and the service provider (BIA).

7. The Administration's testimony mentions how the Office of the Special Trustee has hired more than 50 fiduciary trust officers (FTOs). How many FTO positions exist? Please list the tribe and location where each FTO is deployed. For example, if OST has 55 FTO positions, for each of the 55 positions identify the tribe(s) to which the FTO is assigned and the physical location of the FTO's worksite.

Response: Currently there are approximately 49 FTOs serving throughout Indian country. This number fluctuates somewhat with personnel changes. The current FTO positions, and their locations, are:

PRIMARY Agency	Address	Tribe(s) Assigned	Additional Location(s)

Questions for Mike Black
Subcommittee on Indian and Alaska Native Affairs
House Natural Resources Committee
Regarding H.R. 409 and H.R. 4350
May 7, 2014

ANADARKO AGENCY	Anadarko Agency Hwy. 281 N. & Parker McKenzie Dr. Anadarko, OK 73005	**Apache of Oklahoma; Caddo Nation; Comanche Nation; Delaware; Ft. Sill Apache; Kiowa; Wichita and Affiliated Tribes**	
CONCHO FIELD OFFICE	Concho Field Office 1635 E. Hwy. 66 El Reno, OK 73036	**Cheyenne-Arapaho Tribes of Oklahoma**	
HORTON AGENCY	Horton Agency 908 First Ave. East Horton, KS 66439	**Iowa Tribe of Kansas and Nebraska; Kickapoo Tribe in Kansas; Prairie Band of Potawatomi; Sac and Fox of Missouri**	
PAWNEE AGENCY	Pawnee Agency P.O. Box 440 850 Agency Road, Bldg. 71 Pawnee, OK 74058	**Kaw; Otoe-Missouria; Pawnee; Ponca of Oklahoma; Tonkawa**	
SOUTHERN PLAINS REGION	Southern Plains Region W. C. D. Office Complex 1 Mile North Hwy 281 Anadarko, OK 73005	**Shawnee**	Shawnee Field Office (1 mi North of Anadarko, OK, on Hwy 281)
CHEROKEE Field Office	Cherokee Field Office P.O.Box 440 (w/Zip 74465) 17675 S. Muskogee, Rm 112 Tahlequah, OK	**Cherokee; Eastern Shawnee; Miami; Modoc; Ottawa; Peoria;**	Wyandotte Agency

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	74464	**Quapaw; Seneca-Cayuga; Wyandotte**	
			Miami Agency Miami, OK
			E. Oklahoma Region Office 3100 W. Peak Blvd, Rm 250 Muskogee, OK
CHICKASAW AGENCY	Chickasaw Agency PO Box 156 Ada, Oklahoma 74821	**Chickasaw; Choctaw**	Talihina, OK, Field Office
OSAGE AGENCY	Osage Agency 813 Grandview Pawhuska, OK 74056	**Osage; All Tribes in the BIA Eastern Region**	EASTERN REGION Nashville, TN
TULSA	Tulsa Urban Office 1323 East 71st, Suite 101 Tulsa, OK 74136	**Alabama-Quassarte; Kialegee; Muscogee (Creek); Thlopthlocco; Seminole**	Okmulgee, OK, Agency
			Wewoka, OK, Agency
EASTERN NAVAJO AGENCY	Eastern Navajo AgencyP.O. Box 2098222-OST Code Talker Str.Crownpoint, NM 87313	**Navajo; Hopi**	Shiprock, NM, Agency
NAVAJO REGION	Navajo Region 301 W. Hill, Room 164 Gallup, NM 87301	**Navajo**	Western Navajo Agency, Tuba City, AZ
			Chinle Agency, Chinle, AZ
			Fort Defiance Agency, Ft. Defiance, AZ

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SOUTHWEST REGION	Southwest Region Office 1001 Indian School NW, Suite 349 Albuquerque, NM 87104	**All Pueblos except Taos and Zuni; Mescalero Apache; Ramah**	Ramah, NM, Navajo Agency
			Southern Pueblos Agency Albuquerque, NM
			Laguna Agency, Laguna, NM
			Zuni Agency, Zuni, NM
SOUTHERN UTE AGENCY	Southern Ute Agency 383 Ute Road Ignacio, CO 81137	**Southern Ute; Ute Mountain Ute; Jicarilla Apache; Taos Pueblo; Zuni Pueblo**	Jicarilla Agency, Dulce, NM
			Mescalero Agency
			Northern Pueblos Agency
			Ute Mountain Ute Field Office Towac, CO
FORT BERTHOLD AGENCY	Fort Berthold Agency202 West Main StreetNew Town, ND 58763	**Three Affiliated**	
GREAT PLAINS REGION	Great Plains Region 115 4th Avenue SE, 5th floor Aberdeen, SD 57401	**N/A**	
PINE RIDGE AGENCY	Pine Ridge Agency 100 Main Street, BIA Bldg. Pine Ridge, SD 57770	**Ogalala Sioux**	
CHEYENNE RIVER AGENCY	(PO Box 325) Main Street BIA Bldg 2001 Eagle Butte, SD 57625	**Cheyenne River Sioux**	

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ROSEBUD AGENCY	Rosebud Agency P. O. Box 228 Rosebud, SD 57555 1004 Omaha St., Mission, SD 57555	**Rosebud Sioux**	
SISSETON AGENCY	Sisseton Agency Veterans Memorial Drive/BIA Bldg. Agency Village, SD 57262	**Sisseton Wahpeton Oyate; Flandreau Sioux; Mississippi Sioux**	Lower Brule Agency Lower Brule, SD
STANDING ROCK AGENCY	Standing Rock Agency Bldg. 194 Proposal Ave. Ft. Yates, ND 58538	**Standing Rock Sioux**	
TURTLE MOUNTAIN AGENCY	Turtle Mountain Agency BIA Rd. 7, Bldg. 174 Belcourt, ND 58316	**Turtle Mountain Band of Chippewa; Spirit Lake**	Fort Totten Agency Ft. Totten, ND
WINNEBAGO AGENCY	Winnebago Agency Hwy. 75, RR 1 Winnebago, NE 68071	**Omaha of Nebraska; Winnebago of Nebraska**	
SANTEE SIOUX Field Office	Santee Sioux Field Office 425 Frazier AVE N Niobrara, NE 68760	**Yankton Sioux; Ponca of Nebraska; Santee Sioux**	Yankton Agency Wagner, SD Crow Creek Agency Ft. Thompson, SD
RAPID CITY	Rapid City Urban Office 801 Mt. Rushmore Rd., suite 200 Rapid City, SD 57201	**Crow Creek Sioux; Lower Brule**	
ALASKA REGIONAL OFFICE	Alaska Region 3601 C Street, suite 216 Anchorage, AK 99503-5947	**All Tribes in the State of Alaska except Metlakatla**	

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GREAT LAKES AGENCY	Great Lakes Agency916 Lakeshore Drive, WestAshland, WI 54806	**Bay Mills; Grand Traverse; Hannahville; Huron Potawatomi; Keeweenaw Bay; Lac Vieux Desert; Little River; Little Traverse Bay; Match-e-be-nash-she-wish Band; Pokagon; Saginaw Chippewa; Sault Ste. Marie; Sac and Fox of Iowa; Lower Sioux; Prairie Island; Shakopee Mdewakanton; Upper Sioux; Menominee; Bad River; Forest County Potawatomi; Ho-Chunk Nation; Lac Courte Oreilles; Lac du Flambeau; Oneida; Red Cliff; Sokaogon; St. Croix; Stockbridge Munsee**	Michigan Agency Sault Ste. Marie, MI Sac and Fox Agency Minominee Agency

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MINNESOTA AGENCY	Minnesota Agency 522 Minnesota Avenue NW room 304 Bemidji, MN 56601-3062	**Minnesota Chippewa Tribe (White Earth, Leech Lake, Fond du Lac, Bois Forte, Mille Lacs and Grand Portage Bands); Red Lake Band of Chippewa Indians**	Red Lake Agency Red Lake, MN
BLACKFEET AGENCY	Blackfeet Agency 531 S. E. Boundary Street Browning, MT 59417	**Blackfeet**	
CROW AGENCY	Crow Agency Main BIA Bldg. 2, Weaver Drive Crow Agency, MT 59022	**Crow**	
FORT BELKNAP AGENCY	Fort Belknap Agency 100 BIA Road Harlem, MT 59526	**Fort Belknap Indian Community; Chippewa Cree**	Rocky Boys Agency Box Elder, MT
FORT PECK AGENCY	Fort Peck Agency 500 Medicine Bear Road Poplar, MT 59255	**Ft. Peck Assiniboine and Sioux**	
NORTHERN CHEYENNE AGENCY	Northern Cheyenne Agency BIA Bldg., Hwy. 39 North Lame Deer, MT 59043	**Northern Cheyenne**	Rocky Mountain Region Billings, MT
WIND RIVER AGENCY	Wind River Agency 1st and Washakie Street Ft. Washakie, WY 82514	**Norhtern Arapaho; Eastern Shoshone**	

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PALM SPRINGS AGENCY	Palm Springs Agency 3700A Tachevah Drive Suite 202 Palm Springs, CA 92262	**All Southern California Tribes**	Southern California Riverside, CA
PACIFIC REGION	Pacific Region 2800 Cottage Way Federal Bldg., Room 2821 Sacramento, CA 95825	**All Northern California Tribes**	Central California Agency Sacramento, CA
			Northern California Agency, Redding, CA
COLVILLE AGENCY	Colville AgencyHwy. 155, 2 mi. South of NespelemNespelem, WA 99155	**Colville; Spokane; Kalispel**	Spokane Agency, Wellpinit, WA
FORT HALL AGENCY	Fort Hall Agency Corner of Agency & Bennock Avenue Fort Hall, ID 83203	**Shoshone Bannock; Northwestern Band of Shoshone Nation; Confederated Salish and Kootenai**	Flathead Agency Pablo, MT
NORTHERN IDAHO	Northern Idaho Agency 99 Agency Road, Phinney Bldg. Lapwai, ID 83540	**Nez Perce; Coeur d' Alene; Kootenai Tribe of Idaho**	
NORTHWEST REGIONAL OFFICE	Northwest Region 1201 NE Lloyd Blvd. Portland, OR 97232	**Siletz; Grand Ronde; Klamath; Cow Creek Band of Umpqua; Coos, Lower Umpqua and Siuslaw; Coquille; Chehalis; Cowlitz; Hoh; Jamestown S'Klallam; Lower Elwha;**	Siletz Agency Siletz, OR

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		Quileute; Shoalwater Bay; Skokomish; Squaxin Island; Makah;	
PUGET SOUND AGENCY	Puget Sound Agency 2707 Colby Avenue, suite 1115 Everett, WA 98201-3428	**Lummi; Muckleshoot; Nisqually; Nooksack; Port Gamble S'Klallam; Puyallup; Samish; Sauk-Suiattle; Snoqualmie; Stillaguamish; Swinomish; Suquamish; Tulalip; Upper Skagit; Metlakatla**	Metlakatla, AK, Agency
TAHOLAH FIELD OFFICE	Taholah Agency 1214 Aalis St. Bldg. C Taholah, WA 98587	**Quinault**	Makah Agency Neah Bay, WA Olympic Peninsula Agency Aberdeen, WA
UMATILLA AGENCY	Umatilla Agency 46807 B. St. Pendleton, OR 97801	**Umatilla**	Lapwai, ID
WARM SPRINGS AGENCY	Warm Springs Agency 1233 Veterans Street Warm Springs, OR 97761	**Warm Springs; Burns Paiute**	
YAKAMA AGENCY	Yakama Agency 401 Fort Road Toppenish, WA 98948	**Yakama**	

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COLORADO RIVER AGENCY	Colorado River Agency 12136 1st Avenue BIA Bldg. 4 Parker, AZ 85344	**Colorado River; Chemehuevi; Fort Mojave; Havasupai; Hualapai; Tonto Apache; Yavapai-Apache; Yavapai-Prescott; Cocopah; Quechan**	Fort Yuma Field Agency Ft. Yuma, AZ
			Truxton Canon Agency Valentine, AZ
			Hopi Agency, Keams Canyon, AZ
PAPAGO AGENCY (Tohono O'Odham)	Papago Agency P.O. Box 490 BIA Circle Drive, Bldg. 49 Sells, AZ 85634	**Tohono O'odham; San Carlos Apache; White Mountain Apache**	Fort Apache Agency Whiteriver, AZ
			San Carlos Agency (IIM Accounts) San Carlos, AZ
PIMA AGENCY	Pima Agency 104 N. Main Street P.O. Box 8 Sacaton, AZ 85247	**Ak Chin Indian Community; Gila River Indian Community; Fort McDowell Yavapai; Pascua Yaqui; Salt River Pima-Maricopa Indian Community**	Salt River Field Agency Scottsdale, AZ
			San Carlos Agency (Tribal Accounts) San Carlos, AZ

UINTAH & OURAY AGENCY	Uintah & Ouray Agency P.O. Box 130 988 S. 7500 East Fort Duchesne, UT 84026	**Ute; Skull Valley; Kaibab; Moapa; San Juan Southern Ute; Las Vegas Paiute**	Southern Paiute Agency
WESTERN NEVADA AGENCY	Western Nevada Agency 705 N. Plaza St. Rm. 128 Carson City, NV 89701	**All Nevada Tribes except Moapa and Las Vegas Paiute**	Eastern Nevada Agency

8. Title III of the HR 409 would create a new Under Secretary that would to the maximum extent practicable, coordinate activities and policies of the BIA with activities and policies of the Bureau of Reclamation, the Bureau of Land Management, the Office of Natural Resources Revenue, the National Park Service, and the U.S. Fish and Wildlife Service. This provision responds to complaints by tribes that other bureaus and agencies within the Department will often enact policies or otherwise take action without considering the impacts on tribes or Indians or consulting with the BIA. Does the Department support the designation of an individual, whether or not that individual is an Under Secretary, to coordinate the activities and the policies of the BIA with other bureaus or agencies within the Department?

Response: First, consultation with tribal officials is an important component of ensuring strong government-to-government relationships with Indian tribes, and this Administration has made it a priority to ensure that Federal agencies carry out regular and meaningful consultation and collaboration with Indian tribes during the development of policies that have tribal implications, as defined by Executive Order 13175. With regard to the specific provisions of the bill, we note that the Deputy Secretary performs the duties that the newly constituted Under Secretary would perform. Moreover, as stated in the testimony for this hearing, the Department is in the process of evaluating recommendations made by the Trust Commission and any change in an organizational structure must be carefully evaluated and clearly and appropriately structured to be successful. The provisions in Title III of this legislation do not provide that clarity to the individual beneficiaries and tribes currently served by OST and the Department.

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Rep. Grijalva

H.R. 4350

1. If Great Northern Properties decided it wanted to develop its subsurface mineral rights that exist on the Northern Cheyenne Reservation, would they be able to do so?

Response: Great Northern Properties would need to complete several steps before developing its subsurface mineral rights underlying the Northern Cheyenne Reservation. Based on the type and location of the coal, development would likely have to occur via surface mining methods, and the Surface Mining Control and Reclamation Act of 1977 requires surface owner consent prior to commencing surface mining. Great Northern Properties would also have to complete a mine plan for approval by the Office of Surface Mining Reclamation and Enforcement.

2. Has Great Northern Properties ever contacted the Department of Interior about this bill? If so, what type of discussion has been had between the Department and the company?

Response: Throughout the development of this legislation, the Department, the Bureau of Indian Affairs, and the Bureau of Land Management have had numerous discussions with the Northern Cheyenne Tribe. In January 2014, the Northern Cheyenne Tribe invited the Bureau of Land Management-Montana/Dakotas State Office to meet with the stakeholders involved in the then-proposed bill. The meeting included tribal leadership, the tribe's consultant Norwest Corporation, Great Northern Properties, Signal Peak Energy, and Westmorland Resources, Inc. In addition, the BLM Montana/Dakotas State Office meets with resource users as a matter of course, and the State Office recently met with Great Northern Properties about a variety of issues. At that meeting, Great Northern Properties noted that it expected the legislation to be moving forward.

3. On the map dated February 27, 2014 where it shows the coal tracks to be conveyed to Great Northern Properties, it appears that the East Fork tracts are very close to the Crow Indian Reservation. Has the Crow Tribe expressed any concern over the conveyance of those tracts – so close to its reservation?

Response: The Bureau of Indian Affairs has not received any comments from the Crow Tribe of Montana regarding this proposed legislation.

4. In your testimony, you say that a NEPA analysis is required and therefore the 60 day timeframe for the land transfer is insufficient. NEPA is triggered by a major federal action, but since this transfer is mandated by Congressional legislation, I do not think NEPA applies. Can you comment on this?

Response: The Department believes that NEPA would apply to a limited set of agency decisions to implement the Congressionally directed transfer and the testimony suggested an appropriate timeframe – a minimum of 120 days – to provide for the necessary public input and complete the environmental analysis. Furthermore, that timeframe is appropriate to address other issues associated with the transfer

that have been part of the ongoing discussions with the Northern Cheyenne such as the appraisal methods in the following question and response.

5. The Northern Cheyenne tribe has expressed concerns over appraisal methods that could potentially harm sacred ground on their reservation. In light of this, can the Department live without an appraisal being done? Are there ways to do an appraisal without disturbing sensitive areas?

Response: As noted in our testimony on this bill, when entering into exchanges of lands or interests in lands under the Federal Land Management Policy Act (FLPMA), the Department requires equal value exchanges and completion of an appraisal consistent with Uniform Appraisal Standards. The Department understands that H.R. 4350 seeks to address tribal settlement issues beyond the scope of FLPMA and recognizes the unique role Congress can play in arbitrating difficult issues such as this. The Department does not yet know the specifics as to what methods may be necessary to complete an appraisal, if appropriate, of the Great Northern Properties mineral estate underlying the reservation, and the extent to which existing information could be used is not yet known.

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H.R. 409

6. Regarding Title II of the bill, from its text, do you understand projects to be eligible for both tribal and federal management depending on the deal struck between a particular tribe and the Secretary? Please explain.

Response: Existing law (P.L. 93-638) already allows tribes to perform only a portion of a Program, Function Service or Activity (PFSA), rather than the entirety of that PFSA. The shared responsibility is negotiated between the federal government and the individual tribe on a case-by-case basis. H.R. 409 does not appear to alter that aspect of the law. Section 205 of H.R. 409 breaks the linkage between control of a program and liability for that program, by maintaining the federal government's full liability, even if a tribe is fully managing its assets.

7. We've received testimony about the Office of Special Trustee's involvement in the appraisal process and delays associated with having both OST and the BIA involved in generating appraisals. Does the Department continue to believe that two separate bureaucracies need to be involved in the appraisal process?

Response: There are not two separate entities that handle Indian trust lands valuation. The Office of the Special Trustee for American Indians (OST) Office of Appraisal Services (OAS) performs all Indian trust lands valuation. Secretarial Order No. 3240, dated March 12, 2002 realigned the Indian trust lands valuation and appraisal functions from the Bureau of Indian Affairs (BIA) to OST and established OAS within OST. Because the BIA is responsible for other realty activity, the purpose of the realignment was to ensure the independence from BIA realty functions and accountability of OAS in the performance of Indian trust lands valuation and appraisal functions.

OAS provides real estate appraisals, appraisal reviews, real estate consulting services and technical assistance to support real estate transactions for the BIA, Office of Hearings and Appeals, Department of the Interior's (DOI) Buy Back Program (BBP) and P.L. 93-638 Tribal Realty programs.

The Director, OAS, reports to the Principal Deputy Special Trustee for American Indians. In addition to the Director, OAS is comprised of two Deputy Directors (Regional Operations and BBP Valuations), 12 Regional Supervisory Appraisers, and 38 staff appraisers.

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8. OST was created to implement certain financial reforms to the administration of Indian trust funds and was never intended to be a permanent office. From your testimony, it sounds as if those reforms have now been implemented. If this is the case, why does a separate bureaucracy like OST continue to be needed to carry out these reforms?

Response: As noted in our testimony on this bill, OST's successful performance illustrates the need to have an organizational structure dedicated solely to the accounting of tribal and individual trust assets that remains separate from the BIA to ensure that principles of fiduciary management of trust assets are upheld. It is crucial that fiduciary duties be given a higher level of care, and the best way to ensure that is to segregate the fiduciary functions from other program functions. The Department is also hesitant to support the termination of OST until there is some certainty that any reforms put in place will perform as well or better without a significant burden to taxpayers.

9. Could the Department support the bill if Title I was stricken and Title III was amended to flesh out some details? Is the Department willing to work with tribes and the Committee to restructure these offices in a way that would ensure the best service to tribes?

Response: The Department has serious concerns with Title II as well, as was articulated in our statement.