



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**MAR 23 2020**

The Honorable Betty McCollum  
Chair, Subcommittee on Interior, Environment,  
and Related Agencies  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

Dear Madam Chairwoman:

Enclosed are responses to the questions received by the Department of the Interior following Secretary David Bernhardt's May 7, 2019, appearance before your Subcommittee on the Department's FY 2020 Budget Request. We apologize for the delay in our response.

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

Sincerely,

Cole Rojewski  
Director  
Office of Congressional  
and Legislative Affairs

Enclosure

cc: The Honorable David Joyce  
Ranking Member

Questions from Chair McCollum

**Untimely Tribal Consultation**

In Mr. Cameron's opening statement before the subcommittee on Oversight and Investigations he stated:

“After much input from the Department's Career Senior Executive Staff, Congress, governors, and external stakeholders, **including consultations with Indian tribal leaders**, the map was finalized, and the unified regions took effect on August 22, 2018.”

According to your website, the unified regional boundary map was published July 20, 2018. However, the first tribal consultation occurred on June 3<sup>rd</sup> and the final consultation occurred on August 23<sup>rd</sup>. It is clear from this timeline that tribal consultation was an afterthought to the proposed reorganization.

In addition, during the same hearing that Mr. Cameron testified before the Oversight and Investigations subcommittee, Chairman Frazier of the Cheyenne River Sioux Tribe described the so-called tribal consultation:

“When they came to the region--Great Plains region--we were given a picture of a map. That's all we were given. We weren't given any plans of the purpose and how or why this change is needed or how it's going to benefit our people. It was never done. That's all we were given.”

Now, despite repeated statements from Administration officials that the Bureau of Indian Affairs (BIA) is not part of the proposed larger reorganization, we are hearing from Indian tribes that there are various actions being taken that look like an informal reorganization, such as headquarters employees being moved out west.

Most recently, three tribes located in Arizona – Salt River Pima Maricopa Indian Community, the Pascua Yaqui Tribe, and the Fort McDowell Yavapai Nation – have been notified that the Salt River BIA Agency office will be consolidated into other BIA Western Region agencies or into the BIA Western Region Office.

**McCollum Q1: Why was tribal consultation not completed before finalizing the unified regional boundary map?**

**Answer:** The Department of the Interior conducted 11 formal consultation sessions and an additional 7 listening sessions at tribal offices and facilities, large gatherings, and other venues. Transcripts of all 18 sessions were made available to the public at <https://www.bia.gov/as-ia/raca/doi-reorganization>. Two Tribal Leader roundtable meetings on this issue were also held with the Secretary. Thirty two individuals or groups submitted comments in response to the tribal listening sessions. As a result, the

Bureau of Indian Affairs, the Bureau of Indian Education, and the Office of the Special Trustee for American Indians have not realigned their regional field structure to the new unified regions. Any realignments within the Bureau of Indian Affairs are not part of the Department's reorganization efforts.

**McCollum Q2: Is BIA being reorganized, either as part of the larger Department reorganization or separately? What funds have been and are being used to relocate employees from headquarters and what is the total cost incurred to date? What tribal consultation has occurred on a BIA reorganization whether or not it is part of the larger Department reorganization, including the movement of employees from headquarters?**

**Answer:** BIA is not being reorganized.

**McCollum Q3: Is the Department proposing to consolidate the Salt River BIA Agency office into either the BIA Western Region agency or into the BIA Western Region Office? If so, please describe the tribal consultation that occurred, when the proposed move will take place, and how this proposed move conforms with prior statements that the BIA is not part of a reorganization.**

**Answer:** The Bureau is proposing to consolidate operations of the Salt River Agency with the Pima Agency. This consolidation is not part of any larger BIA reorganization. The Bureau reviewed agency operations and requirements and determined that reduced agency staffing levels afforded the opportunity for consolidation. All three affected Tribes served are Self-Governance Tribes that have taken over most functions and consolidation would optimize the remaining services BIA provides for the Tribes. In December 2018, the Bureau began discussions with the Salt River Tribe and, in April 2019, followed-up with a meeting that included all three Tribes. Two separate Tribal Leader letters were sent, to which we have received no response, and we have agreed to reconvene every quarter to assess progress.

### **Reorganization**

The budget requests \$27 million for the reorganization, \$25 million of which is in the jurisdiction of the Interior subcommittee. Yet, the budget justifications do not explain what the American taxpayers get for their money.

On April 30, 2019, Principal Deputy Assistant Secretary Scott Cameron testified on the DOI reorganization proposal before the House Natural Resources subcommittee on Oversight and Investigations. Mr. Cameron stated:

“We are proceeding deliberately and intentionally on all aspects of reorganization.” Proceeding deliberately and intentionally suggests that DOI has a plan that will guide the implementation of the proposed reorganization.

**McCollum Q4: Does DOI have a comprehensive plan for the proposed reorganization? If there is a plan, include it in the response to this question. If there is not a plan, describe the rationale for attempting to reorganize an entire Department without a plan.**

**Answer:** The Department has shared with the Committees a significant amount of information on our reorganization efforts. The first 2019 Reorganization Spend Plan was provided to Congress on May 8, 2019. The 12 unified regions, which became final on August 22, 2018, align most of the bureaus to shared geographic boundaries and shared geographic perspectives.

**McCollum Q5:** The fiscal year 2019 enacted bill provided \$14 million for the reorganization with the direction that the Department must develop a concrete plan for how it will reshape its essential functions and must provide a report to the Committee 30 days prior to obligating the funds provided for the reorganization.

On May 8, 2019, a day after the hearing, the Committee received a two page word document outlining the 2019 spending plan.

**McCollum Q6: Does this plan incorporate the Bureau proposals on how this funding should be spent or was this plan developed by Department leadership?**

- **How were the Bureaus consulted on the proposed plan?**

**Answer:** The 2019 Reorganization Spend Plan was developed by the Department and shared with bureau leadership prior to being released. The Shared Services components of the plan are coordinated centrally to layout the Department-wide implementation. A Shared Services Advisory Group has been established within DOI to continue this collaboration.

In his testimony before House Natural Resources subcommittee on Oversight and Investigations, Mr. Cameron stated that BLM is having conversations with headquarters staff about who might want to move West.

**McCollum Q7: Will the Department follow the Subcommittee's reprogramming requirements before carrying out employee relocations?**

**Answer:** The Reorganization Plan was submitted to the Committees.

**McCollum Q8: Has the Department conducted an analysis of operating costs under the current and proposed organizational structures? If it has, include the analysis in the response to this question. If it has not, explain how it is possible for the Administration to talk about cost savings without any data to back up these claims.**

**Answer:** The Department provided Congress with both a Reorganization Spend Plan and a cost-benefit analysis for the relocation of BLM's headquarters to Grand Junction, Colorado, in addition to other information.

### **Proposed Reorganization Plan Required by Executive Order 13781**

Congress, specifically House Natural Resources, has asked DOI to provide the plan submitted to OMB as required by Executive Order 13781. Yet this plan has not been made available.

**McCollum Q9: Please provide the reorganization plan that was submitted to OMB to satisfy the requirement of section 2(a) of Executive Order 13781.**

**Answer:** The Department provided a copy of that document to Congress.

### **Vision for the Department of the Interior**

The Department of the Interior is the steward of 20% of the Nation's lands including national parks and wildlife refuges, public lands and minerals, responsible for upholding Federal trust responsibilities to Indian Tribes and Alaska Natives and providing financial and technical assistance for the insular areas, responsible for wildlife conservation, historic preservation, endangered species and mapping, geological, hydrological, and biological science for the Nation.

**McCollum Q10: Given this responsibility as steward of our Nation's natural and cultural resources, why is economic growth and prosperity presented as the top priority in the budget in brief? Is it a higher priority for the Department than conservation or public access?**

**Answer:** The Department and its bureaus continue to implement the laws enacted by Congress.

### **Oil and Gas Decisions**

There have been several recent court rulings on BLM leases in Wyoming and Montana, offshore leases in the Arctic and Atlantic, and royalty valuation that suggest your Department is rushing ahead with energy development at the expense of adhering to requirements in the National Environmental Policy Act or the Administrative Procedures Act.

**McCollum Q11: What steps will DOI immediately take to ensure the leasing programs, and process for determining royalty valuation, has the guidelines and protocols in place to ensure conformance with the law?**

**Answer:** The Department and its bureaus continue to implement the laws enacted by Congress.

### **Freedom of Information Act**

In December, the Department published a notice in the Federal Register proposing to amend how the Department responds to requests under the Freedom of Information Act. The Department states the reason for the proposed change is that the number of inquiries has increased 30 percent from fiscal years 2016 to 2018, and that requests to the Office of the Secretary went up by 120 percent.

The Department also says that because it's not responding to these requests in a timely manner, it's being sued and is now incurring litigation costs; approximately \$1 million as the Committee understands.

Predictably, the proposal has drawn a lot of criticism and it wouldn't be surprising if the Department is sued if the change is actually implemented.

The Department did not come to the Subcommittee to explain the problem and ask for either additional funding or even a reprogramming of current funding. Instead, the Department decided the best way to deal with the problem of too many questions was to change the rules for how you go about answering those questions.

#### **McCollum Q12: If the subcommittee were to include extra funding for personnel in the Interior bill, which bureaus or offices would most benefit from additional staff?**

**Answer:** The Department's final rule was published on October 24, 2019, and received bipartisan support.

### **Climate Change**

In November 2018, the Congressionally-mandated Fourth National Climate Assessment was released. This document is considered the authoritative assessment of the causes of climate change and its expected impacts for the United States. Many Department of the Interior scientists were part of the team of more than 300 of the country's top scientists who produced it.

The Assessment states that, "the recent expansion of oil and gas extraction activities throughout large areas of the United States demonstrates how policy, economics, and technology can collectively influence and change land use and land cover." "Decisions about land use, cover, and management can help determine society's ability to mitigate and adapt to climate change."

#### **McCollum Q13: Please document how climate change is factored into decisions about public land use and management?**

**Answer:** The Department and its bureaus carefully consider all feedback as they carry out their statutory responsibilities.

The US Geological Survey released a report in November 2018 outlining the carbon dioxide emissions associated with extraction and combustion of fossil fuels produced from Federal lands.

**McCollum Q14: How does the Department use this data when making management decisions?**

**Answer:** See the response to the previous question.

### **Climate Change and the Endangered Species Act Regulations Revisions**

On July 25, 2018, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service published three proposed rules that would significantly alter the implementation of the Endangered Species Act (ESA).

One of the revisions would now ignore harm caused by federal actions if those harms are manifested through “global processes.”

**McCollum Q15: Is “global processes” another way of saying climate change?**

**Answer:** An objective of the revision, published in final form in August 2019, is to clarify the meaning of certain ambiguous terms that are in the ESA itself but not defined in the Act.

**McCollum Q16: Will federal actions that result in significant increases in greenhouse gas emissions still require ESA consultation?**

**Answer:** The revision will not change how the Service considers greenhouse gas emissions.

The proposed revisions also alter the process for critical habitat designation stating that it is not “prudent” when climate change is the primary threat to a species.

**McCollum Q17: Why does DOI not think it is not prudent to protect species endangered by climate change?**

**Answer:** Under the revision, designation may not be prudent where threats to the species’ habitat stem solely from causes that cannot be addressed by management actions that may be identified through consultation under section 7(a)(2) of the Act.

Mr. Bernhardt has stated in testimony before Congress that he won’t revise regulations for oil and gas leasing to combat climate change because Congress has not directed him to regulate

carbon emissions, yet he is willing to revise regulations for the Endangered Species Act to omit climate change impacts even though Congress hasn't revised the Act.

**McCollum Q18: Can you explain this inconsistency?**

**Answer:** The Department does not believe there is any inconsistency between the longstanding Service guidance and the revised regulations.

**Oil and gas activity in National Monuments**

For several years now the Interior appropriations bill has carried a general provision prohibiting the Department from conducting certain Mineral Leasing Act activities within the boundaries of National Monuments. Specifically, the relevant parts say:

No funds provided in this Act may be expended to conduct preleasing, leasing and related activities under ... the Mineral Leasing Act ... within the boundaries of a National Monument ... as such boundary existed on January 20, 2001 ....

In December of 2017, the president issued a proclamation modifying the boundary of the Grand-Staircase Escalante National Monument. The legality of that proclamation is being challenged in court.

A month later, in January of 2018, the Bureau of Land Management placed a notice in the Federal Register stating that the Bureau intended to prepare a new Resource Management Plan which would include plans for oil, gas and coal development in the areas newly excluded from the Monument under the president's proclamation.

Current law says that no "preleasing" activities may take place within the boundaries of a Monument as those boundaries "existed on January 20, 2001." It doesn't say "as those boundaries may have been modified." It explicitly says as they "existed" in 2001.

**McCollum Q19: How does the Department square the language in the appropriations bill with the Bureau's activities as not being an Anti-Deficiency Act violation? Isn't BLM undertaking preleasing activities within the boundaries of the Monument as those boundaries existed in 2001?**

**Answer:** The language does not prohibit the BLM from initiating and engaging in land use planning under the Federal Land Policy and Management Act (FLPMA).



**McCollum Q20: Is there a Solicitor’s opinion that supports the Department’s position, and will the Department provide that opinion to the Committee?**

**Answer:** Land use planning activities authorized by FLPMA are statutorily and conceptually separate from activities authorized by the Mineral Leasing Act, which would be prohibited by the language cited in your question.

### **Science Reductions**

In Secretary Bernhardt’s written response to the Senate during the confirmation process, he stated:

“The Department of the Interior’s role is to follow the law in carrying out our responsibilities using the best science. “

**McCollum Q21: How does that fit with the massive cuts being proposed to science?**

**Answer:** The Department’s request supports management strategies and decisions across the Department, including monitoring, research, and mapping. The budget also supports scientific capabilities that can be applied to safeguard communities against natural hazards such as earthquakes, volcanoes, landslides, and floods.

The 2020 budget proposes to cut funding for the U.S. Geological Survey by \$177 million or 15%.

**McCollum Q22: Has the Department done any analysis on how a reduction of this magnitude will impact USGS science and climate change research?**

**Answer:** The budget reflects the Administration’s continued commitment to balance protection and sustainable use of resources in ways that provide conservation stewardship of land and resources, enhance the safety of communities, increase energy security, and allow Americans to prosper.

### **NPS Budget Cuts**

The Subcommittee disagreed with DOI's decision to reopen national parks during the federal government shutdown, using fee revenues in place of the funding this subcommittee appropriates for operational activities.

Because of that decision, national parks sites remained open without adequate staff and services to protect the parks and their visitors.

The Government Accountability Office is reviewing the matter at the request of the Subcommittee and their legal opinion will inform our next steps to ensure this does not happen again and that the intent of Congress is fulfilled.

The 2020 budget proposes to cut the Park Service by \$481 million and reduce staffing by more than 400 full time equivalents from the fiscal year 2019 enacted level.

The consequences of an understaffed and under-resourced Park System are still raw.

**McCollum Q23: How can DOI propose these cuts with a straight face?**

**Answer:** The request balances the needs for fiscal prudence, continued delivery of critical missions, and support to advance priorities.

### **Ethics Problems at the Department**

Under this Administration, there has been no shortage of ethics issues at the Department. On the same day that Mr. Bernhardt made announcements about issuing new directives on ethics, the Office of Inspector General confirmed that it opened ethics investigations into his own actions.

**McCollum Q24: How many active ethics investigations into Mr. Bernhardt's activities are there?**

**Answer:** The investigation you refer to in your question was reported in the media in April 2019. The Department's Ethics Office has reviewed many of the matters that were referenced and has determined the Secretary was in compliance with his ethics agreement and all laws.

**McCollum Q25: How many other senior Department officials are under investigation for ethics or other types of violations?**

**Answer:** Such investigations would be considered ongoing personnel actions and not appropriate for comment.

## Chlorpyrifos

Chlorpyrifos is a widely used pesticide that the United States Court of Appeals for the Ninth Circuit ordered EPA to bar the use of because of developmental disabilities and its link to other health problems in children. This pesticide is also highly toxic for all animals.

According to the NY Times article on March 26, 2019, “Interior Nominee Intervened to Block Report on Endangered Species”, Fish and Wildlife Service scientists concluded that chlorpyrifos, and another pesticide malathion “were so toxic that they ‘jeopardize the continued existence’ of more than 1,200 endangered birds, fish and other animals and plants.” The Service was planning to make its findings public in November 2017.

**McCollum Q26: Is it typical for a Secretary or Acting Secretary to become involved with a Draft Biological Opinion? Why did Mr. Bernhardt become involved?**

**Answer:** On December 9, 2019, the Department’s Inspector General, delivered a Final Report titled *Report of Investigation: Alleged Improper Influence by the Secretary of the Interior in the FWS’ Scientific Process*, available here:

<https://www.doioig.gov/reports/investigative-report-alleged-improper-influence-secretary-interior-fws-scientific-process>, that responded to the misleading media report referenced in your question.

**McCollum Q27: Did representatives of the White House have conversations with the Department of the Interior on the impact of organophosphates such as chlorpyrifos and malathion on species? If so, is this standard practice.**

**Answer:** See the response to the previous question.

**McCollum Q28: How many meetings did Mr. Bernhardt have with Service employees to discuss this Draft Biological Opinion?**

**Answer:** See the response to the previous question.

**McCollum Q29: Emails show that Service staff did have access to actual pesticide usage and measurements of pesticide concentrations, yet staff said in these documents that historic usage data are not enough to predict how pesticides might be used.**

- Explain this position in terms of the science behind the decline in the populations of the Cape Sable seaside sparrow.
- Didn’t the Service conclude that this species was in jeopardy because of drifting sprays of chlorpyrifos?

**Answer:** The Service has not reached a conclusion about potential effects of the registration of chlorpyrifos on the Cape Sable seaside sparrow.

**McCollum Q30: Did an October 2017 summary of a Draft Biological Opinion by Service staff state that “For many vulnerable species, a single exposure could be catastrophic”?**

**Answer:** Review of the biological opinions is an ongoing administrative matter.

According to the New York Times article, Daniel Jorjani, the Principal Deputy Solicitor exercising the authority of Acting Solicitor and Interior solicitor nominee, who also issued an opinion in December 2017 that changed the long-standing interpretation of the Migratory Bird Treaty Act to the benefit of industry, was also involved in meetings.

**McCollum Q31: To address the many concerns around this process, the individuals involved, and the science that is being used, does the Service plan to release the Draft Biological Opinion that was to be released in November 2017 and make this process more transparent?**

- **What is the current timeframe for releasing a Biological Opinion?**

**Answer:** Review of the biological opinions is an ongoing administrative matter.

Questions from Ms. Pingree

**Land and Water Conservation Fund**

I am opposed to the cuts proposed by the Administration to the Land and Water Conservation Fund. This program has overwhelming support, and is in need of its full authorized level of \$900 million which I support.

**Pingree Q1: Given the support professed for LWCF by this Administration during the passage of S47, the John D. Dingell Jr. Conservation, Management and Recreation Act, what possible justification does the Department have for cuts to this program?**

**Answer:** The Department's budget prioritizes taking care of the assets that we manage. The President's recent call to Congress to send him a bill that fully and permanently funds the Land and Water Conservation Fund and restores our national parks is historic and we urge Congress to enact that legislation.

**Pingree Q2: What would be the possible further program successes that could be reached with an increase to the fully authorized level as provided in S47?**

**Answer:** The Department remains focused on caring for the extraordinary assets that the Congress has entrusted to it.

**Aquatic Animal Drug Approval Program / Fisheries Science Centers**

The Committee has diligently supported increases to the Aquatic Animal Drug Approval Program over the past several years. This has had huge benefits to states with large fishery/aquaculture areas. Yet, due to attrition there seems to be even less funding available.

**Pingree Q3: Can you please provide the Committee with any reprogramming or other reallocation of funds that have occurred to the AADAP line in the past two fiscal years?**

**Answer:** There have been no reprogrammings or reallocations of AADAP funds in the past two fiscal years.

**Pingree Q4: Similarly, can you supply the Committee with an understanding of the vacancies at the Western Fisheries Resource Center at USGS and what is being done to insure that the hard work of the Center and other USGS agencies is not impaired due to vacancies?**

**Answer:** There are vacancies related to regional and national fisheries programs, including fish health, and the USGS is working to fill the positions as soon as possible.

Questions from Mr. Joyce

**Great Lakes Restoration Initiative**

Although funding for the Great Lakes Restoration Initiative (GLRI) resides within the Environmental Protection Agency's (EPA) budget, EPA is required to use these funds to coordinate with several other federal agencies – like the Department of the Interior – to carry out Great Lakes restoration work. As of October 2018, the EPA has sent \$607 million to Interior bureaus to implement the GLRI.

**Joyce Q1: Assuming Congress restores full funding for the GLRI, would you please explain why the Department should continue to receive funding for this initiative in fiscal year 2020?**

**Answer:** The Department and its bureaus work closely with the Environmental Protection Agency and other agencies to provide important science and resource management activities to meet the GLRI Action Plan goals.

**Asian Carp**

The Department of the Interior's fiscal year 2020 budget proposal includes a combined \$13.5 million in the US Fish and Wildlife Service and US Geological Survey budgets to control invasive Asian carp and to prevent them from entering the Great Lakes. This subcommittee's investments in recent years in Asian carp control and prevention now easily numbers in the tens of millions of dollars.

**Joyce Q2: Would you update the subcommittee on Interior's accomplishments to date with these recent investments in Asian carp control and prevention, and your objectives for fiscal year 2020?**

**Answer:** The U.S. Fish and Wildlife Service and the U.S. Geological Survey have important roles in the effort to control Asian Carp in the Great Lakes region. FWS has offered leadership and coordination on Asian carp interagency partnerships and programs; technical assistance to agency partners on monitoring, response and prevention actions; partnering on the development of new control tools and technologies; and direct funding support for state-led Asian carp management projects in the Upper Mississippi River and Ohio River basins. FWS resources have leveraged state contributions and supported the priorities of the multi-state Asian Carp Control Strategy Frameworks for those basins. To date, Silver and Bighead carp have not been established in the Great Lakes, and the leading edge in the Illinois Waterway has remained almost 50 miles from Lake Michigan since 2008. Specific USGS annual research objectives are shaped in close

coordination with partners and are described, along with USGS accomplishments, in the annual Asian Carp Action Plans and Summary Reports (<https://asiancarp.us>).

For the past two budget cycles, my Great Lakes colleagues and I have provided funding to the US Fish and Wildlife Service for a contract fishery on Asian carp. God forbid if these things ever get in the Great Lakes, we better be really good at catching them. And right now, unfortunately, the Mississippi River Basin offers plenty of opportunity to do so.

**Joyce Q3: Would you please update the subcommittee on the US Fish and Wildlife Service's efforts to start up a contract fishery for Asian carp?**

**Answer:** For several years, FWS has also funded contract commercial fishing in Illinois using Great Lakes Restoration Initiative funding. To date, Illinois has removed over 8 million pounds of Asian Carp from the leading edge of the population. In 2018, FWS received funding to support contract commercial harvest in the Upper Mississippi and Ohio River systems but we have not yet received harvest numbers from these systems.

**Joyce Q4: Is it possible to eradicate Asian carp in the Mississippi River Basin, and would it be possible to eradicate them if they ever get into the Great Lakes Basin?**

**Answer:** The key to successfully achieving control is detecting invasions early and responding quickly with eradication or control efforts. Management actions to control or slow the spread of Asian carp were not instituted until they had become abundant and widespread in the sprawling and complex in the Mississippi River Basin. The window of opportunity to eradicate Asian carp from that system has most likely closed, given current and developing technology.

If Asian carp become widely established throughout the Great Lakes, as in the case of the Mississippi River Basin, eradication would be an unrealistic management goal in the Great Lakes. While USGS research has found solutions to manage broadly distributed aquatic invasive species in the Great Lakes, such as sea lamprey, the best means by which to reduce costs and impacts of invasive species is preventing their introduction in the first place – which is why such extensive measures are being taken to protect the Great Lakes from the establishment and spread of Asian carp.



### **Harmful Algal Blooms**

The US Geological Survey (USGS) budget proposes a reduction of roughly \$2.3 million and 9 full time equivalent personnel from harmful algal bloom research. The USGS has been a key partner in the development and testing of a promising, environmentally friendly, and cost-effective treatment technique along Lake Erie. I am concerned that the proposed cut to harmful algal bloom research will impact this important work.

**Joyce Q5: Please tell the subcommittee where and how the USGS proposes to scale back its harmful algal bloom research.**

**Answer:** The 2020 President's Budget provided \$3.1 million for continued Harmful Algal Bloom research within USGS. In FY 2019 Congress provided \$2.1 million in unrequested increases in both Environmental Health and Water for Harmful Algal Bloom research. The USGS is employing the 2019 increase to support applied research that improves the understanding of mechanisms that result in toxins being present in harmful algal blooms.

### **Heritage Partnership Program (National Heritage Areas)**

National Heritage Areas tell the story of America's diverse culture and heritage. The Ohio & Erie Canalway National Heritage Area in my district in northeast Ohio preserves and celebrates the trails and towns that grew up along the first 110 miles of the canal that helped my home State of Ohio and our Nation grow. According to a recent community and economic development study, this heritage area generates \$408 million in direct and indirect economic impact, supports 3,200 jobs and generates \$35 million in tax revenue.

The key to successful National Heritage Areas is developing collaborative public-private partnerships. Ohio & Erie Canalway works with more than 150 partners in the region, including local governments, park agencies, foundations and corporations.

The fiscal year 2020 budget provides funding for Heritage Partnership Program (HPP) Administrative Support, but does not propose funding for HPP Commissions and Grants.

**Joyce Q6: How do you expect the proposed decline in federal support to impact National Heritage Areas' ability to leverage funding from other sources?**

**Answer:** National Heritage Areas can continue to use their federal designation as an asset and should continue to work with their partners to achieve sustainability. They can also use unspent federal allocations to continue their work.

The John D. Dingell, Jr. Conservation, Management, and Recreation Act, signed into law in March, designates a number of new National Heritage Areas. I was honored to attend the bill signing ceremony at the White House.

**Joyce Q7: Does the fiscal year 2020 budget provide support for these new sites?**

**Answer:** The John D. Dingell, Jr. Conservation, Management, and Recreation Act was enacted after the formulation of the FY 2020 Budget.

**Joyce Q8: How will more established sites be impacted if overall funding for National Heritage Areas is cut and support is provided for these new sites?**

**Answer:** The NPS would work to determine the most appropriate funding allocation for authorized sites.

### **USGS 3D Elevation Program Partnership (3DEP)**

The U.S. Geological Survey's 3D Elevation Program Partnership (3DEP) acquires high-resolution, three-dimensional elevation data for the Nation in support of management of energy resources and critical minerals assessments, natural resources conservation, public safety and job creation. Dozens of federal agencies and hundreds of State, Tribal, and local agencies rely on 3DEP data. The fiscal year 2020 budget for the National Geospatial Program, within which 3DEP resides, is \$68 million and 263 FTE, absorbing \$177,000 in fixed costs. It is \$1.6 million below the fiscal year 2019 enacted level and does not appear to have included the \$1.5 million added by the Congress for 3DEP.

**Joyce Q9: What is the exact amount requested for 3DEP in fiscal year 2020 compared to the fiscal year 2019 enacted level?**

**Answer:** The amount requested for 3DEP in the FY 2020 President's Budget was \$36.0 million (including data and tech support), which is \$1.5 million less than the FY 2019 Enacted level of \$37.5 million.

3DEP had mapped 53% of the Nation by the end of 2018, and its stated goals are to map 72% by the end of 2020, and 100% by the end of 2026.

**Joyce Q10: Given the \$1.5 million increase in fiscal year 2019, and assuming the same amount is appropriated for fiscal year 2020, how much sooner than 2026 can we get to 100% coverage?**

**Answer:** On average, 80 percent of annual 3DEP data acquisition investments are from partner (non-USGS) funding. Reaching 100 percent coverage depends on the level of

funding leveraged from all of the contributing partners at the federal, state, and local government level.

### **Energy**

In an April 12, 2019 letter to the Department of the Interior, the Government Accountability Office (GAO) called attention to high priority open recommended actions for Interior to take to improve Department operations. One recommendation is to improve the Bureau of Indian Affairs' management of energy development on Indian lands. GAO recommends that Interior develop a documented process to track its review and response times to improve efficiency and transparency. Effective energy development programs help Tribes use and conserve natural resources and provide for greater revenue and job creation.

**Joyce Q11: How does the fiscal year 2020 budget proposal address GAO's concerns and better assist Tribes in the management, development, and protection of Indian natural resource assets?**

**Answer:** The funding provided for 2020 will allow BIA to improve internal controls, provide system enhancements, track processes, and work with our federal partners to align resources all in support of efficient and transparent energy development in Indian Country.

### **BIA Public Safety & Justice**

This subcommittee restored the public safety and justice facilities replacement program to \$18 million in fiscal years 2018 and 2019. We did this in response to testimony from Tribes that the construction grants program within the Department of Justice was not meeting the need. It is therefore disappointing to see the program eliminated in the fiscal year 2020 budget request for the Bureau of Indian Affairs (BIA)—particularly since it does not qualify for funds under Interior's new Infrastructure Fund legislative proposal. The accompanying report language for fiscal year 2018 indicated a priority for detention facilities. The fiscal year 2019 report language indicated no such priority. This change in congressional intent was in response to further testimony from Tribes that more than just detention centers were badly needed, such as a new police station on the San Carlos Apache reservation.

**Joyce Q12: Has the BIA changed its priority-setting criteria for fiscal year 2019 in response to this change in Congressional intent?**

**Answer:** We understand that the intent of the report language is to ensure funding of the highest priority public safety facility projects. The current state of many detention

facilities elevates them to the highest priority for replacement and repair to ensure a safe and humane environment for Indian Country inmates.

**Joyce Q13: Is a new police station on the San Carlos Apache reservation in the running for fiscal year 2019 funding? If not, is the police station at least on a priority list that you can share with this subcommittee, so that we can get a better sense of the costs of working our way further down that list?**

**Answer:** Due to the current state of many detention facilities across Indian Country, it is not likely that a new police station will rank as a high enough priority to receive FY 2019 funding.

### **Tribal Courts**

The U.S. Commission on Civil Rights reports that Tribal court funding is insufficient to allow for the hiring of key personnel such as prosecutors, public defenders, and probation officers. The Bureau of Indian Affairs' budget to support 196 Tribal courts is roughly \$31 million, which works out to about \$160,000 per court. Some Tribes try to bridge the funding gap by competing for grants from the Department of Justice and are forced to eliminate positions when grants expire. Some Tribes ask staff to take on dual roles, such as law enforcement officers at three New Mexico pueblos who also served as prosecutors despite not having any legal training.

**Joyce Q14: What is the Federal Government's fiduciary responsibility to fund Tribal courts, and, does the Federal Government have an obligation to do more than it is currently doing?**

**Answer:** The provisions at 25 U.S.C. § 3611 tasks BIA with three primary functions: (1) schedule and coordinate independent tribal court reviews and complete these reviews annually; (2) schedule training and technical assistance to tribes and tribal organizations focusing on setting up and empowering tribal courts; and (3) study and conduct research on tribal justice systems.

### **Law Enforcement Officers**

We are hearing from Tribes about the high rate of turnover for Bureau of Indian Affairs (BIA) and Tribal law enforcement officers. Officers are hired and trained for a couple of years, and then recruited away by other Departments offering better salaries and benefits.

**Joyce Q15: Does the BIA have the same hiring and salary authorities as other Federal agencies hiring police officers, and, if not, can you please highlight how the BIA is at a disadvantage?**

**Answer:** BIA generally has the same hiring and salary authorities as other federal agencies hiring police officers. Issues related to recruitment and retention of BIA law enforcement officers issues arise for a variety of reasons: 1) the Indian Preference requirement often reduces the number of eligible candidates, 2) the rural and remote locations of the positions limits applicants, and 3) BIA and tribal public safety positions are on an average one to two salary grades below other federal law enforcement programs.

Ten years ago—almost to the day—this subcommittee held a hearing on law enforcement issues in Indian Country. The BIA reported that its funding at the time met only 42 percent of need for law enforcement personnel in Indian Country.

**Joyce Q16: What is the current estimate of the percent of need met for law enforcement personnel in Indian Country?**

**Answer:** The Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country, transmitted to Congress in June 2018, provides an estimate of total annual costs to operate appropriate-sized, fully staffed law enforcement programs in every tribal community. Excluding Public Law 83-280 (PL 280) states, where Indian reservations are under the criminal jurisdiction of state and local law enforcement, BIA appropriations meet 36 percent of estimated law enforcement program costs. The percentage drops to 22 percent when including PL 280 jurisdictions.

### **Transparency**

One of the complaints we often hear from Tribes is that they are kept in the dark about how funding is calculated and allocated. In January, the Government Accountability Office recommended that Indian Affairs develop a process so that all regional and agency offices consistently provide Tribes with documentation on calculations and methodologies to identify

resources available to administer a program using a self-determination contract. The Department of the Interior agreed.

**Joyce Q17: When does Indian Affairs plan to develop and publish updated procedures to respond to Tribal inquiries regarding available resources?**

**Answer:** Indian Affairs is currently developing a consolidated reference for funding allocation and calculation methodologies in order to more efficiently and accurately allocate funding to tribes and address GAO recommendations.

**Joyce Q18: For appropriations that are distributed by formula, is it reasonable to expect that all such formulas—and the data that feed into them—are published online for all Tribes to see?**

**Answer:** Indian Affairs is exploring the best delivery mechanisms for communicating distribution formulas, with online access as one of the options.

### **International Conservation**

One bright spot in the Department of the Interior's fiscal year 2020 budget proposal is an \$800,000 increase to the US Fish and Wildlife Service's International Affairs program in order to increase efforts to fight wildlife trafficking. This is an area of the budget where the Department has routinely requested funding increases over the years and Congress has been happy to oblige. I think we can all agree that we want to see an end to the trafficking of critically endangered animals.

**Joyce Q19: Please update the subcommittee on the work of the American attachés stationed throughout the world to fight wildlife trafficking, and how are we measuring progress in this effort?**

**Answer:** The FWS manages the attaché program. There are seven attachés in Lima, Libreville, Dar es Salaam, Pretoria, Mexico City, Bangkok and Beijing. FWS is seeking to place new attachés in India, Kenya, Vietnam, Brazil, and at the U.S. Africa Command in Germany. These additional five positions will support focus countries identified in the END Wildlife Trafficking Act.

FWS measures progress through implementation of its five-year strategic plan to accomplish five objectives that underpin its mission: the disruption and dismantlement of international trafficking organizations, improved law enforcement source development, continued development of host nation capabilities, expanded coalitions, and increased domain awareness.

**Joyce Q20: Why the proposed \$5 million cut from Multinational Species Conservation Fund grants—is there a concern about the program’s effectiveness?**

**Answer:** The funding cut reflects investment in higher priority programs.

### **Commercial Use Authorization Permits**

In April 2018 the National Park Service (NPS) finalized two proposals to increase park entry fees, and standardize requirements and impose fees for Commercial Use Authorization (CUA) permits. I am told that NPS did not conduct a formal or transparent process when formulating or finalizing these proposals. Further, although the CUA final plan is not to go into effect until October 1, 2019, various parks have already started enforcing the new requirements, causing confusion and raising further concerns for the motorcoach, tour and travel industry.

**Joyce Q21: Where do the park entry fee increase and the new CUA requirements stand, in terms of implementation by the NPS? Are individual parks implementing both of these proposals, and if so, are they being implemented uniformly?**

**Answer:** The proposals underwent a public process. The CUA plan was originally scheduled to go into effect in October, 2019, but implementation will be delayed as necessary to ensure concerns have been adequately addressed.

**Joyce Q22: What actions has the Department/NPS taken to work with the motorcoach, tour and travel industry, to address their concerns and alleviate unnecessary burdens?**

**Answer:** Following the recommendations of the commercial road-based tour industry, the CUA changes will be uniformly implemented with a fee structure consisting of a \$300 application fee and a \$5 per-person CUA management fee. In addition, the per-person CUA management fee will be deducted from the cost of the per-person entrance fee at those parks that charge an entrance fee. Finally, the NPS plans to launch a service-wide CUA application and reporting website that will allow a tour company to submit a single application for multiple parks and simplify the reporting process.

In order to facilitate the implementation of the new requirements, the program office has hosted multiple webinars for NPS staff on various aspects of the road-based commercial tour CUA program, including CUA insurance requirements and CUA accounting. The NPS also maintains a robust internal web site with guidance and tools available to all NPS employees.

**Joyce Q23: What outreach or training has NPS provided to the parks in support of implementation? Also, what outreach has NPS provided to the motorcoach, tour and travel industry to prepare them for the changes?**

**Answer:** See the response to the previous question.

**Joyce Q24: Does NPS plan on making additional changes to the park entry fee or CUA final plan? If so, should, at a minimum, the October 2019 date and any actions taken by individual parks be suspended, until appropriate modifications to the plan are finalized – to provide stability for the industry?**

**Answer:** The NPS has continued to engage with stakeholders to identify concerns and make appropriate adjustments.

**Joyce Q25: During the April 24, 2019 NPS webinar, it was stated that NPS issued more than 6,000 total CUAs in 2018. How many of those were transportation CUAs? Why would there be a uniform price and process for road-based commercial tour operator CUAs and not the same uniformity for transportation CUAs? Are annual reports required for transportation CUAs? Since that could theoretically lead to a requirement of two (different) CUAs for the same trip, wouldn't that lead to double counting of visitors?**

**Answer:** The NPS issued 201 transportation CUAs in 2018. Road-based commercial tour CUAs are the only type of CUA with standard processes and fees. The NPS implemented these standards in collaboration with stakeholders that expressed concern about the complexity of operating across multiple parks with different procedures. Every CUA holder in the NPS must submit the OMB approved CUA Annual Report, including transportation CUA holders. The parks are able to differentiate and ensure counts are not duplicative.

**Joyce Q26: Will implementation be delayed if the CUA online portal is not ready in advance of the October 1, 2019 implementation deadline? Where will the list of parks requesting/receiving waivers from the CUA program be posted? Will the process for how to request a waiver also be made public?**

**Answer:** The NPS announced last summer that implementation would be delayed. A list of parks that have requested and received waivers to opt of the standard process or fees, as well as the waiver guidance material, is posted on the program webpage.



### **Lesser Prairie Chicken**

The Department of the Interior has a difficult mission in helping species at risk. Recently, private investment has begun to show promise in helping fund these efforts. For example, public-private conservation solutions implemented at the local level for the lesser prairie-chicken have secured over half of the desired conservation results sought by the US Fish and Wildlife Service and its state and private partners.

**Joyce Q27: Please explain how the Department intends to encourage this cost-saving approach, enact clear standards of accountability and rely on successful public-private partnerships when these partnerships are reducing the need for new listings under the Endangered Species Act.**

**Answer:** FWS has many successful examples of this work across the nation, and believes successes are best achieved working at the local level to find solutions with interested partners and stakeholders. FWS continues to coordinate closely with the Western Association of Fish and Wildlife Association to implement its range-wide plan and mitigation framework. Additionally, the bureau is working with other partners to build new, and enhance existing mechanisms to address the conservation needs of the lesser prairie chicken and offer regulatory certainty for landowners and industry.

Questions from Mr. Simpson

**BIA Funding**

The Shoshone-Bannock tribe has not received the rest of its base funding from the BIA for the remainder of this year and has not received any FY19 contract support costs. I have heard that, since the shut down ended, there have been delays in BIA's PNW region in sending to tribes their base funding for the remainder of this year and that PNW has not sent tribes' their FY19 contract support cost funding.

**Simpson Q1: Is this true and is there a reason?**

**Answer:** The distribution of the FY 2019 contract support cost funding was delayed due to the unexpected departure of the Northwest Region's Level II Self-Determination Officer responsible for the regional distribution of contract support cost funding. The NW Region is advertising the Level II Self-Determination Officer position and concurrently receiving technical assistance from Self-Determination staff from other Regions to calculate contract support costs for each of the tribes and make these funds available for tribal draw down as soon as possible. BIA is also identifying additional personnel resources that can be made available in the short term to assist the region.

**Simpson Q2: When will BIA PNW send these funds to tribes as this unnecessary delay creates significant hardships for tribes.**

**Answer:** The NW region has obligated all FY 2018 Contract Support Cost funding, and is awaiting documentation from some tribes, which is needed to make the FY 2019 CSC payments. The current plan is to pay out 50% of CSC funds by June 30 and the majority by the end of July, provided BIA receives the proper documentation from the tribes. The NW region will cross train additional staff in the Contract Support Cost funding distribution process to create functional redundancy and reduce the likelihood of similar delays in the future.

### **BLM Right of Way Bonding**

I have heard concern from utility companies with concerns about the BLM's right of way bonding requirement proposed by the last Administration. This was proposed through an interim instruction memorandum.

**Simpson Q3: Does BLM plan to move forward with this proposal?**

**Answer:** In order to address inconsistencies in how bonding requirements were applied between field units, the BLM analyzed a range of potential solutions for national ROW grants and leases or permits for authorized activities. An interim national policy in the form of an Instruction Memorandum (IM 2019-013) was issued in November 2018 that establishes clear, concise direction for ROW bonding. To address this issue more permanently, the BLM is considering potential revisions to existing regulations.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

MAR 23 2020

The Honorable Raul Grijalva  
Chairman, Committee on Natural Resources  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Grijalva:

Enclosed are responses to the questions received by Mr. Daniel Jorjani, Solicitor, U.S. Department of the Interior, following his September 26, 2019, appearance before your Committee regarding Congressional oversight matters. We apologize for the delay in our response.

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 Rob Bishop  
Ranking Member

**Questions from Chairman Grijalva:**

- 1. You testified to the Senate Energy and Natural Resources Committee that documents released under the Freedom of Information Act, or FOIA, were not subject to a “heightened awareness” review process. In fact, you testified that process did not exist -- that the Department does not have a heightened awareness process, which you reiterated in Questions for the Record. But we found substantial evidence to the contrary. Interior staff, including FOIA officers, called it a Heightened Awareness, Supplemental Awareness Review, or even Augmented Awareness. They describe a process of review reserved for the highest-ranking political appointees that get extra scrutiny before being released. Why did you tell the Senate ENR Committee that the “heightened awareness process” did not exist?**

**Response:** As I indicated during my confirmation hearing, the Department does not have a “heightened awareness” process. The Department’s awareness process is set out in the policy document entitled Department’s Awareness Process for Freedom of Information Act Productions issued in May 24, 2018, and updated on February 28, 2019. This document is publicly available on the Department’s website:

[https://www.doi.gov/sites/doi.gov/files/uploads/awareness\\_process\\_memo\\_2.0.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_2.0.pdf).

- 2. Is there a process, formal or informal, by which FOIA productions that somehow implicate some high-ranking political appointees at DOI get an additional layer of review beyond the awareness review process that applies to all political appointees?**
  - a. If so, what is that process called?**

**Response:** See answer to question #1.

**You also testified under oath to the Senate that “as a policy matter, I typically did not review records prior to their release under the FOIA.” But, again, numerous emails show FOIA officers were ordered to include you on FOIA responses as a matter of policy, and that you had numerous recurring meetings with FOIA staff and Interior attorneys about FOIA requests and responses. You even had phone calls scheduled on weekends for FOIA updates. Why did you testify that you did not routinely review FOIA responses, when there is overwhelming evidence that you did?**

**Response:** As indicated during my confirmation hearing, I fill the statutorily required position of the Department’s Chief FOIA Officer and typically do not review FOIA releases. The day-to-day oversight and management of the Department’s FOIA program is done by the Deputy Chief FOIA Officer, who is a career lawyer, and the day-to-day review of FOIA responses is conducted by the bureau FOIA offices in consultation with the career lawyers in the Office of

the Solicitor. It is my clear understanding and consistent position that the FOIA is a disclosure statute and records must be released unless they are exempt under the law.

- 3. You prefaced your answer with the phrase, “as a policy matter.” What does that mean?**

**Response:** See response to question #3.

- 4. Did you ever review records prior to their release under the FOIA as a non-policy matter?**

**Response:** See response to question #3.

- 5. According to the Interior Department’s most recent FOIA Annual Report (2018), the median number of days it takes the Department to respond to FOIA Appeals is 516 days, and on average it takes 643 days to process a single appeal. At the end of Fiscal year 2018, the Department had 379 FOIA Appeals outstanding. It is our understanding that the Department has a single employee who processes appeals for the entire agency. The Department’s own report makes clear that this process is broken and that impedes public oversight of the Department. Why is only one person responsible for this important function?**

**Response:** As the Department has indicated to the Committee in previous communications, due in part to the substantial increase in the number of FOIA requests received by the Department, we have been reassessing the FOIA program and implementing necessary improvements to it. Consistent with that effort we are examining our options for improving the FOIA Appeals process. In addition to the numbers that you cite in your question, the report also shows that the Department was able to process 236 appeals during the fiscal year, a significant increase from the previous year. And as reported in the DOI Chief FOIA Officer’s Report for 2019, the Department was able to reduce the administrative appeals backlog from FY 2017 to FY 2018 and also to resolve the 10 oldest pending appeals.

- 6. During your testimony you said that the Department takes Congressional Oversight seriously and seeks to balance the legitimate legislative branch interests in oversight against confidentiality and executive branch privileges. From whom or what Office do you seek guidance on how to balance these interests? Have you ever consulted the White House about document releases related to FOIA requests or oversight requests?**

**Response:** The Solicitor’s Office has the lead responsibility in the Department for ensuring that congressional oversight productions protect the legal interests of the Department, including our

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September 26, 2019

litigation and ongoing rulemaking interests. The Department will consult with other government agencies when non-DOI equities are involved and will, for example, consult with the Department of Justice when necessary with regard to its legal interests. Notably, consulting with the White House on FOIA releases is not a new concept. This is a practice that the Department has followed for a number of years, as codified in its FOIA Handbook (last updated in 2014), based on a memorandum issued by Attorney General Webster Hubbell in 1993 (text available at <https://www.justice.gov/oip/blog/foia-update-foia-memo-white-house-records>).

**Questions from Rep. Huffman:**

- 1. I have repeatedly asked for the records of communication between the Department of the Interior and Secretary Bernhardt's former clients regarding the biological opinions being developed for the Central Valley Project. When will a copy of these communications be provided to the Committee?**

**Response:** The Department provided an initial production of material responsive to the Committee's request on November 15, 2019. Additional productions will be delivered as the Department is able to do so.

- 2. Was Deputy Secretary David Bernhardt personally involved in the Department of the Interior's efforts to expand Shasta Dam in the time period from April 2017 through August 2018, including personal involvement in making any determinations related to section 4007 of the 2016 WIIN Act (P.L. 114-322)? If yes, please specify all agency decisions, findings, and/or actions in which Mr. Bernhardt was personally involved.**

**Response:** I have no information that supports the statement that then-Deputy Secretary Bernhardt made any determination under the provision you reference in your question. As I indicated at the hearing, Secretary Bernhardt has been clear in his commitment to creating an ethical culture at the Department and to following all ethics requirements. He has actively sought out and consulted with the Department's designated ethics officials for advice to ensure compliance with those requirements, including those contained within his ethics agreement.

- 3. Was Deputy Secretary David Bernhardt personally involved in negotiations with the Westlands Water District or the San Luis & Delta Mendota Water Authority over cost-sharing agreements for the expansion of Shasta Dam, prior to August 2018?**

**Response:** I have no information that supports a statement that then-Deputy Secretary Bernhardt was involved in the negotiations you reference in your question. As I indicated at the hearing, Secretary Bernhardt has been clear in his commitment to creating an ethical culture at the Department and to following all ethics requirements. He has actively sought out and consulted with the Department's designated ethics officials for advice to ensure compliance with those requirements, including those contained within his ethics agreement.

- 4. Were there any specific matters involving the Westlands Water District that David Bernhardt has been recused from during his time as Deputy Secretary of the**



**Interior, or during his time as Secretary of the Interior? If yes, please identify all specific matters for which Mr. Bernhardt was recused.**

**Response:** Regarding the matter you reference in your question, please see Mr. Bernhardt's recusal agreement. Under the terms of that agreement Secretary Bernhardt has been limited from participating in particular matters involving specific parties. To my knowledge, Mr. Bernhardt has not participated in any particular matters or a particular matter involving specific parties in which his participation was limited by either his recusal agreement or the Trump Ethics Pledge. As I indicated at the hearing, Secretary Bernhardt has been clear in his commitment to creating an ethical culture at the Department and to following all ethics requirements. He has actively sought out and consulted with the Department's designated ethics officials for advice to ensure compliance with those requirements, including those contained within his ethics agreement.

**Questions from Rep. Soto:**

**1. Commitment from Department of Interior to generate if there are privilege logs concerning all documents that have been non-responsive. These include:**

- **Alaska meetings during the government shutdown**
- **Proposed ESA regulations**
- **Mountaintop removal mining study**
- **Incident of non-compliance by BLM**
- **Arctic National Wildlife Refuge leasing**
- **DOI Reorganization plan**
- **BSEE offshore leased decommissioning**
- **Biological opinion on three major pesticides**

**Response:** The Department does not maintain privilege logs concerning documents that have been non-responsive.

**Questions from Rep. Gallego:**

- 1. On May 14, 2019, I, along with Chairman Grijalva and Representative Haaland, sent Secretary Bernhardt a letter expressing our concern with the content of the National Park Service's proposed rule on National Historic Preservation on federal land (Fed. Reg. 41, 6996-7005), especially the lack of government-to-government consultation that occurred before the rule was proposed. After receiving no answer and seeing the continued lack of meaningful tribal consultation on the development of this rule, on July 19, 2019, the Chairman, Rep. Haaland and I sent another letter to Secretary Bernhardt and NPS Deputy Director Dan Smith requesting:**
  - a. A congressional briefing from relevant, decision-making staff at NPS on the development, substance and status of the rule before it is finalized;**
  - b. That the Department reevaluate the proposed rule's compatibility with Congressional intent behind the National Historic Preservation Act; and**
  - c. That the Department suspend action on the proposed rule until full and meaningful tribal consultation takes place.**

**It is very concerning that we have not received any response regarding these issues that we first brought to DOI's attention months ago.**

- a. When will you respond to this inquiry and provide us what we requested?**

**Response:** I understand that the National Park Service is in the process of finalizing a response to your inquiry. In response to requests for consultation from a number of tribes, the Department and the NPS undertook in-person consultation during the National Congress of American Indians Mid-Year Conference in Sparks, Nevada, on June 24, 2019, followed by a teleconference on July 1, 2019. The period for tribes to comment on the rule was also extended to July 8, 2019.

- 2. In your testimony you mentioned your Department's eagerness to provide Congressional briefings on Department policy.**
  - a) Can you commit to providing a Congressional briefing on this matter before the rule is finalized as requested in the July 19, 2019 letter?**

**Response:** The Department commits to providing a briefing on the matter at the appropriate time.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

MAR 24 2020

The Honorable Raúl M. Grijalva  
Chairman  
Natural Resources Committee  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Grijalva:

Enclosed are responses to the follow-up questions from the September 26, 2019, oversight hearing entitled, *Sustaining Insular Relationships*, before your Committee. These responses were prepared by the Office of Insular Affairs.

Thank you for the opportunity to respond to you on this matter.

Sincerely,

Cole Rojewski  
Director  
Office of Congressional  
and Legislative Affairs

Enclosure

cc: The Honorable Rob Bishop  
Ranking Member

Questions for the Record  
House Committee on Natural Resources  
House Committee on Foreign Affairs  
Oversight hearing on Sustaining Insular Relationship  
September 26, 2019

**Questions from Chairman Eliot L. Engel**

**Compact Trust Fund Management:**

**The performance of the private equity portfolios for the Federated States of Micronesia and Marshall Islands' Compact Trust Funds have both significantly undershot their benchmarks. These funds were supposed to obviate the need for additional taxpayer funding for these compacts. The Marshall Islands fund's private equity portfolio has returned 3.61% annually since inception, against a benchmark of 11.6%, while the Federated States of Micronesia fund's private equity portfolio has returned 4.8% since inception, against a benchmark of 13.4%. Both are "fund of funds" investments managed by Mercer Private Investment Partners.**

**Question 1: How do these Committees select investment advisors and money managers? How we can improve performance of the Trust Funds, given these funds' impact on the long-term wellbeing of FAS citizens?**

**Response:** Mercer is the Investment Adviser and a Money Manager for the Trust Fund for the People of the Federated States of Micronesia (FSM). Vanguard is the Investment Adviser and a Money manager for the Trust Fund for the People of the Republic of the Marshall Islands (RMI). The Funds are professionally managed and administered and overall have performed at or near comparative benchmarks. Over the life of the Funds, the FSM Trust Fund has earned 71.6% of contributions (meaning for every dollar invested, earnings are 71.6 cents) and the RMI Trust Fund 68.6% (meaning for every dollar invested, earnings are 68.6 cents). The FSM Trust Fund has a growth rate of 5.5% net of fees since inception while the RMI Trust Fund is at 6.2% net of fees. The FSM Trust Fund's net IRR (Internal Rate of Return) for all private equity is 9.0% and the RMI Trust Fund's net IRR is 10.4%. The FSM has been invested in private equity investments since 2005-06 while the RMI private equity investments have been since 2013.

The investment advisers for each fund were selected through public Request for Proposal processes. Investment Advisers identify one or more Money Managers to invest the assets of the Fund to produce a diversified portfolio. These Money Managers meet selection criteria and pass a screening process, pursuant to the Investment Policy Statement which is formulated by each Committee with the advice of their respective Investment Advisers. In addition to the U.S. appointed members who sit on the FSM and the RMI Trust Fund Committees, the FSM and RMI governments appoint members to their respective Committees; in the case of Trust Fund Committee for the RMI's Trust Fund, subsequent contributor Taiwan also appoints a member. The composition of both these Committees help protect and guide the direction and performance of the FSM and RMI Trust Funds for the benefit of the people of the FSM and the people of the RMI, respectively.

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The FSM and the RMI Trust Fund Committees continue to focus on good performance by continuing to have a medium-to-long term investment strategy with a diversified portfolio to help protect against downturns and volatility, which take into account the Committees' comfort with risk. The Committees both remain focused on the intended purpose of the income generated from the respective funds.

**Renewing the Compacts of Free Association:**

**The Freely Associated States remain largely underdeveloped, and economic development will be a priority for them when renewing the Compacts. The average household income is \$6,840 in the Marshall Islands; in Micronesia, 40% of the population lives below the poverty line and 25% don't have access to electricity.**

**Question 2: If economic assistance for these countries is extended after 2023, how should we change the nature of our support? Should self-sufficiency still be a goal of Compact assistance? How should we coordinate with other partners like Japan, Australia, Taiwan, and New Zealand to financially support the Freely Associated States?**

**Response:** Increased self-sufficiency and budgetary self-reliance are goals for U.S. Compact assistance. The Administration and the Department of State, in close coordination with the Department of the Interior, actively work with like-minded partners through U.S. embassies and at regular diplomatic meetings to improve donor coordination in the Freely Associated States.

**Question 3: Which USG offices and officials will be taking the lead on negotiating renewed Compacts with the Freely Associated States? What will the timetable and process for this negotiation look like?**

**Response:** The Department of State and the Department of the Interior will co-lead these negotiations. An interagency group with representatives from the Departments of the Interior, State, and Defense traveled to each of the Freely Associated States in October to understand in detail the specific needs of each of the three countries. We welcome the opportunity to work with Congress as we seek to secure long-term U.S. strategic interests in this vital region.

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**Question from Representative Dina Titus**

**Question 1: How could the next Compact negotiations further address the remediation and health care needs of areas and populations affected by the lingering repercussions of nuclear testing in the Marshall Islands? Do you believe that further compensation should be provided? Wouldn't this help to strengthen the U.S.-Marshall Islands relationship?**

**Response:** The United States recognizes the effects of its nuclear testing and has accepted and acted on its responsibility to the people of Republic of the Marshall Islands (RMI). The 1986 Compact of Free Association provided for a separate agreement under Section 177 that constitutes a "full settlement of all claims, past, present and future," of the Government, citizens, and nationals of the RMI resulting from the U.S. nuclear testing program. Under this Section 177 Agreement, the United States provided \$150 million to the RMI to establish a Nuclear Claims Fund and an independent Nuclear Claims Tribunal to adjudicate all claims. The United States has provided a total of more than \$600 million to the affected communities for direct financial settlement of nuclear claims, resettlement funds, rehabilitation of affected atolls, and radiation-related health care costs. Adjusting for inflation, this amount equals over \$1 billion in current dollars.

Questions for the Record  
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**Questions from Representative Michael San Nicolas**

**Question 1: Could you provide the Committee with minutes of all the JEMCO and JEMFAC meetings?**

**Response:** Resolutions adopted at JEMCO meetings can be accessed at <https://www.doi.gov/oia/compacts-of-free-association/JEMCO-Resolutions>, and resolutions adopted at JEMFAC meetings can be found at <https://www.doi.gov/oia/compacts-of-free-association/JEMFAC-Resolutions>.

**Question 2: How many grant applications have been submitted by the FSM and RMI for review to JEMCO and JEMFAC respectively? How many of these grant applications have been approved and how many denied? What are the respective rationales for approving and denying grant applications?**

**Response:** The Compacts, as amended, with the FSM and RMI state that “the United States shall provide assistance on a sector grant basis . . . in the amounts set forth” in the Compacts, as amended. The Joint Economic Management Committee (JEMCO) and the Joint Economic Management and Financial Accountability Committee (JEMFAC) work to strengthen management and accountability with regard to Compact assistance, and to promote the effective use of Compact assistance. Among the duties of the JEMCO and JEMFAC are to review and approve Grant allocations, performance objectives, and where appropriate, assessment tools, for the upcoming year. Sector Grant assistance is made available in accordance with annual implementation plans developed by the FSM and RMI. Consistent with the Compacts, as amended, the JEMCO and JEMFAC may establish alternative funding levels, special Grant terms and conditions or other actions it deems appropriate to help the FSM and RMI meet the stated goals and objectives of the Compact, as amended. Proposals for the use of Compact Sector grant assistance are reviewed according to these terms and consistent with the Fiscal Procedures Agreement. Denials have been rare and have been occasionally exercised at the line item level.

**Question 3: What are the current funding levels of JEMCO and JEMFAC grants?**

**Response:** For Fiscal Year 2020, the FSM was allocated \$80,795,600, and the RMI was allocated \$36,295,600. Funds are available until expended consistent with the terms of the Compacts of Free Association, as amended, and the funding levels set forth in Section 211.



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**Question from Representative Ed Case**

**A critical component of the Compacts is the ability of FAS citizens to live and work freely throughout the United States and to participate in most government programs. This provision has resulted in a highly disproportionate negative financial impacts on those jurisdictions where the bulk of FAS migrants choose to live. Compact impact aid was intended to reimburse those jurisdictions for that cost, but thus far has been limited as to which jurisdictions and severely underfunded at only \$30 million total annually. For the State of Hawai'i as one example, FAS migrant costs for services such as health care and education in FY 2015 were estimated at over \$145 million. For the territory of Guam in the same year, they were estimated at \$148 million. A very rough ballpark estimate as to current annual costs for Hawai'i alone is in the range of \$300 million. This situation is unacceptable and unsustainable and makes it difficult for our jurisdictions to continue supporting the Compacts.**

**Question 1: Can the Administration commit to supporting increased Compact impact assistance for affected jurisdictions at the level of their actual costs for this national commitment? Please provide an explanation for your answer.**

**Response:** The Administration recognizes that costs Hawai'i claims associated with Compact migrants in affected jurisdictions exceed resources currently provided by Congress for "Compact impact." The Department is happy to work with Congress to explore sustainable solutions.

Questions for the Record  
House Committee on Natural Resources  
House Committee on Foreign Affairs  
Oversight hearing on Sustaining Insular Relationship  
September 26, 2019

**Questions from Representative Gregorio Kilili Camacho Sablan**

**Question 1: Both State and Interior are represented on the FSM and RMI trust fund committees. Considering repeated reports that, under the current trust fund structure, after 2023 the funds may have years where they cannot disburse funds - even while holding millions in their accounts - what are the trust fund committees doing now to address the trust funds' structure? What fixes to the trust fund agreements do the trust fund committees propose?**

**Response:** The Investment Advisors of the Trust Funds, Mercer (for the Trust Fund for the People of the Federated States of Micronesia), Vanguard (for the Trust Fund for the People of the Marshall Islands), the Graduate School USA (funded by the Office of Insular Affairs), the GAO, and the Asian Development Bank, have made presentations describing various distribution scenarios post-2023 under differing terms and conditions, and explored what adjustments might decrease volatile or zero distributions.

The Trust Fund Committees have also had preliminary discussions about the fiscal procedures to be used in implementing the Trust Fund Agreement and noted issues that are matters for the Original Parties including: the composition of the Committee past FY23, the timing of distributions for FY24 and beyond, and the ability to pay certain expenses after 9/30/22.

Any change in the distribution policy must be consistent with the Trust Fund Agreement, which by its terms may only be amended in writing by the mutual consent of the Original Parties.

**Question 2: The Special Education grant for the Freely Associated States replaced many federal education programs. However, it was not made a permanent appropriation and has never been fully funded. Thousands of students are only able to attend school for half the day because of insufficient education funding in the FSM. Schools are unable to feed students lunch. What is your plan for making sure education gets reliable funding when compact renegotiations occur?**

**Response:** The Federated States of Micronesia have made clear the importance of the Supplemental Education Grant to education in the FSM. The interagency is coordinating closely to set priorities for negotiations with the Freely Associated States and we look forward to working with Congress as we seek to secure long-term U.S. strategic interests in this vital region.

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**Question 3: What have been the strengths and weaknesses of the U.S. relationship with the FAS? What, if any, issues in the relationship should be addressed?**

**Response:** Our relationships with the Marshall Islands, the Federated States of Micronesia, and Palau, collectively referred to as the Freely Associated States, have, since World War II, contributed to a secure, stable, and prosperous Western Pacific, a strategic location for the United States in the larger Indo-Pacific region. Together these three countries form a strategic bridge that stretches from Hawai'i to the Philippines, a span larger than the breadth of the continental United States.

The Freely Associated States hold strong to their core democratic values in an era of backsliding. Our countries share values and are committed to democracy and human rights. This bedrock underpins our strong relationships and our close cooperation. The Marshall Islands, Federated States of Micronesia, and Palau are historically among the United States' strongest supporters at the United Nations, as closely aligned with us as some of our closest partners, including Australia and the United Kingdom. In fact, only Israel votes with the United States at rates higher than the Federated States of Micronesia.

**Question 4: Should economic assistance for the RMI and FSM be extended after 2023, would it resemble current support in terms of sector grants, U.S. program assistance, and oversight through the joint economic management committees? Should self-sufficiency still be a goal of Compact assistance?**

**Response:** Increased self-sufficiency and budgetary self-reliance is a goal for U.S. Compact assistance. We welcome the opportunity to work with Congress to secure long-term U.S. strategic interests in this vital region, including working collaboratively to explore ways in which we might further strengthen the relationship after the economic assistance expires under the current terms of the three Compacts of Free Association. The Administration is evaluating options for our continued relationships with all three countries; part of this will be shaped by negotiations with these partners.

**Question 5: How is oversight currently conducted? Should oversight mechanisms be reformed?**

**Response:** The FSM and RMI submit quarterly performance and financial reports for review by OIA grant managers, and OIA grant managers conduct quarterly site visits. These mechanisms enable Department of the Interior to provide assurances that U.S. taxpayer money is spent responsibly and effectively. Ensuring continued accountability for U.S. taxpayer funds is important and would be a topic of conversation with our bilateral partners.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

MAR - 5 2020

The Honorable Ruben Gallego  
Chairman, Subcommittee for Indigenous Peoples  
of the United States  
Natural Resources Committee  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Gallego:

Enclosed are responses to the follow-up questions from the November 13, 2019, legislative hearing on H.R. 4957, a bill to amend the Indian Child Protection and Family Violence Prevention Act, before your Subcommittee. These responses were prepared by the Bureau of Indian Affairs.

Thank you for the opportunity to respond to you on this matter.

Sincerely,

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

Enclosure

cc: The Honorable Paul Cook  
Ranking Member

## Questions for the Record

House Natural Resources Subcommittee on Indigenous Peoples of the United States  
Legislative Hearing on H.R. 4957, the Native American Child Protection Act  
November 13, 2019

### Questions from Representative Rob Bishop

**Question 1: What steps has the Bureau of Indian Affairs taken to help facilitate better sharing of information and reporting between the federal government, state and tribes?**

**Response:** To facilitate information sharing and reporting between the federal government, state and tribes, the Bureau of Indian Affairs (BIA):

- Developed and implemented the Social Services Center for Excellence, a training platform with a focus on creating and disseminating information, knowledge and best practices among Tribal and BIA social services staff on child protection, welfare and family violence prevention.
- Deployed the National Training Center for Indian Social Services website ([www.ntciss.org](http://www.ntciss.org)) in partnership with the Rocky Mountain Tribal Leaders Council and the University of Montana– Center for Children, Families and Workforce Development. The website serves as a training hub with on-demand access to resources, training, trending policies, practices, legislative changes and deliverables that impact social services programs and practices.
- Uses the Indian Child Welfare Quarterly and Annual Report (CAN Report) to collect Tribal Indian Child Welfare Act (ICWA) Program data to determine the extent of service needs in local Indian communities, to assess ICWA program effectiveness, formulate annual program budget justification, capture “best practices” techniques to ensure culturally appropriate child abuse and neglect prevention and protection services, and monitor states’ ICWA compliance.
- Is providing CAN Report technical assistance and training that includes data on the number of ICWA notices and the number of American Indian and Alaska Native children who receive child abuse and neglect referrals.
- Is integrating the Tribal ICWA Designated Agents List with the Bureau’s online Tribal Leaders Directory.
- Is coordinating with the Department of Health and Human Services and the Alyce Spotted Bear and Walter Soboleff Commission on Native Children to develop and establish intergovernmental agreements with an objective of fostering effective intergovernmental relationships between the BIA, Tribes and states to address racial disproportionality and disparity in the child welfare system to formulate and implement solutions.

## Questions for the Record

House Natural Resources Subcommittee on Indigenous Peoples of the United States

Legislative Hearing on H.R. 4957, the Native American Child Protection Act

November 13, 2019

**Question 2: While Congress has failed to appropriate funds for the Indian Child Protection and Family Violence Prevention Act, what other steps have the Bureau of Indian Affairs and the Indian Health Service taken to prevent, reduce, or provide treatment for victims of child abuse, neglect, etc.?**

**Response:** Indian Affairs has taken steps to prevent, reduce, and provide treatment for victims of child abuse and neglect through special initiatives, including:

- In FY 2018, the BIA's Eastern Oklahoma Region and the University of Oklahoma, School of Social Work (OU) developed and implemented a simulation-based Child Welfare and Child Protection training that included training modules for Indian Child Welfare/Child Protection and Domestic Violence.
- In FY 2019, BIA and OU delivered core competency training sessions to over 70 BIA and Tribal social service staff to increase skills in developing long-term strategies with families and their Tribal communities to address factors that impact the breakup of Indian families.
- In FY 2020, BIA will develop a Child Protection and Child Welfare Standard Operating Procedures (SOP) to guide the Bureau's child welfare and social services administration.
- *The Social Services Center for Excellence (the Center)*. The Center is developing culturally-based training and standardized practice and protocols in the areas of Child Protection Services and Child Welfare. The Center offers on-demand access to resources and trainings from the BIA, Tribes, state and local agencies. These resources are designed to give workers the tools and skills to effectively prevent, reduce and work alongside victims of child abuse and neglect as well as families impacted by violence.
- *Bureau Tribal Access Program (TAP) Kiosk*. In FY 2019, the Department of the Interior (Department) and the Department of Justice (DOJ) entered into an Interagency Agreement with the DOJ's Tribal Access Program (TAP) to deploy TAP kiosks at Bureau agency locations with direct law enforcement and/or social services programs. TAP provides federally recognized tribes and BIA Agencies the ability to access and exchange data with national crime information databases for both civil and criminal purposes. One goal of the project is to help prevent the placement of an Indian child in an unsafe foster home and to reduce the risk associated with out-of-home placements. TAP allows Social Services programs to run fingerprint based background checks on all prospective foster care placements, in accordance with the Native American Children's Safety Act (NACSA).
- *Tiwahe Initiative*. In FY 2015, BIA implemented the Tiwahe Initiative (Initiative). It is presently operating at 6 sites in Indian Country and is focused on building tribal capacity and tribal services infrastructure to integrate delivery of services to children and families.

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The Department cannot speak to Indian Health Service (IHS) programs. As such, questions regarding IHS should be referred to the Department of Health and Human Services.

**Question 3: According to the National Indian Child Welfare Association testimony, no Administration since 1990, Democrat or Republican, has ever requested funding for any of the Indian Child Protection and Family Violence Prevention Act, why is that?**

**Response:** Pursuant to the Indian Child Protection and Family Violence Prevention Act (the Act), Congress is authorized to appropriate up to \$30 million per year to establish the Indian Child Protection and Family Violence Prevention Program, and \$3 million per year to support Indian Child Resource and Family Services Centers. In the past, the Department has made direct funding requests in the President's Budget for purposes of the Act. In 2016, Congress amended the Act with the passage of the Native American Children's Safety Act which requires Tribes to conduct fingerprint based background checks prior to the placement of Indian children in foster home placements. However, Congress did not authorize additional funding for this directive.