United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 0 2 2020

The Honorable Lisa Murkowski
Chairman, Subcommittee on Interior, Environment,
and Related Agencies
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Chairman Murkowski:

Enclosed are responses to the questions received by the Department of the Interior following Secretary David Bernhardt's May 22, 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 Tom Udall
Ranking Member

U.S. Senate Committee on Appropriations
Subcommittee on Interior, Environment and Related Agencies
Hearing to Review the U.S. DOI FY20 Budget Request
May 22, 2019
Questions for The Honorable David Bernhardt; Secretary, DOI

Questions from Chairman Lisa Murkowski

1) **The 2018 Omnibus included a provision directing the Department to issue guidance for streamlining and approving vegetation management plans regarding transmission line rights-of-way. This work is particularly important given the wildfire risks posed by fuel build up and hazard trees near these lines. What is the status of the guidance? The law also directed the Interior Department to develop categorical exclusions for implementing Vegetation Management Plans developed by utility companies. What is the status of these categorical exclusions?**

   Answer: The Bureau of Land Management (BLM) issued a new policy for Powerline Rights-of-Way (ROW) and fire risk, including vegetation management. This proposed policy details agency requirements, introduced under the 2018 Omnibus Act, for reviewing and approving vegetation management plans submitted by utilities. The Department's updated guidance for operations and maintenance was made available to the public on December 12, 2019, and can be viewed at: https://www.blm.gov/news.

2) **NPS Centennial Act Visitor Experience Improvement Authority (VEIA)**
   The National Park Service Centennial Act was signed into law in December of 2016. The legislation created a new authority for the Secretary to award and administer commercial services and related professional services contracts in park units, outside of the existing concessions system. The law stated that the regulations should be implemented as soon as practicable, but to date, it is my understanding that we do not even have a proposed rule published yet. Nearly three years later, this program, which represents a new opportunity for the Department to partner with commercial services contractors to provide exciting new recreational opportunities at park units, not to mention the possibility of rehabbing park assets, remains stalled. Can you please explain the current status of implementation of this provision of the Centennial Act? And how the Department plans to utilize this authority?

   Answer: A draft proposed rule to implement the Act is currently under review.

Questions from Ranking Member Tom Udall

1) **The Bureau of Reclamation requested $9 million for fiscal year 2020 to continue oversight, management, coordination, partnering, and *construction* on the Pojoaque Basin Regional Water System source water intake system, water treatment plant and transmission and distribution systems for Pueblo de San Ildefonso and northern portions of the Pueblo of Pojoaque. If appropriated, that would bring the total appropriations for the discretionary portion of the settlement to approximately $55 million; $10 million short of the authorization ceiling. Yet, the Department has recently decided to only allow $10 million of the appropriated amounts to be used for construction.**

   a) **Please outline how Reclamation arrived at the $10 million figure and explain why Reclamation cannot use all appropriated funds to commence construction.**

      Answer: The United States and the settlement parties have reached an agreement that maps out a construction sequence in accordance with a Consensus Design Concept agreed to by the United States and the settlement parties; an amended Engineering Report based on and consistent with the Consensus Design Concept; the total cost of such construction; the allocation of the funding shortfall; the conditions for commencing construction of the Project; and a revised definition of "substantial completion" pursuant to the authorizing statute. The agreement provides "[b]ecause Congress has yet to authorize additional Federal funding for construction of the Project, the Parties agree to proceed with limited construction..." The United States and the settlement parties have agreed to expend $18.6 million in Federal and non-Federal funds on a series of agreed upon construction activities. The Federal share of the $18.6 million is $13 million, of which $10 million will be expended on agreed upon construction activities and $3 million towards non-contract costs, including design and project management.

   b) **Does the Secretary, acting through the Commissioner of Reclamation, have a statutory obligation to plan, design, and construct a regional water system in accordance with the Settlement Agreement?**

      Answer: Yes.

2) **The Federal Records Act establishes that the Department must make a permanent record of all copies of documents, including itineraries and schedules, regardless of medium. That extends to tweets on Twitter, Facebook posts, and Google calendars. The regulations and Interior's agreement with the National Archives require that these records be maintained "from now until the end of the Republic." The law also requires that the Department preserve originals and any subsequent amendments or modifications, under threat of prosecution under the criminal code.**

a) **What steps does Interior take when it receives a FOIA request to ensure all potentially responsive documents are preserved while the request is pending, including schedules or calendars from the Secretary and other senior level officials?**

Answer: NARA has approved the Department-wide records schedule specifically covering records for "High Level Officials". This disposition authority prescribes a permanent retention period for these records. All High-Level Officials receive face-to-face records management training as they are brought on board. During these training sessions, these officials are informed of their senior role and requirement for permanent records preservation, so these records, including calendars and schedules, will be available for FOIA and other document production requirements.

b) **Does Interior have a records schedule in place covering high-level officials' calendars? If so, what is the retention period for those calendars, and what steps has Interior taken to ensure compliance with this records schedule?**

Answer: The Department maintains a list of High-Level Officials who must observe the NARA approved disposition authority, which prescribes a permanent retention period. The Deputy Secretary, Acting Secretary, and Secretary roles are all High-Level Official roles within DOI. As such, the Department maintains all Federal records associated with these roles on a permanent basis.

To ensure compliance with the Federal Records Act, the Department has implemented a robust records training program, which includes training for all new employees. This training includes briefing all political officials on their legal requirements for managing Federal records. The Department also requires annual records re-certification training.

c) **Mr. Secretary, have you or your staff consulted with the National Archives regarding how records need to be maintained as governed by the Federal Records Act, especially in the context of Google software or other applications that allow for constant revision and overwriting? What specific policies and actions has the Department taken to ensure it is adequately documenting the public record consistent with legal obligations?**

Answer: Yes. The Department has and continues to work with NARA on an ongoing basis concerning its records management program and the government-wide move to electronic records since the Federal Records Management Directive (M-12-18) was released in late 2012.

d) **When and why did the Secretary begin using a Google calendar application that overwrites information when new or corrected information is added?**

Answer: NARA's review concluded on June 13, 2019, and determined that Congress's inquiry was "unfounded." In closing its review, NARA stated that "we have found no basis to believe that there has been an unauthorized destruction of federal records." A copy of NARA's letter is attached. For further details and information regarding the

Department's recordkeeping, please refer to the attached report, prepared by the Committee on Oversight and Reform and titled "Disproving Democrat Allegations of Recordkeeping Wrongdoing at the Interior Department."

e) **What, if any, backups does Interior perform of any data created on Google's calendar function?**

Answer: See the response to subparagraph (d).

f) **When and why did Interior change the way it publicly described the Secretary's meetings with outside entities to omit information on his calendars that identified with whom the Secretary was meeting? In those instances, what other records did Interior create or maintain that capture all of the Secretary's daily events?**

Answer: See the response to subparagraph (d).

3) **The Fiscal Year 2020 Budget includes another $25 million to reorganize bureaus funded in the Interior Appropriations bill with almost no detail of how the funds will be spent. This Subcommittee provided $14 million for this effort in Fiscal Year 2019, and the spending plan you just submitted provides limited detail on what you plan to do. As you know, any major relocation of staff falls under the reprogramming requirements set forth by the Appropriations Committees, and because the Department is required to submit plans for approval by the Committees.**

a) **When does Interior expect submit a plan that details the personnel structure of the newly created regions, including any changes to office locations or personnel?**

Answer: On August 9, 2019, the Secretary announced the establishment and appointment of 12 Field Special Assistants who are dedicated to ensuring the long-term operational efficiency of the unified regional structure.

b) **Does Interior intend to establish new regional directors for its bureaus that align with the new map? If so, when will Congress see such a plan?**

Answer: The Department does not plan to establish new regional directors.

c) **Is the Department contemplating any changes related to the new regions that will affect the duty station of any personnel currently based in New Mexico?**

Answer: The Unified Regional structure became final on August 22, 2018, and information regarding that reorganization can be found here: https://www.doi.gov/employees/reorg/unified-regional-boundaries.

d) When does the Department expect to make public its proposal to relocate bureau headquarters from the Washington, D.C., area?

Answer: The announcement of the BLM headquarters elements moving West occurred on July 16, 2019.

e) What specific criteria is the Department utilizing to decide whether to move bureaus? How were the bureaus being evaluated for a move selected?

Answer: The decision to move BLM Headquarters elements to Grand Junction, Colorado, benefited from a thorough analysis of BLM operations and workforce, using generally accepted forms of financial analysis, including net present value, payback period, and rate of return. Additional personnel from the Washington, DC, office will move to State office locations throughout the Western states.

f) What locations and/or geographic areas are under consideration, and how were those areas selected?

Answer: Grand Junction was selected as the Western destination for relocating elements of BLM's headquarters. In selecting Grand Junction, a variety of factors were considered.

g) How is Interior planning to re-engage the public in the Department's deliberations regarding (a) changes to newly created regions; and (b) proposed bureau relocations?

Answer: Discussion with interested stakeholders took place since the inception of the reorganization. We created a website, https://www.doi.gov/employees/reorg and a Reorganization Communication Team to assist Unified Region leadership with internal and external communications.

With regard to the relocation of BLM to the Western U.S., we have ensured appropriate communications to BLM employees, Members of Congress, Governors of all of the affected states, and other key partners and constituents.

h) Given that tribes regularly work with BLM and other affected agencies—not just the BIA and BIE—how does Interior intend to consult with Indian Tribes regarding the broader reorganization?

Answer: With regard to the broader Departmental reorganization effort, the Department held 11 formal tribal consultation sessions and an additional 7 listening sessions with tribal leaders around the country. Transcripts of these sessions were made available online. In addition, the Secretary held 2 additional Tribal leader roundtable discussions specifically on the Department's reorganization efforts.

4) **On March 29, 2019, the United States District Court for the Northern District of California (Oakland Division) concluded that the Department's decision to repeal regulations governing oil, gas, and coal royalties on federal and Indian lands violated the Administrative Procedure Act. The Court therefore reinstated the 2016 Oil and Gas Valuation rule.**

   a) **The Royalty Policy Committee appeared to be tasked with rewriting the Valuation Rule. Now that Interior has disbanded this Committee, what is the status of Interior's efforts to rewrite the rule?**

      Answer: The Royalty Policy Committee (RPC), which was reestablished by then-Secretary Zinke in 2017, provided recommendations to the Office of Natural Resources Revenue (ONRR).

   b) **Does Interior intend to implement the prior 2016 Oil and Gas Valuation Rule?**

      Answer: The effect of the Court's ruling was to reinstate the 2016 valuation rule, including its original effective date of January 1, 2017. ONRR sent a "Dear Reporter" letter to industry to notify industry of its obligation to comply with ONRR regulations as amended by the 2016 valuation rule. ONRR issued a second "Dear Reporter" letter on November 20, 2019, extending the date on which compliance activities would begin to July 1, 2020.

Questions from Vice Chairman Patrick Leahy

1) **When I asked you about the Interior Department's formalized "awareness review process" – by which political appointees outside of the traditional FOIA office are given the opportunity to weigh in and potentially influence responses to FOIA request – you gave an entirely conclusory answer: "It's completely legal." That is not a sufficient response.**

   a) **Please provide any memoranda, guidance, protocols, correspondence, and any other documents memorializing this formalized "awareness review process" within the Interior Department.**

      Answer: The Department's updated awareness process is publicly available at: https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_2.0.pdf

   b) **On what basis are you able to conclude that this awareness review process is "completely legal?" Was there a review of the legality of this "awareness review process" before it was instituted?**

      Answer: A link to the guidance document is provided in the response to the previous question.

   c) **If so, was that legal review memorialized in any memoranda, guidance, correspondence or any other documents? Please provide all such memoranda, guidance, correspondence, or any other documents that memorialize any legal reviews of the "awareness review process." If not, why not?**

      Answer: A link to the guidance document is provided in the response above. The process does not result in the withholding of information that is subject to release under FOIA or cause undue delay in FOIA processing and, thus, does not violate the FOIA or any other law.

2) **When I asked you to commit to reconsidering and rewriting the Interior Department's proposed FOIA rule – which has raised serious concerns among a bicameral, bipartisan group of Members of Congress – you stated that you would consider whether to "scrap it, proceed with it, or significantly modify it." Those are three very different outcomes.**

   a) **What is the status of your review of the proposed FOIA rule, and whether you will "scrap it, proceed with it, or significantly modify it?"**

      Answer: The Department's final rule was published on October 24, 2019. Your letter of appreciation to the Department for addressing your concerns with the rule was received on October 25, 2019.

b) **Who in the Interior Department – in terms of both Department bureaus and offices and relevant staff – is participating in your review of the proposed FOIA rule?**

Answer: See the response to the previous question.

c) **Will you commit now to ensuring that career officials who traditionally handle the Department's FOIA policies and responses will be involved in your review of the proposed FOIA rule? If not, why not?**

Answer: See the response to subparagraph (a).

d) **What legal, policy, and other factors are you considering in making a decision whether to scrap, proceed with, or significantly modify the proposed rule? Please provide a list of legal, policy, and other factors that are guiding your review of the proposed FOIA rule.**

Answer: See the response to subparagraph (a).

e) **If you decide to significantly modify the proposed rule, will you commit now to consulting with the congressional committees with jurisdiction over FOIA to obtain their input about how to modify the proposed rule?**

Answer: See the response to subparagraph (a).

3) **There are numerous investigations into whether your calendar entries are being deleted in violation of federal records laws, and whether calendar entries provided to the public are scrubbed of critical details, such as the attendees of meetings. This obfuscation prevents the American public from understanding whether you are meeting with – and potentially advocating on behalf of – special interests that you previously represented as an oil and gas lobbyist.**

a) **During your tenure in the Interior Department under President Trump, have you ever met with organizations or associations representing any of your former clients where the meetings' attendee lists were subsequently not made available to the public?**

Answer: During my confirmation to be Deputy Secretary of the Department of the Interior, I committed to fully comply with my ethics agreement and to actively seek and consult with the Department's Designated Agency Ethics Official regarding any particular matters involving specific parties of former clients or entities represented by my former firm. I have continued this commitment in my role as Secretary. Copies of my calendars and other related documents are available to the public at: https://www.doi.gov/foia/os/secretarial-calendars

b) **Will you commit now to making and keeping public the list of attendees at meetings you personally take, as well as the topics of discussion at those meetings? If not, why not?**

Answer: During my confirmation to be Deputy Secretary of the Department of the Interior, I committed to fully comply with my ethics agreement and to actively seek and consult with the Department's Designated Agency Ethics Official regarding any particular matters involving specific parties of former clients or entities represented by my former firm. I have continued this commitment in my role as Secretary. Copies of my calendars and other related documents are available to the public at: https://www.doi.gov/foia/os/secretarial-calendars

4) **During a House hearing on March 13, 2019, the Department's Deputy Chief FOIA officer was asked whether your calendar entries were being deleted or altered after they were created. She responded that the Office of the Solicitor is working with the records officers to "determine what's occurred."**

a) **What is the status of that review, and what has the review uncovered? Which components of the Department are involved in this review? Please provide a detailed status update of that review and any interim findings.**

Answer: NARA's review concluded on June 13, 2019, and determined that Congress's inquiry was "unfounded." In closing its review, NARA stated that "we have found no basis to believe that there has been an unauthorized destruction of federal records." A copy of NARA's letter is attached. For further details and information regarding the Department's recordkeeping, please refer to the attached report, prepared by the Committee on Oversight and Reform and titled "Disproving Democrat Allegations of Recordkeeping Wrongdoing at the Interior Department."

5) **I am concerned by the National Park Service's proposal to modify long-standing procedures to nominate properties to the National Register of Historic Places for the purposes of protecting and preserving historic properties. Not only do I question the need for this rule change, but the proposal also appears contrary to the National Historic Preservation Act.**

a) **What is the problem this proposed change seeks to fix and who approached the Department or Park Service with this proposal?**

Answer: The proposed changes seek to implement the amendments to the National Historic Preservation Act enacted by Congress in 2016 and emphasize the rights of private property owners by giving them more control over whether their property is listed in the National Register as part of a historic district. The changes would also extend the timeline for the Keeper to respond to appeals, in order to give the nominating authority sufficient time to provide their position and any relevant information regarding the appeal, and for the Keeper to consider any information provided by the State Historic Preservation Officer. Finally, the rule includes additional minor changes to the

regulations that no longer reflect the current practice of how properties are listed in the National Register.

b) **Which affected entities did you consult or coordinate with when developing and publishing the rule? Did you consult with the Advisory Council on Historic Preservation, as required by the National Historic Preservation Act?**

Answer: The Department and NPS consulted with major stakeholders, including the Advisory Council on Historic Preservation as well as the National Conference of State Historic Preservation Officers, National Association of Tribal Historic Preservation Officers, the National Trust for Historic Preservation, Federal Preservation Officers, and other historical/archeological associations during the 60-day comment period. Officials from DOI and NPS also consulted with Tribes in person and by telephone and extended the period for Tribes to comment on the Rule to July 8, 2019.

c) **How many public comments in opposition to this proposed rule have you received? How many public comments in support of this proposed rule have you received? For those in opposition, what was the primary concern cited?**

Answer: The NPS received 3,304 comments during the public comment period, which are available for viewing here: https://www.regulations.gov/document?D=NPS-2019-0001-0001. Review and analysis of the comments is continuing.

d) **Congress passed a minor, procedural amendment to the National Historic Preservation Act in 2016. What specifically in the 2016 amendment do you believe authorizes the sweeping changes that this rulemaking proposes to the National Register nomination process?**

Answer: Detailed information regarding the proposal and the National Park Service's actions is available here: https://www.regulations.gov/document?D=NPS-2019-0001-0001

e) **How would this change affect the Historic Revitalization Program, or other historic preservation programs administered by the National Park Service?**

Answer: These changes are procedural to the nomination process and would have no direct effect on NPS historic preservation programs, including the Historic Revitalization Program.

6) **In each of Fiscal Years 2018 and 2019, Congress provided $5 million for the Historic Revitalization Program, which I created based on a highly successful Vermont initiative, to support the rehabilitation of historic properties and to foster economic development in small and rural communities across the country.**

a) **The deadline for applications for the inaugural FY18 awards was April 1, 2019. How many applications did the Park Service receive? What was the total amount of funding requested in those applications? When can we expect the release of the first round of grant awards for FY18 funds?**

Answer: The NPS received 108 applications from 46 states, totaling $59.3 million. The awards were announced August 27, 2019.

b) **When do you anticipate release of the FY19 notice of funding opportunity?**

Answer: The NPS expects to release the notice of funding opportunity for the FY 2019 Historic Revitalization Subgrant Program funds in early calendar year 2020 in order to incorporate lessons learned from managing the FY 2018 funds.

7) **It has been widely reported that the administration is planning a second Fourth of July event, separate and apart from the traditional Capitol concert featuring the National Symphony Orchestra on the Capitol lawn. It is further reported that this event will include an address from the President on the steps of the Lincoln Memorial and a relocation of the launch of the iconic fireworks display.**

a) **What strains will both these events taking place on and around the National Mall place on the National Park Service, the Park Police, and the District of Columbia? What additional taxpayer costs will be incurred?**

Answer: The NPS regularly hosts large events on the National Mall and in the District of Columbia that include concerts, parades, and large crowds. While the July 4 celebration expanded public access to the places we manage, the additional work required was comparable to other past events.

b) **Please provide details of the Park Police's plans to provide security for the administration's planned Lincoln Memorial event. How will these competing events impact public access to the National Mall in the days leading up to, and including, July 4th? What resources are being provided to the District of Columbia to address additional security concerns, street closures, and transportation disruptions?**

Answer: The Park Police worked closely with the District of Columbia, the U.S. Secret Service, other law enforcement agencies, and participating branches of the U.S. Military to determine the appropriate levels of security at the events. Public access to the National Mall during the celebration significantly expanded because the Lincoln Memorial Reflecting Pool, Constitution Gardens, and the World War II memorial were opened for attendees. Like other large events on the National Mall, public access was impacted in the days leading up to and shortly after the celebration so that park maintenance staff and volunteers could install and remove security barricades and ground/turf protection.

c) **Does the Park Service typically consider permit requests for public events on the National Mall to be held on July 4th?**

Answer: Yes, the National Park Service receives applications for and allows for public events on the National Mall on July 4th.

d) **If so, has the Park Service granted any permits for public events on the National Mall on July 4, 2019? Please provide the entities granted these permits.**

Answer: Yes, there were 14 permits issued for public events on July 4th.

1. Santo Outreach Ministry/Freedom Fest DC
2. The Webben Group
3. Pocket Full of Change Ministries
4. Honor Flights Network
5. Celebration Concert Tours International
6. John Pylka
7. Executive Office of the President
8. Tim Hamaker
9. Irvin Raymond Brookstein
10. Tighe Barry
11. Gregory Lee "Joey" Johnson
12. Michael Francis Trochan
13. Immigrants Make America Great
14. ISKCON of Washington, DC

e) **Has the Park Service denied any permits for public events for the days leading up to and including July 4, 2019? If so, please provide a list of entities denied permits for events to be held between June 24, 2019, and July 5, 2019.**

Answer: No permits were denied for public events to be held during that period.

8) **The Trump administration has spent the past two years weakening, undermining, and unraveling environmental protection policies and regulations. This month, the administration took an even more aggressive step to attack the very science underlying the policies it has sought to eliminate. The United States Geological Survey will no longer produce scientific assessments using data that modeled climate change impacts through the end of the century. Rather, they will now use models that predict the consequences of climate change only through 2040. This change in precedent is a transparent effort to hide the most severe consequences of climate change, most of which are predicted to come starting in 2050 and beyond. This change in how the underlying science is presented would help protect the Trump administration from judicial challenges against its current energy policies that are undermined by the National Climate Assessment released late last year.**

a) **Why will the U.S. Geological Survey now be limiting its climate change modeling projections to run through 2040 as opposed to the previous models, which ran through the end of the century?**

Answer: The USGS has not issued, nor does it plan to recommend, any directive that restricts the development or use of climate models by USGS researchers or limits projections of climate impacts past 2040. The USGS will continue to use accepted models, scenarios, and studies that contribute to the National Climate Assessment to project the impacts of climate change for the next 25-100 years as required by the Global Change Research Act of 1990. Also, the USGS will continue to assess the entire range of reference scenarios from best-case to worst-case in its scientific studies projecting impacts of future climate change.

b) **Are there other changes to climate modeling being considered?**

Answer: No changes to climate modeling are currently being considered.

9) **Earlier this month, the United Nations released a report on the impact of human activity has caused a "mass extinction event," with one million species facing extinction. That's one eighth of the planet's known species. The report was written by 145 experts from 50 nations over 3 years. You have proposed to weaken Endangered Species Act regulations in ways long sought by oil, gas, and mining interests, and at the expense of sound scientific-based decisions.**

a) **Do you believe the results of this report?**

Answer: I recognize the climate is changing and agree with the USGS scientists that there is large uncertainty in projecting future climatic conditions. Our role is to ensure that the decisions we make are fully informed by science and we rely on that very best science.

b) **Do you believe your proposed changes are at odds with the scientific consensus about a mass extinction event?**

Answer: The proposed changes to the ESA regulations are intended to simplify and clarify definitions and procedures and codify procedural improvements that have evolved since the last revision. They are intended to improve the effectiveness of conservation work under the ESA, and they do not change the conservation standards of the law.

Questions from Senator Dianne Feinstein

1) **On January 10, 2019, I sent a letter requesting information regarding the costs and damages sustained by the national parks during the partial government shutdown earlier this year. On January 11, 2019, I received a letter that was not responsive to my specific requests from National Park Service Deputy Director P. Daniel Smith. I sent a follow up letter to your office on February 6, 2019, which has remained unanswered. As you know, the decision to keep some national parks open during the partial government shutdown resulted in severe damage to our nation's public lands, human health risks, and several deaths.**

   National Parks, like Joshua Tree, were vandalized and severely damaged. For example, in Joshua Tree a 100 year-old juniper tree was used for firewood, Joshua trees were cut down to make way for cars illegally driving in the desert, and an overflow of human waste in the unattended park posed health risks to both people and sensitive habitats. Parklands may take hundreds of years to fully recover, and in some cases the damage is irreparable. It is important that Congress fully understand the ramifications of this decision.

   a) **Please provide an assessment of any damages to natural resources and infrastructure and an estimate of necessary repair costs for each national park that remained open during the shutdown.**

      Answer: The NPS has not done a comprehensive survey of the impact that the lapse in funding had on national parks. However, an informal assessment conducted with park superintendents revealed there were no significant impacts to park resources.

2) **National Park Service permanent staffing levels have decreased over the last several years, while more seasonal employees have been hired in certain areas and seasons. However, seasonal employees are not an adequate replacement for permanent staff that are needed for a number of responsibilities throughout the Park Service.**

   a) **Please provide a list of staff positions over the last five years that have been vacated but cannot be filled due to inadequate funds, including the name of the parks, position titles, and GS levels.**

      Answer: The NPS does not maintain service-wide data that lists specific position vacancies or their reason for being unfilled, either temporarily or permanently. Variability in parks' mission and responsibilities require staffing decisions be made at the local level and which address the highest priority local needs.

Questions from Senator Jack Reed

1) **Secretary Bernhardt, I was proud to introduce the legislation that created the John H. Chafee Blackstone River Valley National Historical Park in 2014. The Blackstone Valley is a national treasure, with thousands of acres of beautiful, undeveloped land and waterways as well as historical sites that highlight Rhode Island's role in the Industrial Revolution. As we near the five year anniversary of its establishment, I am concerned by the overall lack of progress at the Park.**

   a) **Can you provide an update on the status of the Park? What is the Department's timeline for completing the required General Management Plan?**

      Answer: Park management and Northeast Region leadership continue to make progress toward establishing the boundary for Blackstone River Valley National Historical Park:

      - Negotiations between the National Park Service and the Old Slater Mill Association to acquire the Slater Mill property through donation continue.
      - A Conservation and Preservation Easement between the National Park Service and the Rhode Island Department of Environmental Management related to co-management of Blackstone River State Park in Lincoln, RI is complete and must be submitted for approval by the Rhode Island State Properties Committee before signature by both parties.
      - Of the four mill villages named in the park's legislation, both Slatersville (North Smithfield, RI) and Ashton (Cumberland, RI) have a General Agreement and a Local Historic District in place, both are requirements to be included in the proposed park boundary; the mill village of Whitinsville (Northbridge, MA) has a General Agreement in place but has not approved a Local Historic District (proposed Local Historic District will go before the Northbridge fall town meeting for approval) and the mill village of Hopedale (Hopedale, MA) has a Local Historic District in place but not a General Agreement (General Agreement is with the Town Administrator for signature then will come to the park Superintendent for final signature).

   b) **Does the Department expect to finalize the acquisition of Slater Mill or other sites this year?**

      Answer: As noted in the response to the previous question, the NPS continues its negotiations with the Old Slater Mill Association to finalize the donation.

   c) **Since April 2018, there hasn't been a permanent Superintendent assigned to Blackstone. Why has this been the case and when will a permanent Superintendent be in place?**

      Answer: Great care and deliberation is being taken in selecting the next superintendent for the park. Following the vacancy, and after conducting a rigorous vetting process, management made the decision to re-advertise the position. This decision is supported by

the confidence in continuity of operations in having the former deputy superintendent of the three parks act as the superintendent.

Questions from Senator Jeff Merkley

1) **Your predecessor canceled a study on the health impacts of mountaintop mining. The Interior Department's Inspector General investigated why that was, and was told that the decision was made "largely as a result of the Department's changing budget situation" at the time. One of your staffers, a policy advisor in the Office of Surface Mining Reclamation and Enforcement and former coal lobbyist, Landon "Tucker" Davis, said of the reason for canceling the study: "science was a Democrat thing."**

   a) **Do you agree with this statement?**

      Answer: The statement does not reflect the policies or operations of this Department. I believe that the decisions we make should be informed by science and that we must rely on that very best science.

   b) **Shouldn't science, not politics, and most certainly not the interests of coal companies, guide the protection and use of our public lands?**

      Answer: The decisions we make should be informed by science and we must rely on that very best science.

   c) **Will you now resume the scientific study on the environmental impacts of mining, considering Congress has not made the budget cuts you initially cited as justification?**

      Answer: As OSMRE staff has indicated, this grant was reconsidered for reasons that ranged from imprudent use of resources to duplicative research efforts and cited two other studies conducted by other federal agencies.

2) **Secretary Bernhardt, in Interior's FY20 proposed budget, you are asking for increased funding for offshore energy development, while also cutting the budget for environmental enforcement. You also proposed to revoke rules put in place after the Deepwater Horizon spill, which were design to prevent another disaster.**

   We continue to see increasing damage from climate chaos, and instead of investing in conservation and the deployment of clean energy, we are trying to double down on infrastructure that will lock in decades of carbon pollution. This is a reckless and shortsighted approach for both communities and for our climate.

   a) **Will you commit to considering both the climate impacts of offshore oil development and the opposition of coastal communities before moving forward with the Administration's 5-year plan?**

      Answer: The Department carefully considers all feedback received during the development of a National OCS Program, and will continue to do so as this process

moves forward. For more information please see https://www.boem.gov/National-Program/

NATIONAL ARCHIVES and RECORDS ADMINISTRATION
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June 13, 2019

The Honorable Elijah E. Cummings
Chairman, Committee on Oversight and Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Mr. Chairman:

In follow up to my April 1, 2019 letter to the Committee on Oversight and Reform, I am providing the requested information pertaining to your inquiry about recordkeeping and records management practices of the Department of the Interior. In response to the concerns raised, and in accordance with 36 CFR 1230.16, I initiated an inquiry with the Department on March 21, 2019, concerning the alleged unauthorized disposition of Acting Secretary Bernhardt's calendar records (enclosed). As my subsequent letter to Mr. Downs notes, NARA does not conduct an investigation under this process, but instead evaluates the reports and information that the agency provides us in response to the allegations.

The Department provided an initial response in a letter dated March 27, 2019 (enclosed), stating that the records in question were appropriately captured and maintained in accordance with records management requirements. To gain further understanding of how the agency captures, manages, and preserves the Secretary's calendars and other records, on April 18, 2019, I met with Mr. Bruce Downs, the Department's Deputy Chief Information Officer and Acting Senior Agency Official for Records Management; Mr. David Alspach, the Department Records Officer; several members of the Department's Office of the Solicitor, and other Department officials. During this meeting the Department described the various types of calendars created and maintained on behalf of the Secretary and explained how Secretary Bernhardt's records, including calendar records dating back to August 2017, when Secretary Bernhardt was appointed Deputy Secretary, are captured, maintained, and preserved. The Department also noted that records created by other Department programs serve as further documentation of the Secretary's activities and meetings.

At my request, the Department submitted a subsequent response, dated April 30, 2019 (enclosed), detailing the recordkeeping and records management practices outlined above and confirming that no calendar records or calendar entries pertaining to the Secretary's activities have been deleted or destroyed.

Based on my meeting with Department records management officials and after reviewing their written responses, including their responses to follow-up questions, we have found no basis to believe that there has been an unauthorized destruction of federal records. As a result of the information NARA has obtained and reviewed, I have informed the Department that we have closed this case (enclosed and available on our website).

Sincerely,

Laurence M. Brewer

LAURENCE BREWER
Chief Records Officer
for the U.S. Government

Enclosures

cc:
John Hamilton, Director, Congressional Affairs, NARA
Bruce Downs, Deputy Chief Information Officer, DOI
David Alspach, Department Records Officer, DOI

HOUSE COMMITTEE ON
NATURAL RESOURCES
REPUBLICANS | RANKING MEMBER ROB BISHOP

Disproving Democrat Allegations of Recordkeeping Wrongdoing at the Interior Department

Minority Interim Staff Report
Committee on Oversight and Reform
Committee on Natural Resources
U.S. House of Representatives

August 22, 2019

EXECUTIVE SUMMARY

Approximately six months ago, Chairman Elijah Cummings and Chairman Raúl Grijalva initiated partisan investigations into allegations that the Department of the Interior (DOI) was hiding meetings taken by then-Acting Secretary David Bernhardt. These allegations had initially been made and repeated by left-wing special interest groups opposed to Bernhardt and his background. Although the Oversight and Reform Committee has traditionally overseen compliance with the Freedom of Information Act (FOIA) and records management laws on a bipartisan basis, Chairman Cummings opened his investigation without even consulting Republican Committee Members. Likewise, in an unprecedented and overbroad initial document request, Chairman Grijalva requested the entirety of Bernhardt's calendars and schedules from the date of his confirmation as the Deputy Secretary of the Interior. No Republican Natural Resources Committee Members were consulted by Chairman Grijalva prior to initiating his investigation.

Since then—contrary to Chairman Cummings's assertion of a "cover-up" on all congressional investigations[1] and Chairman Grijalva's allegations that Bernhardt treats "congressional requests for information as a nuisance he can ignore . . ."[2]—Bernhardt and DOI have cooperated extensively with the Chairman's investigation. DOI has produced tens of thousands of pages of documents, including Bernhardt's calendars, daily cards, and scheduling emails. DOI has made four employees available for day-long interviews with the Committees. Quite simply, the Committees have a comprehensive record from which to judge DOI's compliance with federal law.

The record before the Committees shows conclusively that the allegations levied against Bernhardt and DOI are unfounded.

- There is no evidence to suggest that DOI is deleting or altering Bernhardt's calendars or that Bernhardt is skirting his ethical obligations.
- DOI witnesses explained that Bernhardt's various calendars and schedules have been preserved and made available to the public.
- DOI witnesses detailed how all of Bernhardt's external meetings undergo a rigorous ethics review process and are approved by career DOI ethics officials and that there is no indication that Bernhardt has ever sought to depart from his ethical obligations.
- DOI witnesses testified that Bernhardt has personally insisted that DOI political appointees take ethical training regularly.
- DOI witnesses denied allegations that Bernhardt was deleting or altering his calendars to hide his meetings from the American public.
- An independent review by the nonpartisan National Archives and Records Administration—a review that Chairman Cummings requested—also found no evidence of records mismanagement.

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[1] *See, e.g.*, 165 Cong. Rec. H4414 (June 11, 2019) (statement of Rep. Elijah E. Cummings).

[2] Press Release, Rep. Raúl Grijalva, Secretary Bernhardt "Not Losing Sleep" Over Climate Change Concerns Me – and So Does His Lack of Transparency With Congress (May 16, 2019), https://naturalresources.house.gov/media/press-releases/chair-grijalva-secretary-bernhardt-not-losing-sleep-over-climate-change-concerns-me_and-so-does-his-lack-of-transparency-with-congress.

- DOI witnesses testified that they disagreed with the assertion of a "cover-up" on congressional investigations.

Because Chairman Cummings and Chairman Grijalva have already used cherry-picked information to create a false impression about DOI's FOIA compliance and Bernhardt's transparency, this interim staff report sets the record straight about the allegations levied against Bernhardt and DOI. The record is clear that contrary to public allegations of wrongdoing, DOI and Bernhardt have acted appropriately and ethically in maintaining and preserving the Secretary's calendar records, as well as making them publicly available.

FINDINGS

1. ***Contrary to allegations, Secretary Bernhardt takes his ethics obligations very seriously.***

   Bernhardt places an emphasis on ethics. As Secretary and Deputy Secretary, Bernhardt implemented several new procedures to ensure he complied with his ethics requirements. These procedures exceed any requirements ever implemented for previous secretaries or deputy secretaries.

2. ***Contrary to allegations, Secretary Bernhardt is not hiding his meetings from the public.***

   The Department publishes Bernhardt's meetings on its official website and makes scheduling documents available on its official website. Although discrepancies may exist between varying types of Bernhardt's scheduling documents, the different purposes of the documents explain such discrepancies. The discrepancies do not evidence that Bernhardt is nefariously hiding his meetings.

3. ***Contrary to allegations, Secretary Bernhardt is not using vague meeting labels to hide his meeting participants.***

   The Department publishes Bernhardt's meetings, including attendees, each week on its official website. Bernhardt's calendars are created for internal use—not for a public audience. The use of vague meeting labels does not suggest an effort to hide his meetings, and witnesses denied any effort to hide the Secretary's meetings.

4. ***Contrary to allegations, Secretary Bernhardt's calendar records are appropriately preserved.***

   Bernhardt's calendar records are preserved, have been produced to the Committees, and are available on the Department's official website. Following an independent review, the National Archives determined that the Department has appropriately preserved the Secretary's calendar records.

5. ***The Trump Administration has cooperated extensively with Chairman Cummings's and Chairman Grijalva's investigation.***

   Contrary to Chairman Cummings's assertions of a "cover-up" on all congressional investigations and Chairman Grijalva's allegation that Bernhardt treats "congressional requests for information as a nuisance he can ignore," the Department has cooperated with this investigation. The Department has voluntarily produced documents and made several witnesses available for day-long transcribed interviews. The Department has been transparent and forthcoming in responding to all of the chairmen's partisan demands.

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BACKGROUND

On April 28, 2017, President Trump nominated David Bernhardt to be the Deputy Secretary of the Interior. Prior to his nomination, Bernhardt worked at a private, Colorado-based law firm, where he specialized in natural resources law. When Bernhardt accepted the position at DOI, he signed an ethics agreement to prevent conflicts of interest arising from any overlap between his former clients and the industries petitioning DOI.[3] In his ethics agreement, Bernhardt agreed to comply with all applicable ethics regulations and laws relating to interactions with his former clients.[4] When Bernhardt started at DOI, he worked with the Department's Ethics Office to fully comply with this agreement. During this process, the Ethics Office developed a recusal card, which Bernhardt carried in his pocket.[5] Throughout his tenure at DOI, Bernhardt, his staff, and the Department's career ethics officials have gone to great lengths to ensure Bernhardt does not engage in prohibited activity.

On February 7, 2019, Chairman Grijalva insinuated the existence of nefarious manipulation of Bernhardt's calendars to avoid full disclosure of meetings. In Chairman Grijalva's letter to Bernhardt, he requested production of the entirety of Bernhardt's calendars and related scheduling documents.[6] On March 19, 2019, Chairman Cummings opened an investigation into the alleged unauthorized disposition of records at DOI. In Chairman Cummings's letter to the National Archives and Records Administration (NARA), he asked NARA to inspect records management practices at DOI to determine if "all of the Acting Secretary's meetings are being captured and preserved in accordance with DOI's record schedules."[7] Nine days after requesting a review by NARA, Chairman Cummings and Chairman Grijalva opened a joint investigation. The chairmen wrote to then-Acting Secretary David Bernhardt to request transcribed interviews with four DOI employees about the preservation and production of records of Bernhardt's daily activities.

As a basis for opening this investigation, the chairmen's letter cited a single, cherry-picked excerpt of an exchange between Chairman Cummings and DOI's Deputy Chief FOIA Officer, Rachel Spector, during an Oversight and Reform Committee hearing to raise questions about whether DOI is "adequately preserving records of [Secretary Bernhardt's] schedule and

[3] Letter from David Bernhardt, to Melinda Loftin, Designated Agency Ethics Official, Dep't of the Interior (May 1, 2019), https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/074A50155ADA5362852581190026EE88/$FILE/Bernhardt,%20David%20L.%20%20finalEA.pdf [hereinafter "2017 Ethics Agreement"].

[4] *Id.*

[5] Todd Willens Transcribed Interview 35, Jul. 18, 2019 (on file with Committee) [hereinafter "Willens Interview"]. Many of the witnesses interviewed by the Committee also carried a copy of Bernhardt's recusal card with them.

[6] Letter from Rep. Raúl Grijalva, H. Comm. on Natural Resources, to Hon. David Bernhardt, Acting Sec'y, U.S. Dep't of the Interior (Feb. 7, 2019).

[7] Letter from Rep. Elijah Cummings, Chairman, H. Comm. on Oversight & Reform, to Mr. Laurence Brewer, Chief Records Officer, Nat'l Archives & Record Admin. (Mar. 19, 2019).

daily appointments."[8] Specifically, the chairmen alleged that Spector testified at the hearing that she was "aware of an issue" concerning the deletion of Bernhardt's calendars.[9]

However, as Ranking Member Jim Jordan noted in an April 9, 2019, letter to Bernhardt, Chairman Cummings mischaracterized Spector's testimony. Spector's statement referred to public allegations that Bernhardt's calendars had been deleted, not—as the chairmen alleged—the deletion of the calendars.[10] In fact, Spector specifically testified that she "d[id] not know"[11] whether Bernhardt's calendars had been deleted, a fact Chairman Cummings omitted from his letter to Secretary Bernhardt.[12]

On April 10, 2019, to assist Chairman Cummings's and Chairman Grijalva's investigation, DOI produced—unsolicited—nearly 27,000 pages of scheduling documents, including meeting request forms, scheduling emails, daily cards, and calendars. Nonetheless, Chairman Cummings sent a series of letters to DOI demanding additional information from DOI, including one letter that threatened to withhold the salaries of DOI employees.[13]

On May 17, 2019, DOI provided a bipartisan briefing to staff from both committees about DOI's records management and retention policies. At this briefing, DOI officials said the key takeaway from their internal records management review was that records were never destroyed.[14] Still unsatisfied, Chairman Cummings and Chairman Grijalva insisted upon obtaining direct testimony from the four DOI employees.

On June 10, 2019, the Committees interviewed Catherine Gulac, a career Administrative Assistant to the Office of the Deputy Secretary. During the two hour-long interview, Gulac testified that she has never been instructed to delete anything from Secretary Bernhardt's calendar and was unaware of meetings being deleted during Bernhardt's tenure.[15] The Committees conducted transcribed interviews of three more DOI officials:

- June 14, 2019: Gareth Rees, Executive Assistant to the Secretary
- June 18, 2018: Samantha Hebert, Director of the Office of Scheduling and Advance
- July 18, 2019: Todd Willens, Chief of Staff

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[8] Letter from Reps. Elijah Cummings & Raúl Grijalva, U.S. Congress, to Hon. David Bernhardt, Acting Sec'y, U.S. Dep't of the Interior (Mar. 28, 2019).
[9] *Id.*
[10] *FOIA: Examining Transparency Under the Trump Administration Before the H. Comm. on Oversight & Reform,* 116th Cong. 72 (2019).
[11] *Id.*
[12] Letter, *supra* note 7.
[13] *See generally,* Letters from Rep. Elijah Cummings, Chairman, H. Comm. on Oversight & Reform, to Todd Willens, Catherine Gulac, Gareth Rees, & Samantha Hebert, U.S. Dep't of the Interior (Apr. 17, 2019); Letter from Rep. Elijah Cummings, Chairman, H. Comm. on Oversight & Reform, to Cole Rojewski, Dir. of Cong. & Legislative Affairs, U.S. Dep't of the Interior (May 7, 2019); Letter from Rep. Elijah Cummings, Chairman, H. Comm. on Oversight & Reform, to Hon. David Bernhardt, Sec'y, U.S. Dep't of the Interior (May 31, 2019).
[14] Briefing by U.S. Dep't of the Interior, to H. Comm. on Oversight & Reform & H. Comm. on Natural Res. Staff (May 17, 2019). The DOI's chief records officer even stated that Secretary Bernhardt was one of the most engaged political appointees during records management training and was intimately familiar with records management.
[15] Briefing by Catherine Gulac, Admin. Assistant, U.S. Dep't of the Interior, to H. Comm. on Oversight & Reform & H. Comm. on Natural Res. Staff (Jun. 10, 2019).

These three transcribed interviews totaled more than 22 hours of the witnesses', DOI counsels', and committee staff's time. The testimony from these three witnesses echoed Gulac's testimony.

Based on the voluminous record before the Committees—including nearly 27,000 pages of documents and approximately 700 pages of witness testimony—this report sets the record straight about DOI recordkeeping and public release practices.

FINDING 1: SECRETARY BERNHARDT TAKES HIS ETHICS OBLIGATIONS VERY SERIOUSLY

Myth:	Secretary Bernhardt skirts his executive branch ethics obligations.

Fact:	Secretary Bernhardt places an emphasis on ethics. As Secretary and Deputy Secretary, Secretary Bernhardt implemented several new procedures to ensure he complied with his ethics requirements. These procedures exceed any requirements ever implemented for previous secretaries or deputy secretaries.

Democrats and liberal special interests have alleged that Bernhardt's calendars are being altered or deleted so that the Secretary can skirt his ethics obligations and secretly meet with oil lobbyists.[16] This allegation is not supported by evidence presented to the Committees, which actually shows the opposite. Every DOI official interviewed by the Committees—both career employees and political appointees—testified that Bernhardt sought to ensure that he is fully complying with his ethical obligations.

Witness testimony shows Bernhardt knows and follows his ethics obligations

Gareth Rees, a career civil servant who has worked closely with Bernhardt since Bernhardt rejoined the DOI as Deputy Secretary in August 2017, explained that Bernhardt was well aware of his ethical obligations. Rees testified:

> Q. Are you generally aware what ethics regulations Mr. Bernhardt must comply with?
>
> A. I always have my ethics recusal card with me, so yes.
>
> Q. So you are aware that he is not permitted to meet with certain individuals?

[16] *See generally, U.S. Department of the Interior Budget and Policy Priorities for FY 2020 Before the H. Comm. on Natural Res.*, 116th Cong. (2019); Juliet Eilperin, *Zinke's #2 Has So Many Potential Conflicts of Interest He Has to Carry a List of Them All,* WASH POST (Nov. 19, 2018), https://www.washingtonpost.com/national/health-science/the-man-behind-the-curtain-interiors-no-2-helps-drive-trumps-agenda/2018/11/18/6403eb4c-e9ff-11e8-b8dc-66cca409c180_story.html?utm_term=.207c96334ff0; Jacob Holzman, *Newly Disclosed Meetings with Industry Create Ethics Questions for Interior Secretary,* ROLL CALL (Apr. 8, 2019), https://www.rollcall.com/news/bernhardt-schedules-undisclosed-contacts-industry.

A. Certain individuals and companies, yes.

Q. Do you think Mr. Bernhardt generally knows who he can and cannot meet with?

A. I was—I would believe so.

Q. And the recusal card that you showed, does it list all of the individuals [and] groups that he is not allowed to meet with?

A. Yes.

Q. Did you help put this list together? Who created that list?

A. I did not help put the list together. The list was between Mr. Bernhardt and the ethics office. I was just the one who created the easy pocket card for people to carry around.

Q. Does Mr. Bernhardt carry one of those pocket cards around with him?

A. He does.[17]

Rees also said that Bernhardt is not afraid to reach out directly to DOI's Ethics Office for ethics guidance. He explained: "[Secretary Bernhardt] will reach out directly to the ethics office. If he has a question, yeah, he will regularly reach out to them and work with them. My previous deputy [secretary] that I worked for I did not experience—experience that. He [Bernhardt] likes to have his weekly meetings with the ethics team."[18]

Samantha Hebert, the DOI official who currently maintains Bernhardt's calendar, similarly testified that Bernhardt stresses his ethical obligations "relentlessly." She testified:

> He's very much an ethical person because—I think more than anything else I've ever heard David Bernhardt speak about is about Ethics and General Law and how important Ethics is at the Department of the Interior. Everyone there hears him talk about it relentlessly, that we follow all of the Ethics rules and that all of the meetings go through Ethics. It's been a big part of him being there.[19]

Hebert confirmed that Bernhardt understands and follows his ethics requirements, explaining:

Q. Do you believe Mr. Bernhardt understands what ethics regulations

[17] Gareth Rees Transcribed Interview 50-51, Jun. 14, 2019 (on file with Committee) [hereinafter "Rees Interview"].
[18] *Id.* at 47.
[19] Samantha Hebert Transcribed Interview 80, Jun. 18, 2019 (on file with Committee) [hereinafter "Hebert Interview"].

he must abide by?

A. Absolutely.

Q. Are you generally aware of Mr. Bernhardt's recusals?

A. I'm generally aware of them, but I also have a card that I keep with me that has them on it.

Q. Do you think Mr. Bernhardt generally knows who he is and is not supposed to meet with?

A. Oh, he absolutely knows.[20]

Like Rees, Hebert informed the Committees that Bernhardt has a weekly meeting with the Ethics Office.[21] Hebert also separately meets twice a week with the Ethics Office.[22]

At his transcribed interview, DOI's Chief of Staff, Todd Willens, described Bernhardt's character as exemplary, stating:

> He's a great guy to work for. Ethical, clear in his direction, consistent in his character. I've worked on the Hill—I've been in Federal service for 20 years. I've worked on the Hill for 16 of those 20. I've been in Federal Government affairs or government affairs for 25 years, and I'd say—and I've worked with a lot of Members of Congress, and they're all good people in their own right, but the level of Ethics, character, that Mr. Bernhardt has is above all of them in my career. I feel I'm at the apex.[23]

Bernhardt implemented rigorous procedures to comply with his ethics obligations

According to witness testimony and documents, Bernhardt has implemented several procedures since returning to DOI in 2017 to ensure that DOI career ethics officials review and approve his meetings. In an email to a meeting requestor, Hebert explained the new process as "a rigorous ethics approval process" in which meetings cannot be confirmed "until that process is complete."[24]

When he began as Deputy Secretary, Bernhardt worked with the Ethics Office to develop a meeting request form, which collects more information from external meeting requesters than DOI had ever collected for any previous deputy secretary or secretary.[25] Rees explained how the

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[20] *Id.* at 51.
[21] *Id.* at 49.
[22] *Id.* at 109.
[23] Willens Interview at 48.
[24] E-mail from Samantha Hebert, Director of Scheduling and Advance, Dep't of the Interior (Feb. 22, 2019, 11:07 AM) (DOI_00011511_0001481).
[25] The meeting request form is reproduced as Appendix I to this report.

meeting request form and ethical vetting process developed when Bernhardt became Deputy Secretary. He testified:

> Q. So you said that there is a form now that you developed when Mr. Bernhardt became deputy secretary. Is that correct?
>
> A. Yes.
>
> Q. This is the form. Are there other forms that you might have used?
>
> A. This would appear to be the form that we used. I know -- I do know that it has been updated. It was updated at one point last year.
>
> Q. Okay. And just to confirm, you are speaking about Exhibit 1?
>
> A. Exhibit 1 would be the form.
>
> Q. Okay. What are some of the other changes that might have occurred on that initial intake process?
>
> A. The biggest one since [former Obama DOI Deputy Secretary] Mike Connor to David Bernhardt has been that any meeting request from an external party must be reviewed by our Ethics Office.
>
> Q. And can you tell me a little bit—so is this meeting form part of that, Exhibit 1?
>
> A. The meeting form, Exhibit 1, is part of that. This form, somebody will email us or call us requesting a meeting with the deputy secretary, we would send out this form to the company or the individual. They would need to complete that form.
>
> Once that form was returned to us completed, I would have a quick look through it to see if there was any glaring issues that could potentially arise with regard to his recusal list.
>
> And then the process that would take place was that we would make the decision as to whether the deputy secretary would likely take the meeting or not take the meeting, at which point it would be submitted to the Ethics Office for review to see if they would approve it or not approve it.[26]
>
> * * *
>
> Q. So why did you start using this form?

[26] Rees Interview at 18-19.

A. This was a form that the deputy—the deputy secretary wanted to be very careful with regards to his ethics recusals and wanted to have something in place that would catch as much information as possible so we could then work with the Ethics Office.[27]

Rees testified that if Secretary Bernhardt planned to take a meeting, it was standard practice to send all meeting request forms to the Ethics Office for review and approval.[28]

Hebert confirmed this rigorous ethics approval process is still in place following Bernhardt's confirmation as Secretary. Hebert testified:

Q. After you receive the form, does the form then go to the Ethics Office?

A. Yes.

Q. And do the schedulers consult with the Ethics Department on every meeting request?

A. Yes. Well, every meeting request that the Secretary is going to accept. We wouldn't send them every single meeting request that comes in, because they don't have time to review hundreds of meeting requests.

Q. So just to confirm, you speak with the Secretary first to determine if he would like to accept or decline the meeting request?

A. Yes.

Q. And then if he would like to accept the request, you send those meeting request forms to the Ethics Office?

A. Yes.

Q. And in your email you say: I cannot schedule it permanently until that process is complete.

Is it true meetings are not scheduled until the request forms are reviewed and approved by Ethics?

A. Yes.

Q. Has this been the practice throughout Mr. Bernhardt's tenure as

[27] *Id.* at 19.
[28] *Id.* at 57-58.

Secretary?

A. Yes.[29]

Hebert testified that after Bernhardt became Secretary, all his personal meetings also received vetting through the ethics review process.[30]

The meeting request form itself reminds the meeting requestor about Secretary Bernhardt's commitment to ethics. The top of the form reads: "To ensure that the appropriate individual within the Department of the Interior is meeting with you on a given matter and because the Office of the Secretary is committed to maintaining the highest ethical standards, we need the information requested below before we can agree to schedule a meeting."[31] When asked about this statement, Hebert explained that it reflected the Secretary's commitment to ethics:

Q. Is this statement consistent with conversations you have had with Mr. Bernhardt about his schedule?

A. Yes.

Q. Do you agree the Office of the Secretary is committed to maintaining the highest ethical standards?

A. Yes.[32]

When asked the same question, Willens also agreed that the statement on the form reflected the Secretary's commitment to ethics. He testified:

Q. Do you believe that it is a true statement that the Office of the Secretary is committed to maintaining the highest ethical standards?

A. Yes.[33]

The DOI witnesses testified that Secretary Bernhardt was the first DOI official to implement a process to ask the Ethics Office to review and approve meeting requests. Rees testified:

Q. So is Mr. Bernhardt the first Deputy Secretary you worked with who did not make his own determination on recusals or whether to take an internal or external meeting?

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[29] Hebert Interview at 60-61.
[30] *Id.* at 79.
[31] U.S. Dep't of the Interior, Office of the Sec'y, Meeting Information Request Form (DOI_00011511_00000717 – DOI_00011511_00000718).
[32] Hebert Interview at 56.
[33] Willens Interview at 64.

A. Yes.

Q. And he relies solely on the ethics office to make that determination?

A. For the ethics determination that he would rely solely on them.[34]

Rees acknowledged that the ethics approval process did create "more work for us, but we wanted to make sure that he's, that any meeting that he takes has been approved and that he doesn't appear to have any conflicts of interest."[35]

In addition to the rigorous ethics approval process for each external meeting, DOI implemented a policy when Bernhardt became Acting Secretary that prohibits meeting requesters from modifying meeting participants on the day of the meeting.[36] In an email in response to a meeting request, a DOI scheduling employee told the requester:

> Please note, we have a new strict policy for all meeting participants—we need to know their name, title and affiliation at least one business day before the meeting. Unfortunately, ***we are no longer able to accept any changes to participants regardless of circumstance on the day of the meeting.***[37]

Hebert described this policy as seeking to implement a "best practice" in upholding Bernhardt's commitment to ethics, explaining:

Q. In the very top email . . . the last two sentences in that first paragraph say: Please also send me the final list of participants. Anyone not listed will not be permitted in the meeting.

Is that the policy about the meeting attendees that you were referring to during the last round?

A. Yes.

Q. And you said earlier, there's a cutoff date. Was the purpose of the statement to notify the requesters of this policy?

A. Yes.

Q. And just to make sure we have the record clear, is the meeting attendee list permitted to change the day of the meeting?

A. No.

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[34] Rees Interview at 50.
[35] *Id.* at 53.
[36] E-mail from Leila Getto, Deputy Dir., Office of Scheduling & Advance, U.S. Dep't of Interior (Feb. 25, 2019 3:40 PM) (DOI_00011511_00001454 – DOI_00011511_00001455).
[37] *Id.*

Q. When was this policy put in place?

A. Sometime when acting—when Deputy Secretary Bernhardt became Acting Secretary Bernhardt.

Q. Okay.

A. I believe it actually came up in one of our Ethics meetings that we had with pretty much the whole hallway, where we were talking about best practices and how do we make sure that we don't put him in a situation he shouldn't be put in, and that was where we came up with the agreement that, you know, these external participants are going to have to understand that there's going to be a cutoff date for when you can add someone to a meeting.

Q. So would you say—did the Ethics Department play a role in putting this policy in place?

A. Oh, yes.[38]

Witnesses testified that Bernhardt is not violating his recusal obligations

Although Democrats and liberal special interests allege that Bernhardt is skirting his ethical obligations by meeting with individuals on his recusal list, Rees confirmed that to his knowledge, Bernhardt has never met with an individual on his recusal list. Rees testified:

Q. To your knowledge, has Secretary Bernhardt or Deputy Secretary Bernhardt ever knowingly met with an individual he previously represented at his firm?

A. Not to my knowledge.[39]

Hebert likewise testified that she was unaware of Bernhardt ever meeting with an individual he represented in private practice. She testified:

Q. To your knowledge, has Secretary Bernhardt ever knowingly met with an individual he previously represented at his firm?

A. No, not to my knowledge.[40]

[38] Hebert Interview at 61-62.
[39] Rees Interview at 52.
[40] Hebert Interview at 52.

Similarly, the Oversight and Reform Committee staff asked Willens whether he was aware if Bernhardt had met with an individual whom he represented in the private sector. Willens testified:

> Q. To your knowledge, has Secretary Bernhardt ever knowingly met with an individual he previously represented while at his firm?
>
> A. No.[41]

During the investigation, the Democrats pressed the witnesses on a particular meeting request with Bernhardt on behalf of nine oil and gas companies, including the Louisiana Mid-Continent Oil and Gas Association (LMOGA) and Statoil.[42] Statoil was listed on Bernhardt's recusal list.[43] LMOGA was not.[44] LMOGA appears to have an association to an entity on Bernhardt's recusal list, U.S. Oil and Gas Association, but it does not appear that this association would require a recusal in all circumstances. In any event, LMOGA had not been identified by career ethics officials at DOI as an entity covered by Bernhardt's ethics agreement.[45]

The meeting—including the list of attendees—was approved by a career agency ethics official.[46] The applicable ethics requirements allowed Bernhardt to meet in groups with five or more interested stakeholders as long as the meeting did not discuss specific party matters.[47] In an email sent to Bernhardt's executive assistant Gareth Rees, DOI's Deputy Designated Agency Ethics Official, Ed McDonnell, approved the meeting based on the understanding that there were going to be five or more interested stakeholders attending and an agreement that no party matters were to be discussed.[48] Statoil did not ultimately attend the meeting, however, the meeting did appear to take place according to the parameters articulated in McDonnell's approval email.[49]

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[41] Willens Interview at 55.
[42] *See generally,* Willens Interview at 154-164; Hebert Interview at 185-187, 201-203; Rees Interview at 112-117.
[43] Memorandum from David Bernhardt, Deputy Sec'y, Dep't of the Interior on Ethics Recusal to Ryan Zinke, Sec'y, et al. (Aug. 15, 2017).
[44] *Id.*
[45] E-mail from Edward McDonnell, Deputy Designated Agency Ethics Official, Dep't of the Interior, to Gareth Rees, Executive Assistant, Dep't of the Interior (Nov. 13, 2017, 4:01 PM) (DOI_00011511_00017311 – DOI_00011511_00017320).
[46] *Id.*
[47] Memorandum from David Bernhardt, Deputy Sec'y, Dep't of the Interior on Ethics Recusal to Ryan Zinke, Sec'y, et al. (Aug. 15, 2017) (citing 5 C.F.R. § 2635.502 (2002)).
[48] E-mail from Edward McDonnell, Deputy Designated Agency Ethics Official, Dep't of the Interior, to Gareth Rees, Executive Assistant, Dep't of the Interior (Nov. 13, 2017, 4:01 PM) (DOI_00011511_00017311 – DOI_00011511_00017320).
[49] Rees Interview at 116.

On Mon, Nov 13, 2017 at 4:01 PM, McDonnell, Edward [redacted] wrote:

Hi Gareth,

Under the impartiality regulation and the pledge, David may not participate in any party matter in which any former employer or client is or represents a party. The pledge also prohibits him from participating in any meeting or other communication with a former employer or client unless five or more interested stakeholders are present and no party matters are discussed. Statoil is a former client under the pledge. Technically, given their number, David could at least meet with the listed attendees but no one at the meeting could discuss any party matters, regardless of who the parties to the matter may be. To avoid the risk of inadvertently violating the impartiality regulation and the pledge, however, it would be prudent to take them up on their offer of having any former employer or client sit out the meeting.

Thanks,
Ed

Bernhardt is improving the "anemic" ethics environment of the Obama Administration

Witnesses testified that in addition to implementing rigorous new ethics procedures, Bernhardt and his staff have worked to improve DOI's commitment to ethics, which had atrophied during the Obama Administration.[50] Willens stated that DOI's Ethics Office was "anemic, that it was inconsistent, and that it was severely understaffed."[51] He described some of the proposed reforms for the Ethics Office. He testified:

> But they are seeking more money, we're seeking employee slots, we're seeking reorganization, and really being led by our career ethics officer who's made these recommendations, and we're in the midst. And our goal is that by the end of this year, we will have that really in place.[52]

In addition to the work already being done, Bernhardt furthered his commitment to improving DOI's Ethics Office by issuing Secretary Order No. 3375. This Order seeks to "realign the reporting structure for ethics personnel" and "clarify roles and responsibilities with regards to the ethics program."[53] The accompanying press release noted the work Bernhardt has already completed, including increasing "the number of full-time, career ethics professionals by 162 percent, nearly doubling the total hired during the entire eight years of the previous administration."[54]

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[50] Willens Interview at 41-42.
[51] *Id.* at 42.
[52] *Id.* at 51.
[53] U.S. Dep't of the Interior, Secretary Order No. 3375, Improving the Department of the Interior's Ethics Programs through Consolidation (2019).
[54] Press Release, U.S. Dep't of the Interior, Secretary Bernhardt Transforms Interior's Ethics Program (Aug. 14, 2019).

Witnesses described how the meeting vetting and approval process is currently different than during the Obama Administration. Rees, who also served then-Deputy Secretary Michael Connor during the Obama Administration, detailed the differences in his testimony. He explained:

Q. This is the calendar for then-Deputy Secretary Michael Connor. And in the last round, you were discussing the 10 a.m. meeting he had with the American Wind Energy Association.

A. Uh-huh.

Q. Did this association fill out a meeting request form to have this meeting with Mr. Connor?

A. There was no meeting request form at that time.

Q. Okay. Was this request for meeting sent to the ethics office for their review?

A. Not that I recall.

Q. Was this meeting reviewed by the ethics office in any way?

A. Not that I recall.

Q. Was this meeting approved by the ethics office?

A. Not that I recall.

Q. And could I turn your attention to exhibit 4, please. This is the daily calendar for Mr. Bernhardt, dated September 26, 2018. And in the last round, you were discussing a 2 p.m. meeting with the reps of the American Wind Energy Association?

A. Yes.

Q. Can I ask you, sir, whether this association submitted a meeting request form to meet with Mr. Bernhardt?

A. I believe so. I would need to check my records, but the practice was or is that any externals would have to complete the meeting request form, and that would be submitted to ethics for clearance.

Q. So it is likely this was submitted to ethics then?

A. I would believe so.

Q. And it was reviewed by ethics attorneys?

A. I would believe so.

Q. And it was approved by ethics attorneys?

A. I believe so.[55]

The evidence before the Committees thoroughly disproves the allegation that Bernhardt skirts his executive branch ethics obligations. To the contrary, the evidence before the Committees clearly shows that Bernhardt is living up to his pledge that the "Office of the Secretary is committed to maintaining the highest ethical standards."[56]

FINDING 2: SECRETARY BERNHARDT IS NOT HIDING HIS MEETINGS FROM THE PUBLIC

Myth:	Several versions of Secretary Bernhardt's calendar exist, suggesting an effort to hide his meetings.

Fact:	There may be discrepancies between types of Secretary Bernhardt's scheduling documents because the documents have different purposes. One document, the daily schedule, is included in the Secretary's evening briefing book to help him prepare for the following day and is not always updated to reflect last-minute changes to the calendar.

News reports have noted that there appear to be several versions of Bernhardt's calendars released through FOIA and that there seem to be discrepancies between the documents.[57] Witness testimony indicates that any calendar discrepancies can easily be explained because Bernhardt maintains different types of scheduling documents for different purposes. Because the Secretary's schedule is dynamic, any late changes to the Secretary's schedule may not be reflected on every type of scheduling document.

Witnesses testified that scheduling documents could differ due to the purpose of the document

Bernhardt's executive assistant, Gareth Rees, testified that when Bernhardt served as Deputy Secretary, Rees created three documents that notated Bernhardt's daily activities. First, Rees used DOI's Bison Connect platform to create a Google-based calendar, which Rees stated was used mostly to inform staff when Bernhardt was available and what meeting to attend.[58]

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[55] Rees Interview at 47-48.
[56] U.S. Dep't of the Interior, Office of the Sec'y, Meeting Information Request Form (DOI_00011511_00000717 – DOI_00011511_00000718).
[57] Ellie Kaufman, *Interior Has 5 Versions of the Secretary's Schedule – But They Don't Always Match,* CNN (Jun. 5, 2019), https://www.cnn.com/2019/06/05/politics/david-bernhardt-conflicting-calendars-interior/index.html.
[58] Rees Interview at 158.

Second, Rees created a daily card/schedule, which was a printout of the Google calendar to be placed in the front of Bernhardt's daily briefing book. Bernhardt reviewed the daily briefing book the night before his scheduled meetings.[59] Finally, Rees created a pocket card for the Secretary to carry on his person detailing the time and location for each meeting.[60]

Rees and Hebert both explained that Bernhardt's schedule could change at a moment's notice. Rees testified:

> Q. When Mr. Bernhardt was Deputy Secretary, would you say his calendar was dynamic, it could change at any moment?
>
> A. It could change every 5 minutes.
>
> Q. Did you change the calendar to reflect those additions?
>
> A. We did the best that we could to reflect all changes.
>
> Q. And if the meeting was canceled before it occurred, would you delete it off the Google Calendar?
>
> A. Yes.
>
> Q. And when the meeting was canceled, would it send a cancelation notice to anyone who had been invited?
>
> A. Yes, it would.[61]

Similarly, Hebert testified:

> Q. Would you say Mr. Bernhardt's schedule is dynamic, can change at any moment?
>
> A. Absolutely.
>
> Q. Are these changes reflected in the calendar?
>
> A. They are.
>
> Q. If a meeting does not occur, do you cancel the meeting off of the calendar?
>
> A. Yes.[62]

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[59] *Id.* at 66.
[60] *Id.* at 66-67.
[61] *Id.* at 60.
[62] Hebert Interview at 65.

Rees explained, however, the daily card and pocket card were not always updated to match the Google calendar because while Bernhardt was Deputy Secretary the cards were created the evening before to prepare for the next day's events. Rees explained:

> Q. So, since the daily cards were created the evening before, if a meeting would get cancelled or a time would get switched, would those changes then be reflected on the daily card? Would you print a new daily card or –
>
> A. If there was a lot of changes, sometimes, yes. Yeah, if it was just one meeting canceled, then no. We would reflect the changes in the calendar.
>
> Q. So, when the daily cards were preserved, could they have inaccuracies on them due to meeting not happening or –
>
> A. Yes.
>
> Q. And if an additional meeting was scheduled, it could also not be reflected on the daily card?
>
> A. That is indeed possible.[63]
>
> ***
>
> Q. When were [the pocket cards] created? What time of day?
>
> A. Again, that would be normally the night before for his briefing book.
>
> Q. So the pocket card could also not reflect some meetings that occurred or did not occur, or did you print off a new pocket card for him to keep in his pocket?
>
> A. Again, sometimes, if there were significant changes and, you know, if it was at the end of the day, it would be easier to do. If it was the following day, then we would not.[64]
>
> ***
>
> Q. We have had several daily cards, pocket cards, Google Calendars produced to us from [the Department of the] Interior, as well as they are available online at Interior's website. And sometimes there are

[63] Rees Interview at 70.
[64] *Id.* at 71.

differences between the daily card and the Google Calendar. Do you know why that is? Is that just because maybe the daily card wasn't updated?

A. That is indeed possible. We would make sure that the changes were reflected in the calendar, not necessarily in the daily card.[65]

Hebert also explained that the daily schedule is not always updated, meaning that meetings could appear on the daily schedule but not be on the Google calendar. She testified:

Q. It appears that sometimes there are discrepancies between the daily schedule and the Google Calendar. Do you know why that is? There may be an extra meeting on one that's not on the other.

A. Because he's a Cabinet Secretary. He has a very busy schedule. White House meetings could pop up at any moment. There could be something that staff members find important that they need to meet with him about and a certain meeting has to go away so that he can take that meeting. For all those different reasons, his schedule shifts from time to time and very quickly.[66]

***

Q. So, ma'am, if there are discrepancies between the two calendars, it's likely some innocent purpose for that, not a nefarious conspiracy to hide calendars?

A. Absolutely. It's because he goes home with it, and maybe he looks at it and he sees that there was a meeting that he meant to tell me that he needed to take with staff that he forgot about and so he comes in the next morning and says, we're going to have to lose this meeting because I got to take this meeting, or whatever . . . .

Q. Would you say that changes to the schedule after the daily schedule is created could account for some of the discrepancies between the daily schedule and the Google Calendar?

A. Absolutely.[67]

Willens, DOI's Chief of Staff, testified that the discrepancies between the scheduling documents are not caused by deliberate actions on the part of DOI employees to hide information. He explained:

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[65] *Id.* at 72.
[66] Hebert Interview at 70.
[67] *Id.*

Q. It appears that there are some discrepancies between the Google Calendar and the schedule that is placed in his briefing book and a document referred to as a pocket card. We've heard from other witnesses that those discrepancies could come from meetings that have been canceled and that may be noted on his Google Calendar but may not make it onto the other documents because, as you stated, those are done the night before.

Is that correct, to your understanding?

A. That is, yes.

Q. Are the discrepancies between the documents, to your knowledge, caused by deliberate actions on the part of Department employees in an effort to hide information?

A. No.

Q. To your knowledge, has staff ever been instructed by Mr. Bernhardt to put more information on the schedule that goes into his briefing book versus what's on his Google Calendar or vice versa?

A. No.

Q. Have you ever instructed staff to put more information on one document versus the other document?

A No.[68]

Witnesses denied that anyone instructed them to hide information on Secretary Bernhardt's calendars

In addition, Rees and Hebert both clearly stated that they never received instructions from Bernhardt or anyone at DOI to put certain information on the Google calendar and not on the daily schedule or pocket card. Rees testified:

Q. Have you ever been instructed by anyone not to include an event on a daily card that is included on a Google Calendar?

A. Not that I recall.

Q. To your knowledge, has staff ever been instructed by Mr. Bernhardt to put more information on the daily card or the pocket card than what's reflected on the Google Calendar or vice versa?

[68] Willens Interview at 132-133.

A. Not that I recall.[69]

Hebert also confirmed this statement, testifying:

Q. To your knowledge, has staff ever been instructed by Mr. Bernhardt to put more information on the daily card or daily schedule than on the Google Calendar or vice versa?

A. No.[70]

Rees also testified that it was not a problem if the pocket card and daily schedule were not completely synchronized because Bernhardt relied upon Rees to ensure he made his next meeting.[71] While Bernhardt's daily activities are kept in several different formats, the testimony obtained by the Committees shows that there are very practical reasons for why there are differences in the content of the different scheduling documents.

FINDING 3: SECRETARY BERNHARDT IS NOT USING CERTAIN MEETING LABELS TO HIDE HIS MEETING ATTENDEES

Myth:	DOI scheduling staff intentionally used vague "external" and "internal" meeting labels on Secretary Bernhardt's calendar to hide meeting participants.

Fact:	DOI publishes Secretary Bernhardt's meeting participants each week on its official website. Secretary Bernhardt's calendars are not created for a public audience. The "external" and "internal" meeting labels used by DOI staff provide enough information for DOI staff to know about Secretary Bernhardt's schedule.

During the Committees' investigation, Democrats examined whether DOI's use of certain meeting labels on Bernhardt's calendars was an intentional effort to hide his meetings and confuse the public.[72] Specifically, DOI has adopted a practice of differentiating between types of meetings on Bernhardt's calendar using the following labels:

- ***Internal meeting:*** denotes meeting with DOI officials;
- ***External meeting:*** denotes meeting with nongovernmental parties;
- ***Intergovernmental meeting:*** denotes meeting with other government officials; and
- ***Personal meeting:*** denotes personal business.

However, the evidence before the Committees demonstrate that these meeting labels were not implemented to hide Bernhardt's meetings. In fact, now that Bernhardt is Secretary DOI releases on its official website the list of attendees for all external meetings attended by Bernhardt each

[69] Rees Interview at 72-73.
[70] Hebert Interview at 70-71.
[71] Rees Interview at 59.
[72] *See generally,* Rees Interview at 142-143, 187, 191-192; Hebert Interview at 24, 75-75,140-141; Willens Interview at 90-94, 119-122.

week.[73] Similarly, Sally Jewell used such labels for her calendar while serving as DOI Secretary in the Obama Administration.[74]

Bernhardt's calendars are not created to be public documents, but instead used as an internal method of allocating his time

Witnesses explained to the Committees that the purpose of keeping a calendar of Bernhardt's daily activities is not to inform the public. Rather, it is a method to allocate the Secretary's time between priority items, government meetings, and meetings with stakeholders. For example, during his transcribed interview with the Committees, Rees was asked if he had the public in mind when creating the calendar. Rees explained:

> Q. When you create the calendar, who is the primary audience of the calendar?
>
> A. That's really the staff, internal the staff.
>
> Q. Okay. The staff and the principal?
>
> A. So, yeah. The principal can see it, but a lot of the times it's more for those of us who are staffing him.
>
> Q. And the daily cards and the pocket cards, who is the primary audience for those?
>
> A. That would be the Secretary or deputy secretary.
>
> Q. So do you create the daily cards and the pocket cards for the principal or the public? Do you have the public in mind when you are creating them or do you solely have the preferences of the principal in mind?
>
> A. Just the principal.[75]

Hebert had a similar response to this same question. She explained:

> Q. Who do you create the calendars for? Who's the audience of the calendar?
>
> A. So the calendar is—I mean, it's Secretary Bernhardt's calendar, but the calendar is really for our office, because the calendar is a way to manage the Secretary's time. You could think about it like a store

[73] U.S. Dep't of the Interior, Press Releases of Secretary Bernhardt's Schedule, https://www.doi.gov/secretarys-schedule (last visited Jul. 3, 2019).
[74] Hebert Interview at 165-176.
[75] Rees Interview at 158.

open hours. There are staff members that sometimes need to meet with him, you know, as you've seen with the forms, external parties that want to meet with him. I have to be able to see where his open hours are.

The Secretary, as you might imagine being a Cabinet official, is very busy and his days are very full, so I have to have a way to manage the time so that I can make sure the train is running on time.

Q. So when you create the calendars, do you create the calendar more for the Department of Interior staff, your office, and Secretary Bernhardt, or for the public?

A. No. It's an internal document.[76]

The meeting labels used on Secretary Bernhardt's calendar adequately inform DOI staff about the Secretary's schedule

Time and again, witnesses told the Committees that the various scheduling documents created for Bernhardt adequately inform him of his daily activities. Rees testified:

Q. Did Deputy Secretary Bernhardt understand the meeting labels that you used?

A. I believe so.

Q. Would you say the labels that you used were adequate for getting Secretary Bernhardt where he needed to be when he needed to be there?

A. Yes.[77]

Like Rees, Hebert also said that Bernhardt understood the labels used on his calendar. She testified:

Q. Does Secretary Bernhardt understand the labels you used on his calendar?

A. Yes.

Q. Do staff understand the labels you used on the calendar?

A. Yes.

---

[76] Hebert Interview at 63.
[77] Rees Interview at 158-159.

Q. Are the labels adequate to get Secretary Bernhardt to where he needs to be when he needs to be there?

A. Yes.

Q. Is it adequate for staff to know where he needs to be?

A. Yes.[78]

Todd Willens, Chief of Staff, noted that every scheduler has their own scheduling style. He testified:

> I mean, the style that they've used for managing the Secretary or the [Deputy Secretary] on their stylistic—for the calendar hasn't impacted me. And I haven't had anyone complain. I mean, everyone has their own style or whatever they want on information, same as every 435 Members of Congress. No two calendars look exactly the same.[79]

Willens testified that no one has expressed confusion to him about the labels used on Bernhardt's calendars. He stated:

Q. Mr. Willens, are the meeting labels that are used on Secretary Bernhardt's Google Calendar adequate to get him where he needs to go?

A. He has never complained to me.

Q. To your knowledge, has Secretary Bernhardt ever missed a meeting due to his confusion regarding a meeting label?

A. Not according—never that's been brought to my attention.

Q. Has anyone ever expressed confusion to you over the labels used on Secretary Bernhardt's calendar?

A. No.

Q. Has Secretary Bernhardt ever expressed confusion to you regarding labels used on his calendar?

A. No.

---

[78] Hebert Interview at 63.
[79] Willens Interview at 122.

Q. Are you confused by Secretary Bernhardt's calendar?

A. No.[80]

Hebert also testified the DOI's use of "external" meeting labels did not create confusion within DOI about the Secretary's calendars. She stated:

Q. Earlier today, you were discussing . . . public confusion around the Secretary's calendars. Do you recall that?

A. Yes.

Q. Obviously, you can't speak to the state of mind of the American public?

A. Correct.

Q. But are you confused at all by the Secretary's calendars?

A. I'm not.

Q. Do you believe the Secretary's confused by his calendars?

A. I don't.

Q. Do you believe that other senior staff at the Department are confused by Secretary's calendars?

A. No. I haven't had any instances where the Secretary has missed a meeting, where the Secretary has not known who he was meeting with, where—I've never had an instance where staff members didn't show up for a meeting, never had any confusion surrounding where and when people are supposed to be or who they're meeting with when it's on the Secretary's calendar.[81]

Taken together, all of the scheduling documents created for Bernhardt—his Google calendar, pocket card, daily schedule, and briefing book—ensure that the Secretary and his staff are prepared for each day's meetings. Hebert said the documents work in tandem to ensure that Bernhardt is equipped with all the necessary information for each meeting. During her interview, Hebert disputed assertions that Bernhardt's scheduling information be in one place because it would be more helpful to the public. She testified:

Q. So I think we're up to six different documents that provide information about the Secretary's daily goings-on. Wouldn't it just

[80] *Id.* at 131-132.
[81] Hebert Interview at 177.

be more helpful if it was all on his calendar?

A. My job isn't to make it more helpful. I think the fact that we have six different documents that all are available for people to see what the Secretary is doing on a daily basis is quite transparent. There's a lot of information out there.

Q. What do you mean by available?

A. Well, they can see on the website who the external parties are he's meeting for. People can certainly FOIA meeting request forms. We provide thousands and thousands of documents to the committee to review. You've seen the meeting request forms. The trip itineraries, they're on the website. People can look at those and they can see, you know, what he's doing on a trip. There's a lot of information out there.[82]

Witnesses denied that DOI uses certain meeting labels to hide Secretary Bernhardt's meetings

The Committees have no evidence that DOI uses the "external" and "internal" labels to shield the public from knowing about Bernhardt's meetings. In fact, DOI employees responsible for keeping Bernhardt's schedule when he was Deputy Secretary and now Secretary both expressly testified that the "external" and "internal" labels are not used to hide Bernhardt's meetings from the American public. Rees testified:

Q. And last turn, we talked about the external-internal meetings labels, did you use the external-internal meeting titles to deliberately shield from the public who Mr. Bernhardt was meeting with?

A. No.[83]

Hebert likewise testified:

Q. And I want to talk a little bit about the external/internal meeting labels. Do you use the external/internal meeting labels or titles to deliberately shield from the public who Mr. Bernhardt is meeting with?

A. No.[84]

Willens, too, confirmed that the labels were not deliberately used to shield information from the public. He testified:

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[82] *Id.* at 107-108.
[83] Rees Interview at 60.
[84] Hebert Interview at 62-63.

Q. We've heard a lot about the external-internal meeting labels and how they are used to distinguish between meetings. Are you aware of whether the external-internal meeting labels are used deliberately to shield the public from knowing who Mr. Bernhardt is meeting with?

A. No, they're not.[85]

In addition, Willens testified that neither he nor the Secretary have ever instructed staff to label meetings in a certain fashion. Willens stated:

Q. Have you ever given any instructions to any Department of the Interior employees on how Mr. Bernhardt's schedule should be kept?

A. No.

Q. And that's including the time while he was Deputy Secretary and Secretary, correct?

A. Correct.

Q. Are you aware of whether Mr. Bernhardt has given any instructions on how his calendar should be kept?

A. No.

Q. Sir, have you ever given any instructions to any employee at the Department on how to label meetings in the Secretary's calendars?

A. No.[86]

Any claim that the DOI uses vague, confusing labels on Bernhardt's calendar to hide his meetings is contradicted by the Committees' evidence. As witness testimony proves, the labels used on the calendar are more than adequate for the purpose the calendars serve.

[85] Willens Interview at 73.
[86] *Id.* at 58.

FINDING 4: SECRETARY BERNHARDT'S CALENDAR RECORDS ARE APPROPRIATELY PRESERVED

Myth:	Secretary Bernhardt's calendar records are deleted and therefore not properly preserved pursuant to federal records management laws.

Fact:	Secretary Bernhardt's calendar records are preserved, have been produced to the Committees, and are available on DOI's official website. The National Archives even determined following an independent review that DOI has appropriately preserved the Secretary's calendar records.

Committee Democrats and the media have alleged that Bernhardt's calendar records are not preserved in compliance with federal records laws.[87] The evidence before the Committees, however, demonstrates that this allegation is meritless. As NARA determined following an independent review, Bernhardt's calendar records are appropriately preserved pursuant to federal records laws.[88] NARA called the allegations "unfounded."[89]

The Department's career records management staff determined that Secretary Bernhardt's calendar records are properly preserved

Before he requested transcribed interviews with DOI officials, Chairman Cummings wrote to NARA requesting an inspection of records management practices at DOI to determine if "all of the Acting Secretary's meetings are being captured and preserved in accordance with DOI's record schedules."[90] NARA, in turn, asked the DOI records office to "investigate this matter to determine if such records are being deleted and whether meeting information is being adequately captured and preserved . . . ."[91] Following this internal review, the DOI records officer wrote to NARA that "[t]he records in question were stored, and remain stored, at all times within the agency's collaboration platform. It is my assessment and the opinion of Department

[87] *See* Juliet Eilperin & Darryl Fears, *Acting Interior Chief's Method of Documenting Meetings Attracts Democrats' Scrutiny,* Wash Post (Mar. 27, 2019), https://www.washingtonpost.com/climate-environment/2019/03/27/interior-chiefs-unusual-method-documenting-meetings-attracts-democrats-scrutiny/?utm_term=.93f25a6f781f; Ellie Kaufman, *Interior Department-released calendars of Secretary Nominee Differ from his Public Descriptions,* CNN (Apr. 8, 2019), https://www.cnn.com/2019/04/08/politics/interior-secretary-calendars-public/index.html; Letter from Rep. Elijah Cummings, Chairman, H. Comm. Oversight & Reform, to Mr. Cole Rojewski, Dir. of Cong. & Legislative Affairs, U.S. Dep't of the Interior (May 7, 2019).

[88] Letter from Mr. Laurence Brewer, Chief Records Officer, Nat'l Archives & Records Admin., to Mr. Bruce Downs, Dep. Chief Info. Officer, U.S. Dep't of the Interior (Jun. 13, 2019), https://www.archives.gov/files/records-mgmt/resources/ud-2019-0018-doi-open-close-letter.pdf.

[89] Nat'l Archives & Records Admin, Federal Records Management, Unauthorized Disposition of Federal Records (last visited Jul. 22, 2019), https://www.archives.gov/records-mgmt/resources/unauthorizeddispositionoffederalrecords.

[90] Letter from Rep. Elijah Cummings, Chairman, H. Comm. on Oversight & Reform, to Mr. Laurence Brewer, Chief Records Officer, Nat'l Archives & Record Admin. (Mar. 19, 2019).

[91] Letter from Mr. Laurence Brewer, Chief Records Officer, Nat'l Archives & Records Admin., to Mr. Bruce Downs, Deputy Chief Info. Officer, U.S. Dep't of the Interior (Mar. 21, 2019).

counsel that Interior is and at all times has been fully compliant with federal records laws with respect to these records."[92]

On May 17, 2019, career DOI records management staff briefed staff from both committees about records management practices at DOI. At this briefing, David Alspach, the Departmental Records Officer, detailed the rigorous records management training that all DOI employees receive. Alspach explained that Bernhardt was the most engaged political appointee to whom Alspach had ever provided training and that during the one-on-one training session, Bernhardt was already very familiar with DOI's records management process.[93] The DOI officials said that their main takeaway from a NARA-requested records management review was that records related to Bernhardt's daily activities have never been destroyed.[94]

Witnesses testified that Secretary Bernhardt's calendar records were never illicitly altered or deleted in any manner

In light of this information from DOI's career records management staff, Chairman Cummings and Chairman Grijalva could have been satisfied that Bernhardt's calendars were preserved. Instead, the chairmen insisted on conducting transcribed interviews with three DOI officials and a briefing with a fourth DOI employee. All four DOI officials definitively told the Committees that Bernhardt's calendar records have never been deleted or destroyed.

For example, Catherine Gulac, Administrative Assistant in the Office of the Deputy Secretary, told the Committees that although she had very limited involvement with Bernhardt's calendar while he served as Deputy Secretary, she had no knowledge about his calendars being altered or deleted.[95] Gulac explained she was never asked to delete anything from Bernhardt's calendar.[96]

Gareth Rees, the executive assistant for Bernhardt, also confirmed that he was never asked to delete anything from Bernhardt's calendars to hide meetings. He testified:

> Q. Is it fair to say in your experience with Mr. Bernhardt that you have no awareness of any meetings being deleted from his calendars that did in fact occur?
>
> A. I am not aware of that happening.
>
> Q. Have you ever been asked to delete or destroy a full day's worth of calendar entries?

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[92] Letter from Mr. Bruce Downs, Deputy Chief Info. Officer, U.S. Dep't of the Interior, to Mr. Laurence Brewer, Chief Records Officer, Nat'l Archives & Records Admin. (Mar. 27, 2019).
[93] Briefing by U.S. Dep't of the Interior, to H. Comm. on Oversight & Reform & H. Comm. on Natural Res. Staff (May 17, 2019).
[94] *Id.*
[95] Briefing by Catherine Gulac, Admin. Assistant, U.S. Dep't of the Interior, to H. Comm. on Oversight & Reform & H. Comm. on Natural Res. Staff (Jun. 10, 2019).
[96] *Id.*

A. No, not that I am aware of.

Q. Are you aware of staff intentionally destroying or altering calendars to shield the public from knowing who the Deputy Secretary was meeting with?

A. Not that I am aware of.

Q. Are you aware of other staff being asked or instructed to do so?

A. No, not that I am aware of.

Q. Are you aware of Mr. Bernhardt or Deputy Secretary Bernhardt at the time either destroying or instructing staff to destroy his calendar?

A. Not that I am aware of.

Q. To your knowledge, has Mr. Bernhardt's calendar ever been deleted or destroyed?

A. Not that I am aware of.[97]

Rees testified to the Committees that he was also unaware of anyone deleting the daily cards and pocket cards. He explained:

Q. And for the pocket cards and the daily cards, I guess we can take each one individually, but daily cards, were you ever instructed to destroy a daily card in full?

A. No.

Q. Were you ever instructed to delete any events off of a daily card or any information?

A. Not that I am aware of.

Q. Did Mr. Bernhardt ever instruct you to delete information off of a daily card?

A. Not that I recall.

Q. Did Mr. Bernhardt ever instruct you to fully destroy a daily card?

A. Not that I recall.

[97] Rees Interview at 65-66.

Q. Now for the pocket card. Have you ever been instructed to not include information on a pocket card?

A. Not that I recall.

Q. Have you ever been instructed to delete information off of a pocket card?

A. No.

Q. Has Mr. Bernhardt ever instructed you to delete information off of a pocket card?

A. Not that I recall.

Q. Has Mr. Bernhardt ever instructed you to delete a pocket card in full?

A. Not that I recall.[98]

Samantha Hebert, who is currently responsible for managing Bernhardt's schedule, testified that she had never deleted or been instructed to delete information from Bernhardt's calendar. She stated:

Q. Have you ever been asked to delete entries from Mr. Bernhardt's calendar?

A. No.

Q. Have you ever been asked to delete or destroy Mr. Bernhardt's calendar in full?

A. No.

Q. Are you aware of staff intentionally destroying or altering calendars to shield the public from knowing who the Secretary is meeting with?

A. No.

Q. Are you aware of other staff being asked or instructed to do so?

A. No.

[98] *Id.* at 73-74.

Q. Are you aware of Mr. Bernhardt either destroying or instructing staff to destroy his calendar?

A. No.

Q. To your knowledge, has Mr. Bernhardt's calendar ever been deleted or destroyed?

A. No.[99]

Todd Willens, DOI's Chief of Staff, also testified that he had no knowledge about any deletion of Bernhardt's calendars. He stated:

Q. Have you ever been asked to delete entries from Secretary Bernhardt's Google Calendar?

A. No.

Q. Have you ever been asked to delete or destroy Secretary Bernhardt's calendar in full?

A. No.

Q. Have you ever instructed a Department of Interior employee to delete entries from Secretary Bernhardt's calendar?

A No.

Q. Are you aware of staff intentionally destroying or altering calendars to shield the public from knowing who the Secretary is meeting with?

A. No.

Q. Have you ever instructed staff to do so?

A. No.

Q. Are you aware of Secretary Bernhardt either destroying or instructing staff to destroy his calendar?

A. No.

Q. To your knowledge, has Secretary Bernhardt's calendar ever been

[99] Hebert Interview at 65-66.

deleted or destroyed?

A. No.[100]

Witnesses testified that Secretary Bernhardt's calendar records were not inappropriately altered prior to public release

The DOI witnesses also clearly stated that Bernhardt's calendars were not altered before their release pursuant to FOIA or their publication on DOI's official website. Rees testified:

Q. Is there any difference between Deputy Secretary Bernhardt's official calendar and the calendar that was released via FOIA?

A. Not that I'm aware of.

Q. To your knowledge, were events deliberately kept off the public calendar because the meetings or events involved former clients or industry lobbyists?

A. Not that I'm aware of.

Q. Were you involved in FOIA requests related to Mr. Bernhardt's daily cards, or pocket cards, when he was Deputy Secretary?

A. Yes.

Q To your knowledge is there any difference between the daily cards and pocket cards that was produced for Mr. Bernhardt and those that were produced via FOIA?

A. Not that I'm aware of.

Q. To your knowledge were events deliberately kept off of the daily cards or the pocket cards because the meetings or events involved [former] clients or industry lobbyists?

A. Not that I'm aware of.

Q. As I mentioned earlier, several months of Secretary Bernhardt's and Deputy Secretary Bernhardt's calendars, daily cards, and pocket cards have been posted online on the [Department of the] Interior's official website. Do you know how the calendars, daily cards, and pocket cards were collected for posting on the web sites?

[100] Willens Interview at 78.

A. I believe that, yeah, his calendar, we—yeah, we were able to save as PDFs and then do the same thing with pocket cards and they were uploaded.

Q. Did you have any involvement in that process?

A. I was the one who—I believe I was the one who helped pull the calendars together.

Q. And were you ever instructed to alter the calendars or the daily cards or pocket cards for preparation for posting on the website?

A. No.

Q. Had you—were you ever instructed by Mr. Bernhardt, or did you hear him instruct anyone else to alter the calendars, daily cards or pocket cards that were posted on the website?

A. Not that I'm aware of.[101]

Hebert likewise confirmed that DOI had not altered scheduling documents before release pursuant to FOIA or placement on the DOI website. Hebert told the Committees that the DOI scheduling office now proactively turns Bernhardt's Google calendar into a PDF at the end of the week and sends the file to the FOIA office. She testified:

Q. Several months of Secretary Bernhardt's calendars as well as the daily schedule as well as pocket cards have been posted on Interior's official website. Are you aware of that?

A. Yes.

Q. Do you know how the calendars, daily schedule, and pocket cards are collected for posting on the website?

A. The FOIA office collects them.

Q. And you said at the end of each week, there's a new—or routine where you PDF the whole week's Google Calendar?

A. Right. So a few weeks ago, we decided it would be easier just at the end of every week, we—there's a way in the Google Calendar where you can create a PDF of the calendar, that we would just go ahead and create that PDF and send that over to the FOIA office so they don't have to ask for it anymore.

[101] Rees Interview at 78-79.

Q. So you do that proactively now?

A. Yes.

Q. Have you or anyone else ever been instructed to alter the Google Calendar or the daily schedule in preparation for posting on the website?

A. No.

Q. Have you ever been instructed by Mr. Bernhardt or heard him instruct anyone to alter his calendar or daily schedule in preparation for posting on the website?

A. No.[102]

***

Q. Is there any difference between Secretary Bernhardt's official Google Calendar and the calendar that is released to the public either via FOIA or Interior's website?

A. No.

Q. To your knowledge, are events deliberately kept off of the public calendar because the meetings or events involved former clients or industry lobbyists?

A. No.

Q. Is there any difference between the daily schedule that is given to Mr. Bernhardt and the daily schedule that is released to the public either via FOIA or Interior's website?

A. No.

Q. To your knowledge, are events deliberately kept off of the public daily schedule because the meeting or events involved former clients or industry lobbyists?

A. No.[103]

[102] Hebert Interview at 71-72.
[103] *Id.* at 73-74.

Finally, Todd Willens also confirmed that there are no differences between Bernhardt's Google calendar and the one produced via FOIA. Willens testified:

> Q. Have you or anyone else ever been instructed to alter the Google Calendar or other scheduling documents in preparation for release under FOIA?
>
> A. No.
>
> Q. Have you ever instructed any Department of Interior employees to alter the Google Calendar or other scheduling documents in preparation for release under FOIA?
>
> A. No.
>
> Q. Have you ever been instructed by Secretary Bernhardt or heard him instruct anyone else to alter his Google Calendar or other scheduling documents in preparation for release under FOIA?
>
> A. No.
>
> Q. To your knowledge, is there any difference between Secretary Bernhardt's official Google Calendar and the calendar that is released to the public, either via FOIA or Interior's website?
>
> A. No.
>
> Q. To your knowledge, are events deliberately kept off of the public Google Calendar because the meetings or events involve former clients or industry lobbyists?
>
> A. No.[104]

An independent review by the National Archives called allegations of calendar destruction "unfounded"

In June 2019, NARA completed its review of DOI's preservation of Bernhardt's calendar records.[105] NARA determined there is "no basis to believe that there has been an unauthorized destruction of federal records."[106] As a result, NARA determined that the allegations pursued by

[104] Willens Interview at 135.
[105] Letter from Mr. Laurence Brewer, Chief Records Officer, Nat'l Archives & Records Admin., to Mr. Bruce Downs, Dep. Chief Info. Officer, U.S. Dep't of the Interior (Jun. 13, 2019), https://www.archives.gov/files/records-mgmt/resources/ud-2019-0018-doi-open-close-letter.pdf.
[106] *Id.*

Chairman Cummings were "unfounded."[107] Although Chairman Cummings requested the independent NARA review, he appeared reluctant to accept the results and suggested the Oversight and Reform Committee's investigation would continue.[108] However, the evidence obtained by the Committees to date confirms and reinforces NARA's findings. The Committees' evidence shows that the allegations that DOI is destroying Bernhardt's calendars have no merit. It is clear based on the record before the Committees that DOI is appropriately preserving Bernhardt's scheduling documents.

FINDING 5: THE TRUMP ADMINISTRATION HAS COOPERATED EXTENSIVELY WITH CHAIRMAN CUMMINGS'S AND CHAIRMAN GRIJALVA'S INVESTIGATION

Myth:	The Trump Administration is engaged in a "cover-up" from the "top" on all congressional investigations.

Fact:	DOI has cooperated with Chairman Cummings's and Chairman Grijalva's investigation at every stage, voluntarily producing documents and making several witnesses available for day-long transcribed interviews. DOI has been transparent and forthcoming in responding to the chairmen's partisan demands.

For more than two years, Chairman Cummings, Chairman Grijalva and other Democrats have pursued allegations of nefarious conduct within DOI. The Committees' investigation has demonstrated that these allegations are untrue. The Committees are positioned to make these findings precisely because DOI has cooperated extensively with Chairman Cummings's and Chairman Grijalva's investigation. DOI voluntarily produced thousands of documents to the Committees. In addition, DOI arranged for three employees to sit for day-long, bipartisan, transcribed interviews with staff from both Committees and for one DOI employee to provide a non-transcribed briefing.

Chairman Cummings has stated repeatedly that the Trump Administration is engaged in a "cover-up" from the "top" on congressional investigations.[109] Chairman Grijalva alleges that Bernhardt treats "congressional requests for information as a nuisance he can ignore . . . ."[110]

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[107] Nat'l Archives & Records Admin, Federal Records Management, Unauthorized Disposition of Federal Records (last visited Jul. 22, 2019), https://www.archives.gov/records-mgmt/resources/unauthorizeddispositionoffederalrecords.

[108] Jacob Holzman, *Archives: No Wrongdoing in Bernhardt's Calendar Practices,* CQ NEWS (Jul. 15, 2019).

[109] *See generally,* Letter from Rep. Elijah Cummings, Chairman, H. Comm. on Oversight & Reform, to Hon. William Barr, Attorney General, U.S. Dep't of Justice (Jun. 3, 2019); Letter from Reps. Elijah Cummings & Mark DeSaulnier, H. Comm. on Oversight & Reform, to Hon. Mitchell Zais, Deputy Sec'y, U.S. Dep't of Educ. (May 30, 2019); Letter from Rep. Elijah Cummings, Chairman, H. Comm. on Oversight & Reform, to Hon. David Bernhardt, Sec'y, U.S. Dep't of the Interior (May 31, 2019) (Chairman Cummings wrote, "Now that the Department has indicated that it is no longer blocking its employees from participating in transcribed interviews . . . .").

[110] Press Release, Rep. Raúl Grijalva, Secretary Bernhardt "Not Losing Sleep" Over Climate Change Concerns Me – and So Does His Lack of Transparency With Congress (May 16, 2019) https://naturalresources.house.gov/media/press-releases/chair-grijalva-secretary-bernhardt-not-losing-sleep-over-climate-change-concerns-me_and-so-does-his-lack-of-transparency-with-congress (last visited Aug. 13, 2019).

Each DOI employee, however, disagreed with these assertions.[111] The employees described in detail the considerable time and effort that DOI had invested in responding to the chairmen's investigation. The employees also testified clearly that no DOI officials had sought to discourage them from cooperating with the investigation.

In refuting several of the allegations levied against Bernhardt and DOI, Rees denied any effort to obstruct the investigation. He testified:

> Q. Sir, there have been allegations in the public that Mr. Bernhardt is hiding something with respect to his calendars. Do you agree with those allegations?
>
> A. I do not.
>
> Q. There have been allegations that Secretary Bernhardt has skirted his ethical requirements with respect to his calendars. Do you agree with those allegations?
>
> A. I do not.
>
> Q. Are you aware of any concerted effort within the Department to allow Mr. Bernhardt to meet with individuals that he is recused from meeting with?
>
> A. I am not aware of that.
>
> Q. Are you aware of any concerted effort within the Department to delete meetings from Mr. Bernhardt's calendars?
>
> A. I am not aware.
>
> Q. Are you aware of any effort within the Department to hide any [conflicts of] interest that Mr. Bernhardt may have?
>
> A. No.
>
> Q. It has been said that the Trump administration is engaged in a cover up from the top with respect to congressional investigations. Do you agree with that statement?
>
> A. No, I don't.
>
> Q. You are here voluntarily, is that right?

[111] *See generally,* Rees Interview at 161-162; Hebert Interview at 81-82; Willens Interview at 85-87.

A. I am here voluntarily so –

Q. I believe several exhibits in front of you reflect emails that have been produced [to] the committee [by] the Department. Is that correct?

A. That is correct.

Q. And just to confirm, sir, no one from the Department has dissuaded you from appearing here voluntarily today?

A. That is correct.[112]

Hebert likewise testified that many of the allegations levied against Bernhardt and DOI were unfounded. She, too, denied any awareness of any effort to obstruct Chairman Cumming's investigation. She testified:

Q. Ma'am, there have been allegations in the public realm that Mr. Bernhardt is hiding something with respect to his calendars. Do those allegations have merit?

A. No.

Q. Why is that?

A. Well, we publish, at the end of the week, all the external groups that he met with, we publish the names of the participants in the meeting. There's plenty of information out there. We have the calendar, we have the—people can FOIA things. There's meeting request forms, all of this different information. So if he's trying to hide who he's meeting with, he's doing a terrible job of it.

Q. There's been allegations in the public that Mr. Bernhardt has skirted his ethical requirements with respect to his calendars. Do those allegations have merit?

A. No.

Q. Why is that?

A. Because all of his meetings go through Ethics and General Law. He—if he's going to meet with an external group or person, Ethics and General Law have approved it.

Q. And, ma'am, are you aware of any concerted effort within the

[112] Rees Interview at 161-162.

Department to allow Mr. Bernhardt to meet with individuals that he's recused from meeting with?

A. No. It's actually quite the opposite. Everyone spends a lot of time making sure that he's not meeting with anyone, in particular, Secretary Bernhardt, that he's not meeting with anyone that he's recused from.

Q. Are you aware of any concerted effort within the Department to delete meetings from his calendars?

A. No.

Q. Are you aware of any effort within the Department to hide any conflicts of interests that Mr. Bernhardt may have?

A No.[113]

***

Q. It has been said that the Trump administration is engaged in a coverup from the top with respect to congressional investigations. Do you agree with that statement?

A. No.

Q. Why is that?

A. I'm here cooperating.

Q. You're here voluntarily?

A. Yes.

Q. And the Department has produced documents to the committee—

A. Thousands.

Q. —including documents that you have authored, emails from you?

A. Yes.[114]

[113] Hebert Interview at 66-67.
[114] *Id.* at 81-82.

Willens, DOI's Chief of Staff, also disagreed with the assertion that the Trump Administration is engaged in a cover-up, and similarly refuted many of the allegations lodged against Bernhardt. He testified:

> Q. Sir, there have been allegations in the public realm that Mr. Bernhardt is hiding something with respect to his calendars. Do you agree with those allegations?
>
> A. I do not.
>
> Q. Why is that?
>
> A. Disprove a negative? He's not. I mean, there aren't—I can't think of anything that isn't already out there in the public realm, in one form or another, either through FOIA requests or things that we post. We have—we have made every attempt to be transparent, be consistent, and provide that information out there.[115]
>
> ***
>
> Q. Sir, there have been allegations in the public that Mr. Bernhardt skirted his ethical requirements with respect to his calendars. Do you agree with those allegations?
>
> A. I do not agree.
>
> Q. Are you aware of any concerted effort within the Department to allow Mr. Bernhardt to meet with individuals that he is recused from meeting with?
>
> A. No.
>
> Q. Are you aware of any concerted effort within the Department to delete meetings from Mr. Bernhardt's calendars?
>
> A. No.
>
> Q. Are you aware of any effort within the Department to hide any conflicts of interest that Mr. Bernhardt may have?
>
> A. No.
>
> Q. It has been said that the Trump administration is engaged in a cover-up from the top with respect to congressional investigations. Do you agree with that statement?

[115] Willens Interview at 83-84.

A. I do not.

Q. Why is that?

A. I've never received direction, a memo, anything that would—that tells me to do what's being suggested in that question.

Q. And you are here voluntarily today. Is that correct?

A. I am here voluntarily.

Q. And no one from the Department has attempted to dissuade you from appearing here today or to tell you what to say?

A. No.[116]

According to the witness testimony, DOI remains committed to cooperating with Chairman Cummings's and Chairman Grijalva's investigation. During his questioning by Democrat staff, Willens said that he would bring additional information forward to the Committees if he became aware of any new information. He testified:

Q. But will you commit to talking to the people at the Department who remain employees to try and help us find answers?

A. I do not know anyone who would have the knowledge, because our scheduling team down for the [Deputy Secretary] was Gareth and Cathy, and you've met with both of them. So I don't want to give you the false – I'm not going to mislead you to say – I'll commit, but I'm telling you right now you've already spoken to them.

Q. Would you commit to following up with Gareth and seeing if there's any way he can clear up this confusion, because –

A. I think you would have gotten the truth. You had to hear from him. I haven't spoken to him about any of this because you guys are reviewing it, investigating it, but –

Q. It's entirely possible we asked the wrong questions. So would you commit to –

A. Well, I don't – you guys ask a lot of questions, so I think you guys – don't sell yourself short. But it's – if I see – if, upon reflection, as I go through this, there's an opportunity and I see something that could have been missed, I certainly won't ignore it and I'll let you

[116] *Id.* at 85-87.

know. And I'll talk to Gareth if we can provide additional information. But I'm not confident and I don't want to promise you that there's – that I'm going to bring something back to you when I'm not sure and I doubt there is anything there to bring back.[117]

Moreover, Willens highlighted the level of responsiveness DOI has provided to Chairman Grijalva's and his staff's requests. In fact, based on assurances from Chairman Grijalva's staff, DOI took action to satisfy Democrats' concerns. He testified:

Q. And while we're talking about external meetings, since you moved to the Secretary's office as acting chief of staff and now as chief of staff, have you provided directions to the scheduling office to post the Secretary's external meetings on the Department's website?

A. Just to do it, yes.

***

Q. Why did you tell them to do it?

A. Well, it was a conversation I had with [Natural Resources Committee Democrat Staff]. . . . We received a letter from –we received – we were in the middle of [the government] shutdown. [DOI] had no staff. [Congress was] still operating. And there was the expectation that we would be able to process FOIAs, which we had no one to do that for. So as a –we received a letter from Chairman Grijalva, expressing concern with disclosure of details of the meetings. And there were a number of items that were in there, they were requesting information. I called [Natural Resources Committee Democrat Staff] and said, All right, what is this? What do you really want out of this? And he and I had a conversation and agreed that what they really wanted to do was transparency on the external meetings, and I said, Okay, we'll publish that on the website, the external meetings, and we'll put that up there if that will satisfy the concerns that you have.

Q. So your instructions to regularly post Secretary Bernhardt's external meetings to the Department website was based on a desire for further transparency, and in consultation with the Natural Resources Committee?

A. Yeah. We thought we were being helpful.[118]

[117] *Id.* at 290-91.
[118] *Id.* at 74.

Contrary to Chairman Cummings's assertion of a "cover-up" from the "top" on congressional investigations, the Committees have no evidence to support that wild accusation. Likewise, Chairman Grijalva's allegation that Bernhardt ignores congressional requests for information is baseless. Instead, the record before the Committees clearly shows that DOI has cooperated voluntarily—and extensively—with the chairmen's investigation and that there has been no effort to hide Bernhardt's meetings from the American public.

CONCLUSION

DOI cooperated extensively and voluntarily with Chairman Cummings's and Chairman Grijalva's partisan investigation. Three DOI employees voluntarily sat for day-long transcribed interviews, DOI produced nearly 27,000 pages of scheduling documents to the Committees, and DOI made officials available to the Committees for two separate staff-level briefings. Due to the Trump Administration's cooperation with Chairman Cummings's and Chairman Grijalva's investigation, the Committees have an extensive record of material from which to make these findings.

The Committees' investigation of the record-keeping practices at DOI conclusively demonstrates that Bernhardt has complied with his ethics obligations and has preserved his calendar records and made documents available to the public as requested. The evidence before the Committees does not support allegations that Bernhardt has sought to hide his meetings from the American public. Instead, the evidence shows that Bernhardt established a robust system to comply with his ethics obligations and to promote an atmosphere of ethical compliance within DOI. As Secretary, Bernhardt even implemented several new procedures for ethics compliance that exceed that of his predecessors and makes more information about his meetings publicly available. In addition, the witnesses told the Committees that records of Bernhardt's scheduling documents were never altered or destroyed. The witnesses also disputed assertions that the Trump Administration had engaged in a "cover-up" from the "top," and exemplified how cooperative and responsive DOI has been to congressional requests for information.

The Committees have an important responsibility to conduct bipartisan, good-government oversight of the executive branch. Unfortunately, the Committees' limited time and resources have been spent all too often in a partisan effort to attack the Trump Administration for political gain. This investigation appears to be one such attempt. Chairman Cummings, Chairman Grijalva, and other Democrats would better serve the American public by moving away from political attacks on the President and his Administration and instead striving for bipartisan, good-government oversight and reform.

U.S. Department of the Interior – Office of the Secretary

Meeting Information Request Form

To ensure that the appropriate individual within the Department of the Interior is meeting with you on a given matter and because the Office of the Secretary is committed to maintaining the highest ethical standards, we need the information requested below before we can agree to schedule a meeting[1].

Please respond to the questions below and send your response to [redacted]
If you have any questions you may contact the Scheduling Office at [redacted]

Requesting individual/organization: (Please identify the person(s) (name and affiliation) requesting the meeting, including any background information on the affiliated organization(s).)	
Contact information (Name, Email, Phone):	
Please describe the action sought from the Office of the Secretary:	
Meeting date (if date is flexible please indicate the range): Please explain any time sensitivity that impacts the date of the meeting, such as court-ordered or statutory deadline:	
Proposed meeting location (City, State):	
Expected meeting participants (name, title, and organizational affiliation):	
Are any expected meeting participants registered lobbyists or lobbying organizations, and/or registered under the Foreign Agents Registration Act? (If yes, please identify.)	
Are any expected meeting participants a partisan political candidate, a representative of a political party or a registered political action committee (PAC)? (If yes, please identify.)	

[1] Per the Administration Ethics Pledge, the Acting Secretary agreed that he will not for a period of two years from the date of his appointment participate in any particular matter involving specific parties in which a former employer or client of his is or represents a party, if he served that former employer or client during the two years prior to his appointment, absent a waiver under Section 3 of Executive Order No. 13770. This includes recusal from any meeting or other communication with such a former employer or client unless (1) there are five or more different stakeholders present and (2) no particular matters involving specific parties are discussed.

DOI_00011511_00000717

Do any expected meeting participants seek or currently have any business interests with the Department such as permits, contracts, litigation, grants, etc.? (If yes, please identify.)	
Were any of the expected meeting participants previously represented by the Acting Secretary? (If yes, please identify.) Are any of the expected meeting participants currently represented in any matter by Brownstein Hyatt Farber Schreck, LLP? (If yes, please identify.)	
Describe the proposed meeting topic/ agenda, provide available briefing materials, and identify desired outcome(s):	
Will the meeting involve legislation, broad policy options, or other general matters that involve a large and diverse range of persons and interests? (If yes, please describe.)	
Will the meeting involve regulations, rules, or other matters that impact a specific industry, sector of the economy, or group of persons? (If yes, please describe.)	
Will the meeting involve a litigation matter, a permit, a grant, a contract, or any other matter that involves specific parties? • If yes, please identify the matter and list the specific parties. • Are any of the parties represented by Brownstein Hyatt Farber Schreck, LLP, in the matter? (If yes, please identify.)	
With which Bureau or Agency does your agenda most align? Please list all, if more than one.	
If the Acting Secretary is unable to meet, is a surrogate desired? If yes, who specifically?	
Any additional notes or information?	

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 24 2020

The Honorable Eleanor Norton
Chairman
Transportation & Infrastructure
Subcommittee on Highways and Transit
United States House of Representatives
Washington, DC 20515

Dear Chairman Norton:

Enclosed are responses to the follow-up questions from the February 6, 2020, oversight hearing entitled, *Assessing the Transportation Needs of Tribes, Federal Land Management, Agencies, and U.S. Territories*, before your Subcommittee. These responses were prepared by the Office of Acquisition and Property Management.

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 Rodney Davis
Ranking Member

House Transportation and Infrastructure
Subcommittee on Highways and Transit
Hearing on Transportation Needs
February 6, 2020

Questions from Chair Norton

Question 1. Mr. Reif, your testimony highlights that the Department of Interior (DOI) has $17.3 billion in deferred maintenance and repair needs, approximately one half of which is related to transportation assets.

What portion of this deferred maintenance and repair needs is attributed to National Park Service assets, both total backlog and the portion attributed to transportation assets?

> **Response:** Interior reported approximately $17.3 billion in total deferred maintenance at the end of FY 2019, including more than $8.5 billion in transportation-related deferred maintenance. The National Park Service (NPS) has both the largest share of total deferred maintenance, approximately 75%, and the largest share of transportation-related costs, approximately 90%, among DOI bureaus.

Question 2. Your testimony also notes that NPS has identified over $2.6 billion in future transportation "mega projects."

Can you confirm that this $2.6 billion in future needs is in addition to the figure you just provided for the backlog?

> **Response:** The $2.6 billion figure identified for transportation "mega projects" is not entirely in addition to the Deferred Maintenance backlog number but does eliminate the DM for the specific project. This is because "mega projects" are large and complex transportation projects that address deferred maintenance through the recapitalization of roads and bridges that are at the end of their service lives. Cost effective design and construction calls for modernization of a facility during recapitalization to address today's safety requirements, functional needs and construction standards. Deferred maintenance estimates do not address these investment items.

Question 3. Mr. Reif, the National Park System includes important tourist destinations, but it also manages critical assets that affect local transportation, such as the Arlington Memorial Bridge in my district.

According to the Pew Charitable Trusts, the District of Columbia has over $500 million in deferred maintenance for transportation projects.

How does NPS prioritize investments among equally compelling transportation needs, and geographically across the nation, when you have such a tremendous deficit?

> **Response:** To prioritize annual funding allocations, the NPS uses several layered strategies to maximize investment decisions, stretch limited funding, and reach performance-based goals on condition of roads and bridges. Generally, this includes:

- Focusing the majority of available Federal Lands Transportation Program funding on projects that address existing paved roads and bridges. Bridges are given priority to ensure the safety of the traveling public from a catastrophic bridge failure. Additionally, Alternative Transportation Program, which includes all the other modes of transport throughout the park, are provided a set aside of $15 million annually;

- Reviewing projects for strict eligibility criteria established by Title 23 and NPS policy which focus funding towards improving the existing NPS transportation systems, discourage ancillary improvements, and allows only limited capital improvements, such as road realignments. Funding is focused on the mainline park roads and parkways—which carry the majority of the visitors—and towards activities such as resurfacing, repairing, and rehabilitating roads and bridges; and

- Taking individual parks and Regional priorities into account when projects are prioritized during the NPS Service-wide Comprehensive Call.

In addition, under applicable statutory authority, NPS is required to develop a long-range transportation plan and establish management systems for pavement, bridges, congestion and safety to influence project selection and priorities.

Finally, resources under jurisdiction of the NPS are to be protected and impacts on resources and park operations are to be minimized. These dual mandates require creativity, sensitivity to both missions, and an innovative balanced approach.

House Transportation and Infrastructure
Subcommittee on Highways and Transit
Hearing on Transportation Needs
February 6, 2020

Questions from Rep. Huffman

Question 1. What level of funding would the Federal Land Management Agencies require to complete new transportation projects that the agencies have identified to increase access and safety? Could you please identify any of those proposed projects in California, with a highlight on projects in California's 2nd district.

Response: The Department has identified annual transportation-related needs of approximately $1.1 billion per year to improve and maintain its transportation infrastructure in good condition, increase access to our Federal lands, improve safety on our facilities, meet modernization needs, and develop a multi-modal transportation system that can accommodate future needs and welcome all Americans.

More than $553 million in total project costs have been identified within the State of California. Example projects that focus on improving access or safety include:

- Construction of Multi-Modal Transportation Connections in San Pablo Bay, National Wildlife Refuge, including the construction of acceleration and deceleration lanes on Highway 37 at a refuge entry point and improvements to the construction materials of trails to allow for bicycle use;

- Rehabilitation of the Entry Road and North & Central Parking Areas, Stinson Beach, Golden Gate National Recreation Area to reduce sensitive resource impacts, create a turnaround for transit buses, and replace deteriorated curb and sidewalks to meet current ADA requirements;

- Rehabilitation of Glacier Point Road, Yosemite National Park, including improvements to formalized pullouts and removal of informal pullouts in areas with insufficient sight distances, and the addition of curve widening on short radius curves to better accommodate shuttles and other large vehicles;

- Rehabilitation of Big Oak Flat Road, Yosemite National Park, including improvements for safety and repairs to poor condition road sections due to subgrade failures and settlement, which will significantly improve the condition of only paved access to the town of Foresta.

Question 2. What are the individual figures for the maintenance backlog at each of the agencies within Interior?

Response: Interior manages an infrastructure asset portfolio valued at more than $300 billion, ranging from large dams and canals in the West to iconic national landmarks. As discussed at this hearing, at the end of FY 2019 the Department reported $17.3 billion in deferred maintenance and repair needs, across its bureaus including the National Park Service, the Bureau of Land Management, the US Fish and Wildlife Service, the Bureau of Indian Affairs and the Bureau of Indian Education.

Question 3. Does the Department of the Interior have any proposals for legislative changes to the FLTP, FLAP, or other DOT programs that are authorized to provide transportation opportunities for the Federal Land Management Agencies?

Response: The Administration does not have any legislative proposals related specifically to the FLTP, FLAP or to other DOT programs to share at this time.

For the second year, the Administration has proposed with the budget a Public Land Infrastructure Fund (Fund), which would provide up to $6.5 billion over 5 years to address the infrastructure backlog needs at the NPS, BLM, FWS, BIE, and at the USDA Forest Service. The President has called on Congress to enact this important legislation. Moneys from the Fund would not replace the Federal Lands Transportation Program and the Tribal Transportation Program, both key funding sources for major capital investments on Interior and tribal transportation facilities. Instead, this would be an additional Fund, working in tandem with existing programs, to help tackle the large balance of transportation-related deferred maintenance, recapitalization, and repair needs.

The Department looks forward to working with Congress on the Public Lands Infrastructure Fund, and on specific proposals for the surface transportation reauthorization as that legislation moves forward.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 10 2020

The Honorable John Barrasso
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, DC 20510

Dear Chairman Barrasso:

Enclosed are responses to the questions received by the Department of the Interior following your Committee's October 16, 2019, hearing on *The Impacts of Diseases on Wildlife Conservation and Management*. 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 Tom Carper
Ranking Member

Committee on Environment and Public Works
Impacts of Diseases on Wildlife Conservation and Management
October 16, 2019

Questions from Chairman Barrasso

Question 1: More than 10 years ago, the U.S. Fish and Wildlife Service issued a recommendation to limit cave activity that could result in the spread of white-nose syndrome. Since that time, how has the Service adjusted its recommendations and policies to promote containment of white-nose syndrome, including with regard to its issuance in 2016?

Response: In March 2009, the U.S. Fish and Wildlife Service (Service), in coordination with other federal and state agencies in the Eastern U.S., issued a Cave Advisory recommending a voluntary moratorium on caving activity and restrictions on the transportation of clothing and equipment between locations to prevent the human-assisted spread of the fungus that causes white-nose syndrome (WNS). These recommendations followed the "universal precautions" principle to reduce the spread of infectious diseases. The Cave Advisory was reviewed frequently as more information became available and was maintained through 2015.

In 2016, the Service issued a revision of the 2009 Cave Advisory, entitled "Recommendations for Managing Access to Subterranean Bat Roosts". The 2016 document is the product of the collaborative national response to WNS, with contributions from representatives of key stakeholder groups, researchers, and natural resource management agencies, and it has the endorsement of the national, multi-agency WNS oversight committees. These recommendations use the latest scientific evidence to justify actions intended to reduce the risk of people unintentionally moving the fungus between roost sites and of disturbing vulnerable bats at those sites, while also considering potential impacts to scientific, educational, and recreational opportunities.

In addition to the 2016 recommendations, in November 2019, the Service released another national response document entitled "White-nose Syndrome Show Cave Guidance", for managers of private and public cave sites operated for tourism and recreation. This guidance document provides examples of how site operators can contribute to containment efforts in ways that are compatible with the operational objectives at their locations.

Finally, we continue to maintain and regularly revise the "National Decontamination Protocol for White-nose Syndrome". This core protocol provides a geographic framework for adherence to containment measures and describes methods for cleaning and disinfecting equipment and clothing using laboratory-tested products to reduce the risk of spreading the fungus after visiting caves or working with bats.

All of these documents are revisited regularly as new information becomes available or circumstances change, and are available on our WNS public website at whitenosesyndrome.org.

Question 2: At the federal level, the U.S. Fish and Wildlife Service is responsible for managing wildlife, including wildlife that is listed as threatened or endangered under the Endangered Species Act, and wildlife on refuges and lands that it manages. How does the Service balance the need to develop strong, "universal" Service-wide policies that ensure adherence with best practices in wildlife management with an appropriate recognition of and respect for the primacy of states?

Response: The Service is committed to being a good partner to the States. In 2018, Secretary Zinke issued a Memorandum to all Bureaus reaffirming the authority of the States to exercise their legal authority to regulate fish and wildlife species on Federal public lands and waters, except as otherwise required by Federal law. We recognize that States are good stewards of our natural resources and practice sound management of fish and wildlife while allowing appropriate opportunities for citizens to enjoy public resources.

Questions from Sen. Carper:

Question 3: In addition to habitat loss and climate change, wildlife trade is a major driver of wildlife disease. International trade in wildlife and wildlife parts - both legal and illegal – can introduce diseases to susceptible native wildlife populations. The U.S. Fish and Wildlife Service's Office of Law Enforcement plays a major role in enforcing wildlife trade regulations.

a. Considering the vast number of wildlife and wildlife parts imported into the United States each year, would you share what you know about the different pathways by which diseases can be transmitted through trade?

Response: Trade in wildlife and wildlife parts, both domestically and through importation into the U.S., poses a risk of introduction of pathogens that can have implications for domestic wildlife populations, animal agriculture, and human health. Disease transmission may occur through a number of routes or pathways and is dependent on characteristics of the pathogen (e.g. the type of bacteria or virus), as well as the product responsible for the transmission (e.g. live animals versus wildlife parts).

Trade in live wildlife presents the highest risk of introduction of wildlife diseases into the U.S. Diseases that pose a significant threat to native wildlife include brucellosis, tuberculosis, classical and African swine fever, and foot-and-mouth disease. These and other diseases can also pose a threat to U.S. agriculture. The domestic trade in native wildlife also poses a significant risk of disease spread to wildlife within the U.S. Examples include chronic wasting disease in deer and elk, and the chytrid fungus, which is currently devastating amphibian populations.

Disease transmission from wildlife to humans may occur through direct contact with wildlife, including those imported for the pet trade, zoological display, education, or laboratory use. Examples include monkeypox from rodents imported as pets, as well as a variety of potential disease exposures from nonhuman primates imported for science, exhibition, or education. Examples of diseases of concern with nonhuman primates include Herpes B, hemorrhagic disease viruses, enteric disease viruses, or bacterial infections.

b. What are the major challenges the Office of Law Enforcement faces in preventing the introduction of exotic diseases through wildlife trade?

Response: The Service, through its Office of Law Enforcement (OLE), has broad authority to inspect all wildlife imports, and assists Federal agencies that have the expertise and authority to identify and prevent the introduction of zoonotic and animal diseases. OLE Wildlife Inspectors regularly coordinate with the CDC on physical inspections of non-human primates, turtles and tortoises with shell lengths less than 4 inches, and bats – all of which are subject to CDC import restrictions based on human health concerns. Wildlife Inspectors also coordinate with USDA-Veterinary Services on wildlife imports that are prohibited due to livestock health issues, such as

hedgehogs that can transmit foot-and-mouth disease and tortoises carrying ticks infected with heartwater disease, and to quarantine exotic birds seized at our borders.

The U.S. wildlife trade has grown over the past decades, heightening concerns about species conservation, the introduction of injurious animals and plants, and potential risks to human health and domestic wildlife. In particular, the demand for live wildlife has escalated, driven in part by the increasing popularity of exotic pets in the U.S. In addition, the ease of travel, transport, and transaction (including e-commerce) has removed barriers to wildlife trade. Wildlife importers have access to ample financing, technology, and overnight air cargo shipping services from virtually any place in the world.

c. Does Congress need to strengthen laws to prevent the introduction of exotic diseases? Please elaborate.

Response: The Service relies on the Lacey Act (18 U.S.C. § 42(a)(1)) to regulate the importation and transport of species determined to be injurious to human beings, the interests of agriculture, horticulture or forestry, or to wildlife or wildlife resources. The Service historically interpreted the Lacey Act to include a prohibition on the transportation of injurious species between States within the continental United States. However, in 2017 the U.S. Court of Appeals for the D.C. Circuit held that 18 U.S.C. § 42(a)(1) does not prohibit transport of injurious wildlife between States within the continental United States. As a result, in the D.C. Circuit and any other circuits that adopt that interpretation of the statute, the prohibition on transport of injurious wildlife is not applicable when the transport occurs between States within the continental United States. Addressing the issues posed by this decision would need to be done legislatively.

Wildlife disease prevention is a collaboration with the other Federal agencies responsible for identifying possible health risks and wildlife disease. The CDC currently regulates the import of dogs, cats, turtles, snakes and lizards, monkeys, African rodents, and bats; and the USDA regulates non-domestic hoof stock, birds, and other specific mammals that originate in countries positive for reportable diseases. These species are regulated for specific diseases and thus may be approved entry if deemed safe.

Question 4: The public can play a major role in facilitating the spread of many wildlife diseases. For example, humans visiting caves can spread the fungus causing white-nose syndrome via contaminated clothing or equipment. People importing exotic frog species as pets can unintentionally cause the introduction of exotic diseases into native wildlife populations. Would you please elaborate on the role that public participation and education can play in minimizing the spread of wildlife disease? Is there anything Congress can do to improve opportunities for public education and engagement to reduce the spread of wildlife diseases?

Response: The need to adopt a collaborative and multidisciplinary approach to wildlife health surveillance is increasingly recognized and the general public can make a significant contribution to this work through citizen science. Public participation has enabled both federal and state

agencies to significantly increase their effectiveness in wildlife disease surveillance through observations, reporting, and biological sample collection. At the same time, public participation in scientific research has been demonstrated to advance the participants' environmental education and increase public engagement.

For wildlife diseases that may be spread or exacerbated by human behaviors, public education and engagement is crucial to effective prevention programs. However, prevention education is not easy and may require repetition, persistence, and patience. Human dimensions research supports this work by helping managers to understand the societal drivers and consequences of wildlife diseases and better communicate the necessity of reducing the spread of wildlife diseases to the public. Supporting educational and engagement opportunities along with human dimensions research to understand human drivers, knowledge, and attitudes around wildlife disease is critical to combating wildlife disease.

Question 5: From DNA technologies to novel vaccines, scientists and managers have proposed innovative technologies and methods to monitor and manage outbreaks of disease in wildlife populations. What role does innovative research and technology play in preventing or mitigating the diseases that you study or manage?

Response: Innovative research and development of new technologies are vital to effective wildlife disease detection, surveillance, and response activities. As a management agency, the Service supports and relies on the advanced wildlife disease research being conducted at a variety of institutions including the Southeastern Cooperative Wildlife Disease Study, Northeastern Wildlife Disease Cooperative, the USGS National Wildlife Health Center, USDA APHIS Wildlife Services, the U.S. Centers for Disease Control and Prevention, state wildlife management agency laboratories, and numerous universities both in the U.S. and abroad. In order to prevent or mitigate wildlife diseases, we must first understand the cause of the disease (pathogen), affected species (host), and method of disease spread in the environment. Once that information has been established, we are able to develop diagnostic capabilities to detect the disease and begin to determine how it may be impacting wild populations. Consequently, we can begin to apply management techniques to break the cycle of transmission and prevent the spread of disease. None of this would be possible without the cutting-edge wildlife disease research and medical technology.

Question 6: There are numerous diseases plaguing our coastal and marine wildlife, including sea turtles, manatees, and sea otters. Disease is also a concern in freshwater ecosystems, where diseases such as whirling disease afflict salmon and trout. In these aquatic environments, disease containment and response initiatives across governance boundaries are challenging. How does the U.S. Fish and Wildlife Service collaborate with other federal, state, and local authorities in these situations? Which NGOs does the Service call upon to help with monitoring, response, restoration, outreach, and public education?

Response: The Service has responsibility under the Marine Mammal Protection Act (MMPA) for the conservation and management of manatees, sea otters, walruses, and polar bears within

waters of the United States. Monitoring the status and health of marine mammal populations, including disease vectors and environmental conditions, is important for their conservation and management. The Service accomplishes this responsibility through our cooperative partnerships with other Federal and State agencies, Natives Tribes, Aquaria, Universities, and other stakeholders. Many of these agencies and facilities also provide assistance in rescuing injured animals from the wild, rehabilitating these animals for release, studying the causes of injuries or deaths, collecting carcasses, conducting necropsies, and analyzing biological samples. The Service is currently in the process of developing a grant program under the MMPA that would provide Federal funds for our partners in these efforts. In addition, the Service engages with the Working Group on Marine Mammal Unusual Mortality Events (UMEs), established under the MMPA, when a UME is declared for species under our jurisdiction.

The Service also utilizes six certified Fish Health Centers to detect, monitor, and mitigate disease-causing pathogens that threaten aquatic species. Their findings inform decisions that improve the health of captive fish at both Federal and partner hatcheries and fish populations in the wild. To accomplish this, Service Fish Health Centers utilize National Wild Fish Health Survey funds to conduct analyses of fish provided by Service partners to ensure that fish moved from the wild onto production facilities or fish moved from production facilities into the wild are not a vector for disease. The results of disease testing are shared with our partners. While the Service does not rely on our NGO partners such as the American Fisheries Society, National Aquaculture Association, American Veterinary Medical Association, and the U.S Animal Health Association for assistance with monitoring, response, and restoration activities, their ability to reach a broad constituency plays an important role in providing outreach and education of emerging disease issues. In addition, the Service approves import requests for salmonids from foreign countries to ensure that they are free of four pathogens that could infect domestic fish.

Questions from Sen. Markey

Question 7: What is the federal response from the U.S. Fish and Wildlife Service to the outbreak of Eastern equine encephalitis (EEE) in Massachusetts? At least twelve cases have been reported this season in Massachusetts, with three deaths. This is a dramatic increase from the total often human cases between 2009 and 2018 in Massachusetts.

Response: The Service does not have a lead role in addressing Eastern equine encephalitis, which is transmitted by infected mosquitoes. The Centers for Disease Control and Prevention has a key role, as this is primarily a human health issue. Our agency does manage mosquito populations on National Wildlife Refuges and National Fish Hatcheries, in order to support efforts to control the mosquito population for human health impacts. In Massachusetts, two National Wildlife Refuges - Parker River and Monomoy - allow monitoring and control of mosquitoes on specific marsh areas that have high mosquito populations. We continue to allow local mosquito control agencies to conduct these activities through close coordination and to minimize harm to fish and wildlife.

Question 8: What federal resources are required to effectively respond to EEE in Massachusetts and ensure containment of this deadly disease? Are any resources limited that would prove critical in coordinating a rapid and successful response?

Response: As mentioned in the above response, the Service does not have a lead role in addressing Eastern equine encephalitis. The Service has adequate resources to manage mosquito populations on our lands.

Question 9: Lyme disease is one of the fastest growing infectious diseases in the U.S., partially due to increased average daily temperatures. In Massachusetts, the black-legged tick (Ixodes scapularis) is the most common vector for Lyme disease transmission and is carried via woodland rodents. What wildlife management activities are being done to reduce the risk of Lyme disease to humans and domestic animals?

Response: The Service does not have a lead role in addressing Lyme disease and wildlife impacts. The Centers for Disease Control and Prevention has a key role for the human health impacts and the National Institutes of Health is also studying this serious human health issue. We understand the seriousness of this issue, and in response we have posted signage in public locations to educate our visitors about the risks associated with Lyme disease and other tick-borne diseases and encourage visitors to take precautions to minimize the risk of transmission.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 14 2020

The Honorable Martha McSally
Chairman, Subcommittee on Water and Power
Committee on Energy and Natural Resources
United States Senate
Washington, DC 20510

Dear Chairman McSally:

Enclosed are responses to the follow-up questions received by the Department of the Interior following the March 4, 2020, hearing before your subcommittee on the impact of invasive species on Bureau of Reclamation facilities.

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 Catherine Cortez Masto
Ranking Member

Senate Committee on Energy and Natural Resources
Subcommittee on Water and Power
The Impact of Invasive Species on
Bureau of Reclamation Facilities
March 4, 2020

Questions from Sen. Cortez Masto

Question 1: The National Invasive Species Council provides high-level interagency coordination of Federal invasive species actions and works with many partners to address invasive species issues at the national level. I understand that the National Invasive Species Council Management Plan was updated in 2016. It is my understanding that the Council evaluates and updates the plan every 3 years.

- **What is the current status of the management plan?**

Response: Implementation of the 2016-2018 National Invasive Species Council (NISC) Management Plan concluded last year with the completion of the majority of action items. As an alternative to publishing a three-year Management Plan with limited interagency engagement, in 2019 NISC developed its first Terms of Reference document, which establishes the relationship among NISC, its staff, and member agencies. NISC also adopted an annual work plan process to be more responsive to immediate interagency priorities and more effectively tap into available interagency energy and capacity. The NISC FY2020 Work Plan includes six thematic priority activities and a series of general coordination responsibilities. These documents are available www.invasivespecies.gov. NISC staff are coordinating interagency teams to advance these priorities.

- **Do you have the funds and resources to actively implement the management plan?**

Response: NISC's role is to promote interdepartmental coordination. Most federal invasive species funding, approximating $2 billion annually, is administered through individual agency programs, predominantly in the Departments of Homeland Security and Agriculture. The shift to an annual planning cycle and streamlining of NISC operations under the new Terms of Reference, discussed in the response to the previous question, was partially due to the need to be more effective and efficient in view of the fact that the Department of the Interior has sought statutory authorization, as part of the President's Budget, to receive financial contributions from other agencies to support its work. In anticipation of receiving that authority, the Department reduced its FY 2020 budget request for NISC to $600,000, but Congress has yet to provide the requested authority. The NISC FY2020 Work Plan was developed to be in line with available resources with a focus on areas where coordination can be improved by working across NISC member agencies. The efforts of NISC staff therefore help leverage and are in turn dependent on the engagement of NISC member agencies.

Question 2: Research and development plays a crucial role in providing insight, options and solutions to protect our economy and ecosystems from the threat of invasive species.

- **How can Congress work with you (DOI) and other federal agencies to prioritize research and development efforts related to invasive species?**

Response: Congress should support the President's FY 2021 budget request for Interior's research programs on invasive species in both the U.S. Geological Survey and the Bureau of Reclamation. More

broadly, the Department plays a leadership role in using science and innovation to improve invasive species management activities. This includes understanding current and emerging invasive species, their biology and impacts; developing and applying new tools, technologies, and methods to prevent, detect, and control invasive species as cost-effectively as possible; and developing decision-support tools to inform planning and management actions. Importantly, the Department emphasizes making these and other products available to managers across our programs and partners. Examples of specific research efforts include:

Reclamation: Reclamation's Research and Development Office, Science and Technology Program has funded $1.85M annually for mussel research since 2018. Since the development of Reclamation's invasive mussel early detection and monitoring program in 2008, Reclamation's Ecological Research Laboratory has processed 21,754 samples from 670 water bodies across 17 states. Research has focused on development of methods for control of invasive mussel settlement and shell debris at Reclamation hydropower facilities, control of populations in open water, development of effective monitoring methods, and predictive modeling. Research into control methods to prevent significant increases in operation and maintenance costs and potential failure or outages of critical hydropower generation systems has led to the installation of ultraviolet light treatment for generator cooling systems at three large Reclamation hydropower facilities.

Other agencies managing hydropower facilities also rely on Reclamation's research when considering mussel mitigation methods. Research is ongoing using novel methods to support the development of open water control and eradication of invasive mussels. Reclamation researchers are currently working to sequence the quagga mussel genome and have partnered with the winning solver of a prize challenge that was funded and administered by Reclamation's Prize Competition Program.

US Geological Survey: USGS scientists partner with state and federal agencies, tribes, agriculture, natural resource managers, and the private sector to help solve problems posed by invasive species. The USGS provides information on early detection and assessment of newly established invaders; monitoring invading populations; improving understanding of the ecology of invaders and factors in resistance of habitats to invasion; developing and testing prevention and management and control alternatives, stressing integrated control management approaches where appropriate; and assessing approaches for restoring disturbed habitats after control. USGS's Invasive Species Program, funded at $23M in 2020 and at $16.7 in the President's FY 2021 budget, researches high impact invasive species.

Tools and technologies developed by USGS and its partners - such as acoustic deterrent systems, carbon dioxide as a deterrent for movement, and the modified unified method to improve commercial harvest - are being deployed to help contain and control Asian carp in the Mississippi River basin. Innovative approaches of USGS scientists continue to provide new tools crucial to maintain control of sea lamprey in the Great Lakes; adaptively manage Phragmites (common reed) in the Great Lakes region; reduce the spread and impact of zebra and quagga mussels in the Midwest and the West; and to help managers in Hawaii deal with new, high impact species such

as Rapid Ohi'a Death that threaten important native species. USGS decision science tools, online databases and alert systems help managers to more optimally allocate resources to address invasive species issues.

Congress typically provides funding for specific invasive species, those both long-established and high impact, rapidly spreading invasive species. This approach focuses on controlling invasive species that are causing problems now. Expanding the focus to also support the President's budget request in USGS for $4.5M and the U.S. Fish and Wildlife Service for $15.3M specifically for prevention and early detection/rapid response activities to limit introductions and spread in the United States would be beneficial. Taking action before invasive species become established and widespread is the most cost-effective approach. These proactive, cost-effective approaches include efforts such as horizon scanning – looking for potentially high impact invasive species across the globe not yet in the country; biosurveillance – monitoring, early detection, and sharing information about relative risk to stakeholders across the country; and rapid response, such as deployment of interjurisdictional teams to eradicate new incursions, before invasive species have had the opportunity to spread.

In addition, in 2019, Congress passed the John D. Dingell Jr. Conservation, Management, and Recreation Act (Act). One of the Act's provisions established the Theodore Roosevelt Genius Prize for Management of Invasive Species. The purpose is to encourage technological innovation with the potential to advance the mission of the FWS with respect to the management of invasive species. The Act authorized funding for this and other prize competitions. This type of Congressional direction will help leverage advancements to pilot and implement winning technologies, in partnership with conservation organizations, federal or state agencies, federally recognized Indian tribes, private entities, and research institutions.

Question 3: Cheatgrass, an invasive species, is highly flammable and acts as a fuel that increases fire intensity. In Nevada, the 2018 Martin's Fire sped through cheatgrass to consume over 435,000 acres. Coordination between different agencies and levels of government and sustained commitment and funding are necessary to address this invasive grass. The Bureau of Land Management is working to treat vegetation and fuels as part of wildfire mitigation in the West.

- **Will you commit to working with stakeholders in Nevada to mitigate cheatgrass?**

Response: Yes. The Bureau of Land Management is committed to working with stakeholders in Nevada to mitigate cheatgrass. BLM uses a variety of approaches, including proactive inventorying and monitoring, robust weed treatments using multiple tools, and active restoration of lands impacted by cheatgrass. Partnerships with an array of federal, state, tribal and local partners are key to the BLM's success in addressing weed infestations. BLM continues to support a comprehensive approach to weed treatments that cross ownership and administrative boundaries through our partnership with the Cooperative Weed Management Areas. We also partnered with the Nevada Department of Wildlife to complete aerial herbicide treatments on the Martin Fire, totaling approximately 15,000 acres in the Fall of 2018. BLM is also working on establishing a working partnership with the Natural Resources Conservation Service, Nevada Department of Agriculture, and U.S. Forest Service to proactively address

nonnative annual grasses in Paradise Valley, NV (near the Martin Fire). Further, the BLM works in collaboration with the State of Nevada, FWS, and the Forest Service under a Shared Stewardship Agreement to prioritize landscapes in Nevada for fuels treatments. The BLM is committed to continued collaboration with agency partners and stakeholders to identify and implement necessary treatments to address invasive grasses and hazardous fuels.

- **How will the National Invasive Species Council support efforts to control cheatgrass in Nevada?**

Response: Wildland fire and invasive species is one of NISC's thematic priority activities for FY2020 with the aim of advancing landscape scale approaches to the management of this problem area. NISC has formed a federal interagency task team to address the topic and is coordinating with intergovernmental groups like the Wildland Fire Leadership Council to identify joint activities to reduce risks associated with wildland fire and invasive species. Additionally, NISC staff actively participate in discussions with resource managers in the west, including through the Western Weed Coordinating Committee, the North American Invasive Species Management Association, and the Western Governors' Association to support inter-jurisdictional efforts to address invasive grasses.