AUG 1 0 2017

The Honorable Paul Gosar
Chairman
Committee on Natural Resources
Subcommittee on Energy & Mineral Resources
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Office of Surface Mining Reclamation and Enforcement to the questions for the record submitted following the June 7, 2017, oversight hearing entitled: *"Oversight Hearing on the Office of Surface Mining Reclamation and Enforcement's Abandoned Mine Lands Program."*

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

Sincerely,

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

Enclosure

cc: The Honorable Alan Lowenthal, Ranking Member
        Committee on Natural Resources,
                Subcommittee on Energy & Mineral Resources

The Office of Surface Mining, Reclamation and Enforcement (OSMRE)
Responses to Questions
From the Subcommittee on Energy and Mineral Resources
Oversight Hearing on June 7, 2017

Questions from Chairman Gosar:

Question No. 1

Does OSMRE have information on the cost of reclamation of non-coal projects and public facilities?

OSMRE's Response to No. 1:

Yes. The cost of reclamation of non-coal projects and public facilities[1], based on information from the enhanced Abandoned Mine Land Inventory System (e-AMLIS) as of September 30, 2016, includes:

- $56 million - Construction costs for non-coal AML Priority 1, 2, and 3 projects completed by uncertified States. The source of these AML grant expenditures was the AML Fund.
- $104 million - Construction costs for both coal and non-coal priorities previously eligible for AML funding. The source of these AML grant expenditures was the AML Fund.
- $493 million - Construction costs for non-coal AML Priority 1, 2 and 3 projects completed by certified States and Tribes. The sources of AML grant expenditures on these projects were the AML Fund and the U.S. Treasury Funds.
- $39 million - Construction costs for non-coal AML Priorities 1, 2, and 3 funded, but not yet completed.

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[1] The costs associated with the reclamation of non-coal projects and public facilities are typically entered into the e-AMLIS database after projects have been completed. Therefore, the above-referenced information only provides a snapshot of the reclamation costs for non-coal projects and public facilities which have been completed. It does not include projects which are waiting to leverage other funding sources nor does it include projects that require multijurisdictional coordination before construction can begin.

Question No. 1a.

Does OSM have a list of which States spent funds on such projects, the money spent on those projects and any description of the project or facilities? If so, please provide this information?

OSMRE's Response to No. 1a.

Below is a list of States and Tribes and the amounts of money expended from AML grants for non-coal projects or facilities.

Non Coal Expenditures for Certified States and Tribes Data as of September 30, 2016	
State/Tribe	Total Expended
Crow Tribe	2,219,509.02
Hopi Tribe	122,342.28
Louisiana	449,963.63
Montana	39,039,139.77
Navajo Nation	13,106,692.21
Texas	18,404,090.28
Wyoming	89,675,477.93
Total	**$163,017,215.12**

Project and facility description data is not contained in a single data base. It will thus take additional time to compile manually. OSMRE will provide under separate cover.

Question No. 2a

Does OSMRE have a more specific accounting for the $5.5 billion transferred to States and Tribes in terms of actual reclamation costs; design costs; consulting services and program administrative costs? And does that account break out the costs by the Priority 1, 2, and 3. If so please provide this information to the subcommittee.

OSMRE's Response to 2a:

Yes. The following accounting information describes the $5.5 billion expenditure appropriated to States and Tribes from the AML Fund.[2] The data is provided in terms of priorities.

- o $2.6 billion - Construction costs to reclaim coal AML Priorities 1, 2, and 3[3] completed as of September 30, 2016.
- o $437 million - Construction costs for coal AML Priorities 1, 2, and 3 funded but not yet completed as of September 30, 2016.
- o $56 million - Construction costs for non-coal AML Priority 1, 2, and 3 projects completed by uncertified States as of September 30, 2016.
- o $104 million - Construction costs for both coal and non-coal priorities previously eligible for AML funding as of September 30, 2016.[4]
- o $286 million - Construction costs for non-coal AML Priority 1, 2 and 3 projects completed by certified States and Tribes before the 2006 SMCRA Amendments were enacted.
- o $1.45 billion – Administrative costs by AML States and Tribes as of September 30, 2016.
  - Initial start-up cost of States and Tribes establishing their own AML Programs
  - Salaries
  - Project design
  - Other indirect reclamation costs (e.g. technical support interagency review, consultations/public meeting, compliance with the National Environmental Policy Act (NEPA);
  - State/Tribal oversight costs (e.g. administrative activities, site inspections, site visits, and inventorying AML problems).
  - Building capacity to implement and maintain their AML programs (e.g., staff, training, field equipment, vehicles, lease office facility, office equipment);
  - Coordinating bids/contracts, grant activities, staff training, field equipment, office equipment)
- o $297 million - Acid mine drainage/ future set aside account for uncertified States to earn interest and for operation and maintenance of treatment systems as of September 30, 2016.
- o $262 million - Undelivered orders which is the amount of AML grant funds that States and Indian Tribes have not yet expended or committed as of September 30, 2016.

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[2] Adjustments were made for expenditures from U.S. Treasury Funds (e.g. Prior Balance Replacement Funds, Certified in Lieu Funds). All reclamation costs conducted by certified States and Tribes after the 2006 SMCRA amendments were not included because these monies did not come from the AML Fund.

[3] Priority 1 coal problems - Physical hazards that pose extreme danger to public health and safety, and may include environmental problems if they are located adjacent to this priority. Priority 2 coal problems - Physical hazards that pose adverse effects to public health and safety; and, may include environmental problems if they are located adjacent to this priority. Priority 3 coal problems - Hazards that adversely affect land or water resources or that have other effects on the environment.

[4] Prior to the 2006 SMCRA Amendments eligible projects for AML funding included: Priority 4 - protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices. Priority 5 - development of publicly owned land adversely affected by coal mining practices Including land acquired as provided in Title IV for recreation and historic purposes, conservation, and reclamation purposes and open space benefits. Non-mining related activities, included transportation, education, or energy development. Water supply restoration for protecting, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.

Question No. 2b.

Does OSMRE have a more specific accounting for the $1.6 billion mentioned in your testimony related to federal spending? Please provide any document that accounts more specifically for the $1.6 billion by specific programs (e.g. AML emergencies, priority coal and non-coal projects by priority; oversight; administrative costs and "other initiatives").

OSMRE Response to No. 2b:

The $1.6 billion expenditure since 1977 is broken out as follows:

- $1.054 billion for Environmental Restoration. This includes state program evaluation, emergency and high priority Federal reclamation, program development, and the small operator assistance program.
- $225.8 million for Executive Direction and Administration, which includes general services.
- $244.3 million for Financial Management, which includes fee compliance, and grants financial management.
- $84.5 million for Technology and Transfer initiatives.

Question No. 3

Do States account for their spending in similar manner in terms of construction design, consulting and administrative costs? For example, do all States separately account for construction, design and administrative costs?

OSMRE Response to No. 3:

Yes. The States separately account for construction, design, and administrative costs.

Does OSMRE provide any guidance on cost accounting, and if so, does OSMRE review States accounting and how often?

Yes. OSMRE provides ongoing guidance to the States and Tribes concerning cost accounting principles based on guidance found in the OMB regulations at 2 CFR Part 200, and the OSMRE Directive GMT-10, *Federal Assistance Manual.* In addition, OSMRE also provides periodic training for State and Tribal recipients. OSMRE also periodically reviews the accounts of States and Tribes. In fact, OSMRE conducts an average of 5 to 6 drawdown analyses of AML grants annually. As part of the review process, OSMRE requests additional information from the States and Tribes concerning specific aspects of its AML accounts. These drawdown analyses are conducted annually on approximately 20% of AML grants.

Question No. 4:

How much AML money distributed to States to date has been placed by states in the pre-2006 amendments 402(g)(6)(A) and (B) future and AMD set aside accounts and the post 2006 amendments 402(g)(6) AMD set aside accounts?

OSMRE's Response to No. 4:

Approximately $24.7 million has been placed in future set-aside accounts under the pre-2006 SMCRA Section 402(g)(6)(A) and (B) which allowed for any State to receive and retain up to 10 percent of its total grant amounts annually awarded in AML grants. This 10 percent is based on the State Share portion and Historic Share portion of the State's total AML grant award. Under this SMCRA provision, both certified and uncertified States could establish an acid mine drainage (AMD) abatement and treatment fund to earn interest, and to address hydrologic units affected by past coal mining practices.

Approximately $262.6 million has been placed in AMD set-aside accounts under the post-2006 SMCRA Section 402(g)(6)(A) and (B) which allow for an uncertified State to receive and retain up to 30 percent of their total grant amounts annually awarded in AML grants. This 30 percent grant amount is based on their State Share portion and Historic Share portion of the State's total AML grant award. The only exception to this provision is the State of Maryland. Under the 2009 appropriation law H.R. 1105, Maryland is allowed to set aside the greater of $1,000,000 or 10 percent of the total of the grants made available to the State under title IV of SMCRA, which includes their State Share and Historic Coal Share portion of the AML Fund, in addition to Federal Expense Share funds and Prior Balance Replacement Funds. This maximum amount is contingent upon the completion of Priority 1 AML problems.

Tabulated below is the list of States that have received set aside amounts over the lifetime of the AML program.

Set Aside Amounts from AML Grants to State and Tribe AML Programs Based on OSMRE's Financial Records *Data as of September 30, 2016*			
State	**Future Set Aside**	**AMD Set Aside**	**Total**
Alabama		1,309,837	1,309,837
Colorado	518,801		518,801
Illinois	4,059,143	28,280,983	32,340,126
Indiana	1,944,323	17,142,009	19,086,332
Kentucky		30,888,871	30,888,871
Maryland		5,378,000	5,378,000
Missouri	243,691		243,691
New Mexico	666,778		666,778
North Dakota	355,342		355,342
Ohio		20,970,026	20,970,026

Pennsylvania		107,774,062	107,774,062
Tennessee		3,740,407	3,740,407
Utah	169,708		169,708
Virginia		2,627,596	2,627,596
West Virginia	1,974,305	44,518,309	46,492,614
Wyoming	14,768,150		14,768,150
Totals	$24,700,241	$262,630,100	$287,330,341*

*Due to several de-obligation/re-obligation transactions the $287 million differs from the $297 million total in question 2a

Question No. 5

How much money has OSM expended on the Watershed Cooperative Agreement Program, mentioned in your testimony? What types of activities and how much has been spent on activities that would fall under the category of "other initiatives" mentioned in your testimony?

OSMRE's Response to No. 5:

Since the beginning of the Watershed Cooperative Agreement Program in 1999, OSMRE has expended more than $25.7 million. Through this financial assistance program, OSMRE provides awards of up to $100,000 per recipient to qualified local watershed groups.

Other initiatives funded by OSMRE over time have included the Small Operator Assistance Program, Applied Science Program, Acid Mine Drainage Technology Initiative, Volunteers in Service to America (VISTA), AmeriCorps and Intern Programs, Watershed Intern/Clean Stream Programs, and the Technical Information Processing and Technology Development Transfer Program. Since 2002, OSMRE has spent more than $11 million on these other initiatives.

Question No. 6.

Can you explain the process of how the Abandoned Mine Land Inventory System is updated?

OSMRE's Response to No. 6:

States and Tribes determine and prioritize their reclamation projects. Using OSMRE's Abandoned Mine Land Inventory Manual (AML-1), States and Tribes enter cost estimates and documentation into the e-AMLIS system. The categories are Unfunded, Funded, and Completed. Initial data is added to the "Unfunded" category. After OSMRE reviews and approves project cost estimates and documentation and a State or Tribe is awarded an Authorization to Proceed (ATP), the respective State or Tribe may transfer cost data into the "Funded" category. Upon completion of a project, the State or Tribe then transfers the final figures into the "Completed" category.

Question No. 6a

Do States use the same criteria for ranking projects by priority?

OSMRE's Response to No. 6a:

Yes. OSMRE provides guidance to States and Tribes in the form of statutory requirements and directions published in the Directive AML-1 to assist with ranking coal AML priorities according to pre-established parameters.

Question No. 6b

How does OSMRE assure that States are applying the criteria in a consistent manner?

OSMRE's Response to No. 6b:

OSMRE performs an analysis prior to issuing an authorization to proceed (ATP).

Question No. 6c

How does OSMRE assure that States are using similar cost assumptions for construction costs when making an addition to the inventory?

OSMRE's Response to No. 6c:

New entries referred to as Problem Area Descriptions (PADs) are submitted by States into the e-AMLIS system and are reviewed and approved by OSMRE prior to entry.

Question 6d

Does OSMRE review and approve each proposed addition to the inventory in terms of both the priority and cost.

OSMRE's Response to No. 6d:

Yes. OSMRE staff reviews and approves/disapproves the documentation submitted by States and Tribes for all new PAD entries for priority and cost that are proposed for addition into the e-AMLIS system.

Question 6e
Does OSMRE review and approve each proposed addition to the inventory in terms of both the priority and cost.

OSMRE's Response to No. 6e:

Yes. OSMRE staff reviews and approves/disapproves the documentation submitted by States and Tribes for all new PAD entries for priority and cost that are proposed for addition into the e-AMLIS system.

Question No. 7

Several witnesses raised NEPA analysis as an impediment to beginning project construction. Why do state AML projects require NEPA analysis? Has that always been the policy under the AML program? Does OSMRE have any analysis on the average time it takes to complete the NEPA analysis for state projects? Please provide any analysis OSMRE has performed in that regard.

OSMRE's Response to No. 7:

NEPA analysis is required when the States expend Federal funds on AML reclamation projects because the projects are Federal undertakings. The Federal decision (which triggers NEPA) is the decision to fund a project.

Has that always been the policy under the AML program?

OSMRE's Response:

Yes.

Does OSMRE have any analysis on the average time it takes to complete the NEPA analysis for state projects? Please provide any analysis OSMRE has performed in that regard.

OSMRE's Response:

OSMRE has not conducted an analysis of the time it takes States to complete the NEPA analyses for their AML projects.

Question No. 8

Has OSMRE tracked or analyzed the time period between AML grants to States and the spending of those funds on specific projects? Please provide any analysis OSMRE has conducted in that regard.

OSMRE's Response to Question No. 8:

OSMRE does not track the time between when AML grants are awarded to the States or Tribes and the spending of those funds on specific projects. Programmatic progress reports, however, are submitted on an annual basis for OSMRE's review. AML grants that are awarded to States and Tribes typically have a 3-year performance period.

Questions from Representative Lamborn

Ms. Owens, the Consolidated Appropriations Act of 2016 authorized $90 million for AML reclamation and economic development on Priority 1, 2, and 3 sites in struggling coal communities in the three States with the largest AML inventory. Does OSM have a record of how exactly those funds were spent in each of the three AML pilot States? If so can you produce it for the Committee?

OSMRE Response to Representative Lamborn's Questions:

Yes, we are completing a Draft Report on the AML Pilot program that we will provide to the Committee shortly.

Questions from Representative Lowenthal

Question No. 1:

In Mr. Quinn's testimony, he referenced a table in the FY 2018 OSMRE Budget Justification, on pages 155 and 156, which indicates that the cost of completed reclamation projects over the history of the program has totaled $2.82 billion. The e-AMLIS database, however, reports that $3.99 billion has been spent on completed projects, with another $564 million in projects funded. What is the reason for the difference between the table in the Budget Justification and the data in e-AMLIS?

OSMRE Response No. 1:

The two data sets differ because they serve different purposes. The Tables in the FY 2018 OSMRE Budget Justification, consistent with established reporting practices, provide information on AML programs for the 28 coal producing States and Tribes and for coal AML priorities 1, 2 and 3, as they are currently defined under SMCRA. The e-AMLIS database, on the other hand, provides more comprehensive information on the full array of AML programs, resulting in the inclusion of additional projects. For example, all AML coal priorities authorized throughout the history of SMCRA legislative changes are maintained in e-AMLIS. This includes AML priorities that were previously authorized such as Priority 4, Priority 5, and special designations that existed prior to 2006. The Budget Justification table, however, takes into consideration only those coal producing States and Tribes, rather than the expansive national inventory that also includes non-coal producing and non-AML program states and tribes (e.g. Michigan, California).

Question No. 2:

In response to questioning from Representative Pearce, you appeared to confirm some statements he made regarding the percentage of AML funding that goes towards administrative costs. Could you clarify your response regarding these costs? How much of the "non-construction spending" from the AML Fund goes to activities, such as engineering and design, that are necessary precursors to any construction projects and how much is truly administrative?

OSMRE Response No. 2:

To clarify, the accurate ratio of AML construction costs is approximately 1:3 non-construction to construction.

The cost breakdown is as follows:
Construction - $3.483 billion (63%)
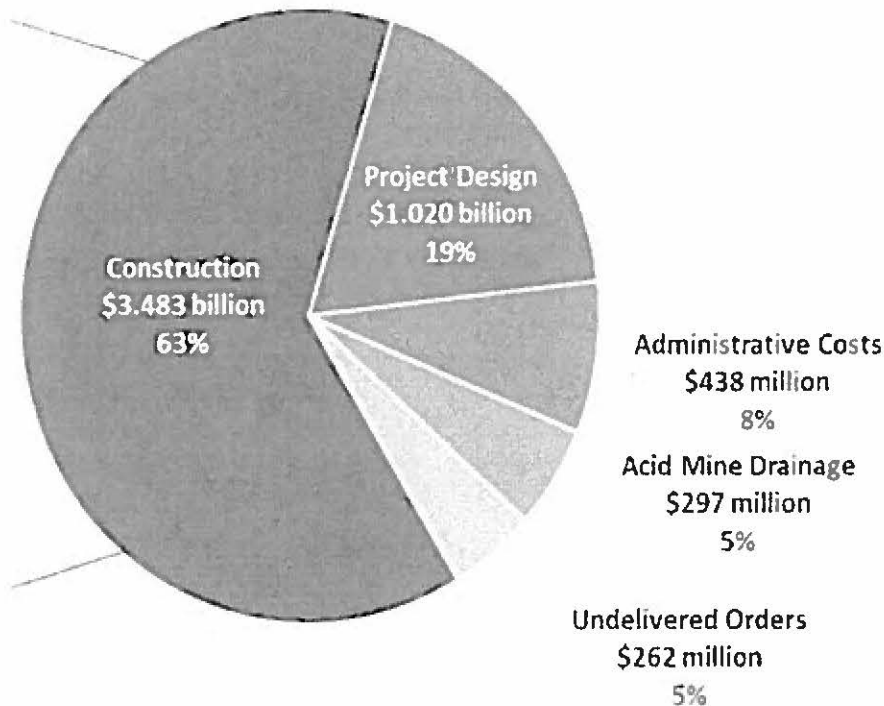Project Design/Administrative costs - $1.02 billion prior to 1998 (19%)
Administrative costs - $438 million from 1998 to 2016 (8%)
Acid Mine Drainage - $297 million (5%)
Undelivered Orders - $262 million (5%)

Total Cost: $5.5 billion

For further clarification see the chart below:

Question No. 3

During the hearing, Mr. Parfitt stated that Wyoming submits all prior-balance funding requests, including for highway projects, to OSMRE for review. Please provide all correspondence with the State of Wyoming regarding the spending of AML funding on highway projects, and explain the criteria by which OSMRE ensures that such projects are being prioritized to address the impacts of mineral development.

OSMRE's Response to No. 3:

Wyoming requests and receives AML funding through the grants application process, as do all other states. Wyoming's grant application includes a high level breakout of where funds are to be expended. In FY 2016, Wyoming's grant application identified the highway projects impacted by mineral development, on which they intended to expend AML grant funding. During OSMRE's review of grant applications and proposed projects in certified states, such as

Wyoming, OSMRE, working with the state, ensures that proposed highway projects impacted by mineral development are given priority.

Question No. 4

Ms. Owens, your agency workforce has declined considerably in the last fifteen years, going from 600 in 2002 to roughly 435 this year – a drop of nearly 30 percent. Your Fiscal Year 2018 budget proposal would involve a cut of nearly 14 percent, not counting the AML pilot program. This includes a drop of 20 percent for Fee Compliance work, and the complete elimination of any money for Federal Reclamation Projects. What impact has the declining workforce had on OSMRE's ability to fulfill its mission, and what would be the impact of the proposed cuts in FY 18?

OSMRE's Response to No. 4:

OSMRE's FY 2018 budget focuses funding on OSMRE's core mission requirements and eliminates or reduces funding for lower priority, mission enhancing programs and activities.

Question No. 5

In the Fiscal Year 2017 omnibus there was a permanent fix included to address shortfalls in the United Mine Workers of America health care plans. What is the expected impact of that fix to the AML Fund?

OSMRE's Response to No. 5:

There should be limited, if any, impact on the AML Fund. The additional funds that addressed the shortfalls in the United Mine Workers of America are paid from the Treasury General fund after all interest earnings from the AML Fund have been exhausted.

Question from Rep. Jody Hice:

What is the timeframe OSM anticipates for software updates to e-AMLIS?

OSMRE Response to Rep. Jody Hice:

Outlined below is OSMRE's timeline for completing system enhancements:

Priority for Completion	System Enhancement	Target Date	Completion Date
# 1	Select new e-AMLIS contractor	September 2017	
# 2	Ability to "park" State/Tribe data entry until an OSMRE staff review, and approve data entry	December 2017	
# 3	Data standardization and modification of existing historic data	May 2018	
# 4	Adaptation of e-AMLIS capabilities to mobile devices to improve efficiencies in data entries	December 2018	

Questions from Rep. Beyer:

Question:

Given that the AML program is now roughly 25 years past its original –intended 15 year lifespan and there is still, conservatively, about 10 billion in remaining cleanup to be done, if we reauthorize the program how much longer would it take to address all the priority sites? And can we assume that we are not creating any new sites?

OSMRE Response to Rep. Beyer:

OSMRE forecasts AML fee collections annually based on the Energy Information Administration's (EIA) *Annual Energy Outlook* (AEO) Report that provides projections on coal tonnage production. Based on the last AEO Report published in November 2016, the projected fee collection for the period FY 2017 through FY 2021 is expected to range from $160 million to $166 million. Using the higher projection, it would take approximately 60 years to address all current high priority problems. Bear in mind this a conservative estimate which does not consider project complexity, inflation, or State and Tribal capacity to complete projects.

We cannot assume that there will not be any new problem areas for the following reasons:

- The estimated costs of reclamation for AML projects in the inventory are fixed at the time of entry into e-AMLIS and they are not automatically adjusted for inflation;

- Environmental problems which are initially designated as Priority 3 may be elevated to higher priorities if they later pose serious health and safety problems consistent with Priority 1 and Priority 2;

- Some States and Tribes periodically inspect their inventory to update their figures to reflect the current and increased reclamation costs;

- Urban sprawl has resulted in the need to update and re-evaluate AML priorities (i.e. Priority 1, Priority 2 and Priority 3) to reflect newly discovered AML problems that reflect SMCRA's priorities. The inventory may also be updated to reflect the contemporary pricing structures for these reclamation projects; and,

- New health and safety AML problems may also arise which result in more projects being added to the inventory. For example, the increased accessibility in remote areas using enhanced mapping technologies, equipment and demographic expansion into areas once considered remote has resulted in new AML problems being added to the inventory, and data on existing AML problems being updated on an ongoing basis.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

AUG 2 9 2017

The Honorable Lisa Murkowski
Chairman, Committee on Energy and Natural Resources
U.S. Senate
Washington, D.C. 20510

Dear Chairman Murkowski:

Enclosed are responses prepared by the Department of the Interior to the questions for the record submitted following the June 14, 2017, legislative hearing on *S. 677, Water Supply Permitting Coordination Act* and *S. 1012, A bill to provide for drought preparedness measures in the State of New Mexico Examine the United States' Increasing Dependence on Foreign Sources of Minerals and Opportunities to Rebuild and Improve the Supply Chain in the United States* before your Committee.

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

Sincerely,

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

Enclosure
cc: The Honorable Maria Cantwell, Ranking Member
        Committee on Energy and Natural Resources

U.S. Senate Committee on Energy and Natural Resources
Subcommittee on Water & Power
June 14, 2017 Hearing: Pending Legislation
Questions for the Record Submitted to Mr. Scott Cameron

Questions from Senator John Barrasso

Question 1: Could you please provide me with an update on the status of the Leavitt Reservoir Expansion project and the Alkali Creek Reservoir project reviews underway in the Bureau of Land Management's D.C. office?

Response: The Leavitt Reservoir Expansion project and the Alkali Creek Reservoir project Notice of Intents (NOIs) are currently under final review by the BLM and the Department. Both of the proposed projects aim to either construct or expand reservoir resources to assist in late season irrigation, alleviate flooding concerns and provide recreational use. Not only is the Leavitt Reservoir project proposal a component of Governor Mead's 2015 Wyoming Water Strategy, but both projects also provide support for traditional uses on public lands like ranching, farming and angling. We recognize the importance of serving our local communities in this way and I have been informed that the BLM is working on these notices as expeditiously as possible.

Question 2: Could you also provide when the Notice of Intent for these projects is expected to be published in the Federal Register?

Response: The BLM and the Department are working diligently to move these NOIs forward with the goal of publishing them in the Federal Register within the next two months.

Question from Senator Martin Heinrich

Question: Has the Bureau of Reclamation implemented water leasing programs in basins other than the Middle Rio Grande? What has been the experience of the Bureau in implementing water leasing in those basins? What have been the challenges, lessons learned, and successes of those water leasing programs?

Response: Reclamation has over 40 years of experience partnering with local water districts throughout the 17 western states to facilitate water transactions in order to enable greater flexibility in the use of water resources and Reclamation facilities to meet a broad array of water demands. Water leasing is a type of water transfer generally limited to a limited time period, as opposed to direct, permanent sale of water rights.[1] Reclamation plays a central role in water transfers when its facilities are used to store or convey non-project water, the proposed water transfer impacts Reclamation contractors, or Reclamation purchases water for the purpose of environmental flows or water for wildlife. The primary drivers for water transfers vary, but are generally associated with water supply shortages, the high cost or difficulty of developing new supplies, and the differences in value between alternative water uses.

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[1] The term "water leasing" is generally, but not exclusively, used in the context of Indian water rights settlements, while the term "water transfers" refers more broadly to the range of activities Reclamation participates in to assist moving water between willing buyers and sellers.

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Reclamation has had an integral role in water transactions, including facilitating transfers of water amongst its stakeholders utilizing federal facilities. A few examples of water transactions, including water leasing, include Reclamation's involvement in the allocation of water in California through the Central Valley Project and the Colorado River. In the first instance, the Central Valley Project and California State Water Project allow for water to move between locations and users, thus allowing for a robust market for water transfers, especially during dry years. In the case of the Colorado River, Reclamation participated in the development and implementation of the State Qualification Settlement Agreement, which quantified the share of California's apportionment of Colorado River water and allowed for transfers of Colorado River water among Colorado River users. In Colorado, between 2007 and 2015, about 140,000 acre-feet of water per year was transferred from Colorado-Big Thompson Project contract holders to other water users within the Northern Colorado Water Conservancy District. Native American water rights settlements enacted by Congress often authorize water leasing for settlement water, which can provide a stable revenue stream for a Tribe and a water source for communities near an Indian reservation.

The availability of water transfers is largely dependent on the unique circumstances of the Reclamation project, federal and state law, or local conditions. Because water markets are based on water sources derived from federal, state, or local water rights, and because such rights vary, the exact form and practice of water markets vary. Functioning water transfer markets require the existence of willing buyers and sellers, where there are sufficient economic incentives for water users to pursue water transfers. The absence of adequate water infrastructure to move water among water users can hinder the facilitation of water transfers. Reclamation's general deference to state law that govern the control, appropriation, use and distribution of Reclamation project water, complicates Reclamation's ability to develop a uniform water transfer process. Certain uses may not be considered beneficial under state law, such as instream flows, thus narrowing the types of water users that can participate in a water market. Legislation authorizing a Reclamation project specifies the project purposes and generally identifies the project's service areas, which can also narrow the scope of potential buyers. Water transfers can also have a variety of adverse economic, social and environmental impacts on third parties.

Reclamation has developed several recommendations to remove impediments to water transfers, which include identifying and evaluating opportunities for increased efficiencies relating to environmental compliance, creating a centralized source of information for water transfers, and reducing transaction costs by making information generated or compiled by Reclamation available, including information related to the approval process required, NEPA compliance, and potential fees or charges. Reclamation continues to pursue opportunities to facilitate water transfers as a valuable tool in managing the competing needs for water in the West.

Questions from Senator Angus S. King, Jr.

U.S. Senate Committee on Energy and Natural Resources
Subcommittee on Water & Power
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Question 1: I understand the intent of S. 677 is to help streamline permitting processes, but I also understand the bill is considered problematic by environmental groups, and concerns have been raised that the language may be duplicative to existing policy.

In testimony you submitted, you suggest that S. 677 establishes policy that already exist, but you also acknowledge the importance of streamlining and expediting permitting processes. What can the Bureau do administratively to address these challenges and address water challenges in a more sustainable manner? When can and will administrative actions be taken to address these challenges?

Response: As noted in our testimony, Reclamation supports efforts to streamline and expedite, in a manner consistent with law, environmental reviews and approvals for all infrastructure projects, including new surface water storage projects. Surface water storage projects create multiple benefits, including reliable water supplies, flood control, hydropower, and water quality improvements. The Department is looking into some of the factors that often curtail the authorization of new surface storage projects, such as often costly, unpredictable, and time-consuming environmental review processes; or identifying additional, non-federal cost-share partners to finance the repayment of new projects. We continue to look at ways to streamline and expedite the approval of infrastructure projects, and in doing so, aim to identify new and viable surface storage projects.

Question 2: Can you expand on what aspects of S. 677 are duplicative efforts of Title 41 of the FAST Act and offer specifics?

Response: Title XLI of the FAST Act established a process to expedite the federal approval of infrastructure projects that would likely require a total investment of more than $200 million, including water resource projects. The Act creates a council composed of relevant permitting agencies to designate lead agencies for covered projects, develop recommended performance schedules, establish best practices, and shorten the time in which challenges can be made to final decisions. Similar to S. 677, the Act pertains to any license, permit, approval, finding, determination, or other administrative decision issued by an agency - including the Department of the Interior - that is required or authorized under federal law. Like Section 3(a) of S. 677, the Act creates a mechanism to identify a lead agency to work with project sponsors to expedite the approval process. The Act requires the lead agency to identify and notify cooperating agencies that have financing, environmental review, authorization, or other responsibilities with respect to the proposed project, as does Section 3(b) of S. 677. The Act also requires the lead agency to establish a permitting timetable for action by each participating agency on any federal environmental review or authorization required for the project, similar to Section 4(b)(3) of S. 677.

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The Honorable Steve Daines
Chairman
Subcommittee on National Parks
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Chairman Daines:

Enclosed are responses prepared by the National Park Service to questions received following the June 7, 2017, oversight hearing before your subcommittee.

Thank you for the opportunity to respond to you on these matters.

Sincerely,

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

Enclosure

cc: The Honorable Mazie Hirono
    Ranking Member

U.S. Senate Committee on Energy and Natural Resources
Subcommittee on National Parks
June 7, 2017 Hearing: Opportunities for Moving into a Second Century of Service:
Working to Improve the National Park Service Workplace Environment
Questions for the Record Submitted to
Mr. Michael T. Reynolds, Acting Director, National Park Service

Question from Senator John Barrasso

Question: You indicated the new Ombuds office has received more than 1,000 comments in the four months following its establishment. How many of those are new allegations of misconduct, and are any new reports being handled differently than those reported last year?

Response: Ombuds do not receive formal reports of misconduct or initiate investigations. They provide confidential assistance to employees with identifying appropriate avenues for formally raising matters, such as filing complaints with the Office of Human Resources, Equal Employment Opportunity counselors, the Inspector General hotline, or senior officials. The Ombuds can report aggregate numbers of each tupe of comment they receive, but because they guarantee anonymity, it is not possible to know how many of the comments received by the Ombuds lead to new formal allegations of misconduct.

Separately, the National Park Service (NPS) is creating a tracking system that will help with measuring the number of official reports of misconduct over time. Until recently, the NPS did not have a consistent method to track the instances of misconduct or document the penalties for such misconduct nationally. Documentation of misconduct may have been gathered at the park or regional level, but national data was not compiled or analyzed. Beginning in March 2017, the NPS began tracking data related to allegations of employee misconduct in a consistent format on a monthly basis and submitting to the Department of the Interior (Department). In the future, the NPS will have more precise data on reports of misconduct.

Questions from Senator Mazie K. Hirono

Question 1: In your testimony you note the voluntary survey that the Park Service has circulated to permanent employees and plans to circulate with seasonal employees next month and how the results of this survey will assist the Park Service in understanding the scope of the sexual harassment and other workplace environment issues across the service.

Do you feel that the survey is adequate? Once you assess the scope of the problem, how will you monitor and evaluate steps taken to address sexual harassment to make sure that they are effective and producing results? Going forward, what will be the Park Service's formal procedure for responding to and addressing sexual harassment reports, including the process and criteria for disciplining employees that have committed sexual harassment, and ensuring that these procedures are communicated to all employees?

Response:

Adequacy of the survey - The survey will be adequate to provide the information we need to lay a foundation for a comprehensive, effective plan to combat sexual harassment and hostile work environments. The survey was rigorously designed and goes beyond basic harassment prevalence surveys. It will give us a clear understanding of the type of employee who is most likely to be harassed, the particular type of environment where harassment is occurring (e.g. office environment, remote location), when employees are harassed for the first time in their career and by whom (e.g., supervisor, coworker), the likelihood of a person intervening if they witness harassment, and whether employees are likely to report harassment and if they are not willing to report, why not.

Monitoring and evaluation - Survey data will drive the interventions we design and implement. We will monitor our progress by comparing the 2017 baseline survey results with the results of future surveys and the total numbers of misconduct allegations. As we assess our progress, we will make adjustments to our interventions and tailor our actions to ensure we are addressing the issues effectively and efficiently. In the near term, we expect to see an increase in reporting and total numbers of cases because employees and managers are actually reporting harassment that they might not have reported in the past. An increase in complaints may occur as employees have increased evidence that management will take appropriate action and employees are protected from retaliation. When cases of misconduct are more consistently reported, we are in a much better position to hold employees accountable and ensure safe environments for all employees.

Responding to sexual harassment reports - The Secretary has been very clear that he has a zero tolerance policy for sexual harassment and has begun a process to clarify and update NPS' training and processes. Once updated, we look forward to their swift implementation. .

Criteria and process for disciplining employees - Managers are required to follow Office of Personnel Management guidelines to ensure the laws passed by Congress are upheld. That includes allowing employees due process, providing them with written notice of the charges and access to any supporting documentation, and allowing employees to give oral and written responses to the charges. Managers consider the circumstances surrounding the event, the table of penalties, and the Douglas Factors (https://www.opm.gov/policy-data-oversight/employee-relations/reference-materials/douglas-factors.pdf) when taking disciplinary actions related to misconduct. Managers are held accountable for addressing misconduct of their subordinates through their annual performance plans. The NPS will seek to enhance the skills of our front-line managers so that they are more skillful and confident when addressing employee misconduct through improved supervisory training.

Communicating to employees - We are taking several steps to ensure that procedures are communicated to all employees:

> 1) Improving our internal intranet site, so that online resources for employees are easy to find and understand.

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2) Including explanations of policies and procedures related to sexual harassment and hostile work environments in our onboarding of new staff.

3) Requiring Civil Treatment for Leaders training for all supervisors, which includes sessions on the managers' duty to act when allegations of harassment have been brought to their attention.

4) Including information about how to report and respond to allegations of misconduct, and integrating anti-harassment training into existing training programs.

5) Continuing to require Prohibited Personnel Practices and Whistleblower Training, which includes a section for managers on managers' duties related to hiring and to whistleblower protections.

6) Continuing to have the Ombuds disseminate information to employees about resources available to resolve workplace problems through emails and phone calls with individuals, and through site visits.

7) Planning for providing training to all employees so that they know how to report harassment and managers know how to promptly and properly respond to allegations; we will conduct this training after the personnel bulletin on reporting and investigating harassment has been finalized and NPS standard operating procedures are in place.

Question 2: The National Park Service director is one of 442 Senate confirmable positions that has yet to receive a nominee from this administration. What are the challenges the Park Service faces in setting a tone for the workplace environment without a director?

Response: The entire NPS senior leadership is demonstrating to employees in multiple ways that we are determined to bring about a culture change that will end sexual harassment and hostile work environments. We anticipate that a Senate-confirmed director will reinforce that message, especially since Secretary Zinke has made clear through numerous statements and actions that harassment and hostile workplace environments will not be tolerated.

Question 3: Seeing as you have spent over 30 years in government and worked at almost every level within the National Park Service, I'm sure you have noticed some trends over that period of time. With visitation increasing and the National Park Service budget being cut simultaneously, have you noticed these factors impacting workplace morale?

Response: Many factors contribute to the morale of the workforce in any government agency and private sector workplaces. Some of the factors are within our control and some are beyond our control. We cannot equate the morale of the workforce solely to the budget.
We are very committed to addressing morale issues and going forward we are going to need to listen better and understand our workforce needs.

Question 4: In Ms. Burks' testimony she notes that "Training within the service is inconsistent, inadequate, and unavailable to many employees" and that "Managers and supervisors cannot count on training funds being available as they are often the first thing cut when appropriations are reduced."

You note in your testimony that the Park Service has identified serious shortfalls in training consistency across the NPS. However, do you agree with Ms. Burks that training funds are not consistently available for managers and supervisors? If so, how has the Park Service ensured that employee training will not suffer in the time of reduced appropriations, especially given the President's budget proposal for FY 18?

Response: As with every other area of the budget, the NPS often has to make hard choices when it comes to allocating limited funding for staff training and development. The NPS prioritizes training funds to meet the legal requirements for training superintendents and new managers so they can lead by example, but we are also working hard to make the most effective use of training funds for all employees. To deliver training to employees more cost effectively, the NPS Office of Learning and Development is developing a Learning and Performance Ecosystem (LPE) strategy, an industry model which "enhances individual and organization effectiveness by connecting people, and supporting them with a broad range of content, processes and technologies to drive performance." The LPE supports employees through six components: structured learning, knowledge management, social networking/learning, performance support, talent management, and asking experts.

Additionally, through the new NPS Common Learning Portal (CLP), staff connects in real time to find courses, internal experts, training opportunities, and best practices. The CLP is a crucial tool to connect the over 22,000 staff across the country and it increases opportunities to connect beyond in-person learning and development activities.

Question 5: Do you agree with Ms. Kendall that having only one full-time ethics counselor within the Park Service is inadequate? What is the current training requirement for NPS employees and roughly what percentage of NPS employees in leadership or management positions receive adequate leadership training? Do you agree with Ms. Kendall that NPS should require ethics training for all employees?

Response: The NPS has received recommendations about the ethics program from the Department's ethics counselor. It would be desirable to have more than one NPS ethics counselor. We are currently prioritizing the recommendations among the multiple needs of the organization. Our resources are being directed first to the almost 300 park superintendents who set the tone and example for the employees under them and who also tend to deal with these ethical issues more than other employees. One of our current efforts is the development of ethics training for superintendents on how to work properly with partners on fundraising activities.

All new employees are required to take ethics training within 90 days of beginning work as part of their onboarding. Notices reminding all NPS staff of ethics policies are sent out annually. In addition, certain categories of employees including Senior Executive Service employees,

political appointees, contracting officers, and other employees who are required to submit financial disclosure reports, are required to complete ethics training annually.

All new managers are expected to participate in the New Supervisor Development Program during their first 12 months as a supervisor. This program includes supervisory ethics.

Question 6: Ms. Kendall notes in her testimony that the Park Service has developed a "culture of silence and protecting its own."

What is your response to her criticism of the Park Service's "culture of silence," and what specific steps do you plan to take to address the conditions that have created this culture?

Response: We appreciate the hard work that Ms. Kendall and the staff of the Office of the Inspector General have done to ferret out wrongdoing and bring to our attention some serious workplace issues. However, characterizing the culture of the NPS with such a sweeping generalization is unfair to the thousands of conscientious men and women of the NPS, including the majority of managers, who are fair and respectful to their fellow employees. The comment fails to recognize the determined effort that the NPS leadership is making to assure employees who come forward with complaints that they will not be ignored or face retaliation.

NPS leaders are making it easier and safer for employees to report misconduct and are taking appropriate and swift disciplinary action in cases of confirmed wrongdoing. Employees are seeing that misconduct is not being tolerated. To the extent that the culture characterized by Ms. Kendall exists in any part of the NPS, we are making every effort to change that.

Questions from Senator Angus S. King. Jr.

Question 1: While additional training and new programs to expedite handling of complaints is an important start, these proposed responses won't rectify systemic problems without an effective and timely disciplinary process.

To that end, what concrete steps do you plan to take in order to dismiss consistently problematic employees from the NPS? Is there a formula you can develop, such as first identifying the most frequent offenders, and work from there? And along those lines, what steps can you take to replace the managers who have turned a blind eye to the recurring problems? Can you look to any other federal agencies besides the Department of Defense – or even private industry – for assistance?

Response:

Dismissing consistently problematic employees and identifying the most frequent offenders - The NPS is committed to addressing misconduct and poor performance to regain the public's trust and our employees' confidence. Employees can be removed for both conduct and performance reasons, but each basis has its own set of procedural due process, as established by Congress.

The agency must take care that a decision to remove an employee is factually and legally supported to ensure that the removal is not overturned if appealed by the employee.

In March 2017, the Department of the Interior asked all bureaus to begin tracking data related to allegations of employee misconduct in a consistent format and submitting to the Department. This means cases of misconduct are now able to be reviewed and tracked at the regional and national level across bureaus to ensure cases are being addressed and resolved.

To address problem employees, managers work closely with Employee Relations specialists to learn about an employee's past work history so they can understand if they have any previous cases of misconduct. Managers have also been instructed to more consistently conduct reference checks on candidates to determine if a candidate has an existing disciplinary record. By understanding an employee's past conduct, managers can weigh a variety of factors when determining disciplinary actions. If employees continue to act inappropriately, managers can use progressive discipline and can assign a more serious penalty for each infraction including up to removal from government service.

Replacing managers who ignore problems - Secretary Zinke has adopted a zero-tolerance policy for misconduct related to sexual harassment. Under this policy, employees may be removed from Federal service for a single, egregious offense. Additionally, the Department is reviewing new policies that will provide managers options to hold employees accountable for harassing conduct that is inappropriate but falls short of the legal definition of harassment under Title VII. This will enable the NPS to address misconduct before it rises to the level of illegal harassment. It is essential for every manager to be accountable for his or her performance in addressing employee misconduct. All managers have a critical element on their performance plan in which they are rated on their effectiveness in supervising their employees. Managers who fail to hold their employees accountable for performance or misconduct can receive a negative performance evaluation, be placed on an employee performance improvement plan, and if performance does not improve, may themselves be removed or demoted from a supervisory position.

External assistance - In addition to earlier engagement with the Department of Defense, the NPS has sought other outside expertise to help us understand and address the issue of sexual harassment and incivility. Two recent examples: (1) The NPS convened a "Creating Employees First NPS" workshop on June 19-20. Seven highly regarded experts in the fields of organizational behavior, industrial psychology, sociology, communications, women's studies, and human resources helped us understand how we might be able to change our culture by increasing the level of respect in the workplace and preventing instances of harassment and incivility. (2) The NPS Women's Employee Resource Group in partnership with the Office of Learning & Development, the Peace Corps Office of Safety and Security, and US Park Police jointly developed a webinar on Bystander Intervention that was delivered on July 12. The Peace Corps has documented over 1600 occurrences in which Peace Corps members have used bystander intervention skills since they began offering their Bystander Intervention training in 2011.

Question 2: The Mount Desert Island community that surrounds Acadia National Park is very concerned about the suspension of the Acadia National Park Advisory Commission, a

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Commission established by law that serves as an important forum for communication between the local communities and the Park Service. Formal meetings of the Commission operate to make valuable suggestions and recommendations to the Park Service on the management and operation of Acadia National Park that benefit the Park, visitors to the Park and residents of the region and state. The suspension of this important Commission, especially in light of critical Commission meetings set to take place this year, negatively impacts Acadia National Park management and the local communities.

What specific actions will the National Park Service take to ensure that the Acadia National Park Advisory Commission can get back to work so that they can formally meet for their scheduled meeting in September of this year?

Response: The Acadia National Park Advisory Commission has been a strong partner to the NPS, ensuring coordination and consultation at the local level. In order to make sure all commissions are giving local communities adequate opportunities to comment on park management decisions, the Department is reviewing the more than 200 boards, committees, and commissions under its responsibility. This review is scheduled to be completed later this year so that commissions can get back to work.

Question 3: What steps does the Acadia National Park Advisory Commission need to go through in order to ensure that they can be relieved of the suspension of activities as soon as possible?

Response: The NPS has submitted all necessary paperwork to the Department to complete its review of the Acadia commission. No additional steps need to be taken at this time.

Question 4: Will there be a first round or tier of Advisory Commissions that will be released from the freeze?

Response: No information is available on the exact timing of when individual commissions can begin meeting again.

Question 5: What are the standards that an Advisory Commission would need to meet in order to be release from the suspension of formal activities as soon as possible?

Response: The Department is reviewing committee charters, evaluating committee memberships to ensure there is adequate local representation, assessing benefits and services provided by the committees, and analyzing costs. One important requirement is that there are an adequate number of members on each commission to represent the local community's interests.

Questions from Senator Tammy Duckworth

Question 1: During your June 7th hearing before the National Park Service Subcommittee, you highlighted the important work of two new ombudsmen employees at the National Park Service (NPS). As you continue implementing this new avenue of outreach for NPS's

23,000 employees, what is your vision and long-term goals for this program? Please share any metrics you are using to evaluate the program's effectiveness.

Response: The mission of the NPS Ombuds program is to help reinforce a workplace culture that focuses on ethics, respect, teamwork, fairness, civility, responsibility, and accountability. The vision is to provide resources to the NPS to explore resolution of individual and systemic problems affecting the workforce. As we work on defining the long-term goals and role for the NPS Ombuds, we will evaluate the program's effectiveness and make changes, as needed, to best serve the workforce.

We are taking several actions simultaneously to better understand the NPS workplace environment and improve conditions for employees, so it is difficult to attribute changes specifically to the Ombuds program. However, the number of employee contacts, and the quantity and types of comments received, are metrics which indicate the extent to which employees are using the service.

Question 2: Given your stated goal of creating an open and safe atmosphere at NPS and the more than 1,000 comments, complaints and recommendations already received, how many ombudsmen employees are needed to fully and effectively address the concerns of all 23,000 of your employees? How do you plan to increase the public facing visibility of this office?

Response: As part of the evaluation of the program's effectiveness, we will assess the Ombuds workload, employee interest, and the value to leaders in order to make recommendations about Ombuds staffing needs and implementation strategy. The Ombuds guarantee the anonymity of the employees who use their services. Their primary roles are to assist employees with identifying appropriate pathways for resolving workplace issues and advising senior leaders about the trends in comments from employees. As such, it is an internal program and we do not have plans to share more than general information about the program with the public.