

**U.S. Senate Committee on Energy and Natural Resources
September 7, 2017 Hearing: Pending Nominations
Questions for the Record Submitted to Mr. Ryan Nelson**

Questions from Senator Ron Wyden

Question 1: The Oregon and California (O&C) land grants are important economic drivers in Southern Oregon. These are 2.5 million acres of BLM-managed timberlands interspersed with private lands, which have historically provided for timber harvests, jobs in the woods, and a source of county revenue.

In 2015, the Bureau of Land Management came out with an resource management plan for O&C lands that brought timber harvests up to around 230 million board feet. O&C counties and the timber industry believe the O&C Act requires 500 million board feet, and have sued the Department of the Interior (DOI). As Solicitor at DOI, you will have a key role in determining the future of O&C lands, which will directly impact the future of my state.

When it comes to the management of O&C lands, as Solicitor will you commit to a fair and balanced reading of the law - regardless of political pressures you may experience from the Secretary or the White House to choose one winner over another?

Response: Yes.

Question 2: The President's review of National Monuments has many in Oregon concerned about the future of lands conservation and protection. In Oregon, Cascade-Siskiyou National Monument is critical to the beauty and economic well-being of Southern Oregon and highly supported by my constituents. If public comments are not persuasive and are overshadowed by far fewer voices of special interests, then what role does the public comment process play? When people can't harvest trees and manage forests, when they're blocked from traveling down a rural road or hiking trails in our national parks, it only serves to fuel the fire for the small number of voices who want to sell off public lands. The Department of the Interior (DOI) has a responsibility to ensure the public has access to our nation's treasures -- our public lands.

Secretary Zinke has prepared a report for the President regarding the future of many national monuments, including Cascade-Siskiyou. But there is much legal debate over whether the Antiquities Act gives the president the authority to diminish or rescind current monuments. Most legal scholars conclude that any ambiguity in the Antiquities Act was cleared up with the passage of the Federal Land Policy and Management Act of 1976 whereby Congress made clear that only the legislature has the authority to diminish or rescind national monuments.

Will you give the Secretary and the White House a fair and balanced reading of the Antiquities Act - regardless of political pressures?

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Response: Yes.

Questions from Senator Bernard Sanders

Climate Change

Question 1: President Trump has suggested in the past that climate change is a hoax. Is the President correct? Is climate change a hoax?

Response: I believe the climate is changing and many factors influence that change. As policy decisions are made by the Department, I will provide sound legal counsel to the Secretary and other executive officials to ensure all actions are done within the framework of the law.

Question 2: Do you agree with the vast majority of scientists that climate change is real, it is caused by human activity, and that we must aggressively transition away from fossil fuels toward energy efficiency and sustainable energy like wind, solar, and geothermal?

Response: As noted above, I believe that the climate is changing and many factors influence that change. If confirmed, I look forward to advising Secretary Zinke and other executive officials to ensure Departmental policies and initiatives are grounded in statutory authorities and are carried out consistent with the law.

Question 3: Do you agree with the vast majority of scientists that the combustion of fossil fuels contributes to climate change?

Response: As noted above, I believe that the climate is changing and that many factors influence that change.

Question 4: Do you believe that the Department of the Interior has a role in reducing the extraction and use of fossil fuels?

Response: The Department of the Interior's role in the extraction and use of fossil fuels is subject to the authority granted by Congress to manage the development of all the resources on public lands and waters to benefit the public. Should I be confirmed, I will provide sound legal advice to the Department and other executive officials so all actions are done within the framework of the law.

Question 5: If confirmed, how will you work to address climate change?

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Response: If confirmed, I look forward to advising Secretary Zinke to ensure Departmental policies and initiatives are grounded in statutory authorities and are carried out consistent with the law.

Congressional Relations

Question 6: If confirmed, do you commit to assuring staff in the Office of the Solicitor will respond to all relevant inquiries from all Members of Congress, regardless of party or position?

Response: If confirmed, the Solicitor's Office under my leadership will make every effort to be as responsive and transparent as possible to Congressional inquiries, regardless of party or position.

Energy policy

Question 7: What are the policy implications of the President's America First Energy Plan for the Department of the Interior? How will you enforce the President's plan?

Response: I am convinced that President Trump's and Secretary Zinke's goals for the Department, including the America First Energy Plan, will not only preserve but increase the value of our natural resources for future generations. The actual enforcement of the plan rests in the relevant bureaus of the Department of Interior. As Solicitor, if confirmed, I will ensure that any actions taken are done consistent with the law.

Endangered Species Act

Question 8: If confirmed, will you commit to enforcing the laws and regulations protecting critical-habitat protections for imperiled species?

If confirmed, how will you enforce conservation measures that seek to protect and recover endangered species throughout their geographic range?

Response: If confirmed, I commit to ensuring that both policymakers and resource managers in the Department are given clear legal guidance regarding implementation of the laws and regulations related to critical habitat and species protections.

Question 9: In regard to the implementation of the Endangered Species Act, do you support designating critical habitat for species, and do you believe enforcement of these decisions should be based on the best scientific data available?

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Response: I believe that resource managers should follow the law in carrying out their management activities and that decisions related to these activities should be based on scientific data as required by law. If confirmed, I commit to ensure that they are given clear guidance regarding implementation of the applicable laws.

Question 10: Do you support Fish and Wildlife Service guidelines to ensure that science is the driving force behind Endangered Species Act implementation?

Response: I believe that decisions related to Endangered Species Act implementation should be based on science as required by law.

Question 11: Do you support relying on independent scientists with relevant expertise to evaluate and review the data that the Fish and Wildlife Service uses when making decisions related to the implementation of the Endangered Species Act?

Response: If confirmed as Solicitor, I will ensure that policymakers and resource managers are provided clear guidance on the applicable laws so they can effectively implement those laws.

Fisheries

Question 12: Many fish populations in both marine and freshwater environments are threatened. If confirmed, do you commit to ensuring that the Department of the Interior upholds its duties to address these issues?

Response: If confirmed, I will ensure that policymakers and resource managers are provided clear guidance on the applicable laws so they can effectively implement those laws.

Question 13: If confirmed, do commit to ensuring that the Department of the Interior fully enforces and implements the management of Lake Champlain fisheries?

Response: If confirmed, I commit to ensure that the relevant policymakers and resource managers are provided with clear guidance on the applicable laws so that they can effectively implement any applicable laws.

Fossil fuels

Question 14: According to recent studies, the quantity of federal fossil fuels already under lease exceeds the amount that can be burned and still meet our commitments to reduce domestic greenhouse gas emissions, keeping average global temperature below 2 degrees Celsius. The Department of the Interior is responsible for managing fossil fuel development on public lands

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and waters. What role do you think the Department of the Interior, and specifically the Office of the Solicitor, can play in transitioning our country away from fossil fuels?

Response: The Department of the Interior must responsibly manage energy development on public lands and waters consistent with the law. As Solicitor, I will provide correct legal advice in that administrative process.

Question 15: President Obama withdrew significant portions of the Arctic and Atlantic Oceans from oil and gas development. The reasons he cited for this action include the irreplaceable value of these waters for Indigenous, Alaska Native, and local communities' subsistence activities, economies, and cultures; protection of wildlife and wildlife habitat; promotion of scientific research; and the vulnerability of these ecosystems to an oil spill, which would present significant logistical, operational, safety and scientific challenges for extraction and spill response. In addition, President Obama noted that by the time oil production could begin in these areas, our nation needed to be well on our way to transitioning to clean, renewable energy sources.

BOEM recently initiated a new National Outer Continental Shelf Oil and Gas leasing program to modify President Obama's withdrawal and open these areas for lease consideration. Notwithstanding DOI's statutory requirement to analyze all available leasing areas, if confirmed, will you commit to implementing the highest environmental protections for the Atlantic Region, Pacific Region, and Alaska Region, including the Beaufort, Chukchi, and North Aleutian Basin Planning Areas commensurate with those provided by the Obama Administration?

Response: I am not currently privy to the specific details of any planning efforts underway in the Department, or the BOEM. If confirmed as Solicitor, I am committed to accurately interpret the law, follow it and fulfill the Department of the Interior's vital mission to protect our country's resources and heritage.

Question 16: As we have seen with Hurricane Harvey, Gulf Coast communities are on the front lines of climate disruption and fossil fuel extraction. Many communities, primarily low-income and communities of color, suffer daily from environmental injustices related to the fossil fuel industry. If confirmed, would you support action to extend or make permanent the drilling moratorium in the Eastern Gulf of Mexico? If confirmed, will you commit to further action to phase out fossil fuel development and promote a just transition to a clean, renewable energy-based economy along the Gulf Coast?

Response: If confirmed as Solicitor, I commit to accurately interpret the law and to advise the Secretary, the Department and other executive officials on complying with the law.

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National Monuments

Question 17: The 1906 Antiquities Act allows the president to proclaim “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States” to be national monuments. At his nomination hearing, Secretary Zinke said of rescinding a national monument, “legally, it’s untested.” Since then, Secretary Zinke has proposed shrinking the Bears Ears, Cascade-Siskiyou, and Grand Staircase-Escalante national monuments. Do you believe that the President has the legal authority to overturn or alter an existing national monument designation?

Response: In my current legal role, I have not evaluated the question raised and I am not privy to current Department policy or recommendations except as reported by the press. As I have previously noted, if confirmed as Solicitor, I will accurately interpret the law, follow it and fulfill the Department of the Interior’s vital mission to protect our country’s resources and heritage. I anticipate, however, that the ultimate determination of the contours of the President’s legal authority will come from the White House and Office of Legal Counsel at the Department of Justice.

Public Lands

Question 18: Under what conditions do you believe it is legally appropriate to allow the transfer federal lands to private ownership?

Response: Any transfer of federal lands to private ownership must be consistent with the powers granted under the United States Constitution and applicable federal law.

Question 19: Under what conditions do you believe it is legally appropriate to allow the transfer federal lands to state ownership?

Response: Similar to Question 18, any transfer of federal lands to private ownership must be consistent with the powers granted under the United States Constitution and applicable federal law.

Science

Question 20: In order to protect scientific integrity, the Department of the Interior created a Scientific Integrity Policy, to which all career, political, and contract employees must adhere. There are now designated Scientific Integrity officers, who are career employees in each bureau to review and adjudicate any discrepancies. Do you commit to enforcing this policy to protect scientific integrity?

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Response: I am not yet familiar with this specific policy, but agree with Secretary Zinke that scientific integrity should underpin agency actions.

Question 21: Do you commit to enforcing all decisions that come from these Scientific Integrity Officers?

Response: While I am not yet familiar with any controlling policy or law concerning this specific issue, as a general matter, I recognize that science is critical to the Department's mission, and scientific integrity should underpin the Department's actions.

Question 22: Do you commit to personally signing the Scientific Integrity Policy, and sharing with this committee a copy of that document?

Response: If confirmed, I look forward to the opportunity to review this policy, and working to uphold Secretary's Zinke's commitment to ensure scientific integrity underpins Departmental actions.

Tribal Rights

Question 23: Indian Affairs is the oldest bureau of the Department of the Interior. Throughout history and even today, the United States government has treated the Native American people with disrespect, abrogating treaty obligations and its trust responsibility. As a result, there are Native American communities living in unbelievable poverty with high unemployment rates and unspeakably high youth suicide rates. Do you agree with these assertions? If so, what do you propose to do at the Department to better enforce the law and the Department's regulations and policy to improve life for the Native American people throughout this country?

Response: The Department plays an important role in the United States' trust relationship with tribes, in ensuring meaningful consultation takes place with tribes, and in promoting self-determination and tribal sovereignty. If confirmed as Solicitor, I will ensure that the policymakers are provided clear guidance on relevant laws and policies so that they can effectively implement those laws.

Question 24: The federal government's moral and legal obligations to tribes in light of the trust responsibility carry immense moral and legal force. This trust relationship serves as an underlying basis for tribal consultation, the process by which the government engages in a meaningful, good-faith dialogue with all tribes. The Department of the Interior, by virtue of its role in Native American affairs, plays a prominent part in how the government engages in tribal consultation.

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In the wake of the Dakota Access Pipeline, three federal agencies, including the Department of the Interior, published a report in January 2017 entitled, “Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions.” The subject of months-long consultation across Indian country, this report sets forth a number of recommendations to improve the process for permitting and infrastructure development. What steps do you intend to take to incorporate this report into the agency’s enforcement process?

Response: If confirmed I will ensure that the policymakers are provided with clear guidance on applicable laws and policies so they can effectively adopt policies that implement those laws.

Question 25: Based on your interpretation of the Endangered Species Act and Department of the Interior policies, what are the requirements for consultation with federally recognized Native American tribes in making rulings under the Act? If confirmed, do you commit to ensuring the Department of the Interior upholds its tribal consultation duties?

Response: If confirmed, I commit to do all I can to ensure that the Department upholds its responsibility to consult with tribes as required by law or otherwise permissible.

Wild Horse Management

Question 26: Do you have plans to change or modify the implementation of the Bureau of Land Management’s implementation of its wild horse management plan? If so, what changes would you recommend?

Response: If confirmed as Solicitor, I commit to accurately interpret the law and to advise the Secretary and the Department on complying with the law, including on any actions taken regarding the BLM’s wild horse management plan.

Question from Senator Mike Lee

Question: The State of Utah and the Ute Indian Tribe of the Uintah & Ouray Reservation are involved in a land dispute over the tribe’s claim of title to more than 1 million acres of public land comprising the historic Uncompahgre reservation in Uintah County, Utah. The dispute has disrupted investment decisions relating to mineral development in one of the most promising areas in Utah. Will you work with the state and the tribe to bring final resolution to this land claim?

Response: Yes.

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Question from Senator Steve Daines

Question: In the last couple of years we have seen an increase in the number of suits filed against the Department of the Interior and the Department of Agriculture from fringe environmental groups, many based on the Endangered Species Act. One such lawsuit resulted in the infamous *Cottonwood* decision that increased red tape on federal agencies and halted several forest management projects. One enjoined project, the Stonewall Vegetation Project, would have reduced excessive fuels on the same acres currently burning near Lincoln Montana. This is nothing short of appalling.

As solicitor will you work with me to reverse the Cottonwood decision, and will you work with congress to fight against these obstructionist lawsuits and help land managers get through the planning process to get the work completed on the ground in reasonable time?

Response: If confirmed, I would look forward to reviewing the Cottonwood opinion and any potential legal avenues to expedite the planning process.

Questions from Senator Mazie K. Hirono

Question 1: The details of Secretary Zinke's review of National Monuments that were recently designated or expanded are currently unknown to the public, which is particularly concerning, especially to those of us who have these monuments in our states. I hope that those details will be made publically available soon, as this review is unprecedented.

In designating and expanding new monuments, the Obama administration made sure to engage with local communities, including indigenous communities, as it weighed whether to designate or expand monuments. The Obama administration did so in a more expansive manner than previous administrations.

Secretary Zinke has a report that he provided to the President that presumably contains the legal analysis of the Department of Interior's obligations regarding management of these lands under Antiquities Act. If confirmed, will you commit to making those legal analyses public?

Response: As I am currently not at the Department, I am unaware of the content of any particular document prepared by the Secretary and am unable to make any commitment with respect to any such document. However, if confirmed, I commit to work with the Secretary to respond to Congressional inquiries.

Question 2: Your role, if confirmed, will be to supervise and direct all of the legal work within the Department of Interior. In your view, what are the Department's legal responsibilities to

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ensure the perspectives of local and indigenous communities are solicited, meaningfully considered, and incorporated appropriately?

Response: I know that the Department plays an important role in the United States' trust relationship with tribes, in ensuring meaningful consultation takes place with tribes, and in promoting self-determination and tribal sovereignty. If confirmed, I commit to ensure that the Department upholds these commitments to tribes consistent with the law or as otherwise permissible.

Question 3: Will you commit to continuing to work with native communities to protect their sacred sites and spaces preserved through the Antiquities Act?

Response: As stated above, if confirmed, I commit to ensure that the Department is upholds its commitments to tribes, consistent with the law.

Question 4: Will you commit to continuing to work with native communities to protect their special political relationship with the United States?

Response: Again, as stated above, if confirmed, I commit to ensure that the Department upholds its commitments to tribes, consistent with the law.