

Committee on Energy and Natural Resources

May 18, 2021

Questions for the Record Submitted to Mr. Robert T. Anderson

Questions from Ranking Member Barrasso

Question 1: Over the course of the last 13 years, the State Department, in cooperation with several federal and state agencies, including the Department of the Interior, Bureau of Land Management, prepared substantial environmental reviews, consultation, meetings, studies and then supplemental analysis to respond to TransCanada’s Keystone XL Pipeline application. In response to court order, the agencies supplemented and updated the analysis to satisfy legal challenges, particularly to conduct additional analysis related to potential impacts that might occur from a release, using a “worse-case” spill scenario analysis, tribal treaty rights, climate analysis, and market demand. Of the 880 mile proposed pipeline project, only about 46 miles (less than 5 percent) cross federal lands, with the vast majority proposed on private lands. The proposed pipeline avoids tribal lands.

In November 2015, the Department of State denied TC Energy’s border crossing application. Then, in March 2019, President Trump approved and issued to TC Energy the border crossing permit, at which time the Department of State continued cooperative efforts with agencies to complete a supplemental environmental impact statement as well as additional public involvement. Ongoing tribal consultation was conducted through a Programmatic Agreement. Relying on the extensive body of supplemented analysis and reports, consultation, as well as analyzing for an unlikely event of a ‘worst case’ spill analysis, the Secretary of the Interior issued a decision to approve the Mineral Leasing Act right-of-way for Keystone XL Pipeline in January 2020. In the spring of 2020, the pipeline was successfully constructed at the International Border Crossing. In January 2021, President Biden unilaterally revoked the border crossing permit within hours of taking office, with little regard for the 13 years of studies, consultation, research and analysis.

What is most concerning is “on again, off again” decision-making for critical, long-term infrastructure projects, instead of relying on sound science, environmental analysis and professional expertise.

- a. If confirmed as Solicitor, will you advise thoughtful consideration and review of the record, procedures and environmental studies to form the basis of decisions for all matters, regardless of whether the project aligns with Administration priorities, but meets the test of multiple use?**

Response: If confirmed as Solicitor, my primary role will be to lead the office and provide sound legal advice to the policy decision-makers. If confirmed, I will always follow the law and will always advise Department leadership and staff to follow the law. It is my view that a thoughtful review of the complete record is important and necessary to make properly informed decisions.

- b. Executive Order 13867 directs the Department of State to review border crossing applications, and that if the Secretary of State is of the opinion that the foreign policy interests of the United States are served, shall so advise the President. The President has the sole discretion to approve, deny or amend a border crossing permit. The border permit application was denied in 2015 by the State Department, then approved in 2019 by the President, followed by the Keystone XL right-of-way grant approved by the Secretary of the Interior in 2020, based on a thorough review of the record. Are you aware of new information or analysis that prompted President Biden to revoke**

the border crossing permit that was previously approved, a right granted, and which has already been constructed at the border?

Response: As your question notes, the President has the sole discretion to approve, deny, or amend a border crossing permit, and the Department of State advises the President on whether the policy interests of the United States are served by a particular border crossing permit application. While I know that the merits and issues associated with this pipeline have been debated for many years, I am not aware of the details of the internal deliberations going into the original decisions made by President Obama, the change in that decision by the previous administration, or the recent action taken by President Biden.

c. Was this decision to revoke the previously-issued permit based on a review of the science and analysis?

Response: As your question notes, the President has the sole discretion to approve, deny, or amend a border crossing permit, and the Department of State advises the President on whether the policy interests of the United States are served by a particular border crossing permit application. I am aware that President Biden's Executive Order 13990 provides context to this issue, as well as information related to President Obama's original decision on this matter. As I noted above, while I know that the merits and issues associated with this pipeline have been debated for many years, I am not aware of the details of the internal deliberations going into original decision made by President Obama, the change in that decision by the previous administration, or the recent action taken by President Biden.

d. Are you concerned that this type of back and forth decision-making sets a precedent that creates long-term implications to conducting mission-related activities on public lands?

Response: As a general rule, I believe that durable policy solutions are preferable where possible, and also that it is common for a new administration to review, change, or reverse certain policies of its predecessor.

Question 2: Many federal lands and waters are open for the development of renewable energy resources. Development of various renewable resources is authorized by multiple laws. Some examples of renewable energy resources developed on federal lands include geothermal, wind, solar, hydropower, and biomass. Development of federal lands for renewable energy projects can contribute to clean energy goals and raise revenues, but it can also restrict the long-term or permanent use of that land footprint from other activities and public enjoyment and fragment vast landscapes, impacting wildlife migration corridors.

- a. If confirmed, in your capacity to ensure multiple-use of federal lands, how would you counsel agencies to address and reconcile competing land and ocean uses and priorities related to renewable energy development?**
- b. Given the Administration's emphasis on renewable energy projects and the 'fast tracking' of wind or solar projects, if confirmed, will you ensure all appropriate environmental reviews, clearances, studies and consultations, particularly with US Fish and Wildlife Service and Tribes, are held to the same standard as fossil fuel energy projects?**

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Response: As I noted in response to a previous question, if I am confirmed, I will always advise Department staff to follow the law, and this includes the land and resource management statutes under which the Department's bureaus operate. Most of the Department's lands are managed for multiple uses, and these factors are appropriate to take into account when making decisions such as the ones referenced by your question. The Department's bureaus have the special expertise to address and reconcile competing land uses and priorities that may arise from their planning processes. When it comes to environmental reviews and related matters, I will always advise the Department and its bureaus to follow the law, and striking the right balance among different priorities is the primary role of the policy decision-makers, consistent with the legal requirements.

Question 3: What has been the role of the Department of the Interior in helping the nation to attain energy independence? Please comment specifically on the production of natural gas, oil, and coal since 1990.

Response: Generally speaking, the lands and waters managed by the Department's bureaus are responsible for production of a diverse energy portfolio. This includes natural gas, oil, and coal onshore, and increasingly renewable energy, including wind and solar energy projects both offshore and on the public lands. I am aware that fossil energy production, particularly oil and gas, has increased on public lands over time and that the nation is more energy independent now than it has been in past time periods. If confirmed as Solicitor, my primary role will be to lead the office and provide sound legal advice to the policymaking decision-makers when it comes to natural resource development.

Question 4: How do you define "environmental justice?"

Response: I begin by noting that the concept of environmental justice has been recognized by the federal government for many years, including in Executive Order 12898 issued by President Clinton in 1994 which directed federal agencies to make environmental justice part of their missions by "identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States."

I believe that the Biden Administration's vision of environmental justice is best articulated in Executive Order 14008, Section 219, which states that the pursuit of environmental justice means:

[I]nvesting and building a clean energy economy that creates well-paying union jobs, turning disadvantaged communities—historically marginalized and overburdened—into healthy, thriving communities, and undertaking robust actions to mitigate climate change while preparing for the impacts of climate change across rural, urban, and Tribal areas. Agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.

If confirmed, I would work to support the administration's pursuit of environmental justice, consistent with applicable law.

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Question 5: As energy costs increase there will be a rise in energy poverty in our country, causing disproportionate hardship on economically disadvantaged communities, including communities in Indian Country. Please reconcile the Biden Administration positions on environmental justice and the inevitable increase in energy costs that will come as a result of a reduced supply of affordable energy.

Response: If confirmed as Solicitor, my primary role will be to lead the office and provide sound legal advice to the policy decision-makers. The President has also been clear in his goal to invest in and build a clean energy economy that creates new economic opportunities, including well-paying union jobs, addresses climate change, and helps to turn historically marginalized and overburdened communities, across rural, urban, and Tribal areas, into thriving communities. As noted above, the President's Executive Order 14008 Section 219 is cognizant of the economic issues associated with environmental justice issues, and as Secretary Haaland has said, we will pursue an approach that recognizes the importance of American families to have affordable energy.

Question 6: Will the Department comply with the quarterly lease sale requirement under 30 U.S.C. §226(b)(1)?

Response: I will always advise the Department to comply with the law and related matters are the subject of ongoing litigation. The Interior Department's ongoing review of the federal oil and gas program is assessing compliance with applicable laws and, as directed by Executive Order 14008, reviewing whether the current leasing process provides taxpayers with a fair return. Some past leasing activities have been found to be unlawful by federal courts due to lack of compliance with laws. Based on our ongoing review, the Bureau of Land Management is exercising its discretion to not hold lease sales in the 2nd quarter of Calendar Year 2021. This decision does not impact existing operations or permits for valid, existing leases, which continue to be reviewed and approved, and decisions about future quarters have not been made.

Question 7: If confirmed, how will you ensure the BLM meets its multiple use mandate?

Response: If I am confirmed I would ensure that the BLM was provided with timely review and advice on questions it might have related to its planning processes. The law requires BLM lands to be managed for multiple use and I will always direct the Department and its bureaus to comply with the law.

Question 8: I asked Secretary Haaland a question for the record which stated, "Ensuring public access to the national parks is vital to gateway communities across the country. There have been instances in the past when the parks were closed as a result of a lapse in appropriations. Government shutdowns should not force parks to close because funds from entrance fees are available to pay for essential services. Will you commit to using recreation fees in the event of a government shutdown to protect NPS employees and gateway communities from economic hardship as well as ensure the health and safety of the parks?" She replied she would, "strongly oppose government shutdowns and hope they can be avoided. If there is a lapse in appropriations, I will consult with the Department's legal advisors on how that impacts operations and what lawful options would be available."

- a. If confirmed as Solicitor, would you advise Secretary Haaland and the National Park Service to use entrance fees to keep parks open in the case of a government shutdown?**

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Response: I have not done an analysis of this particular question. I am aware that the previous administration found that sites could be left open during a lapse in appropriations while the Government Accountability Office issued a legal opinion finding similar actions taken in the previous administration to be a violation of the Antideficiency Act. I would consult with the career experts on this issue and make my own judgment to determine the appropriate, legal course of action if a government shutdown were to occur.

Question 9: During the most recent government shutdown in December 2018 through January 2019, NPS used recreation fees collected under the Federal Lands Recreation Enhancement Act (FLREA) to fund limited operations within park units while the shutdown was in force. GAO issued a legal opinion stating that NPS's use of the FLREA funds violated the purpose statute and the Antideficiency Act, and DOI issued a response disputing the GAO opinion. What is your interpretation of the legality of NPS's use of FLREA revenues for park operations during a government shutdown?

Response: As I noted in response to the previous question, I have not done an analysis of this particular question, although I am aware that the Government Accountability Office issued a legal opinion finding similar actions taken in the previous administration to be a violation of the Antideficiency Act. I would consult with the career experts on this issue and make my own judgment to determine the appropriate, legal course of action if a government shutdown were to occur.

Question 10: In your view, what is the role of Solicitor opinions? What types of circumstances might merit a Solicitor opinion versus a statutory interpretation by an administering service or agency?

Response: As I noted at the hearing, Solicitor's Opinions are documents that facilitate the implementation of lawful policies. This is an important issue to me, and I intend to develop an approach that best serves the Department's mission and implements the laws we administer.

Question 11: What are your standards for withdrawing Solicitor's M-Opinions? If so, how would you articulate them?

Response: As I noted at the hearing, I believe that Solicitor's Opinions must follow the laws as written by Congress and should not be plainly inconsistent with existing law; they should not be otherwise arbitrary or capricious or promote policy that are arbitrary or capricious; and they should not be based on an intent to facilitate policies that have otherwise been rejected. I do not believe that decisions about previous Solicitors' opinions should be made on the basis of partisan affiliation or politics, and I would take a deliberate and thorough approach to review past opinions and making decisions. In doing so, I would consult with the career attorneys in the Solicitor's office and seek out and weigh arguments on all sides of a legal question before coming to a conclusion.

Question 12: How do you address situations where the Secretary wants to pursue a policy that you believe to be inconsistent with law?

Response: I would not hesitate to advise the Secretary of my belief that the policy was inconsistent with the law. I would try to understand the policy goal and would provide the Secretary with advice to achieve that goal if it could be accomplished in a way that is consistent with the law.

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Question 13: Most FOIA office employees throughout the Department continue to work remotely due to the pandemic. A notice on DOI's website states that responses to FOIA requests for hard copy records will likely be delayed.

- a. How would you balance DOI's continued efforts to protect the health and safety of its personnel with the need to ensure that the Department's FOIA offices operate in an efficient manner, including with regard to their processing of FOIA requests?**
- b. When can the American public expect to have DOI's FOIA offices fully functional and working in person?**
- c. How will you address the backlog of FOIA requests?**
- d. How do you ensure that FOIA requesters who may be unable to use or have difficulty using the FOIAonline portal — perhaps because of disability, limited or no access to the Internet, or problems with the portal's functionality—receive timely consideration of their requests?**

Response: I consult with the Department's leadership and public health officials about the issues involved with employees returning to physical offices to conduct their work. I am not aware of a timeline for that but complying with FOIA is an important priority. As public health guidance is updated, we will react accordingly to ensure that necessary functions are handled appropriately.

During COVID-19, the Department has been actively complying with FOIA requests and processing them, and compliance with FOIA and reducing the backlog is a priority for me.

As I discussed at the hearing, I am having bi-weekly meetings with the Department's FOIA Office career staff leadership to provide the necessary direction for their important work. The Department is appreciative of the funding that Congress has provided to address the backlog and we are taking that work very seriously. When it comes accessibility of the FOIA online portal, the Department has requirements to ensure access for Americans with disabilities and is cognizant that reliable Internet access is not a given for all Americans, and we will bear those considerations in mind as we move forwards with our important FOIA obligations.

Question 14: How do you coordinate with the regional solicitors to ensure that they are meeting the Department's legal and ethical obligations and that the Department's approach is consistent across the country?

Response: I have bi-weekly meetings with each Regional Solicitor to review substantive and administrative matters. In these meetings, I discuss legal and policy directions and also invite input on any matters of general concern. I have also had introductory meeting with all Regional and Field staff in a town hall fashion for each office.

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Question 15: How do you ensure that guidance documents do not impose new obligations on regulated parties?

Response: Generally, guidance documents are documents that facilitate the implementation of Departmental policies. Like all actions of the Department and its bureaus, guidance documents must be compliant with the underlying statutes and regulations. If I am confirmed as Solicitor, I will always direct Department and bureau staff to comply with the law.

Question 16: What actions might the Solicitor take to review the functionality and efficiency of the land-into-trust process?

Response: On April 27, 2021 I reinstated Sol. Op. M-37029 as the Department's interpretation of the phrase "under Federal jurisdiction" (UFJ) as used in the first definition of "Indian" in the IRA. Multiple federal court decisions have held that the Department's interpretation memorialized in M-37029 was reasonable, and for over a decade, Tribal Nations and the Department have relied on M-37029's criteria in preparing UFJ opinions for applicant tribes. I also worked closely with the Secretary to issue SO3400 which returned the delegated authority for making non-gaming off-reservation fee-to-trust determinations to the BIA Regional Directors. Both of these actions support a more functional and efficient fee-to-trust process for the Department and for Tribal Nations.

Question 17: On October 13, 2017, then-Secretary Zinke announced "an immediate action plan to combat the widespread and pervasive culture of harassment and discrimination throughout the National Park Service." What progress has been made on this issue since Secretary Zinke's announcement, and what are you doing to ensure that harassment and discrimination in DOI agencies are addressed appropriately and promptly?

Response: The Department is committed to creating an inclusive and respectful workplace that serves the American public. Since 2018, employee conduct has been guided by the Department's Personnel Bulletin 18-01: Prevention and Elimination of Harassing Conduct. The policy defines unacceptable harassing conduct, outlines the rights and responsibilities of employees and managers, and establishes reporting procedures and accountability measures. With Secretary Haaland, I am committed to equal, equitable and inclusive opportunities for all.

Question 18: The Endangered Species Act (ESA) requires the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to list species determined to be threatened or endangered and to designate critical habitat for listed species. Listing decisions must be made "solely on the basis of the best scientific and commercial data available" and critical habitat designations must be made "on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat."

- a. Do you interpret the ESA as requiring FWS to restore listed species to their historical range, population size, or robustness at some historical reference point, or solely to ensure that the species not become extinct?**

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Response: The ESA requires that the protections of the Act apply to listed species until they no longer meet the definition of either "endangered species" or "threatened species" and can therefore be delisted. The ESA defines "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range" and "threatened species" as "any species which is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range." It also requires the Fish and Wildlife Service to determine whether species meet either of those definitions because of any of five "factors." Depending on the applicable threats, a species can be endangered or threatened despite being at or near historical population levels or range. Conversely, if the threats to a listed species are adequately addressed, the species may no longer be threatened or endangered even if its range or population levels are significantly reduced.

Question 19: How should DOI ensure that grant recipients are not committing human rights violations?

Response: It is important, as a steward of federal funds and taxpayer dollars, that the Department and its bureaus take seriously their responsibility to conduct oversight of financial assistance awards to ensure compliance with federal law. Regarding the allegations related to the FWS International Program, I am aware that FWS is implementing specific safeguards for grants that support parks and protected areas through funding transferred from the Department of State or U.S. Agency for International Development, and is working closely with USAID to develop a mechanism to integrate these provisions into the administration of current and future agreements.

Question 20: The Biden Administration seeks to increase development of renewable energy such as wind power that may result in incidental takings of migratory birds. Does the MBTA allow DOI to consider mitigating measures used to prevent incidental takings when enforcing MBTA take prohibitions?

Response: The MBTA allows the Department to work with industry to implement mitigation measures to reduce incidental take of migratory birds. Based on the work of a federal advisory committee, composed of industry and conservation groups, and other stakeholders, the FWS developed and published Land-Based Wind Energy Guidelines in 2012. Since then, these guidelines have been adopted by much of that industry to reduce their impacts on migratory birds. I am aware that potential enforcement actions based on the facts surrounding incidents of "take" of migratory birds are evaluated within the discretion of the Department, as well as the Department of Justice, and those evaluations often consider mitigating measures.

The Department is also exploring options to clarify the interpretation of the MBTA and to develop a common-sense approach that can protect migratory birds while providing legal certainty to industry and other stakeholders. If confirmed, I commit to ensuring that any framework that is developed follows the law and provides certainty to our stakeholders.

Question 21: Should there be different standards for the take of migratory birds (whether intentional or unintentional) by different kinds of energy production or infrastructure activities?

Response: The question of how to manage the incidental take of migratory birds is an important one both for the protection of birds and to provide certainty to our stakeholders. With the recent publication of the proposal rule to revoke the January 7, 2021, rule issued by the previous administration that was intended to codify the

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rescinded Solicitor's Opinion, the Department is exploring options for an approach that provide that certainty and protect birds.

Question 22: In Executive Order 14008, President Biden ordered an indefinite “pause” on new onshore and offshore oil and natural gas leasing, pending a “comprehensive review” of the federal leasing program to assess its climate impacts and other issues. Pursuant to the executive order, DOI has postponed or canceled pending onshore and offshore oil and gas lease sales and lease sale planning activities.

- a. What is the statutory authority for President Biden's leasing pause?**
- b. What is the difference between “a pause” and “a moratorium?”**
- c. How can these decisions to postpone or rescind lease sales planned for 2021 be reconciled with DOI's previous approval of these sales under the procedures set out in the Outer Continental Shelf Lands Act, the Mineral Leasing Act, and NEPA?**
- d. Does the government have the legal authority to suspend all new oil and gas leasing indefinitely? If so, how would that position be reconciled with the requirement in the Mineral Leasing Act that “lease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary”? How would that position be reconciled with the requirement within the Outer Continental Shelf Lands Act stating that the outer continental shelf “should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs”?**
- e. Does the president have the authority to revoke a withdrawal of offshore areas from oil and gas leasing promulgated under Section 12(a) of the Outer Continental Shelf Lands Act? If yes, how do you reconcile this with the fact that Section 204 of FLPMA includes the explicit language authorizing the Secretary to “modify, extend, or revoke withdrawals” while the OCSLA does not include such language? If no, does that interpretation effectively allow any president to withdraw the entire OCS, in contrast with the stated policy goal of the OCSLA to make the OCS's natural resource reserve “available for orderly and expeditious development”?**

Response: Onshore, based on our ongoing review, the Bureau of Land Management is exercising its discretion to not hold lease sales in the 2nd quarter of Calendar Year 2021. This decision does not impact existing operations or permits for valid, existing leases, which continue to be reviewed and approved, and decisions about future quarters have not been made.

Offshore, there is similarly statutory discretion in terms of the holding and timing of lease sales, and the President's withdrawal authority was considered in recent court decisions that were vacated as moot. Many of these matters are in current litigation in various federal district courts, and I am not in a position to respond

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beyond these answers. The federal position on these issues is expected to be set out in briefs that will be filed in the litigation.

Question 23: BOR provides water for millions of agricultural, municipal, and industrial irrigation customers west of the Mississippi River, but the operations of Reclamation facilities can be controversial. For instance, multiple lawsuits have been filed alleging that Reclamation violated NEPA and other environmental statutes when implementing actions it deemed essential to its mission responsibilities of management and conservation of water resources in the western United States.

- a. What role will the Solicitor's office play in coordinating the interests of the Fish and Wildlife Service, the Bureau of Reclamation, and other stakeholders such as the U.S. Army Corps of Engineers, the Bonneville Power Administration, state agencies, and Indian tribes in the Northwest?**

Response: The serious drought conditions in the region have placed a priority and special focus on the need for the Department and its bureaus to work together and with stakeholders in the region. The Solicitor's Office plays an important role in ensuring that the participating bureaus and agencies are aware of the statutes and regulations that they operate under and how they influence the actions they may take, as well as how those authorities for the various entities interact with each other.

Question 24: Political appointees at the Department are required to disclose any potential ethical conflicts with previous employers. Many of the members of agency leadership who are responsible for overseeing our nation's natural resources come to the Department from outside organizations with a direct interest in departmental interests.

- a. How will you ensure DOI officials are honoring their pledge to work exclusively in the public's interest, without regard to private gain or personal benefit?**
- b. If there are violations of this pledge by DOI employees, how will you address the problem?**

Response: All new appointees receive mandatory ethics training early in their tenure at the Department, which is undertaken by the career officials in the ethics office. It is my understanding that this training typically occurs in the first few weeks following appointment, which was certainly my experience. Appointees also consult with the ethics department about their own particular circumstances to fully understand the requirements for their particular circumstances. I continue to remind appointees of the importance of fully complying with the ethics requirements that come with federal government service.

If there are violations of ethics requirements, the Department's ethics office would handle those according to their regular process and I would support their independence.

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Question 25: Do DOI appointees understand that they cannot work on particular matters involving specific parties that they have worked on immediately prior to joining the Department? Have they received training on this and how can you assure this Committee that they understand this? If they have not received training, please tell us when they will.

Response: As noted in the previous question, all new appointees must receive ethics training early in their tenure at the Department, which is undertaken by the career officials in the ethics office. It is my understanding that this training typically occurs in the first few weeks following appointment, which was certainly my experience. Appointees also consult with the ethics department about their own particular circumstances to fully understand the requirements for their particular circumstances. I actively encourage appointees to seek out and follow ethics guidance.

Question 26: The previous administration elevated the chief ethics official from reporting to a mid-level career lawyer to reporting directly to the Solicitor, the third ranking official in the Department. Will you commit to keeping that reporting relationship in place?

Response: I take the ethics responsibilities of the Department very seriously and have great respect for the career professionals and leadership of that office. There are no plans to review or change the current reporting relationship of the Department's chief ethics official. In my role as Principal Deputy Solicitor, I take the independence of the ethics office very seriously and will defend that independence.

Question 27: The previous administration made a significant investment in the SOLIS case tracking system. Can you comment on this? Will you retain this system?

Response: My experience to date with the system is largely positive, and I discuss implementation issues with my staff on a regular basis.

Question 28: In *Bullock v. BLM*, a federal judge determined that the previous administration had violated the Federal Vacancies Reform Act. Will you comment on this decision? Do you think DOJ should appeal this decision?

Response: The court's decision in the *Bullock v. BLM* case is still under review and, therefore, I cannot comment on it. I believe that it is important that the Department comply with the law, including the Federal Vacancies Reform Act.

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Questions from Senator Risch

Question 1: How do you view Tribal consultation factoring into the Bureau of Land Management's multiple use mandate?

Response: President Biden reiterated in his January 26, 2021, Memorandum *Tribal Consultation and Strengthening Nation-to-Nation Relationships*, respect for sovereign Tribal Nations and made clear that consultation strengthens the Nation-to-Nation relationship between the U.S. and Tribal Nations. All executive departments and agencies have been charged with engaging in regular, meaningful, and robust consultation with Tribal officials in the development of all federal policies that have Tribal implications. The Department recently completed a plan of action to implement the policies and directives of the President's Memorandum, after hosting government-to-government Tribal consultation sessions in March.

Question 2: By nature, there are always a number of legal challenges to the Department's various actions. If confirmed, how would you view your role in the Department's obligation to defend actions by previous administrations?

Response: It is an important aspect of the Solicitor's role at the Department. If I am confirmed, my responsibility would go beyond providing the Secretary and Departmental staff with timely and accurate legal advice regarding future actions. I would also be responsible for defending current Departmental policies and actions, as well as working with other Departments, and the Department of Justice leadership, to identify both mission-related and other precedential matters that have an important bearing on a larger scale. I would take that responsibility seriously, and I view these matters through a legal frame of reference, not a partisan one.

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Questions from Senator Daines

Question 1: Mr. Anderson, the Mineral Leasing Act specifically states in 30 U.S.C. 226 (b)(1)(A) “Lease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary.” If confirmed you will be the chief attorney for the Department and will have to defend the actions of the President and the Department including the current leasing moratorium which has resulted in the cancelation of two quarterly lease sales in Montana and throughout the west. Do you believe that the Department is in violation of the law as relates to the mandatory quarterly lease sales prescribed in the MLA and if not, how would you justify the actions when the law is so clear?

Response: This matter is currently in litigation, but I can say that the Administration believes it has the discretion and the authority to take the actions that it has taken. As I have said before, the Administration has undertaken a pause on new leasing pending review of the oil and gas program, as directed by President Biden. The review is required to examine all aspects of oil and gas leasing including ensuring that we achieve a fair return to the American taxpayer, and that oil and gas leasing is done in an environmentally protective manner. Permitting continues on existing oil and gas leases during the review, and new production continues to take place.

Question 2: Mr. Anderson, do you have any existing or perceived conflicts of interest as it relates to your work as solicitor if confirmed?

Response: My Ethics Agreement was provided to the Committee and details my commitments and the actions I have taken to avoid actual or apparent conflicts of interest. I will always conduct myself with high ethical standards and will seek the advice of the Department’s career ethics officials if any actual or potential conflict of interest arises during my appoint at the Department.

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Questions from Senator Lankford

Question 1: Do you support legislation in response to the 2009 Supreme Court decision *Carcieri v. Salazar*? If so, what would be your policy preference for that legislation?

Response: Yes, I understand that President Biden has made clear that he supports a clean *Carcieri* fix and, if confirmed, I will stand ready to work with Secretary Haaland, Departmental staff, and Congress to enact a remedy to the *Carcieri* decision.

Question 2: Do you intend or expect to make any changes to the Department's rules concerning the Indian Child Welfare Act? If so, what changes would you make?

Response: The decision of the Fifth Circuit in *Brackeen v. Haaland*, which your question relates to, is a complicated decision that generally upholds the Indian Child Welfare Act, and finds parts of the Indian Child Welfare Act unconstitutional. In consultation with the Department of Justice, we are reviewing the decision to determine how to proceed. Once that process is finished, the Department will determine what, if any, steps will be taken.

Question 3: Should land-into-trust applications be approved automatically?

Response: Placing land into trust for the benefit of an Indian Tribe is an important responsibility. Since returning to the Department I have reinstated Sol. Op. M-37029 as the Department's interpretation of the phrase "under Federal jurisdiction" (UFJ) as used in the first definition of "Indian" in the Indian Reorganization Act. For over a decade, Tribal Nations and the Department have relied on M-37029's criteria in preparing UFJ opinions for applicant tribes. I also worked with the Secretary to issue SO3400 which returned the delegated authority for making non-gaming off-reservation fee-to-trust determinations to the BIA Regional Directors. If confirmed, it would be important to work with the Bureau of Indian Affairs to ensure that any actions taken would fulfill these important responsibilities.

Question 4: Do you support off-reservation tribal gaming?

Response: Off-reservation gaming is governed in detail by the Indian Gaming Regulatory Act. I will advise the Secretary of the legal requirements of IGRA in any relevant matter.

Question 5: Congress has continued to maintain the Hyde Amendment on a bipartisan basis each year in annual funding bills since 1976. If confirmed, will you continue to uphold and enforce the restrictions of the Hyde amendment – that no federal funding can pay for abortions except in the case of rape, incest or to protect the life of the mother – as enacted by Congress?

Response: If confirmed, I will follow the law.

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Question 6: A report from the Obama administration in 2010 reinforced the importance of faith-based partnerships. Among the recommendations put forward in the report was to draw more on the local expertise and relationships of faith-based organizations as a way of filling gaps in the provision of essential services. Faith-based organizations are excellent, effective, and efficient at meeting the needs of our most at-risk populations. The report also highlighted the need to ease overly-burdensome reporting and regulation requirements placed on social service agencies. Do you agree that it is important to continue pursuing ways to engage and expand faith-based partnerships as a way of effectively addressing some of the most critical social service needs in our country?

Response: If confirmed, I will follow the law and I will advise Department staff to do the same.

Question 7: The Supreme Court has, in multiple decisions, reiterated that religious organizations cannot be discriminated against in the distribution of a public benefit for which they otherwise qualify because of their religious beliefs or identity. Will you commit to ensuring that no policy of your Department will disqualify a religious organization from receiving aid or participating in grant programs simply because of the organization's religious beliefs or because the organization receives statutory protections for religious freedom like those in Title VII and Title IX?

Response: If confirmed, I will follow the law.

Question 8: An important part of prompting and expanding faith-based partnerships is providing clarity on the legal obligations that will be expected of faith-based organizations when they partner with the government. Title VII of the Civil Rights Act of 1964 protects the ability of religious organizations to hire employees that support its religious beliefs and mission. Do you agree that it is both logical and appropriate that religious organizations should be able to hire employees that support the religious mission and beliefs of the organization? Do you agree that it is inappropriate for the federal government to dictate to a house of worship or a religious organization what tenets of the faith should be observed? Will you commit to ensuring that any nondiscrimination policy implemented by your agency will reinforce the hiring protections that Congress has passed in Title VII for religious organizations?

Response: If confirmed, I will follow the law.

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Questions from Senator Murkowski

Question 1: What role did you have at the solicitor’s office while Kaktovik Inupiat Corporation (KIC) was in the permitting process for Incidental Harassment permits? Did you have a role – directly or indirectly – in KIC not receiving its permits?

Response: During the permitting process, I was advised of the difficulties in processing the huge number of comments received in response to the prior administration’s efforts to expedite the permitting process.

Question 2: Hunting and fishing are two quintessential pastimes that are as deeply ingrained in Alaskan culture as it is possible to be. What are your personal and professional opinions of hunting, fishing, and trapping on Federal lands?

- **Many Alaskans move from smaller more rural communities to cities like Anchorage and Fairbanks for a variety of reasons, including jobs, economies, education, healthcare, and more. Yet they remain deeply connected to the places where they came from, and in the case of Alaska Natives, where their family has lived since time immemorial. How do we ensure that people in these circumstances are able to access subsistence resources and hunting, fishing, and trapping opportunities if and when they return home?**

Response: I represented Katie John in her successful effort to reopen the historic tribal fishing grounds on the Copper River, which had been unlawfully closed by the State of Alaska in the early 1960s. I also represented Alaska Native Tribes in the Copper River Basin to enforce their subsistence priority with respect to moose and caribou hunting under state and federal law. I am very familiar with Title VIII of ANILCA and state laws governing fish and game. On a personal level, I enjoy hunting and fishing, and grew up doing so in rural area in Minnesota.

Question 3: The President continues to push forward with his so-called “30 by 30” program, to conserve 30 percent of the nation’s waters and lands by 2030. ANILCA, passed in 1980, put nearly a quarter of Alaska’s land – 100 million acres – into new or expanded conservation units. Nearly 30 percent of Alaska is already conserved. With that being said, can you define what the administration considers “conservation” status? What considerations are being given to communities that rely upon resource development, subsistence, and other uses of nearby public lands for their livelihoods? What tribal consultation, including with Alaska Native Corporations, has occurred in Alaska in the course of developing this plan?

Response: I understand that President Biden has challenged all Americans to pursue the goal of conserving at least 30 percent of our lands and waters by 2030. The preliminary report to the National Climate Task Force has been published recommending a 10-year locally-led America the Beautiful Campaign to conserve and restore the nation’s lands and waters. This report is intended to be a starting point for additional public input to help inform the nation’s progress, and it reflects the input from Alaska stakeholders that their state has the largest proportion of protected land. In moving forward, my role will be to ensure that the actions of the Department are consistent with Federal law and policy, including ANILCA and ANCSA. The Biden Administration has committed to engagement and consultation with Alaska tribes and Alaska Native Corporations in this effort.

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Question 4: The Department has paused PLO revocations in Alaska, and I appreciate the work to try to find a way forward for our vets, but what are we going to do about these long overdue land entitlements? How do you plan to facilitate expedited land conveyances for the State of Alaska and ANCs?

Response: I know that it has been an important priority for you for many years that the conveyance of land entitlements to the State of Alaska and to the Native Corporations be completed, and like Secretary Haaland I am committed to that effort. With regard to the specific PLOs referenced in your question, the BLM is initiating consultation on the decisions made in PLOs 7899, 7900, 7901, 7902, and 7903, including issues related to the withdrawals more broadly and will be announcing additional details on public involvement in the National Environmental Policy Act analysis.

Question 5: Governor Dunleavy notified President Biden a few weeks ago that the State of Alaska is going to assert state management of more than 800,000 miles of navigable rivers and 30 million acres of navigable lakes in Alaska. If confirmed, how do you plan to facilitate Interior issuing title to these lands and waters to the State?

Response: I am aware of Governor Dunleavy's letter to the President, as well as the letters from State Commissioners on this issue. I know that Secretary Haaland and the program and policy staff, including staff in the Office of the Secretary, are engaged on this matter and the Department is ready to work with the State and to engage relevant Tribal Nations in these discussions in a productive way. If I am confirmed as Solicitor, I will ensure that the Department staff understand and are continuing to comply with the various statutory and other legal obligations of the Department and its bureaus in Alaska, and I will provide advice and guidance as we move toward a resolution.

It is important to note that as a legal matter, the title to submerged lands under navigable waters is not a matter of a conveyance from the Department of the Interior to the State of Alaska. Under the Equal Footing Doctrine, submerged lands under navigable waters pass to states at the instant of statehood – unless previously reserved in federal or tribal ownership by Congress. There are several modern U.S. Supreme Court cases involving claims to submerged lands in Alaska that provide useful guidelines. I will ensure the Department follows those decisions as we move forward on this important topic for Alaska.