

# HAYES NOMINATION

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HEARING  
BEFORE THE  
COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE  
ONE HUNDRED ELEVENTH CONGRESS  
FIRST SESSION  
TO  
CONSIDER THE NOMINATION OF DAVID HAYES TO BE DEPUTY  
SECRETARY OF THE INTERIOR

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MARCH 12, 2009



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## HAYES NOMINATION

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THURSDAY, MARCH 12, 2009

U.S. SENATE,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Washington, DC.*

The committee met, pursuant to notice, at 2:37 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Jeff Bingaman, chairman, presiding.

### OPENING STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

The CHAIRMAN. Ok. Why don't we start out? The committee meets this morning to consider the nomination of David Hayes to be the Deputy Secretary of Interior.

Mr. Hayes is well known to many of us on the committee from his previous service in the Department of Interior during the Clinton Administration. He served as Counselor to Secretary Babbitt from 1997 to 2000. As the Deputy Secretary of Interior in 2000 to 2001, Mr. Hayes is plainly very well qualified for the office to which he's been nominated since he served in that office before with great distinction.

While at the Department before he handled many of the Department's most challenging issues including the acquisition of the Headwaters Redwood Forest, the restoration of the California Bay Delta Ecosystem, negotiation of habitat conservation plans under the Endangered Species Act, Indian Water Rights settlements and energy development on the public lands. We're fortunate to have someone of his experience and ability agree to return to the Department for a second tour. I hope we can confirm his nomination as soon as possible.

Let me call on Senator Murkowski for any statement she has. Then we would of course, hear from our colleague Senator Bayh as well. Go ahead, please.

### STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman. Thank you, Mr. Hayes for appearing before us today and for your willingness to serve in the position of Deputy Secretary, again. Either you really enjoyed the job last time or you're a glutton for punishment. But either way, we appreciate your willingness to serve.

I have described the President's budget blueprint as a war on domestic production. Subsequent Administration testimony has not altered my opinion on this. I think that we have to take every rea-

sonable opportunity to promote clean, alternative sources of energy. We certainly hope that these measures will bear fruit.

But I believe that with all of the hopes, and all of the wishes for where we're going with renewables it's not going to change the reality that the vast majority of Americans are going to run their cars on petroleum for the foreseeable future. Punishing the domestic oil and gas industry will not bring the age of renewable energy any faster. I believe it will increase our dependence on foreign oil and further threaten our energy and economic security.

The President's budget proposals would have this Nation turn its back on workers in the petroleum industry, raise prices for American consumers and increase the export of American dollars, all in one fell swoop. At this point in time, our Nation can't afford any one of these, much less all of them. I hesitated to use this forum for a statement on where we're going, but I think we realize that we don't have that many opportunities as individuals come before us for the confirmation hearings to make these statements. So I did feel it was important to make sure that we do have a balance within our policies.

I do understand, Mr. Chairman that there may be questions asked of Mr. Hayes regarding details of the matters as they relate to lobbying. I would like to take a moment to note that the committee received an allegation regarding lobbying activity by Mr. Hayes, stating that he was in violation of the ban on high ranking officials regarding or returning to lobby their old agency for a period of 1 year. Republican and Democratic committee staff worked together to conduct an extensive review of this allegation including interviews with relevant parties.

At the committee's request the Acting Inspector General of the Department of Interior has reviewed all available records from 2001 including visitors, logs, calendars and electronic mail, and we have not found the allegation of improper conduct by Mr. Hayes to be substantiated. So I just wanted to put that within my opening statement.

The CHAIRMAN. Thank you for—

Senator MURKOWSKI. To welcome Mr. Hayes. Thank you.

The CHAIRMAN. Thank you very much for that statement. Our colleague Senator Bayh has asked permission to introduce Mr. Hayes to the committee. We're glad to have you do that.

**STATEMENT OF HON. EVAN BAYH, U.S. SENATOR  
FROM INDIANA**

Senator BAYH. Thank you very much, Mr. Chairman. After your very gracious introductory remarks I'm tempted to just say, Amen and get on with the business of the committee. But I have prepared a very brief statement. If you would permit me, I will present it to the committee.

Mr. Chairman, Ranking Member Murkowski, fellow members of the Energy and Natural Resources Committee, I thank you for the opportunity this afternoon to introduce an individual for whom I have great personal respect, admiration and confidence, David Hayes. David is an accomplished lawyer and knowledgeable public servant who is exceedingly well qualified to be Deputy Secretary of the Department of the Interior. David will bring a lifetime of rel-

evant experience and scholarship in environmental, energy and natural resources matters to this position.

As Deputy Secretary of the Department of Interior from 1999 to 2001, David was the second highest ranking official at the Department. It was statutory responsibility to serve as Chief Operating Officer over Interior's 70,000 employees and \$10 billion annual budget. He was nominated for the position by President Clinton and unanimously confirmed by the U.S. Senate.

As Deputy Secretary, David oversaw all the Department's bureaus and offices including the National Park Service, the U.S. Fish and Wildlife Service, the Bureau of Reclamation, the U.S. Geological Survey, the Bureau of Indian Affairs, the Bureau of Land Management and the Minerals Management Service. He played a lead role in many of the Department's most complicated and important policy matters with a principle focus on the acquisition and protection of threatened lands, the restoration of vulnerable ecosystems and the introduction of modern water management in the West. David has contributed to countless books and articles on environmental and energy matters.

He has also served as a Senior Fellow at the World Wildlife Fund and as a consulting professor at Stamford University Woods Institute on the Environment.

On a personal note, Mr. Chairman I have known David Hayes for nearly 30 years. Before I began my public career David and I were young lawyers together at the same law firm. I know him to be a devoted husband to his wife, Elizabeth and a loving father to his children, Katherine, Stephen and Molly. He is also, I'm proud to report an honorary Hoosier having earned his undergraduate degree at Notre Dame.

David enjoys strong support from both Democratic and Republican Senators. He is a pragmatic, bipartisan, forward thinking individual. David has a proven track record for approaching water and land matters in a constructive and collaborative manner. We are fortunate to have a nominee who has his breadth of experience and can hit the ground running at the Department of the Interior.

Finally I have high confidence that if confirmed David will be a strong partner to our friend and former colleague, Secretary Salazar. Mr. Chairman based upon 30 years of personal experience, I can offer Mr. David Hayes my highest recommendation to the committee. I thank you for your courtesy in allowing me to present him today.

The CHAIRMAN. Thank you very much, Senator Bayh. We appreciate that. Let me just advise all Senators we're nearly half way through this vote right now.

So I think what I'll do is to go ahead and administer the oath to Mr. Hayes. Then ask him the questions we're required to ask. Then adjourn the committee hearing and go vote and we'll come back and hear your statement at that time, if that's acceptable.

The rules of the committee that apply to all nominees require that nominees be sworn in connection with their testimony. Would you please stand and raise your right hand?

Do you solemnly swear that the testimony you're about to give to the Senate Committee on Energy and Natural Resources will be the truth, the whole truth and nothing but the truth.

Mr. HAYES. I do.

The CHAIRMAN. Please be seated. Before you begin your statement let me ask you the three questions that we address to each nominee that comes before our committee.

First is will you be available to appear before this committee and other congressional committees to represent departmental positions and to respond to issues of concern to the Congress?

Mr. HAYES. I will.

The CHAIRMAN. A second question. Are you aware of any personal holdings, investments or interests that could constitute a conflict of interest or create the appearance of such a conflict should you be confirmed and assume the office to which you've been nominated by the President?

Mr. HAYES. Mr. Chairman, my investments, personal holdings and other interests have been reviewed both by myself and the appropriate Ethics counselors within the Federal Government. I've taken appropriate action to avoid any conflicts of interest. There are no conflicts of interest or appearances thereof to my knowledge.

The CHAIRMAN. Alright. The third and final question that we put to all nominees is are you involved or do you have any assets that are held in blind trust?

Mr. HAYES. I do not.

The CHAIRMAN. Alright. As I indicated before we're in the middle of a vote. Why don't we adjourn the hearing at this time? Then when we return we will ask you to go ahead with your opening statement.

Mr. HAYES. Thank you, Mr. Chairman.

[RECESS]

The CHAIRMAN. Ok. Why don't we reconvene the hearing? At this point the tradition of the committee is to invite you, Mr. Hayes to introduce any family members that are here with you and to make your opening statement. So why don't you go right ahead.

**TESTIMONY OF DAVID J. HAYES, NOMINEE TO BE DEPUTY  
SECRETARY OF THE INTERIOR**

Mr. HAYES. Thank you, Mr. Chairman. I am accompanied today by my wife, Elizabeth behind me and two of my three children, my daughter, Kate and Molly. My son Stephen is in college on the West Coast and claims to be studying today so couldn't be here.

The CHAIRMAN. We welcome them.

Mr. HAYES. Thank you. Mr. Chairman I have prepared a personal statement that I would appreciate being entered into the record.

The CHAIRMAN. We will enter it into the record.

Mr. HAYES. Thank you. I will just make a few brief comments about the personal statement. Tell you a little bit about myself and then what I hope to have the opportunity to do working with you and Secretary Salazar at the Interior Department.

Just very quickly, biographically I was born and raised in Western New York State. My two parents are from small towns outside of Rochester. They met in a dance hall on Conesus Lake, a beautiful Finger Lake south of Rochester.

When I was a very small child, my parents bought a log cabin on Conesus Lake, complete with outhouse where I spent all of my

summers growing up. It was that formative experience, being in the outdoors, fishing, swimming, being a family, that I think started my head in the direction of environment and natural resources. As Senator Bayh mentioned I then moved out to Indiana for college and enjoyed the Indiana Dunes and Lake Michigan and then moved on to California where I went to law school and that really opened my eyes as I crossed the country back and forth and saw the splendors of the West.

After law school I committed myself to a career in the environmental and natural resources area. As you mentioned, Mr. Chairman, I had the honor of serving in the public service at the Interior Department for 4 years in the Clinton Administration. It's a Department whose mission I love and I think it's an incredibly important Department.

Important because it's important to our economy and it's important to our legacy. Our natural resources, our land, our water, our wildlife are irreplaceable, need to be appropriately used. Certainly, particularly with the lands, we need to be thinking about future generations as we go forward in implementing the administration of those resources.

As I mentioned in my personal statement there are several matters of particular interest to me that I look forward to working with you on as I hopefully am confirmed with your blessing to be the Interior Deputy Secretary.

First of all just as a general matter, I believe firmly in the collaborative process that needs to be behind every major resource decision. I like this area in part because of the problem solving nature of working through resource issues that tend to be extraordinarily important to people throughout the Nation. In terms of specific issues I'll mention four very briefly.

I share Secretary Salazar's enthusiasm for the potential for renewable energy on our public lands. The Interior Department, as you know, manages one fifth the land mass of the United States. Has enormous potential renewable resources, solar, wind and geothermal.

Also has, I think, the unrealized potential to be a hugely productive player in bringing stranded renewable energy to our population centers. Going over Federal land should be the first thing, not the last opportunity in terms of new transmission. I look forward to working with Secretary Salazar on that perspective and on that initiative as we proceed as well with appropriate oil and gas leasing, coal development and the other uses of our public lands that are so important to our domestic energy economy.

Secondly, I'm very interested in the climate change issue, particularly with regard to its impacts on our landscapes. The Interior Department, as you know, is the largest water wholesaler in the West. Water supplies are being affected by changes in climate with 20 percent of the land mass of the United States under our jurisdiction we are seeing impacts on land and wildlife resources.

This committee in 2007 directed the United States Geological Survey to help study the impacts of climate change. We're looking forward to moving that agenda forward and helping folks at the local, State and Federal level to understand the impacts on our resources to climate change and to react to them, so that they can

adjust to those impacts. With regard to climate change also, I think there's a good news story here.

Our natural landscapes are drinking in carbon dioxide. There's a benefit to the wetlands, to the forests, to the grasslands and the range lands that are in the public trust. I think we need to celebrate that. Make sure the American people realize that there are benefits in terms of climate change to these resources.

Thirdly I'll just mention that I share the views of all of you on the committee about the importance of continuing to invest in our treasured landscapes. Let me say that as I mentioned early on. I'm a native of Western New York State.

As such, while I very much love and appreciate the iconic National Parks in the West. I also understand and appreciate the importance of our responsibilities in the East, the South, the Midwest, throughout the country. I look forward to pursuing that agenda and providing opportunities for all Americans to understand and appreciate our natural wonders.

Finally and just as importantly as all the other points, I look forward to working with the Native American community. When I was at Interior the first time around working with Native Americans was one of the most rewarding aspects of the job. As I look at you, Senator Bennett, I recall going to Window Rock with President Clinton.

You were there talking about economic opportunity for Indian tribes and on the communications front. When I first started my first assignment, one of my first assignments for Secretary Babbitt was dealing with Indian water rights issues. We made some progress but we have much more to do. I will look forward to spending a lot of time on Native American issues should I be confirmed.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Hayes follows:]

PREPARED STATEMENT OF DAVID J. HAYES, NOMINEE TO BE  
DEPUTY SECRETARY OF THE INTERIOR

Thank you, Mr. Chairman, Senator Murkowski, and members of the Committee. I am honored to be with you today as President Barack Obama's nominee as Deputy Secretary of the Department of the Interior. I am joined by my wife, Elizabeth, and two of my children—Kate and Molly. My son, Stephen, is a college student on the west coast, and he unfortunately cannot be here today.

With your indulgence, I would like to begin with a short, personal introduction that helps to explain why I am here today.

I grew up in western New York State. Both of my parents were from small towns in the countryside outside of Rochester, New York. They met after World War II at a dance hall on Conesus Lake—one of the Finger Lakes in New York State that is south of Rochester. They married and raised my three sisters and me in Rochester. But even though they had moved to the city to find work, my parents always remained true to their small town roots, and their love of the rolling hills and beautiful lakes of upstate New York. In the early 1950s, they bought a modest log cabin cottage on the same Conesus Lake where they met, and where my mom had spent her summers growing up with her family. Thanks to the log cabin, my sisters and I were able to repeat the experience. We spent all of our summers together on Conesus Lake—swimming, fishing and just being a family. My parents have since passed on, but my sisters and I still own that same log cabin, and now Liz and our kids make a pilgrimage to lake country in western New York every summer to repeat the simple joys of being together, in a beautiful place, with family and friends.

After high school, I went to college in the Midwest, in Indiana, and then I continued west to California, where I attended law school. My cross-country trips to and from California introduced me to the wonders of our nation that lay beyond the Fin-

ger Lakes, Niagara Falls, and the sand dunes on the south shore of Lake Michigan. These formative experiences prompted me to dedicate my career to energy, environmental and natural resources issues. That pull toward natural and cultural resource issues has become my life's work, both in and out of government, and through my academic and non-profit work.

In that regard, and perhaps most pertinently to this Committee, I was fortunate enough to have served for four years in the Department of the Interior—the last two as Deputy Secretary—in the Clinton Administration. I worked with many of you on the Committee during that period, and I thoroughly enjoyed the privilege of tackling the many important and challenging issues that arise within the vast domain of the Interior Department.

I am extraordinarily grateful that President Obama and Secretary Salazar have asked me to serve at the outset of this new Administration as the Deputy Secretary—the second highest ranking official in the Department and, by statute, its Chief Operating Officer. If confirmed, I can assure you that I will take on this challenge with seriousness of purpose and total commitment to the task at hand. As you know very well, the Interior Department deals with issues that matter greatly. The Interior Department makes decisions every day that implicate our stewardship responsibilities over the land and water resources of this great nation. And all of the issues that the Department touches affect our fellow Americans.

Because of the weighty responsibility associated with managing the Interior Department's responsibilities, I approach my prospective position with deep humility and a commitment to work collaboratively with you, the Department's fine career staff, and with all key stakeholders who are affected by the Department's programs. My first choice—always—is to look hard for collaboratively-based approaches to decision making. I pride myself in solving problems, and in seeking solutions that advance the interests of all interested parties.

In that regard, if confirmed, I am looking forward to working with Secretary Salazar and our team, in close collaboration with this Committee, to expand the portfolio of energy that is produced from the public resources that are under the Interior Department's jurisdiction. As the nation's largest landowner, including lands with enormous solar, wind and geothermal potential, the Interior Department is in a unique position to greatly expand renewable, domestically-produced energy production in the United States. In tandem with the Department's continued production of oil, gas, coal and other energy sources, increased production of renewable energy is a key element of the "moon shot" on energy independence that the President and Secretary Salazar are so committed to taking. Interior Department landholdings also will play an indispensable role in expanding the electric grid and bringing renewable energy from the sunny southwest and the windy plains to our population centers.

As with all other Interior Department issues, developing renewable energy on the public lands will require a balanced approach that addresses the impacts of such development on wildlife, water resources and other interests. History has taught us that when it comes to our public lands, we must proceed with care, for we have a responsibility to take a long-term view as we manage these lands for the benefit of all Americans, including future generations that will follow.

In addition to devoting substantial attention to energy issues, I expect to give special attention, if confirmed, to the issue of how climate change is impacting our water, land, and wildlife resources. Given the Interior Department's vast land base, its statutory obligations to address wildlife issues, and its responsibilities as the largest water wholesaler in the western United States, Interior must be at the forefront of our efforts to understand how climate change is affecting our resources, and to anticipate and react to these impacts. With the substantial scientific capabilities of the United States Geological Survey, the Fish & Wildlife Service and the National Park Service, Interior is well-positioned to lead this vitally important work, and to do so in partnership with state and local land and water managers, and ordinary citizens, who are concerned about the effects that climate change are having on their resources. In that regard, I hope that the Interior Department can also bring good news to Americans on the climate change front. Our forests, rangelands and open spaces are providing climate change benefits—day in and day out—as they absorb carbon dioxide from the atmosphere. We need to tell this story, and help Americans understand how their support for parks, wildlife habitat, wetlands, and other natural landscapes is helping to address our climate change challenge by removing excess heat-trapping gases from the atmosphere.

I also look forward to working with you, if I am confirmed, as we invest in the many national treasures that the National Park Service, the Bureau of Land Management, and the Fish & Wildlife Service oversee. While I share the affinity that all Americans have for our magnificent and iconic national parks in the west, I am

an equally strong supporter of the parks, monuments and refuges in the east, mid-west, and south, and the many historical sites that are under our trust—from Constitutional Hall and the Liberty Bell to our Civil War battlefields. And I am a firm believer that we must give more attention to our urban parks and to the lakes and rivers that run through our cities and countryside and that so many people enjoy. I believe that we should be mindful of our responsibility to provide opportunities for all Americans to enjoy God's bounty that surround us—regardless of where we live.

Finally, if I am fortunate enough to receive your endorsement, I look forward to working closely with Native Americans who look first to the Interior Department to work with them on a government-to-government basis. We must honor our trust obligation to the tribes. This is an obligation, and a challenge, that I accept without hesitation. During my first tour of duty at the Interior Department, I worked closely with many tribes on a broad range of issues, and I look forward to continuing that work in the months and years ahead.

Thank you for your attention, and I look forward to responding to your questions.

The CHAIRMAN. Thank you very much for your statement. Senator Murkowski mentioned in her opening statement there have been questions raised about contacts that you may have had with Interior Department officials during the first year of the Bush Administration when you, under the statute then and now were barred from lobbying anyone in the Department on behalf of a client. You've already provided a written response to those questions which we will make part of the record.

But let me ask for the benefit of the committee, three questions and get your response.

Number one, did you have any contact with any officer or employee of the Department of Interior in connection with any matter on which you were seeking official action on behalf of another person within 1 year after you left the Department in January 2001?

Mr. HAYES. I did not.

The CHAIRMAN. Let me ask a second question, more specifically, did you during any of your contacts with Deputy Secretary Griles or Assistant Secretary Scarlett within 1 year after you left the Department seek official action from either of them on any matter on behalf of another person?

Mr. HAYES. No, sir. I did not.

The CHAIRMAN. let me ask one final question. President Obama has issued an Executive Order on Ethics that prohibits the appointment of a registered lobbyist to any executive agency that he or she lobbied within 2 years before the appointment. Have you lobbied the Department of Interior at any time during the past 2 years?

Mr. HAYES. I have not, Mr. Chairman.

The CHAIRMAN. Let me defer to Senator Murkowski for her questions.

Senator MURKOWSKI. Thank you, Mr. Chairman. Mr. Hayes, in the past month Secretary Salazar has delayed the 5-year plan for off shore leasing. He's withdrawn more than 130,000 acres from oil and gas exploration in Utah and he's canceled the next round of oil shale leasing.

Now I don't dispute that the officials at the Interior have the right to review the previous Administration's actions, but all of these actions will slow down rather than speed up domestic energy production. Can you tell me what the plans are at Interior to increase the amount of oil and gas that is produced here in this country?

Mr. HAYES. Certainly, Senator. I should first make clear of course that I'm at the Department now only in a senior advisor capacity. I am not a decisionmaker in the Department. Have not made any of the decisions to which you are referencing. I've been very careful about that because I know how important prerogative is at the Senate in terms of my position.

I can say though that I know that Secretary Salazar on the offshore drilling issue was concerned about the very short time period there was to evaluate the potential opening up of very, very large area of the offshore for potential oil and gas development. He wants to have a full and complete discussion about the possibility of increasing oil and gas production in areas that have been subject to the moratorium. That was the purpose of extending what was a 60 day comment period that would be actually over within a week or so of now to a 6-month period.

What he did is asked the USGS and the Minerals Management Service to, on an expedited basis, come up with a report which is due at the end of this month to help lay out what information we have in terms of oil and gas resources for all these areas. Then he has scheduled a series of four meetings, one on the East Coast, one on the Gulf Coast, one in California and one in Anchorage, Alaska to take in public comment on the very important question of whether these areas that have not been open to oil and gas leasing should be in fact open.

So that's my response on that point, Senator.

Senator MURKOWSKI. Yes, but in terms of oil increased production here in this country obviously I would agree with you. We need to assess and understand what we have on the OCS. I would hope that you would advise Secretary Salazar and President Obama with regards to that.

As you know, we lifted the moratoria. I don't know whether you intend to suggest that that moratoria be re-imposed or how you feel about the direction that we should be taking with offshore, but I'd like you to address that a little bit further.

There are more to our domestic—

Mr. HAYES. Yes.

Senator MURKOWSKI [continuing]. Resources than just the offshore resources.

Mr. HAYES. That's exactly right. The Secretary, I know that Secretary Salazar is committed to continuing with bigger responsible oil and gas drilling throughout the United States. The Utah lease situation, I think, was an unusual one because when we came into office, the issue was on the plate. There were questions about whether there was adequate consultation with the National Park service.

The Secretary—I did not take those leases off the table for all time. He took the leases that had been questioned and said we just need more time to evaluate them. But the Secretary intends to move forward with many, many scheduled oil and gas leases and is very committed to continuing to take full advantage of our domestic oil and gas resources.

Senator MURKOWSKI. We're giving the Administration another opportunity to revisit ANWR. During the Clinton Administration, and in various writings after you left your post at the Interior, you

opposed development of the 10 02 area. But it appears that most of your arguments really center on the impact that surface development could have on the ecosystem of the refuge.

So what we've done is we've said ok—we're not crazy. We're not going to run the same idea that has been rejected by those who have opposed it.

Let's go underneath. Let's use the technology that allows us to drill directionally under the surface with no surface occupancy. Can you tell me whether or not you would encourage the Administration to look carefully at the opportunities that present themselves in ANWR with the advancements that we have in technology now?

Mr. HAYES. Senator, I look forward to learning more about the technologies and will be happy to do so. I expect that the ultimate decision will be Secretary Salazar's and the President's on this issue. But I'm certainly looking forward and open to learning more about the new technologies that you're mentioning.

Senator MURKOWSKI. We'll bring you up and show you what they're doing at Liberty. It's about eight miles of directional drilling under the surface.

Mr. HAYES. I look forward to doing that, Senator. I would like to go see it.

The CHAIRMAN. Senator Shaheen.

Senator SHAHEEN. Thank you, Mr. Hayes. I would like to echo the earlier comments from other members of the committee about your willingness to come back and serve in government. I think that's admirable and we appreciate that.

Also want to point out that my youngest daughter is named Molly.

[Laughter.]

Senator SHAHEEN. So I especially appreciate Molly being here today.

You talked a little bit about the importance of recognizing the grass lands and the forests and our public lands as an opportunity to store carbon which we very much appreciate in New Hampshire as the second most heavily forested State in the country. But how do you see the balance of protecting those resources along with thinking about using our public lands for renewable energy sources? How do you determine the balance?

Mr. HAYES. That's a good question, Senator. It's hard to answer in the abstract, I think. But I personally believe based on some experience from the last go round, that where there's a will, there's often a way.

Much like we have developed oil and gas resources increasingly in an environmentally sensitive manner, I think that we could do the same in terms of solar and wind. There clearly are—and geothermal. There clearly are environmental impacts associated with any type of energy production.

But we have tools available. We can consider things like land exchanges, like, you know, habitat conservation plans, other approaches to deal with the conservation impacts of some of these projects. I think we have to if we're going to change our economy and make real progress in this area.

Senator SHAHEEN. Thank you. On another topic you will be overseeing the Minerals Management Service. Can you talk a little bit

about some of the things that you think need to be done to address the inappropriate activities that have been engaged in by that agency in the past?

Mr. HAYES. Yes, Senator. As you know this has been a top priority for Secretary Salazar. Very early on he went out to Lakewood and visited with the MMS staff. In a nutshell, I think has, you know, expressed grave concern.

While recognizing that the, by far, the vast majority of MMS employees are good, upstanding citizens. There were clearly very inappropriate activities. He has asked for a special review of all of that and is emphasizing the importance of ensuring that this department is ethical from top to bottom. We are reminded of that every day in the Department.

Senator SHAHEEN. Is there a time period when you expect that review to be completed?

Mr. HAYES. It's an ongoing review. I will look into that and see if we can get you some more definitive information, Senator. But it's an ongoing thing that we're constantly concerned about.

We also, I should say on a policy level we look forward to working with your committee on the question of royalty collection and reform potentially to make sure that the process is such that it's more transparent, fair and you don't have the environment that creates the potential for these kinds of ethical issues. So we'll look forward to working with your committee on that angle.

Senator SHAHEEN. Good. Thank you.

The CHAIRMAN. Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman. I understand that you were a registered lobbyist?

Mr. HAYES. Yes, I was, Senator.

Senator MCCAIN. For how long?

Mr. HAYES. I think I was a registered lobbyist for four or five entities beginning in 2001 and ending in 2006.

Senator MCCAIN. The firm that you worked for did pretty well. In 2003 they got a million and \$730,000. In 2004 they got almost \$2 million in lobbying fees. 2002 they got \$1.38 million in lobbying fees. They did pretty well Latham and Watkins lobbying here in Washington. I mean that's the information we have.

Mr. HAYES. Right. Senator, the Latham and Watkins actually it's true. Though it's certainly true it's a very, very large law firm of over 2,000 lawyers.

Senator MCCAIN. How many lobbyists?

Mr. HAYES. I don't know.

Senator MCCAIN. The point is you were a registered lobbyist for a number of years.

Mr. HAYES. Yes, sir.

Senator MCCAIN. How does this coincide with President, then candidate Senator Obama saying that there would not be lobbyists in his Administration? Do you know?

Mr. HAYES. Senator, I know that he requested that no one be a registered lobbyist within 2 years and I'm not.

Senator MCCAIN. I see. Would you like to tell the committee who you'd lobbied for on behalf of who you lobbied?

Mr. HAYES. Certainly, sir. That information is available on the committee questionnaire that has been provided to the committee. Would you like me to go through that?

Senator MCCAIN. No, that's alright. We'll look at it.

Mr. Hayes, in April 2006 on behalf of the Progressive Policy Institute that I believe you were part of you wrote and I quote.

"The conservative political agenda in the West is grounded in hoary stereotypes about the region and its people. In their world view the West natural resources are inexhaustible. Exploiting them will produce a bonanza of dollars and jobs, (never mind the West's sad history of boom and bust cycles,) and Federal bureaucrats with title to the land the only thing blocking that utopian vision from becoming reality. Out of this conservative world view emerges a stereotypical western man (and it is unquestionably a he) a drugged gun toting individualist who fiercely regards every man's right to drill, mine, log or do whatever he damn well pleases on the land. He hates government, taxes, regulations, environmentalists and anyone or anything else that tries to tell him what to do provided of course, that Federal subsidies from mining, logging, grazing and the like continue unabated. Like Ronald Reagan before him President Bush has embraced the Western stereotype to the point of adopting some of its affectations, the boots, brush clearing and get the government off our backs proviso."

You know, a lot of us don't feel that way about President Reagan. A lot of us feel that President Reagan did a lot for our environment. A lot of us honor his service to this country, not only as President of the United States, but Governor of the great State of California where there were many environmental accomplishments which I would be glad to provide you since clearly you didn't know in April 2006 or you never would have made such a comment about President Reagan.

Do you stand by those remarks? What you wrote in April 2006?

Mr. HAYES. I think the prose is overly florid, Senator. I regret that. I did feel at the time that the Bush Administration was not as balanced as they should be in natural resources policy.

Senator MCCAIN. So you had to throw Reagan's name in there too about brush clearing?

Mr. HAYES. I shouldn't have done that, Senator.

Senator MCCAIN. You know, I find it highly offensive but you're certainly entitled to your views. I just don't know if that helps in any way the efforts that many of us made for a long, long time trying to protect the great natural treasures that we have. I'm very proud of my record and I'm very proud of Democrats as well as Republicans.

I guarantee you I would never have said anything like that about former Governor and Secretary of the Interior Bruce Babbitt. In fact, I've done nothing but praise him. So later in your article you state that today for instance, we're all grateful that the Marble Canyon and Bridge Canyon dams were never built in the middle of the Grand Canyon, etcetera. Do you think that the Glen Canyon dam should have been built, Mr. Hayes?

Mr. HAYES. I think the Glen Canyon dam is providing terrifically important resources to the Southwest as you know. As I understand it—and you certainly know this history far better than I do—

I think a broad consensus developed that those two additional dam sites were not appropriate.

Senator MCCAIN. I thank you for your answers. I will be considering seriously whether I can support your nomination or not. Thank you, Mr. Chairman.

Mr. HAYES. Thank you, Senator.

The CHAIRMAN. Senator Udall.

Senator UDALL. Thank you, Chairman Bingaman. Good afternoon, Mr. Hayes. Let me start with oil shale if I might.

You know there's been a lot of concern expressed about the potential of element oil shale in the West as well as the recently released oil shale regulations. Do you have any comments on how you view the development of this potential energy resource?

Mr. HAYES. Senator, I know that Secretary Salazar is interested in the information that will come out of the RD and D leases that already were granted by the Department and is seriously interested in moving forward with a second round of RD and D leases. I think as he testified before this committee he is interested in learning more about issues like potential water impacts, etcetera. But absolutely has an open mind about it.

Senator UDALL. I think there are many of us in the West who are and certainly all over the country who are intrigued with the oil shale potential. But also know that there are significantly unanswered questions about the amount of water that's necessary. About the energy inputs that will be necessary and what sorts of reclamation policies may be necessary, particularly in wide scale oil shale development, would involve stripping off the over burden. We're talking literally thousands and thousands of square miles. So I look forward to working with you, if you're confirmed and of course Secretary Salazar.

Let me turn to renewable energy certainly it's a large interest of mine. It's a large interest of many of us in the Southwest. Could you comment on the role that you foresee that the Department of Interior will have in expanding and promoting renewable energy? Not just in the West, I don't want to be too Rocky Mountain West centric here, but all over the country?

Mr. HAYES. Senator, I know that Secretary Salazar, consistent with President Obama's emphasis on taking full advantage of our domestic energy resources is very committed to having the Interior Department be a leader here. Being an observer, as an advisor, at this point I am seeing that happen. As he, just yesterday issued an order forming a task force that will be focused on this and that will make renewable energy a priority for the Department.

Senator UDALL. Let me follow up and talk about transmission. We had an important hearing this morning. In fact it lasted all morning and I think into the afternoon.

We've got to balance out the needs of the country with the needs and points of views of local and regional interests. What is the plan the Department of Interior has to address those challenges dealing with transmission expansion and transmission capacity and in effect creating a 21st century interstate highway system of transmission?

Mr. HAYES. Senator, as Secretary Salazar met just last night with Secretary Chu, with the Acting Chair of the Federal Energy

Regulatory Commission and with Secretary Vilsack to talk about this specific issue, the potential formation of a cross agency effort to work together on transmission.

Senator UDALL. I think we heard about a transmission line from Montana to Utah I believe earlier today. That proposed line only 17 miles and over 1,000 mile transmission system were on private land. So the public estate will play a key role in expanding our transmission capabilities, our transmission system.

But let me turn to coal. We have vast resources of coal. We also, I think, know as a country that we have to reduce our carbon footprint. There's much to do with carbon capture and sequestration technology. Please comment on what Department of Interior's role will be in promoting that technology understanding the geological limitations and opportunities as well.

Mr. HAYES. Senator, the Department of Interior, I believe can be very helpful potentially in carbon capture and storage. In the 2007 Energy Independence Act coming out of this committee, there was a request for the U.S. Geological Survey to prepare methodology to help evaluate the appropriate sites for carbon capture and storage. That report is near finished.

My understanding is that it will be ready for release very soon. So it's been a priority for the USGS to help in that regard. I know that the Secretary Salazar is interested in potentially offering Federal sites for experimental carbon capture and storage to help move along the technology.

Senator UDALL. Mr. Chairman, I see my time is expired. If we have another round I have some additional questions.

The CHAIRMAN. Ok.

Senator UDALL. Otherwise I'd like to submit some for the record.

The CHAIRMAN. Alright.

Senator Barrasso.

Senator BARRASSO. Thank you very much, Mr. Chairman. Mr. Hayes, thank you for coming by the office yesterday. Congratulations. I want to welcome your wife and daughters here. It's a family commitment to do this sort of work. Then I appreciate their efforts to be with you.

Senator McCain talked about Ronald Reagan. Ronald Reagan came to Cheyenne, Wyoming in the early 1980s and drew a big crowd, overflowing capacity in a gymnasium. He pointed out the thing he loved about Wyoming and the Rocky Mountain West. He said that the people here still believe that the future is ours to shape. He said ours, because he was one of us.

Yesterday you and I discussed some of the natural resource issues that are very important to the people of Wyoming. We agree that this country needs to abandon the ideological battles of years past. We have to focus on the people, the land, the communities that are affected by these policies.

I told you about my concern that there were mistakes in the past, and the people of Wyoming have been forced to pay the price for many of those mistakes. What seemed to be simple decisions made in Washington have dramatic effects back home in Wyoming.

We've seen it with wolves, grazing permits, energy development, lawsuits and with much, much more. So what I need from you is a commitment to abandon the restrictive attitudes of the past. You

and I talked about not repeating failed policies and really charting a new course in a number of areas.

So with that I'd like to talk about the issue of wolves which we talked about yesterday. This is a big issue in Wyoming. Secretary Babbitt, who you served under, reintroduced gray wolves into the Wyoming landscape. The decision was really made with disregard, I felt, to the people who live there.

It's where we raise our families, where we build our businesses. I think people felt that the Federal Government really treated us like it was some kind of a Petri dish for an environmental experiment. When we started they were required that there be 30 packs of wolves in the Yellowstone area. Since then, the number has just multiplied and multiplied. They're in Montana, in Wyoming, in Idaho and States beyond.

Yet the Fish and Wildlife Service refuses to delist the wolf in Wyoming. The Clinton Administration created the problem. The Bush Administration failed to solve it. Now the Obama Administration has refused to deal with it.

Will you commit to me today that you will take a fresh look at gray wolf management in Wyoming? Will you work with our State to find a solution to the problem?

Mr. HAYES. Senator, I will. As I said to you yesterday, very interested in working with you and your State. I think Interior Department, if I'm confirmed, and if I can play a role, would like nothing better than to delist the wolf in Wyoming as well. I would like to work with you toward that end.

Senator BARRASSO. Another issue that we talked about was abandoned land mine money. As you know, there is a tax charged on every ton of coal produced in the State of Wyoming. That tax was established with the understanding that the money would go back to the States where it came from to clean up the abandoned mines. But also to take care of the communities where there's been an impact. There has been an impact.

When President Obama was a member of the Senate he actually supported the bill that promised Wyoming its fair share of the AML funding. Senator Salazar supported the bill that promised Wyoming its fair share of AML funding. It applied to his State as well in Colorado.

The money rightfully belongs to the States. Unfortunately the new budget that came out, the President's budget, proposes terminating the payments to the States that are called certified States. This proposal truly contradicts the position that both President Obama and Secretary Salazar voted for just 3 years ago here in the Senate. Plus it short-changes the people of Wyoming and Wyoming communities by millions and millions of dollars.

Do you believe that the people of Wyoming are entitled to their share of the payments to the abandoned mine land fund as required by law? If appointed how will you address this issue?

Mr. HAYES. Senator, as we discussed yesterday I am not up to speed on this issue. I will look forward to doing so. The message is loud and clear about your concern about this. Of course I was not a decisionmaker on this point.

I look forward to working with you as we move forward on this very important issue.

Senator BARRASSO. My time is expired but Mr. Chairman I can go with one more question if you'd like. I wanted to move to the topic of grazing. Do you believe that grazing should continue on public lands or will you advocate reductions in grazing on public lands?

Mr. HAYES. I think grazing should continue on public lands as a general matter, Senator.

Senator BARRASSO. Will you advocate for a reduction in the grazing on public lands?

Mr. HAYES. I have no personal reason to advocate for a reduction. I think that obviously that grazing, the appropriateness of grazing and the intensity of the grazing differs from area to area. These issues primarily should be dealt with on the local level.

Senator BARRASSO. Because the Department of Interior took an aggressive position on grazing during the Clinton Administration. There were changes made to grazing regulations in the mid 1990s. It's been a great concern to the people of Wyoming.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Bennett.

Senator BENNETT. Thank you very much, Mr. Chairman. Mr. Hayes, welcome.

Mr. HAYES. Thank you, Senator.

Senator BENNETT. I've made some notes of what you have been saying. You say you're for appropriate oil and gas development on public lands. I like that.

You want a full and complete discussion. I like that. That this should be done in an increasingly environmentally sensitive way and I like that.

You've been around Washington long enough to know that when I start out like that I'm setting you up.

[Laughter.]

Senator BENNETT. Secretary Salazar, one of the very first things he did, if not his first official act was to reject the bids of 77 parcels of BLM land that had been offered for lease. Senator Murkowski has already referred to these. He said the Bush Administration had done this in the dead of night. That the environmental impacts to the National Park units had not been studied.

That is flat not true. They comply with everything you have just said that it is appropriate oil and gas. It's done with full and complete discussion.

These leases have been in the process of preparation and review for years, not months, not in the dead of night, for years. The reason they have taken years is because they were examined in an increasingly environmentally sensitive way. Indeed Mike Snyder, the Regional Director of the National Park Service, quoting him has said of this lease sale when it occurred, "Has resulted in the kind of resource protection that Americans want and deserve for their National Parks."

The reason it was so late in the Bush Administration is that it took so long to jump through all of the environmental hoops to make sure every "I" was dotted. Every "T" was crossed. Every aspect of the law was complied with. They were sure.

We finally have oil leases that comply in every possible way. We've taken the time to do it right. Then they're told they're

pulled. They're pulled by the fiat of the Secretary. The Secretary further insults everyone in the Department and out by saying, you know, it was done in the dead of night and ignoring the years that went into that.

I know you're not there yet. I know you had nothing to do with this decision to pull these leases. But the only chance I get at you is this one to make it very clear that what the Interior Department here has done is not in coordination with what you've told this committee is an appropriate way to proceed.

I agree with what you've told this committee. I would, at the very least, hope that we would go back and look at this very, very carefully because if it stands that these leases stay pulled we are sending a message that this Administration doesn't really care how carefully you comply with the law, how carefully you approach this from an environmentally sensitive way. They simply want to kill oil and gas leases, period. They will make up whatever excuse they can.

Now that's harsh language. But it complies with the facts. Now quickly in the time remaining we've heard rumblings in Utah that the Interior Department will begin to make changes in the RMPs for land use that were finished in Utah last year.

The same thing I've just said about the oil leases applies to these RMPs. They've been carefully, carefully put together. They represent thorough extensive public input, millions of dollars and nearly a decade to complete.

If the Interior Department now says, well we're going to toss them all out and start over again. Once again they're sending the message that this Interior Department doesn't really care about the law or the precedent. They simply want to pursue some other agenda.

Now that's my rant. I'd be happy to hear you respond in whatever fashion you might like.

Mr. HAYES. Senator, I appreciate hearing the rant in all seriousness. It's important that we have a good dialog on these issues. If confirmed I will be happy to work with you on this subject.

The issue of balance and sound appropriate oil and gas production is very important to Secretary Salazar. I regret we're off on this foot with you. I know Secretary Salazar does as well. We'll look forward to working with you going forward so that we can address these issues as we move forward.

Senator BENNETT. I would hope so. Senator Murkowski has raised them most appropriately even though it's not from her State because the precedent really is quite chilling. If they had been sloppily put together we'd have a different reaction. But the amount of effort and money that has gone into this, not only the oil and gas leases, but the RMPs as well is something we take very seriously.

So I look forward to working with you on it. Thank you.

Mr. HAYES. Thank you, Senator.

The CHAIRMAN. We'll see what additional questions members have in a second round. I do not have any questions. Senator Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman. I want to bring up the issue of the polar bear listing. As you know very controversial in my State, the Alaska delegation certainly did not support

Secretary Kempthorne's decision last year to list the polar bear as threatened.

But what he did do in that ESA designation. He provided for a 4D provision to lessen the threat to subsistence, hunting and on oil and gas development. So fast forward to today or at least last week with the Omnibus provision.

In that Omnibus budget bill this Administration was given the ability to remove those provisions without any new public comment, period. So no process in other words. I believe very, very strongly that this was a process mistake as well as a policy mistake.

I think making the polar bear listing unlimited in scope when in terms of the scientific evidence that is out there. Part of the hearing record on oil and gas exploration and production, yeah. I think we recognize that there's not a nexus there.

I disagreed with the Kempthorne decision but at least there was a process in place for it. We were not successful in ensuring that process will be in place moving forward. Now without this 4D protection that was inserted by the Secretary, you've got a situation where you're just ripe for litigation with any development project that may come forward, anything that might produce carbon emissions.

Quite honestly we don't have the personnel at United States Fish and Wildlife to do the Section seven consultations on every action that could present itself out there. What will Interior do in so far as the consultation requests moving forward on this issue?

Mr. HAYES. Senator, I know that you've mentioned this to Secretary Salazar. If confirmed I will be engaged in discussions with him at the Department on this point. I think your primary point about ensuring that any project that emits greenhouse gases does not trigger a consultation because of some extended theory impact on polar bears is a very good one.

The Endangered Species Act is not well suited to deal with climate change which is a global phenomenon that has built up over decades. I know that the Secretary wants to have a common sense approach to implementing the Endangered Species Act. We'll look forward to working with you toward that end if I'm confirmed.

Senator MURKOWSKI. I'm glad to hear you say that you agree that the ESA is not the tool with which we should work to reduce carbon emissions. But there are those who have made it very clear, the Center for Biological Diversity is one who has made it very clear in their statements that they specifically intend to use it to do so. So you're setting yourself up for a conflict.

I think you appreciate this. I think Secretary Salazar does as well that despite the best intentions the way it can play out is that it will be used. We will find ourselves in a series of lengthy and protracted and expensive litigation with, you know, pick your project, road development in Florida. It doesn't necessarily have to be oil and gas development on the North Slope.

So this is something that we remain very, very concerned about. I still don't think that I understand what it is that the Administration intends to do insofar as the consultation and how that will work. But I think we're going to get slammed on this. I'm very, very concerned about it.

We need to figure out a path forward. Thank you, Mr. Chairman. Mr. HAYES. Thank you, Senator.

The CHAIRMAN. Senator Udall.

Senator UDALL. Thank you, Mr. Chairman. Mr. Hayes, let me turn to wilderness. We've come to understand over time that wilderness, not only has value as a place in which to recreate and recreate and to connect with the wonderful lands, not only in the West, but all over our country. But it's also a real economic driver, increasingly, particularly in the West, State of Alaska.

We have a lot of potential in our Bureau of Land Management lands. There are a lot of proposals for wilderness designations. I know you shared an interest in common sense based wilderness designations.

Do you have any initial thoughts on how you might go about considering recommendations on our BLM lands for additional wilderness protection?

Mr. HAYES. Senator, I do not. But I look forward to talking with you and others about this process. Obviously the designation process is a Congressional prerogative in terms of wilderness.

So the job of the Administration I think is to work with you to move forward and help decide what areas might be appropriately designated as wilderness. We'll look forward to doing that.

Senator UDALL. I would add that Senator Salazar has a record, as I think I do of working from the bottom up with local stakeholder groups that represent all the various economic interests in places like Colorado. We've had some successes in Colorado.

Mr. HAYES. Right.

Senator UDALL. Hopefully the Public Lands bill that's pending in the House which may be coming back to the Senate will pass. I know there are important success stories in there for all of us here in the Senate. If you'd care to comment?

Mr. HAYES. We hope so also. Wilderness should not be a wedge issue. It should be a consensus based issue. The tremendous advances in S. 22 in that regard in your State of Colorado, for example are testament to that I think.

Senator UDALL. Let me move to mining law reform. I know my friend and colleague from the neighboring State of Wyoming, Senator Barrasso talked about the Abandoned Mine Land Fund. I know Senator Salazar was a leader here on implementing such reform.

In the House of Representatives I was keen to put in place a Good Samaritan law which would help people in local communities have the tools and the protection from liability to clean up these thousands of abandoned mine sites. The jobs that can be created, water quality can be enhanced and if we would provide the direction and the protection. It's not a question, just as a comment that I look forward to working with you and Senator Barrasso as well as we move forward.

I thought on my remaining time I'd try and get two questions. No. 1, I wanted to ask you about the Centennial Challenge. Give you a chance to tell us about your thinking there. If talked about that earlier I'd still like to hear about here now.

Then I want to respond to Senator Bennett's concerns about the Utah leases before I complete my questioning.

Mr. HAYES. Senator, on the Centennial Challenge I know that Secretary Salazar, of course was a supporter of that with many of you on this committee. Is committed to taking advantage of the anniversary of the parks to help develop and enhance the public/private partnership that should be supporting the parks. It's going to be one of his top priorities. We'll look forward to working with all of you on that.

I know that the Secretary is excited about the Ken Burns film series that's coming out this fall in the National Parks. I think there's going to be a very exciting opportunity to remind all Americans about the treasures of our parks. So hopefully we can do something great together.

Senator UDALL. I understand in the Economic Recovery Package there are some resources there to invest in our National Parks. Is that right?

Mr. HAYES. That's right, Senator. Thank all of you for the Recovery Act in that regard. It's \$750 million for to deal with what has been as you well know a chronic backlog problem in the parks.

Also, you know, very significant expenditures for our BLM lands, for our National Wildlife Refuges. All our public lands, we have an opportunity to not only provide jobs because these are projects that directly will generate jobs in the very short term in construction trades and other trades, road building, etcetera. We're very excited about moving out quickly and hope that that will also help provide a reminder of the importance of the parks. Frankly get folks re-acquainted again with the parks.

Senator UDALL. If I might, Mr. Chairman, I just would like to end with a comment. I respectfully disagree with Senator Bennett when he talked at some length about the process you followed to set aside those leases in Utah. The Bush Administration, it's well documented, granted thousands and thousands of oil and gas leases.

The Bush Administration clearly accelerated some of that lease activity toward the end of its tenure as Administrations are want to do. There's a particular block of leases that were issued for, in a draft form, for the area around Arches National Park which is a unique and wonderful park of our National Park portfolio. These are very sensitive lands. There were ground water considerations.

I supported that decision. I believe that we can return to the question of how and when we develop those particular leases in those particular lands. But the oil and gas isn't going anywhere. It will still be there. It will only get more valuable. But in this case, I believe the resource provided by the National Park is worth protecting and erring on the side that the Secretary erred upon. I just wanted to make that clear for the record.

The CHAIRMAN. Senator Barrasso.

Senator BARRASSO. Thank you very much, Mr. Chairman. You just mentioned wilderness and it's a consensus based issue. I wanted to now switch a little bit to the Antiquities Act because you know as a second ranking official under then Secretary Bruce Babbitt, you witnessed the creation of more national monuments than during any Presidential administration in history.

These designations met with much controversy, lots of anger in the West because of the size and the lack of consultation with the

States and communities. The consequences of these designations for private land owners for grazing permitting and for other users within the designated areas really has proven to be excruciating. Do you agree with the methodology of those widespread Presidential designations? Should the designations of these protected places really be reviewed by Congress to reflect public input, stakeholder commitment?

Mr. HAYES. Senator, of course Congress has plenary authority here. Can overturn an Antiquities Act designation by a President. Should if the Congress believes it should.

To your point though, I agree that Antiquities Act designations should occur after there has been good discussion with all stakeholders. I'll mention that Congressman Mike Simpson from Idaho was over at the Department recently and talking about the Craters of the Moon National Monument which was created at the end of the Administration with a lot of collaboration, with a Congressional delegation and others. That's the way it should be done.

Senator BARRASSO. Senator Craig Thomas who had this seat before I did used to say if it's a good idea it's going to be a good idea after the public gets a good look at it and Congress gets a chance to weigh its merits and its costs.

You wrote a 2006 paper for the Progressive Policy Institute an arm of the Democratic Leadership Council. You had advised progressives that they need to, "Respect the live and let live ethic that courses through the blood of long time Westerners and newcomers alike." But then you wrote in the Virginia Environmental Law Journal that Interior Secretary Babbitt was not, "shy in recommending that President Clinton use his authority under the Antiquities Act to protect some of our most special and treasured public lands."

You praised the Clinton Administration for "using the thread of potential action under the Antiquities Act to encourage Congressional conservation legislation." The people in Wyoming, you know, really don't see this kind of political gamesmanship as respectful of that live and let live value that you talked about in the 2006 paper. So if appointed do you intend to use some of these political games to reach ideological goals or can we count on you to, as you and I talked about yesterday, charting a new course.

Mr. HAYES. Very much so the latter, Senator. Let me say I appreciate your quoting from elsewhere in my article. I think the body of my written work shows that I'm a believer in collaboration.

I think that these resource issues are solved when there is local input, all stakeholders are heard and sensible win/win decisions are reached. That's my philosophy. That's the philosophy I will follow if I am confirmed.

Senator BARRASSO. My final question, Mr. Chairman. You talked about some of the more heartwarming experiences in your time is working with the Native Americans, with our tribes. Indian economic development is a big issue in Wyoming.

The Wind River Indian Reservation in Wyoming is the home of the Eastern Shoshone and the Northern Arapahoe tribes. That community and many others in Indian country have a great need for economic development yet the bureaucratic red tape often stands in the way of this economic development. Will you commit

to focus significant resources and priorities of the Department on removing some burdensome, duplicative and overly restrictive Federal regulations that impede Indian community's economic development? We're talking about energy development and others.

Mr. HAYES. Absolutely, Senator. This has been an issue that you have raised. Senator Dorgan has raised it as well. In fact we are already moving out and doing experimental one stop shop in Indian country for energy development.

We need to do this because there's a terrific economic opportunity in the energy area in particular for tribes. We want to help facilitate that.

Senator BARRASSO. We must allow these communities to succeed. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. Let me just make a comment since Senator Barrasso raised the issue of the Antiquities Act. We've had a lot of discussion about that over the years.

I just wanted to indicate for the record that I think Secretary Babbitt, President Clinton and yourself deserve great credit for some of the designations that were made under the Antiquities Act. One in my State was the Tent Rocks Monument which was very much appreciated and something that I think has been a good thing for our State.

I also wanted to just complement President Bush for his use of the Antiquities Act on the sixth of January to designate the Marianas Trench, the Pacific remote islands and the Rose Atoll Marine National Monuments. I think that's another example where that act has been very useful.

Did you have additional questions, Senator Udall.

Senator UDALL. Mr. Chairman, I want to make sure you have the last word. But I would add to your list of important uses of the Antiquities Act two additional national parks that were designated national parks after initially being designated national monuments. One, the Grand Canyon National Park which is seen as the crown jewel, perhaps, of the National Park System with all due respect to Yellowstone National Park and others that may want to vie for that title.

In Colorado we have a new national park, the Black Canyon of the Gunnison National Park which was initially designated through the Antiquities Act as a national monument by I believe, President Hoover. That foresightedness on the part of President Hoover in that particular policy area left us the option in this time-frame to then create a new national park. So the Antiquities Act has been used to great effect, by and large and very appropriate ways as Senator Bingaman just pointed out with the recent actions of President Bush. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you for mentioning those other incidents or instances. Let me at this point indicate for the record that members will have until five tomorrow to submit any additional questions for the record.

The CHAIRMAN. Thank you very much for all of your time this afternoon. We will hope to proceed with your nomination this next week.

Mr. HAYES. Thank you, Mr. Chairman. Thank you, Senator Udall.

The CHAIRMAN. That will conclude our hearing.  
[Whereupon, at 4:05 p.m. the hearing was adjourned.]



## APPENDIXES

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### APPENDIX I

#### Responses to Additional Questions

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##### RESPONSES OF DAVID J. HAYES TO QUESTIONS FROM SENATOR BINGAMAN ON BEHALF OF SENATOR MAX BAUCUS

*Question 1.* The 100th anniversary of the Park System in 2016 is quickly approaching—The National Park Service has taken good steps to build a strong foundation for the future, but much needs to be done to prepare our Parks for another century of conservation, preservation, and enjoyment, I am working to reintroduce the National Park Centennial Challenge Fund Act, a bill introduced in 2008 by then-Senator, now-Secretary, Ken Salazar. A matching donation fund in the federal treasury that will provide up to 5100 million a year to the national parks in support of signature “Centennial projects and programs.” This would allow supporters of the parks to match their contributions with federal dollars to carry out a program or a project at a national park unit, provided that the project or program is approved by the Park Service and Congress. I feel that this additional funding would allow our national parks to reach their full educational, economic, environmental, and civic potential.

Nominee Hayes, what is your plan to prepare our National Parks for the upcoming Centennial?

Answer. The upcoming National Park Service centennial in 2016 offers a great opportunity to celebrate our national parks’ preservation of spectacular scenery, wildlife and the most significant places in our nation’s history. As we prepare for the centennial, I will be a strong supporter of exploring ways to engage new audiences, particularly young people, in our national park’s programs and stewardship. I will also support continuing to engage park partners and the public in investing in the parks. The President’s budget includes \$25 million for FY 2010 for matching contributions toward programs and projects for the National Park System. In addition, I look forward to seeing the funding Congress provided through the American Recovery and Reinvestment Act used to make significant progress on addressing the serious backlog of park maintenance needs well before 2016.

*Question 2.* How will you help to garner support for legislation that would help to secure funds for projects related to the 2016 Centennial?

Answer. I have not yet had an opportunity to fully review the issues surrounding the legislation providing for National Park Service centennial partnership projects and programs. However, Secretary Salazar has made known his strong interest in working with Congress to pursue legislation to provide dedicated funding for partnership projects and programs to improve our parks for the centennial. If confirmed, I will work with him to develop a strategy for that purpose.

##### RESPONSES OF DAVID J. HAYES TO QUESTIONS FROM SENATOR MURKOWSKI

*Question 3.* In testimony before this Committee in both 2000 and 2001, you discussed the evolution of our nation’s long-standing moratoria on offshore development. Last year, however, the President lifted the executive ban, and the House and Senate agreed to allow the congressional ban to expire.

As Deputy Secretary, would you advise Secretary Salazar and President Obama to reapply the executive moratorium on offshore development? Would you lobby Congress to do the same? Or do you agree, with the vast majority of the public, that those bans should not be resurrected?

Answer. The Secretary has just announced the schedule for public meetings that the Department will be holding around the nation to discuss both conventional and

renewable energy on the Outer Continental Shelf. If confirmed, I look forward to reviewing the input received at these meetings as well as the report the MMS and USGS are preparing on this issue. Improving our nation's energy independence is important to our economy and our environment. I believe we should look at all of our options and then focus our efforts where it makes the most sense.

*Question 4.* I hope you are aware of the effort of many to gain a nonessential-experimental population designation for the Woodland Bison near Fairbanks, Alaska so they can be reintroduced into the wild.

According to a white paper that your staff shared with my office the "ADF&G will not release Woodland Bison into the wild until the final special rule containing the nonessential experimental population designation and special conditions and exemptions are in place and determined to ensure sufficient protection to existing and future land uses."

The U.S. Fish and Wildlife Service and the Alaska Department of Fish & Game have been playing around with this proposal since the early 1990's.

Will you commit to direct the U.S. Fish & Wildlife Service to make a decision one way or the other on using the experimental population designation through the 10(j) and 4(d) provisions of the Endangered Species Act for the Woodland Bison within the next 6 months?

I suspect that without such a listing there is no chance of releasing these animals into the wild and that would be a real shame.

I also want you to understand that it is entirely unacceptable for the U.S. Fish & Wildlife Service to continue to play kick the can, year after year, by refusing to make a decision on the status in hopes of getting a different level of support from the Doyon's and the public.

Answer. I understand that officials within the U.S. Fish and Wildlife Service are working with the Alaska Department of Fish and Game on reintroduction of wood bison in Alaska and that the Service is supportive of reintroduction. If confirmed, I will ensure that the Department works with the State of Alaska in a timely and responsive fashion on reintroduction of wood bison in Alaska and their classification under the Endangered Species Act.

*Question 5.* Mr. Hayes, in response to a supplemental question asked by Senator Murkowski in your last confirmation hearing before this committee on September 15, 1999, you provided the following answer to this question—

Senator Frank Murkowski: "Do you think that it is appropriate in this day and age to ignore NEPA compliance in a major federal action?"

Your response: "The National Environmental Policy Act applies to major federal actions taken by federal agencies. Clearly, federal agencies may not ignore NEPA in taking major federal actions. I am advised that Presidential and Congressional actions are not covered by NEPA."

I would like to explore the very last part of your response to that question. That would be "that Presidential and Congressional actions are not covered by NEPA".

Do you still hold that position?

*If yes—*

- I want to make sure I am clear, that if the President or Congress sends you a law that does not mention the need to complete NEPA prior to implementation of a project you will direct the agencies you oversee to implement the law or Presidential order without a NEPA analysis, is that correct?
- If Congress sends you a bill that does not expressly direct NEPA or a Finding of Public Benefit requirement, say on a land exchange, or the building of a transmission line, or the building of a dam, how would you expect the implementing agency to implement the law?
- Given your answers do you think there is a need for Congress to include direction to undertake NEPA or include a "finding of public interest" requirement when passing legislation that directs the implementation of projects on federal lands?

*If no—*

- In 1999 you made it expressly clear that you did not think that either the President or Congress were covered under NEPA. What has changed either legally or in your thinking to alter your position between 1999 and today?

Answer. I continue to believe that the National Environmental Policy Act applies to major federal actions taken by federal agencies, and that federal agencies may not ignore NEPA in taking major federal actions. The coverage of NEPA in a specific circumstance is a legal question for which I would seek the advice of a NEPA expert. That is why I qualified my statement in 1999 that "I am advised" regarding the relationship between Presidential and Congressional actions and NEPA obliga-

tions. It is my general understanding that direct Presidential actions are not covered by NEPA, and that Congress can enact specific exceptions to NEPA. Given the legal nature of this question, I would look to the Interior Department's Solicitor to provide me, if confirmed, with appropriate guidance for how to apply these principles to any specific situation.

*Question 6.* At a hearing held by this Committee in April 2001, you testified about the tremendous impact that deepwater royalty relief was having on offshore oil and gas production. There was much debate in the last Congress regarding the fact that some of the leases issued in 1998 and 1999 did not contain royalty relief thresholds. Now the Fifth Circuit has upheld summary judgment from a lower court that Interior did not have the authority to impose royalties on those leases in the first place.

Do you believe that it is appropriate to attempt to impose royalties on those leases retroactively, even if it ultimately means breaching contracts that were entered into with private companies? Will you continue to support the practice of deepwater royalty relief in the future?

*Answer.* I believe the focus should be to ensure that the public receives fair value for these resources. The President's Budget Blueprint, released last month, calls for an excise tax on Gulf of Mexico oil and gas production starting in 2011 to ensure a fair return to the public—an approach that would not impose royalties retroactively. I look forward to working with Congress in considering how to best address this issue.

Regarding deep water royalty relief, I have not yet had the opportunity to look at whether there are circumstances where such relief is currently appropriate. This is something that needs to be considered as we look at creating an energy policy that makes sense.

*Question 7.* I realize that Interior does not have jurisdiction over the Clean Air Act, but it is nonetheless an issue that DOI should have an interest in since the some of the department's offshore leases are significantly encumbered.

My concern is that it appears to be unreasonably difficult to obtain an air permit for offshore exploration activity. Offshore exploration is not development or production; it is just a temporary activity. The drill ship moves onto a site for 30 to 60 days and then leaves. The emissions from the drill ship are small and temporary—insignificant compared to permanent installations. Shouldn't it be relatively straightforward to permit these exploration activities?

Specifically, one company has tried for three years to receive a final air permit. Three years and I am told they have spent well over \$11 million. The amount of money spent by the federal government is likely significant as well. Given the temporary nature of offshore exploration drilling activities and the relatively insignificant level of air emissions involved, in combination with the fact that the exploration drilling season is at most three months long on the Alaskan OCS, I am concerned that a situation of diminishing returns is being created. Ultimately, how can the Department of the Interior expect to ever run a strong leasing program if air permits continue to cause delays and increase costs?

*Answer.* One of the goals for meeting our energy needs must be to ensure that we are promoting the right kind of development in the right places. Achieving that goal will require us to have effective and efficient government operations and processes. If confirmed, I will reach across agency lines to identify where bottlenecks exist, promote coordination among agencies, and fashion solutions to ensure that unnecessary delays are eliminated. If confirmed, I will certainly look into the circumstances surrounding this issue to see what needs to be done to meet our country's energy needs.

*Question 8.* One of the most important aspects of any legislation is the precise and accurate definition of the key terms included within it. This is particularly true for the term "renewable energy." Can you list the resources that you consider to be renewable?

*Answer.* On March 11, 2009, Secretary Salazar issued Secretarial Order Number 3285, establishing the development of renewable energy on the public lands and the Outer Continental Shelf as a priority for the Department of the Interior. In that Order, the Secretary mentioned solar, wind, geothermal, incremental or small hydroelectric power on existing structures, and biomass energy as renewable energy sources. The Secretary has also indicated that future Outer Continental Shelf development should include consideration of wind, wave, and ocean current energy as sources of renewable energy. I think this provides a good list of the sources that may qualify as "renewable energy." I also believe it is important to remain flexible about the possibility of identifying additional sources for which the term "renewable energy" would be appropriate.

*Question 9.* In transitioning to cleaner energy technologies, I am concerned that we risk trading our reliance upon foreign oil for reliance upon other foreign min-

erals. We are 56 percent reliant upon imports for the silicon in solar panels, 100 percent reliant upon imports for the rare earths contained in hybrid-electric vehicle motors, and 91 percent reliant upon imports for the Platinum used in fuel cells and other applications. And much of these imports come from places like China, Venezuela, and Russia.

How important do you believe it is that the raw materials for clean energy technologies be produced here in the United States?

Would you consider the jobs associated with providing the raw materials for clean energy technologies to be “green”?

Answer. It is important for the raw materials for clean energy technologies to be produced here in the United States when possible and economically feasible. President Obama has made clean energy technology development an important component of his plans for the recovery of our economy. I believe environmentally responsible production of the raw materials needed for new clean energy technologies can be a part of that effort.

*Question 10.* Less than a year ago, you testified before the Senate Foreign Relations Committee on Cap-and-Trade legislation and your support for the inclusion of an Emission Allowance Account “for use in carrying out forest carbon activities in countries other than the United States” in such a measure. In the President’s budget blueprint, however, he has committed to a 100 percent auction of allowances, which would not allow for the creation of any allowance accounts.

Have you revised in any way your position on spending money raised through Cap-and-Trade on forestation in other countries as a result of the global climate change policies contained in the President’s budget blueprint?

Answer. In the testimony that I delivered for the World Wildlife Fund, I referenced WWF’s support for a specific provision in the Lieberman-Warner bill that would provide funding for local citizens and institutions to monitor forest carbon. If confirmed, I will adhere to whatever position the Administration develops in climate change negotiations and in the legislative context, including whatever funding approaches or priorities it may adopt for forest carbon activities.

*Question 11.* Mr. Hayes, in a number of situations the U.S. Fish & Wildlife Service has utilized the 4(d) and 10(j) provisions of the Endangered Species Act and regulations to designate certain species as a “nonessential-experimental population”. This helped facilitate the reintroduction of species in areas, on private land that might not otherwise have been able to be re-introduced. One that comes to my mind is the Aplomado (Ap-lo-muad-o) falcon restoration in New Mexico.

Could you tell us how those efforts are progressing?

Answer. The nonessential experimental population designation under the Endangered Species Act enables the U.S. Fish and Wildlife Service, in appropriate situations, to reintroduce listed species and assist in their recovery in a manner that minimizes conflict with human activities and provides regulatory flexibility in their management. I have been informed that in the Southwest, where falcons have been reintroduced as a nonessential experimental population since 2006, there are now breeding pairs of aplomado falcons in both New Mexico and Texas as a result of the Service’s work and that of partners such as the Peregrine Fund.

*Question 12.* Mr. Hayes, I know you are acutely aware of the situation in the intermountain west with the overpopulation of Wild Horse and Burros on some rangelands in Nevada, Idaho, Utah, Wyoming and Montana. It was a problem when you left the Clinton Administration and the problem continued through the Bush Administration. Now due to prolonged draught, ever expanding wild horse populations, over populated wild horse facilities, limited budgets, and the failure of the Bureau of Land Management to utilize its legislative authority to euthanize horses, the Bureau is in a crisis on some ranges when it comes to wild horses.

When you left the government in 2001 what were the estimated populations of wild horses in the intermountain states? What are they today?

Answer. I know that maintaining healthy wild horse and burro populations on healthy public rangelands is important to Secretary Salazar. I understand that since 2001, the BLM has reduced on-the-range herd numbers by 25 percent—from 45,500 to about 34,000. I am aware that this is an ongoing issue; wild horses have no natural predators and herd populations can double every four years. The BLM must remove thousands of animals from public rangelands each year to ensure that herd sizes are consistent with the land’s capacity to support them, and to ensure healthy landscapes. If confirmed, I am committed to working with the Congress, stakeholders and the BLM to develop a workable strategy for managing herd populations both on the range and off-range.

*Question 13.* I know the Bureau has expressed real concerns about Mrs. Madeline Pickens’ plan to move 30,000 of the horses to her preserve. What are the

agency's options if the Pickens' plan to take 30,000 horses off the range and out of the holding facilities does not come to fruition?

Answer. I know that Secretary Salazar greatly appreciates Mrs. Pickens' desire to protect wild horses, and I understand that the BLM is open to continuing its discussions with Mrs. Pickens and her representatives. I understand that the GAO recently reported to the Congress that the BLM has limited options for dealing with unadopted animals, and that the costs of pasturing the excess animals removed from the range continue to overwhelm the program. If confirmed, I am committed to working with the Congress, stakeholders, and the BLM to improve the way excess animals are managed while at the same time protecting the wild herds in designated Herd Management Areas, their habitat, and the public lands from the destructive effects of overpopulation.

*Question 14.* Mr. Hayes, in your original confirmation hearing before this Committee you mentioned your involvement in the Headwaters Forest Settlement in California. Can you describe what has happened to the major players in that agreement (i.e., Pacific Lumber Company, the State of California, and the U.S. Forest Service) since the agreement was concluded? Are the U.S. Forest Service, the State, and Pacific Lumber Company better off today than prior to that agreement?

With the benefit of hindsight is there anything you would do differently today, as compared to the agreement that you helped to develop?

Answer. Congress established the agenda for the Headwaters Forest transaction, including the terms for the purchase of the Headwaters Forest, and the requirement for the negotiation of a Habitat Conservation Plan for neighboring lands that remained in private ownership. I was part of a team at the Interior Department that effectuated this Congressional intent. I did not remain involved in the Headwaters Forest matter after leaving the Interior Department in 2001. As a result, I am not in a position to comment on the relative benefits associated with the protection of the Headwaters Forest and the Habitat Conservation Plan that the landowner voluntarily entered into with the United States.

*Question 15.* Mr. Hayes, in your April 22, 2008 testimony before the Senate Foreign Affairs Committee on international deforestation, you spoke quite eloquently about tropical deforestation, and the Kyoto Accords. You reported that the World Wildlife Fund did not believe that countries should be allowed to get credit for existing forest resources as a means to avoiding having to reduce emissions.

Do you still hold that opinion?

If so, when a country allows its forests to burn or be consumed by insect and disease do you believe there should be a price that country has to pay within a global greenhouse gas reduction scheme? Or should we just ignore the fires and neglect what is on going within the borders of those countries, in terms of forest management practices?

Answer. As explained in the testimony, in 1997, when the Kyoto Protocol was negotiated, WWF objected to countries relying on existing forestry resources as a means of avoiding having to reduce emissions from industrial sources. As pointed out in the testimony, however, "the times and circumstances have changed" and WWF indicated that all forest-related issues should now be on the table, including forestry management issues. As a general matter, if confirmed, I anticipate that I will adhere to whatever position the Administration develops regarding the treatment of forest-related issues in climate change negotiations and in the legislative context.

*Question 16.* Over the next few years, the Department of the Interior will play an important role in analyzing our available water resources, the impact of climate change on these resources, and the availability of these resources in maintaining and developing additional supplies of energy.

Please describe how recommendations aimed at climate mitigation and adoption may shape policies developed in the energy and water sectors, and, specifically, to the interrelationship between energy-water.

Answer. This is an important topic to which the Department will be giving significant consideration as we try to understand how climate change is affecting our resources and to anticipate and react to those impacts. If confirmed I would be happy to keep your office informed of our progress.

*Question 17.* Please describe the key institutions, within the Department of the Interior, and other Federal agencies, that should be strengthened to ensure more integrated and effective policy making on climate, energy and water.

Answer. As I noted in my response to the previous question, the answers to this question will be more fully developed as we continue our efforts to understand how climate change is affecting our resources, and to anticipate and react to those impacts. If confirmed, I would be happy to keep your office informed of our progress.

*Question 18.* Amidst all of the other areas of jurisdiction for the Department of the Interior it can be easy to overlook the Department's responsibilities to the territories of Guam, the Northern Marianas, American Samoa, and the U.S. Virgin Islands. What steps will you take to ensure that the territories receive the attention and assistance they need, both from within the Department of the Interior as well as from other federal departments and agencies?

*Answer.* The United States territories are largely self-governing, much like states. Departmental officials seek not to infringe on that self-governance. However, there are times when issues arise that are outside the province of local self-government. When that occurs, I would expect to work through the Department's Office of Insular Affairs, to seek solutions. In addition, issues may arise that could lend themselves to consideration by the Interagency Group on Insular Affairs (IGIA).

While both the Office of Insular Affairs and IGIA provide institutional bases for solving issues of concern in the territories, Secretary Salazar and I, if confirmed, plan to consider possibilities for increasing the authority and effectiveness of these institutions.

*Question 19.* Your name comes up in a couple of September 1999 Washington Times articles concerning the Secretary Babbitt having to recuse himself from involvement in decisions and discussions concerning the Canyon Forest Village near the Grand Canyon. Those articles suggest that Secretary Babbitt used you as his surrogate to communicate his desires concerning that project to the Forest Service who were developing an Environmental Impact Statement on the project.

Please describe what your role was in the communications between Secretary Babbitt and the Forest Service on the Canyon Forest Village project.

*Answer.* In 1999, the Senate Energy and Natural Resources Committee examined those allegations on a bipartisan basis and found them to have no merit. Chairman Frank Murkowski reported this conclusion in a Committee meeting of October 20, 1999. As former and current Committee staff who were involved in this matter can confirm, I did not participate in decision-making that the Forest Service was undertaking with regard to the proposed Canyon Forest Village, a development proposed for construction outside the boundary of the Grand Canyon National Park on U.S. Forest Service land.

*Question 20.* Having been placed in the position of being Secretary Babbitt's surrogate in those discussions can you give us your assurance that you will not require any Department of Interior employee from having to perform a similar role on any of the issues that you have recused yourself from if you are confirmed as Deputy Secretary?

*Answer.* As I stated in my response to the previous question, in 1999 the Senate Energy and Natural Resources Committee examined those allegations on a bipartisan basis and found them to have no merit. Chairman Frank Murkowski reported this conclusion in a Committee meeting of October 20, 1999. As former and current Committee staff who were involved in this matter can confirm, I did not participate in decision-making that the Forest Service was undertaking with regard to the proposed Canyon Forest Village, a development proposed for construction outside the boundary of the Grand Canyon National Park on U.S. Forest Service land.

*Question 21.* In Section 388 of the 2005 Energy Policy Act, Congress directed the Department of the Interior to issue leases, easements or rights of way for alternative energy projects on the Outer Continental Shelf. To date, however, the Minerals Management Service (MMS) has not issued its Final Rule on offshore energy production and no leases or other permits have been granted pursuant to this authority. The Cape Wind project, for example, has been pending since 2001. When do you expect the MMS to have its offshore energy program up and running?

*Answer.* Secretary Salazar has publicly stated that publishing the final rule for offshore renewable energy is a top priority. The rule is currently under review so that we can better understand its operation and determine whether there are any parts of the rule that can be improved. If confirmed, I will work to see that a final rule is published as soon as possible.

*Question 22.* Mr. Hayes, I remain interested in the December 2008 Utah Oil and Gas leasing situation and would like for the Department of the Interior to which you have been nominated to provide the following information:

A list of each of the original parcels nominated and who nominated each parcel to be considered by the BLM for lease for the fall 2008 lease sale. If you cannot provide individual names, or company names, please tell us if the lease request came from a company, individual known to work in the oil or gas industry, or from an individual that is not known to work in the oil or gas industry.

*Answer.* I understand that after an oil and gas lease sale, the BLM will make information available about the parcels sold and successful bidders. However, the BLM does not release information regarding original expressions of interest for par-

cels to be included in an oil and gas lease sale unless and until those parcels are actually offered at an auction and then only upon request. This is considered to be proprietary information. Releasing this information could expose the nominating party's exploration and development strategies to their competitors and affect the integrity of the auction process and the value of bid received. In this instance, all of the nominating entities were either known industry representatives or individuals who work with industry. The BLM advises me that it has not received requests for leasing from individuals not known to work in the oil, and gas industry. If confirmed, I will ensure that the BLM provides you with a copy of the appropriate information related to this lease sale.

*Question 23.* The criteria used by the Department of the Interior to determine which parcels would be withdrawn from the December 19, 2008 lease auction. The Administrative record on how parcels were added to the list for the sale and how each parcel that was withdrawn got withdrawn, along with all e-mails, letters, or records of phone conversations related to requests to add or withdraw individual parcels from the fall 2008 lease sale in Utah.

*Answer.* As you know, Secretary Salazar has expressed his goal of ensuring that oil and gas resources are developed in a thoughtful and balanced way that complies with all legal requirements. The 77 leases in questions were the subject of a court challenge that led to the entry of a restraining order by a federal district court judge. The court concluded that it did not appear that all legally-required environmental analysis had been completed for the leases, and that irreparable harm could occur if the sale of those particular leases were to go forward. The 77 leases that Secretary Salazar withdrew from the sale were the same 77 leases that the court enjoined from sale on this basis. Secretary Salazar removed the leases from the sale to provide an opportunity to review the legal adequacy of the sale. He has committed to undertake that review and, if confirmed, I will work with you as that review proceeds. I understand that, upon completion of this review, it is possible that some of these parcels may be offered in future lease sales.

I am also advised that the BLM compiles an Administrative Record for each of its oil and gas lease sales. If confirmed, I will ensure the BLM transmits to you a copy of the appropriate records for the December 19, 2008, Utah oil and gas lease sale.

*Question 24.* The date of the next lease sale to be held in Utah, given that the law calls for there to be four lease sales per year, and if you delay the March offerings, on what dates will those sales be held to meet the four sales per year direction?

*Answer.* I understand that Utah's next quarterly oil and gas lease sale is scheduled for March 24. Subsequent oil and gas lease sales for 2009 are currently scheduled for May 19, August 18 and November 17.

*Question 25.* In Secretary Salazar's February 6, 2009 memorandum to State Director Selma Sierra, he directed that the 77 leases be withdrawn. In his press statements the Secretary indicated that Interior would conduct further review on whether coordination between agencies and consideration of "cultural resources" were adequate.

Please provide the Committee with a detailed plan for that review, including who will undertake the review, who within the BLM, MMS, and Department will participate in the review, who will lead the review, and deadlines for accomplishing the review.

*Answer.* Due to ongoing litigation surrounding this lease sale, it is my understanding that the BLM has not begun this review, and is currently working with the Solicitor's Office on how best to proceed. If confirmed, I commit to keeping you fully informed as this situation evolves.

*Question 26.* Is it the BLM's or the Secretary's intention to include any public hearings or meetings in relation to this review, and if so how many and where they will be held?

*Answer.* As I noted in the response to my previous question, due to ongoing litigation surrounding this lease sale, I understand that the BLM has not yet begun this review and is currently working with the Solicitor's Office on how best to proceed. If confirmed, I commit to keeping you fully informed as this situation evolves.

*Question 27.* As soon as that review is completed I would like your office to send a copy of it, along with its recommendations and the Secretary's decisions on these leases, to the Committee.

*Answer.* Due to ongoing litigation surrounding this lease sale, I understand that the BLM has not yet begun this review and is currently working with the Solicitor's Office on how best to proceed. If confirmed, I commit to keeping you fully informed as this situation evolves.

*Question 28.* Please also provide the Committee a detailed log of contacts between Agency or the Department and the State and or Federal Prosecutor related to the bid opening for the Utah lease sale which was held in December of 2008. Please include the names of the employees who made the contact, the nature of the contact, and any requests that were made by the Secretary, his office or any of the Department or Bureau of Land Management's employees.

Answer. I understand that this matter is the subject of an ongoing Federal investigation. All materials related to the case, including any records of communications between agency employees and State or federal prosecutors are within the exclusive control of the Assistant United States Attorney for Utah.

*Question 29.* Has a new Administration ever come in, prior to the current Administration, and had its Interior Secretary reverse a lease sale? What is the administrative review process for such a reversal?

Answer. While I am not personally aware of another situation where an incoming Secretary of the Interior has deferred leasing parcels awarded at an oil and gas lease sale, the Secretary has the authority to administratively review oil and gas lease decisions.

*Question 30.* Mr. Hayes, in recent years, the Park Service has demonstrated an inexplicable resistance to embrace the willingness of qualified volunteers to help address wildlife overpopulation situations in national parks. There are tragic overpopulation issues where our majestic elk herds are dying of starvation and depleting their habitat, but the park service has repeatedly resisted efforts to employ the free services of qualified volunteers, instead in some instances paying millions of dollars to foreign companies to hire snipers. At the same time, the park service routinely tells the Congress that it needs more funding to manage our parks. Can you give me your opinion on this inexplicable inconsistency?

Answer. I am aware that overabundant ungulate populations, particularly deer and elk, are common in many modern landscapes, including National Parks. The NPS Organic Act and longstanding NPS policy allow hunting only where it is either mandated or authorized by federal statute. Sixty-one park units authorize hunting. Where hunting is not mandated or authorized, the use of skilled volunteers, pursuant to the Volunteers in the Parks Act, is being considered and in some cases, implemented to assist NPS in reducing deer and elk populations where it is compatible with existing law, regulations, and NPS Policy. I am unaware of any National Park that currently contracts with foreign companies to control native populations of wildlife.

*Question 31.* Mr. Hayes, just two days ago the park service announced a ban on the use of traditional ammunition in all park lands. The park service's news release does not cite scientific evidence that wildlife populations are being negatively impacted by the use of traditional ammunition, and there is no indication that park visitors' health was affected in any way by hunters and wildlife managers using traditional ammunition.

Ammunition containing lead components has been the choice of hunters for well over 100 years, during which time wildlife populations in America have surged. Also, there has never been a documented case of lead poisoning among humans who have eaten game taken with traditional ammunition, and a recent Centers for Disease Control and Prevention study on North Dakota hunters who consumed game confirmed that there was no reason for concern over eating game taken with traditional ammunition. Can you advise the committee whether the park service will be making its regulatory decisions with any scientific basis? Or is the service pursuing some form of agenda hostile to the Second Amendment rights of Americans?

Answer. My understanding is that the announcement made last week by the NPS indicated NPS's intention to begin to remove lead from a limited range of activities conducted by the NPS. I am assured that the reduced use of lead is not intended to have any impact on Second Amendment rights, and is not intended to impact hunters in those parks where hunting is allowed. If confirmed, I will follow up with the Committee on this issue and ensure that any actions taken by the NPS along these lines are supported by sound science and do not impinge Second Amendment rights in any way.

*Question 32.* As you know, I'm committed to the construction of a natural gas pipeline that will bring Alaska's gas to market.

Do you support additional federal incentives for the Alaskan Natural Gas Pipeline?

Answer. At his confirmation hearing, Secretary Salazar specifically stressed the importance of prioritizing the construction of the Alaska natural gas pipeline. The pipeline will play a key role in providing access to the substantial natural gas resources in Alaska that can significantly contribute to our nation's energy and security needs.

*Question 33.* Back in 2004 Congress passed a provision that authorized the government to take over and study an independent pipeline plan and financing mechanism to bring Alaska gas to market, should a pipeline project not proceed within 18 months. The entity to do that plan is not Interior, but Energy, but do you have any feelings about whether now is the time for greater actions to promote an Alaska gas line?

*Answer.* The Secretary in his confirmation hearing emphasized the importance of prioritizing the construction of the Alaska natural gas pipeline. I know that in 2004, the Alaska Natural Gas Pipeline Act greatly enhanced the prospects for the pipeline by providing an \$18 billion federal loan guarantee, significant tax incentives, and streamlined permitting. In addition, the State of Alaska, through the Alaska Gas Inducement Act, provided a \$500 million incentive to the successful licensee. I am aware that since that time, two pipeline projects have been proposed, and various federal and state entities are reviewing the applications as part of the Federal Energy Regulatory Commission (FERC) process for natural gas pipelines. The Department of the Interior is a cooperating agency with FERC and the Office of the Federal Coordinator (established by the Alaska Natural Gas Pipeline Act) in this process. If confirmed, I look forward to working with the Secretary to support the efforts.

*Question 34.* In the Energy Policy Act of 2005, Congress provided for 10-year lease extensions in the National Petroleum Reserve in Alaska (NPR-A). That was because without a gas line being built, it is impossible for companies to develop their gas within a 10-year lease period with no possibility of being able to market their gas. Last year, however, there was talk of revising EPACT and again limiting lease terms under the mantra of “use it or lose it.” What is your feeling about the need for changes to leases, if there is any, for NPR-A leases?

*Answer.* During his confirmation hearing, Secretary Salazar expressed his support for responsible energy development in the National Petroleum Reserve-Alaska. I am aware of the particular challenges associated with oil and gas development in the NPR-A due to the limited window of opportunity in which exploration and development can occur. I am also aware that lease extensions are permitted under certain circumstances (e.g., discovery of an oil or gas resource). If confirmed, I am committed to the construction of a natural gas pipeline that will bring Alaska’s gas to market and look forward to working with you and the Committee as this project progresses. With regard to “use it or lose” it, I look forward to working with you and other Committee Members to evaluate this legislation, including lease term extensions.

*Question 35.* An issue of tremendous importance to my home state, Alaska, is the 1002 Area of the Arctic National Wildlife Refuge. If confirmed, would you support the development of this area, its permanent designation as wilderness, or leaving its status as it is today?

*Answer.* Secretary Salazar is committed to continuing responsible oil and gas development throughout the United States. The decision regarding the potential use or designation of the 1002 Area of the Arctic National Wildlife Refuge ultimately will be Secretary Salazar’s and the President’s.

*Question 36.* This past November, the U.S. Geological Survey released its assessment of gas hydrates located beneath the North Slope of Alaska. The survey indicated that up to 85.4 trillion cubic feet of this clean-burning resource may be present, but that additional research would be necessary to demonstrate that it is economically viable and possible to produce. Do you support additional research related to gas hydrates? While DOE had some money, \$15 million in its FY 09 budget, USGS still had no funding for such work. What is your reaction to USGS getting back into the study of methane gas hydrates?

*Answer.* I have been informed that the U.S. Geological Survey has been studying gas hydrates since the mid-1980’s. This long record of gas hydrate research has allowed for recent advances such as the technically recoverable resource assessment released in November, current efforts by the USGS and the Bureau of Land Management to evaluate the impact of gas hydrate energy resource development in Northern Alaska, and the planning of long term production tests on this important potential energy resource. I look forward if confirmed to learning more about natural gas hydrates.

*Question 37.* As a top official at Interior Secretary, the environmental community will likely press you to designate even more federal lands in Alaska, perhaps by creating de facto wilderness areas via the Antiquities Act. However, the aptly named “no-more” clause in the Alaska Lands Act bars the withdrawal of more than 5,000 acre tracts in Alaska for more than a year absent Congressional approval. What is your position on land withdrawals under the Antiquities Act?

Answer. If confirmed, I will work with the Solicitor of the Department of the Interior to ensure that the Department complies with the Alaska National Interest Lands Conservation Act and all laws.

*Question 38.* March 24th is the 20th anniversary of the Exxon Valdez Oil Spill that savaged the environment in Alaska's Prince William Sound. Three years ago the Department of Justice at the encouragement of the Interior Department and this Senator filed papers to "reopen" the civil settlement with Exxon involving damages to seek additional money to pay for cleanup efforts. The government agreed to seek \$92 million in additional aid to speed cleanup on beaches where oil can still be found in the gravels. Efforts to press the "reopener" clause have been moving seemingly slowly. Can you give me any information on your feelings about the reopener and if there is anything you can do at Interior to speed the court action to gain those funds, perhaps by better funding research needed to make the legal case for the need for the funds to pay for additional cleanup?

Answer. As a result of my prior positions at Interior, I am generally aware of the "reopener" provisions of the settlement which enable both the United States and the State of Alaska to obtain additional recoveries from Exxon for the restoration of the natural resources injured by the oil spill. I am not personally familiar with the status of the reopener claims presented by the United States and Alaska. If confirmed, I will work closely with our Solicitor's Office, the Department of Justice and the State of Alaska to ensure that we provide the support necessary to further these claims and that the obligations of Exxon under the 1991 settlement are fully met.

*Question 39.* The U.S. Fish and Wildlife Service is considering listing dozens of Alaskan species under the Endangered Species Act, such as walrus and seals, in addition to Beluga whales. The North Slope Science Initiative (NSSI) was established in Alaska to produce sound science upon which to base these important policy decisions but funding for the NSSI has been very limited and is nonexistent in the FY 09 Omnibus budget. Will you support additional funding for the NSSI as you build your detailed FY 10 budget submissions for release next month?

Answer. We value the added scientific information that is made available through the North Slope Science Initiative. I will evaluate the funding opportunities for the NSSI as we develop our future budgets.

*Question 40.* As we celebrate the 50th anniversary of Alaska's statehood, we are still waiting for the federal government to complete the land conveyances promised to the State in 1959. Four years ago, I sponsored the Alaska Statehood Lands Acceleration Act to complete the conveyances within the next year. While enactment of that legislation did improve the pace somewhat, approximately 35 million acres of land must still be transferred. If confirmed, will you commit to providing funding to help complete these land transfers?

Answer. We are eager to complete the conveyance of these lands to the State and Native Corporations. I will commit to examine the funding opportunities for the Alaska Conveyance program in the Bureau of Land Management's budget.

*Question 41.* Included in the Committee's omnibus lands package now pending before the House, and perhaps soon back before the Senate in a vehicle other than S-22, is a land-exchange involving the Izembek Wildlife Refuge. This legislation provides for a one-lane gravel road, from Cold Bay to the King Cove airport, for medical emergency cases. What is your position on this legislation? As a key Interior official, will you support the package if the House passes it and sends it to the President for his signature?

Answer. I have not had an opportunity to review the numerous provisions included in S. 22, the Omnibus Public Land Management Act. Therefore, I am not in a position at this time to make specific recommendations regarding whether or not the President should sign it into law. In regard to the Izembek National Wildlife Refuge provision specifically, I am cognizant of the safety concerns of the local communities, as well as the environmental concerns voiced by a variety of organizations. If confirmed, I will work in the Department of the Interior to ensure that the Department complies with this provision if it is signed into law.

*Question 42.* The BLM has done a good job in recent years in funding the cleanup of abandoned oil wells in northern Alaska—wells developed by the government in National Petroleum Reserve as part of its government-led exploration efforts in the early 1980s. The FY 09 bill includes \$6 million in funding, for which we are very appreciative. Unfortunately the estimates are that there is another \$150 million of cleanup work still needed from abandoned, federal, not private industry drilled wells. Will you support this continued funding in the Interior Department's budget?

Answer. I am aware that the remediation of the historic abandoned oil wells in the National Petroleum Reserve-Alaska is an important issue. If confirmed, I will work to support the BLM in its ongoing efforts to evaluate and address these abandoned wells to protect public health and safety and the environment.

## RESPONSES OF DAVID J. HAYES TO QUESTIONS FROM SENATOR MCCAIN

*Question 43.* As you know, 18 U.S.C. Section 207(c) sets forth, “any person who is a officer or employee of the executive branch of the United States (including an independent agency)...within 1 year after termination of his or her service or employment as such officer or employee” may not knowingly make “with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency...”

Attached are three lobbying disclosure reports\* that were filed by Latham & Watkins stating that you lobbied the Department of Interior during the period of July 1, 2001, to December 31, 2001, in an apparent violation of 18 U.S.C. Section 207(c). As I understand it, you left the Department of Interior in January of 2001. Please explain representations on behalf of clients Hearst Corporation Sinalca Land & Livestock Division and Sempra Energy in 2001.

Answer. As I stated at the hearing, and as explained in a letter that I provided to the Committee on March 9, 2008, I did not contact any official at the Interior Department on behalf of a client within one year of my service as Deputy Secretary of the Interior in the Clinton Administration.

Confusion apparently has arisen because the Lobbying Disclosure Act requires that Latham & Watkins file a single lobbying report for each company for each reporting period. This single report must list all covered entities that have been contacted by any Latham & Watkins employee during the relevant period, and it also must identify all individuals in the firm who have engaged in any lobbying contacts during the period, even if an individual (such as me) had no lobbying contacts with some of the entities listed on the report (such as the Department of the Interior). It is because the Act requires that all individuals and entities contacted be filed on a single report that my name appears on reports that Latham & Watkins filed for two companies in 2001, even though I did not contact any official at the Interior Department on behalf of either company in 2001.

With regard to the lobbying contacts that I made during the one year period after I left the Department of the Interior in January 2001, my lobbying contacts for the Hearst Corporation were limited to briefings with Congressional delegations about the potential conservation of Hearst Ranch property in San Simeon, California and, for Sempra Energy, Congressional briefings regarding the potential construction of an electric transmission line in southern California.

*Question 44.* In your letter to Melinda J. Loftin, Designated Agency Ethics Official and Director for the U.S. Department of Interior, you state “[o]n December 31, 2008, I retired from my position as a partner with the law firm of Latham & Watkins.” Until December 31, 2006, it appears you spent your entire career at Latham & Watkins serving as a registered lobbyist for many of the firm’s clients, according to the Lobbying Disclosure Act Database.

Did you stop lobbying activities beginning January 1, 2007, as shown by the Lobbying Disclosure Act Database? If so, why?

Answer. During the 2001 to 2008 period, I was practicing law and was providing legal services to clients in a variety of matters, typically including negotiations and/or litigation regarding existing and/or potential legal disputes. I typically worked with teams of lawyers on legal matters only. I had minimal lobbying contacts for very few clients (only four, over the eight year period from 2001 through 2008). In each case, the lobbying contacts were incidental to legal representations that the law firm was handling. The contacts constituted a very small percentage of the work that I was engaged in during the 2001 to 2006 period—and none during the 2007 and 2008 period.

With regard to the end of my lobbying contacts in 2006, I note that by 2006, I was only involved in a single matter that involved lobbying contacts. I was not the lead lawyer for the matter and had limited involvement in it. (This was a transmission matter involving complex rights-of-way that one of my partners was handling for San Diego Gas & Electric.) I was removed from the lobbying reports at the end of 2006 because I was fully engaged in legal matters for other clients and was no longer an active participant in the legal team working on the project. Although Latham & Watkins dropped my name from the registration in 2006, the law firm maintained its registration for the matter, as required by the Lobbying Disclosure Act, so that the other lawyers at Latham & Watkins who were actively working

\* Reports have been retained in committee files.

on the matter could have the flexibility to provide briefings to Congress and relevant federal agencies on the matter, if needed.

*Question 45.* If you were not lobbying on behalf of clients at Latham & Watkins beginning January 1, 2007, could you please explain what duties you performed at the firm from January 1, 2007, to December 31, 2008?

Answer. As explained above, during the 2001 to 2008 period, I was practicing law and was providing legal services to clients in a variety of matters, typically including negotiations and/or litigation regarding existing and/or potential legal disputes. I typically worked with teams of lawyers on legal matters only. I had minimal lobbying contacts for very few clients; in each case, the lobbying contacts were incidental to legal representations that the law firm was handling. My involvement in those few matters for which I had lobbying contacts ended by the end of 2006. In 2007 and 2008, I continued to handle legal matters, including negotiations and litigation matters—just as I had during my entire tenure at the law firm.

*Question 46.* From a review of the lobbying disclosure forms filed by Latham & Watkins, it appears your firm continued to lobby the Department of Interior, the Senate and the House on behalf of many of the clients for whom you performed lobbying duties between 2001 and 2006. To what extent did you continue to be involved with these clients between January 1, 2007, and December 31, 2008?

Answer. The statement that lawyers at Latham & Watkins continued to lobby the Department of the Interior, the Senate and the House on behalf of many of the clients for whom I performed lobbying duties between 2001 and 2006 is not correct. Three of the four clients for whom I was a registered lobbyist prior to 2007 completed the projects that were the subject of lobbying contacts before the end of 2006. More specifically, the Hearst Corporation, Sempra Energy and MWD matters were completed in 2003, 2004 and 2005, respectively, and lobbying termination reports were filed in those years. The San Diego Gas & Electric matter continued at the firm after 2006, but without my active involvement, as explained above.

*Question 47.* As I understand it, while working at the Department of Interior during the Clinton Administration, you served as the chief negotiator for the Department of Interior during discussions between water districts in California which included Metropolitan Water District as a party. You then left the Department of Interior and became a lobbyist for Metropolitan Water District. If confirmed, to what extent will you be involved in further negotiations with Metropolitan Water District or issues related to California water resources?

Answer. As explained above, the nature and scope of my legal work for MWD at Latham & Watkins was narrow and the subject matter of that limited representation is not implicated in California water issues that are currently before the U.S. Department of the Interior.

*Question 48.* You recently served as a Senior Fellow at the World Wildlife Fund and according to its website, “As senior fellow at WWF, Hayes has been a key advisor on forestry issues, specifically on reducing carbon emissions from deforestation, and has played an integral role in developing WWF’s public policy strategy and has testified before Congress on behalf of the organization.” Did you lobby Congress or the Department of the Interior during the past two years on behalf of the World Wildlife Fund?

Answer. No, I did not lobby Congress or the Department of the Interior during the past two years on behalf of the World Wildlife Fund. I testified before the Senate Foreign Relations Committee, but that testimony was not a lobbying contact, as noted in Section 3(8)(B)(vii) of the Lobbying Disclosure Act.

*Question 49.* At the same time you served as the chairman of the Environmental Law Institute (ELI), you were representing clients of Latham and Watkins as Global Chair of the Environment, Land & Resources Department, some of whom were involved in energy development in Western states. One such client was Sempra Energy which sought to build a natural gas-fired power plant in southern California. That proposal was met with stiff resistance from state and local authorities who would have required Sempra to comply with strict air quality regulations. Facing mounting opposition and environmental analyses, Sempra opted to move its plant across the border to Mexico where environmental standards are less strict. To what extent, if any, was your role in the development of this project? Do you believe bypassing U.S. environmental laws was an honorable action by Sempra? How were you able to simultaneously reconcile the clear differences between the missions of Sempra, a Western energy company, and ELI, an environmental justice advocacy group?

Answer. I had no involvement in the development of a natural gas-fired power plant in Mexico by Sempra Energy, and I have no knowledge of the factors that Sempra Energy took into account in constructing the plant.

*Question 50.* In 2005-2007, you represented Ford Motor Company in their attempts to have the Borough of Ringwood, New Jersey, pay the bill for the cleanup of Ford's industrial waste sludge—approximately \$17 million. At the time you publicly stated that it was “outrageous” to suggest that the Mayor and Council of Ringwood were unaware of Ford's disposal activities. Do you still believe the Ringwood community possessed full knowledge of Ford's actions?

Answer. Ford has been engaged in a legal dispute with the Borough of Ringwood regarding the cleanup of a historical disposal site that was successively owned and operated by both Ford and the Borough of Ringwood. EPA issued an Order that the Borough assist Ford in financing on-going cleanup activities at the site based on EPA's conclusion that the Borough shared liability for cleanup costs due to its prior involvement in waste disposal activities on the site. The letter referenced in your question pertained to the Borough's failure to comply with the EPA Order against the Borough. The dispute has not impacted on-going cleanup efforts at the site; Ford has been the sole financier of investigative and cleanup costs that have been incurred in the last several years.

*Question 51.* In April 2006, you wrote an article for the Progressive Policy Institute that strongly condemned conservative energy and land management policies. Specifically, you wrote that conservatives believe “the West's natural resources are inexhaustible, exploiting them will produce a bonanza of dollars and jobs, and federal bureaucrats with title to the land are the only thing blocking that utopian vision from becoming reality.” Do you stand by the article? Can you pledge that your views of conservative policy will not prevent you from working constructively with conservative members of Congress?

Answer. In the Progressive Policy Institute article, I criticized the Bush administration for “push[ing] the conservative agenda in the West harder than many of its strongest supporters ever dreamed.” I suggested that the Bush administration was reinforcing outdated and misinformed western stereotypes to promote a natural resources agenda that lacked balance. I do not believe that most Americans—whatever their political leanings—embrace natural resource policies that are not balanced, or the stereotypes that such policies can appear to reinforce. As discussed throughout the article, I favor pragmatic, common sense and solution-oriented approaches to resolving natural resources disputes and, if confirmed, I will work constructively with Congress and individuals of all political persuasions to address our natural resource challenges.

*Question 52.* We have seen increasing concerns regarding the quality of the Colorado River water due to uranium tailings, nitrates, and pharmaceuticals. These issues have been raised and prioritized by the Colorado River Regional Sewer Coalition (CRRSCo). What role do you anticipate the Department of Interior will play in addressing water quality issues raised by CRRSCo?

Answer. First, let me assure the Committee that I believe the overall water quality of the Colorado River is good. I understand the concerns about water quality along the Colorado River system as demands on the River continue to grow.

I believe the Department must continue to seek opportunities to collaborate with the many and diverse stakeholders with interests in the Colorado River. No one agency can hope to address all the concerns involving the Colorado River by itself; however, we can work to ensure that these groups are successful by bringing the right agencies together to address specific issues.

It is my understanding that the Department has already worked with the CRRSCo, exploring a possible method of reducing nitrates from municipal wastewater discharges and has facilitated bringing the Environmental Protection Agency (EPA) into the process of addressing water quality issues. EPA's involvement with the CRRSCo is appropriate, as that agency has the statutory authority and ability to play a more operational and positive role in meeting the CRRSCo members' needs. I see facilitation as an important role; one that the Department should continue.

*Question 53.* In a March 2007 Bureau of Reclamation report entitled, “Wastewater Treatment Needs Along the Lower Colorado River,” the Bureau concluded it would cost \$2.1 billion over a 20-year timeframe to address nitrate pollution issues in the Lower Colorado River Basin. If confirmed, what measures will the Department of Interior propose to assist these smaller communities, who cannot raise the funds alone? How will you coordinate with other Federal agencies to address these concerns?

Answer. I am aware of the referenced report and want to note that it was a preliminary assessment. I understand and agree that funding major wastewater treatment facilities can be an overwhelming burden for local governments, especially smaller communities. I believe the Department should always be sensitive to local

needs and provide funding and technical assistance within its statutory authorities and budget capability.

To assist smaller communities with wastewater treatment issues, the Department can facilitate communications with appropriate Federal and State agencies that have the authorities and capabilities to meet these needs.

Currently, it is outside the statutory scope of authority of the Department and Reclamation to fund construction of municipal wastewater treatment facilities, and I would not seek an expansion of authority in this area. However, as a Federal agency with major operational responsibilities on the Colorado River, I believe the appropriate role is to be involved and provide leadership in coordinating with states, Indian tribes, and local communities to bring the right players to the table to resolve issues.

*Question 54.* Quagga mussels have become a serious threat to the Lower Colorado River Basin, its lakes and tributaries. What is the Department's plan for abating the onslaught of quaggas?

Answer. Aquatic nuisance species can have a significant negative ecological and economic impact. If confirmed, I will engage all the relevant Department of the Interior bureaus to strategically plan and implement invasive species prevention and control activities related to quagga mussels.

*Question 55.* Five years ago, Congress authorized a boundary expansion of the Petrified Forest National Monument (P.L. 108-430) by means of acquiring both private and State-owned lands through purchase, donation, or exchange. How do you propose to manage the process that identifies state properties for acquisition by the National Park Service? How about for private properties identified for acquisition?

Answer. I am aware that the acquisition of private and public property as part of this legislation is ongoing. The property in question is a checkerboard of federal, State and private lands. The identified private landowners have indicated their willingness to sell their property. Negotiations to purchase or trade federal lands to fulfill the terms of this legislation are near completion. If confirmed, I will direct staff to continue to work with our State of Arizona partners to review this situation and arrive at a resolution that will satisfy all parties.

*Question 56.* I believe the responsible use of nuclear energy will play a pivotal role in addressing global climate change. About 90% of the uranium used in our nation's 120 operating nuclear power plants is imported from foreign countries. As demand for nuclear energy increases both in the U.S. and overseas, we will need to increase the development of our vast, untapped domestic uranium supplies. Do you believe uranium can be mined and reclaimed in an environmentally sound way using current technology?

Answer. President Obama has stated that it is unlikely that we can meet our aggressive climate change goals unless we continue to utilize nuclear power. I am aware that uranium mining, vital to nuclear power, must comply with current surface management regulations, environmental laws, and Federal and state permitting requirements. Additionally, operators must submit a bond that covers the full cost of reclamation before any ground disturbing activity occurs. If confirmed, I will work to ensure that uranium mining on the public lands is done in an environmentally sound manner.

*Question 57.* Can you assure the Committee that the Department will provide the necessary resources, within existing rules and guidelines, to complete the required environmental studies that are needed to assess the full impact of uranium mining in areas that are environmentally sensitive and culturally significant?

Answer. Yes. If confirmed I will ensure that we budget adequately for the environmental studies that are necessary to assess the full impact of uranium mining on Federal lands and on natural and cultural resources.

*Question 58.* There are several pending Indian water settlements in the West, as you likely know. For those settlements that Congress authorizes, how will you ensure there are sufficient resources to implement those settlements?

Answer. During my past service to the Department of the Interior, I was responsible for the Department's Indian Water Rights Settlement initiative and these settlements are of personal interest to me. I am familiar with the funding challenges that new settlements face, having faced the same challenges with the settlements achieved under my watch. An unprecedented number of Indian water rights settlements are approaching finalization and many are already making their way through Congress. There is a real need for the Federal government to identify reliable and appropriate funding sources for these settlements. If confirmed, I will work with Congress and with the Office of Management and Budget to analyze potential funding sources and identify appropriate mechanisms for funding. Part of this analysis may involve consideration of whether other Federal agencies besides Interior with mandates that overlap the policy goals achieved through these water rights settle-

ments could appropriately fund parts of settlements. On a case-by-case basis, I will also work with groups actively negotiating settlements to identify potential funding sources unique to individual settlements and to ensure that all reasonable cost sharing opportunities are fully explored.

RESPONSES OF DAVID J. HAYES TO QUESTIONS FROM SENATOR WYDEN

*Question 59.* The 2007 energy bill included a definition of renewable biomass that excluded all biomass from Federal lands. I recently introduced a bill to amend the Clean Air Act to modify the definition of the term “renewable biomass” contained in the Federal Renewable Fuel Standard so that biomass from National Forests and Bureau of Land Management forests is eligible as a fuel source under this standard (S. 536). This definition includes protections for sensitive lands and requirements that projects be sustainable. I intend to work to ensure that this definition also gets incorporated into the Renewable Electricity Standard and other future pieces of legislation. Will you work with me to ensure that Federal lands aren’t off limits as a source of biofuels?

*Answer.* Development of renewable energy sources, including the use of biomass is an issue that is important to President Obama and Secretary Salazar. If confirmed, I will work to ensure that appropriate federal lands are available as sources of biofuels.

*Question 60.* The recently passed stimulus includes funding for hazardous fuels reduction work, which has an incredible backlog. Will you work with the Senate Energy Committee and the Chief of the Forest Service to move aggressively to advance hazardous fuels reduction projects—particularly in areas where the danger to forests and communities is the greatest and where BLM and National Forest lands are intermixed and require an extra measure of coordination? And will you commit to helping identify opportunities to develop uses for woody biomass that would result from these fuel reduction activities and could provide a source of revenue to finance them?

*Answer.* As I noted in my response to the previous question, development of renewable energy sources like biomass is an important issue and, if confirmed, I will ensure that the Department is working with all stakeholders in reducing hazardous fuels in a coordinated fashion and developing opportunities to use biomass from these projects.

*Question 61.* I have been deeply troubled by the ethical problems at the Interior Department. Whether it’s Jack Abramoff, or Steve Griles or Julie MacDonald, the news from the Interior Department shows example after example of an agency where private and political interest was placed above the public interest. One Inspector General report initiated at my request found that a former deputy assistant secretary inappropriately influenced two-thirds of the endangered species decisions that were investigated. As Deputy Secretary, what will you do to 1) make sure that the tainted decisions are fixed, 2) ensure that that these types of improper actions highlighted in the Inspector General’s findings no longer take place at Interior employees and 3) build on Secretary Salazar’s efforts to reform and clean up the Agency so that this never happens again?

*Answer.* Secretary Salazar has made it clear that he will not tolerate the kind of actions that were highlighted in the Inspector General’s report, and neither will I if confirmed as Deputy Secretary. I am also in firm agreement with the Secretary in stressing the importance of scientific integrity in our decisionmaking.

*Question 62.* Senator Salazar made a commitment to get back to us with a timetable as to how and when the Department will correct the tainted decisions identified in the Inspector General’s Report on endangered species decisions. Can you give us an indication of when we will be able to get that from the Interior Department?

*Answer.* This issue is a high priority. I understand that these decisions are being reviewed as the Secretary gets his team in place and that he has said he will provide information on those matters at that time.

*Question 63.* While these decisions are being revised, they are being used as a basis for a host of projects and land management decisions that are moving forward. How will you ensure those decisions and projects also receive review and that no improper harm comes to a species or its habitat while the tainted decisions are being reviewed?

*Answer.* Review of these projects, as well as the decisions that allowed them to go forward, will occur as the Department’s fish and wildlife and legal teams are put into place. I know that the Secretary is working deliberately in this regard.

*Question 64.* Will you remove or reassign career staff who have been named by the Inspector General or Government Accountability Office as having improperly influenced species decisions?

Answer. These are personnel matters and decisions that will be made in accordance with appropriate guidelines and requirements relating to the career civil service. The Secretary is on record, however, as noting that any necessary and appropriate steps to redress improper decision-making regarding endangered species determinations will be taken.

*Question 65.* At the end of the last Congress, Sen. Barrasso and I introduced legislation to begin to reform the Minerals Management Service, by making the Director a Presidential appointee and Senate confirmed. It is the only major agency within Interior that doesn't have Senate confirmed director or statutory framework governing its responsibilities. We also required the Secretary to implement all of the outstanding Inspector General's recommendations. Once you get in, I would like to work with you to drain the swamp and create some basic level of accountability and checks and balances. You could install a new Director, in the interim, to begin the process, but I would still like to make some of these changes statutory. Will you work with me to help make these changes permanent?

Answer. This is an important issue. As you know, Secretary Salazar recently launched an ethics reform initiative that is intended to reexamine the potential criminal conduct that the Inspector General wrote about, to look at restructuring the agency's oil and gas royalty program, and to thoroughly review the Department's ethics regulations and policies. He has also met with Minerals Management Service employees in Colorado.

*Question 66.* Several basins in Oregon are going through major efforts to improve habitat, stream flows and provide adequate water supplies—the Klamath, Deschutes, Umatilla among others. These projects cut across agency departments. I want to work with you to establish a process that we can use to work through these issues on a basin by basin basis with your Department. Can I get your thoughts on how we might do that?

Answer. I am happy to work with you to develop efficient and effective cross-departmental approaches to basin-specific projects.

*Question 67.* The Deschutes Basin recently reintroduced endangered salmon and the communities, the Tribes, irrigators and Portland General Electric are all making great strides, with the Bureau of Reclamation and Fish and Wildlife support, to develop a Habitat Conservation Plan. Will you support your Department's continued involvement in these efforts?

Answer. I know that Secretary Salazar supports these ongoing efforts, and if confirmed I will support them, as well.

*Question 68.* I have a bill to expand the Oregon Caves National Monument boundary by 4,084 acres to include the entire Cave Creek Watershed, the management of which would be transferred from the United States Forest Service to the National Park Service. Last year at a hearing on this bill, the Park Service gave testimony that contradicted their long held position supporting expansion of the Monument boundary—a position held since the 1930's and articulated in the Monument's 1998 General Management Plan. I believe this was politically motivated. Can I get your commitment to look with fresh eyes at this legislation, which I will again be seeking to move this year?

Answer. Yes, If confirmed, you have my commitment that I will review this legislation with fresh eyes.

*Question 69.* There are a number of Tribes in my home state that face a number of challenges and are also involved in a whole host of projects involving the Department of Interior. As you know, this Bureau too has faced a number of criticisms of mismanagement and lack of responsiveness to needs within the Tribal community. In President Obama's announcement of Secretary Salazar's nomination, he acknowledged that among the many responsibilities is to help ensure that we live up to our treaty obligations and honor a nation-to-nation relationship with tribes. People often think the Bureau of Indian Affairs' has the only direct federal relationship with tribal governments. However, many tribes in Oregon and across the West have treaty reserved rights that extend beyond their reservations and are likely to be impacted by the other programs within Interior, such as management of parks and refuges and Bureau of Land Management lands and where activities might involve grazing, logging, irrigation, and mining. How will you go about ensuring that the federal relationship extends across all agencies and services in Interior and not just the BIA?

Answer. Secretary Salazar has been clear in the importance of and his commitment to the consultation process with tribes by all Interior bureaus and agencies—not just the Bureau of Indian Affairs. If confirmed, I will work with Secretary Salazar to ensure that all corners of the Department are engaging in government-to-government relationships with the tribes.

*Question 70.* How do you propose cleaning up the Bureau of Indian Affairs and creating trust once again between the Tribes and the Federal Government, especially following major legal challenges such as the *Cobell v. Kempthorne* lawsuit, that alleges mismanagement of the Government's trust obligation?

Answer. As I noted at my confirmation hearing, our trust obligation is a challenge that I accept without hesitation. If confirmed, I will make certain that lines of communication are open and the sovereignty of tribes and their rights to self-determination and self-governance are fully recognized.

*Question 71.* The Interior Department's compensable trust obligation to manage Indian lands is certainly equal to that owed by the US for the management of Forest Service or BLM public lands. And even while funding for managing those lands has been very woefully inadequate, BIA funding for managing these natural resources is just a fraction of that spent by other federal agencies. Shouldn't Indian trust resources receive the same level of support accorded similar public lands?

Answer. If confirmed, I will ensure that the Department looks at the funding levels for the management of Indian lands as we develop our budget requests for the coming years.

*Question 72.* A number of our Tribes are actively involved in alternative energy development. Do you have a vision to provide opportunities for Tribes to create alternative energy?

Answer. I support efforts to increase economic development opportunities in Indian country through the development of alternative energy sources. As part of our plan to increase alternative energy resources for America, I expect the next Assistant Secretary for Indian Affairs to focus on this challenge.

*Question 73.* The continuing uncertainty regarding unquantified Tribal water rights encumbers Tribal economic development and, in many cases, especially among treaty tribes in the Pacific Northwest, prevents the exercise of treaty-reserved fishing rights. Unquantified Tribal water rights also cloud non-Indian water rights and development in affected basins—and can be the source of conflict between Tribes and their surrounding communities. What are your plans as Secretary of the Interior to prioritize the settlement of Tribal water rights?

Answer. If confirmed, I commit to looking at the Department's criteria and the overall process for settlement of Indian water rights.

*Question 74.* A federal agency (non-Interior) began construction of a large-scale public works project on the Oregon side of the Columbia River without consulting with the tribes holding treaty fishing and access rights in the affected area. The resulting work stoppage could cost American taxpayers millions of dollars. Will the Department of Interior work with the White House to set the standards for adequacy and best practices in consultation with Indian Country?

Answer. As I noted above, consultation is an important aspect of our relationship with federal tribes. I expect the Department to be a leader in ensuring that Federal agencies engage in consultation with affected tribes in connection with projects that impact these rights and interests.

*Question 75.* Two blue ribbon independent assessments over the past 16 years have found BIA per acre Forestry funding to be only about 1/3 that of the U.S. Forest Service. (FY 1991 BIA per acre: \$4.14, USFS per acre: \$11.69. See An Assessment of Indian Forests and Forest Management in the United States, IFMAT 1 Report, November 1993, Table 11, page V4. FY 2005 BIA per acre: \$2.83, USFS per acre: \$9.51. See IFMAT 2 Report, December 2003, Table 2, page 9.) Funding for ESA activities on Indian trust lands is only a quarter of that for BLM. (FY 2008 BIA ESA: \$1.228 million divided by 56 million trust acres = \$00.02.19 (or 2.2 cents) per acre. FY 2008 BLM ESA: \$22.3 million divided by BLM's 258 million acres = \$00.08.6 (or 8.6 cents per acre). What will you do to ensure more parity in funding for Tribal lands?

Answer. If confirmed, I will ensure that the Department looks at the funding levels for the management of Indian lands as we develop budget requests for the coming years.

*Question 76.* The Umatilla Tribe's Umatilla River Basin settlement happens to have significant workforce employment, small business and on-farm economic and regional economic stimulus attributes. Importantly, this economic stimulus opportunity is in rural northeast Oregon. Literally hundreds of farms can be rescued and new agriculture on the Umatilla Indian Reservation can be developed. Will you advocate for and is the Administration planning to include Indian water rights settlement projects as part of actions nationwide?

Answer. As I stated above, if confirmed I will commit to looking at the Department's criteria and the overall process for settlement of Indian water rights.

*Question 77.* In the Umatilla Basin, the State, irrigators and the Confederated Tribe of the Umatilla Indian Reservation have worked hard and support the Depart-

ment of Interior's two related and continuing studies: Indian Water Rights Assessment study (due mid-2009) and Reclamation's water supply study (also due mid-2009). Can you commit to ushering these studies forward and using them as the basis to construct a comprehensive project to meet water needs in the basin?

Answer. I can commit to examining this issue and working to ensure the completion of these studies in a timely manner. I would want to examine them and understand the financial implications before I commit to the construction of a comprehensive project.

*Question 78.* What are your views on funding for habitat conservation plans under section 10 of the Endangered Species Act? Currently, mitigation funding as well as funding to maintain habitats are woefully absent. Will you provide leadership to better balance funding for mitigation and maintenance to off-set the impacts of development in listed species critical habitats?

Answer. I am committed to finding ways to make the Endangered Species Act work for landowners affected by the requirements of the Act. If confirmed, I will work with Secretary Salazar and the Department's staff on this important issue.

*Question 79.* S. 22, the Omnibus Public Land Management Act of 2009 includes a provision extending the Department's authority to enter into cost-shared programs to protect endangered salmon and other species in the Northwest. This program funds fish screens, diversions, and other measures that prevent these endangered fish from being inadvertently diverted into irrigation systems and has been extremely cost effective. The new bill would extend the Fisheries Restoration and Irrigation Mitigation Act (FRIMA) until the year 2015. If confirmed, would you commit to fund the FRIMA program?

Answer. While I cannot make funding commitments, as funding Interior programs is decided through the Administration's budget process, in consultation with the Office of Management and Budget, I can commit to look at the issue of funding for the FRIMA program, should I be confirmed.

#### RESPONSES OF DAVID J. HAYES TO QUESTIONS FROM SENATOR BENNETT

*Question 80.* Mr. Hayes, I remain interested in knowing more about the December 2008 Utah Oil and Gas leasing situation and would like your office to provide the following information.

Please provide the Committee with a list of each of the original parcels nominated along with who nominated each parcel to be considered by the BLM for lease for the fall 2008 lease sale. If you can't provide individual names, or company names please tell us if the lease request came from a company, individual known to work in the oil or gas industry, or from an individual who is not known to work in the oil or gas industry.

Answer. I understand that after an oil and gas lease sale, the BLM will make information available about the parcels sold and successful bidders. However, the BLM does not release information regarding original expressions of interest for parcels to be included in an oil and gas lease sale unless and until those parcels are actually offered at an auction and then only upon request. This is considered to be proprietary information. Releasing this information could expose the nominating party's exploration and development strategies to their competitors and affect the integrity of the auction process and the value of bid received. In this instance, all of the nominating entities were either known industry representatives or individuals who work with industry. The BLM advises me that it has not received requests for leasing from individuals not known to work in the oil and gas industry. If confirmed, I will ensure that the BLM provides you with a copy of the appropriate information related to this lease sale.

*Question 81.* Please provide the Committee with a detailed administrative record to show the process BLM used to add parcels to the list for the sale.

Answer. I am advised that the BLM compiles an Administrative Record for each of its oil and gas lease sales. If confirmed, I will ensure that the BLM transmits to you a copy of the appropriate records for the December 19, 2008, Utah oil and gas lease sale.

*Question 82.* Please provide detailed justifications for withdrawing each of the 77 parcels.

Answer. As you know, Secretary Salazar has expressed his goal of ensuring that oil and gas resources are developed in a thoughtful and balanced way that complies with all legal requirements. The 77 leases in questions were the subject of a court challenge that led to the entry of a restraining order by a federal district court judge. The court concluded that it did not appear that all legally-required environmental analysis had been completed for the leases, and that irreparable harm could occur if the sale of those particular leases were to go forward. The 77 leases that

Secretary Salazar withdrew from the sale were the same 77 leases that the court enjoined from sale on this basis. Secretary Salazar removed the leases from the sale to provide an opportunity to review the legal adequacy of the sale. He has committed to undertake that review and, if confirmed, I will work with you as that review proceeds. I understand that, upon completion of this review, it is possible that some of these parcels may be offered in future lease sales.

*Question 83a.* Mike Snyder, National Park Service Regional Director for the Intermountain Region said regarding NPS' work with the BLM on this lease sale that working with Selma Sierra, the BLM Utah State Director, has resulted in the kind of resource protection that Americans want and deserve for their national parks." A BLM press release from November 25, 2008 indicated that the BLM had agreed to defer all parcels of concern to the Park Service from the sale.

Was the BLM required by federal law to coordinate with the National Park Service regarding this lease sale?

Answer. I am advised that while the BLM is not required by law to coordinate with other agencies regarding lease sales, as a regular part of the agency's collaborative process the BLM coordinates its review of parcels in advance with other land managing agencies that could be impacted by a lease sale. In this case, I am told that the BLM coordinated with the National Park Service on the through the preparation of a Natural Resources Management plan, but not the lease sale itself

*Question 83b.* Please provide details of all communications and copies of all correspondence between the Bureau of Land Management and the Department with the National Park Service regarding this lease sale.

Answer. I am advised that the BLM compiles an Administrative Record for each of its oil and gas lease sales, which would include correspondence with the National Park Service. If confirmed, I will ensure the BLM transmits to you a copy of the appropriate records for the December 19, 2008, Utah oil and gas lease sale.

*Question 84.* In Secretary Salazar's February 6, 2009 memo to State Director Selma Sierra, he directed the 77 leases be withdrawn and any money received by the BLM in connection with the leases to be refunded. In his press statements, (and in your remarks before the committee) the Secretary indicated that a review would be initiated to reexamine these leases.

Please provide the Committee with a detailed plan for that review, including who will undertake the review, who within the BLM, MMS, NPS, or other agencies within the Department will participate in the review, who will lead the review, and deadlines for accomplishing the review.

Answer. As noted in my response to question 82, Secretary Salazar has expressed his goal of ensuring that oil and gas resources are developed in a thoughtful and balanced way that allows for protection of signature landscapes and cultural resources. In withdrawing the 77 leases from the Utah sale, Secretary Salazar announced that he was doing so in order to take a fresh look at the environmental review and analysis performed on these parcels, and to ensure that there was adequate consultation with other agencies.

Due to ongoing litigation surrounding this lease sale, I understand that the BLM has not yet begun this review and is currently working with the Solicitor's Office on how best to proceed. If confirmed, I commit to keeping you fully informed as this situation evolves.

*Question 85.* Additionally, is it the BLM or Secretary's intention to include any public hearings or meetings in relation to this review, and if so, how many and where they will be held?

Answer. Due to the ongoing litigation surrounding this lease sale, I understand that the BLM has not yet begun this review and is currently working with the Solicitor's Office on how best to proceed. If confirmed, I commit to keeping you fully informed as this situation evolves.

*Question 86.* As soon as that review is completed I would like your office to send a copy of that review, its recommendations, and the Secretary's decisions on these leases to the Committee.

Answer. As I noted in my response to the previous answer, due to the ongoing litigation surrounding this lease sale, I understand that the BLM has not yet begun this review and is currently working with the Solicitor's Office on how best to proceed. If confirmed, I commit to keeping you fully informed as this situation evolves.

*Question 87.* Does the BLM intend to make changes to its policies and procedures regarding who is eligible to bid on leases to prevent the type of bidding manipulation that occurred in the December lease sale from happening again? If so, what and when?

Answer. I am aware that the BLM is in the process of evaluating policy and procedural options for the management of oil and gas lease auctions. If confirmed, I

will work with the BLM to continue to look for ways to improve the lease sale process and to ensure that no manipulation of lease sales can occur.

*Question 88.* Please provide for each of the 77 parcels the earliest date upon which the parcel originally became available for leasing. In other words, when did the BLM first decide in a planning document (prior to the RMPs that were approved last year) that each parcel was open for oil and gas development and could therefore be nominated for leasing?

*Answer.* It is my understanding that each of the 77 parcels was available for leasing under the planning documents that pre-dated the 2008 revised Resource Management Plans (RMPs). These included the Diamond Mountain RMP (1994), Book Cliffs RMP (1985), Price River Management Framework Plan (1982), San Rafael RMP (1991) and the Grand RMP (1985).

*Question 89.* Please provide the committee with estimates of oil and gas resources within the 77 parcels.

*Answer.* It is my understanding that accurate estimates of oil and gas resources that may be present beneath the 77 parcels cannot be determined or quantified due to the largely exploratory nature of those resources. It is also my understanding that the associated Resource Management Plans and Mineral Reports suggest that the majority of the parcels have high potential for oil and gas occurrence, and the northernmost parcel in the Vernal planning area is considered to have moderate to low potential (source: Inventory of Onshore Federal Oil and Natural Resources and Restrictions to Their Development, U.S. Department of the Interior, Department of Agriculture, and Department of Energy, May 2008)

APPENDIX II

Additional Material Submitted for the Record

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THE HUMANE SOCIETY,  
*Washington, DC, March 17, 2009.*

Hon. JEFF BINGAMAN,  
*Chairman, U.S. Senate, Committee on Energy and Natural Resources, 304 Dirksen  
Senate Office Building, Washington, DC.*

DEAR CHAIRMAN BINGAMAN: On behalf of the 11 million supporters of The Humane Society of the United States (HSUS), and its international arm, Humane Society International (HSI), I write to urge the confirmation of David Hayes as Deputy Secretary of the Interior.

Mr. Hayes is a highly qualified candidate who has devoted much of his life, professionally and personally, to maintaining and enhancing environmental quality. As you know, he has already served this nation ably as Deputy Secretary of the Interior under Bruce Babbitt. Moreover, through his actions as a private attorney he has consistently represented and supported the public interest through legal advocacy on behalf of wildlife and the environment. As Chairman of the Environmental Law Institute, and at Hogan and Hartson, and at Latham and Watkins, Mr. Hayes has shown unique dedication to promoting and enhancing public interest pro bono work. He has represented a diversity of parties on natural resource issues, and we have found him to be a moderate, thoughtful leader who works hard to find common ground in an area that is often hampered by a lack of meaningful discourse and cooperation among the various stakeholders. It is our conviction that such background and experience will serve him well in supporting the Obama Administration's and Secretary Salazar's efforts to ensure that the Department of the Interior can meet the myriad challenges it will face in the years ahead.

Our organization has a tremendous interest in the activities of the agency, including its work on the Endangered Species Act (ESA), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Migratory Bird Treaty Act, the Wild Horse and Burro Program, and its efforts on such topics as non-lethal predator control, the exotic pet trade, the importation of sport-hunted trophies of protected species, wildlife penning, and hunting in National Parks and National Wildlife Refuges.

From our perspective as the nation's largest animal protection organization, and our work here and abroad, the Department of Interior is a crucial policy-making agency. We at HSUS/HSI look forward to working with you and your colleagues, with Secretary Salazar, with Deputy Secretary Hayes, and with others within the Department of the Interior, to ensure meaningful animal protection in all of the arenas where its jurisdiction applies.

Sincerely,

WAYNE PACELLE,  
*President & CEO.*

WORLD WILDLIFE FUND,  
Washington, DC, March 11, 2009.

Hon. JEFF BINGAMAN,  
Chair, Committee on Energy & Natural Resources, 304 Dirksen Senate Building,  
Washington, DC.

Hon. LISA MURKOWSKI,  
Ranking Member, Committee on Energy & Natural Resources, 304 Dirksen Senate  
Building, Washington, DC.

DEAR SENATOR BINGAMAN AND SENATOR MURKOWSKI: I am writing to express the strong support of the World Wildlife Fund (WWF) for the appointment of David Hayes as Deputy Secretary of the Interior.

Since August 1, 2007 until his nomination, Mr. Hayes served as Senior Fellow at WWF. As Senior Fellow, Mr. Hayes has been a key advisor on forestry issues, specifically on reducing carbon emissions from deforestation, and has played an integral role in developing WWF's public policy strategy and has testified before Congress on behalf of the organization on those issues. He is a superb strategist on conservation issues and brings a practical approach to solving environmental challenges.

Mr. Hayes previously served as the Deputy Secretary of the Interior under then-Secretary and current WWF Chairman Bruce Babbitt. With the nomination of Mr. Hayes for Deputy Secretary, President Obama and Secretary Salazar have again demonstrated their commitment to sound science and experienced leadership within the highest levels of the administration.

Mr. Hayes brings many years of experience and extraordinary talent to the number two post in the Interior Department. While we will miss Mr. Hayes here at WWF, we are proud that he is answering the call to serve and were extremely gratified that the enormously consequential policies of the Department of the Interior will be entrusted to him and Secretary Salazar.

We look forward to the Committee's expeditious and unanimous approval of his appointment, and his unanimous confirmation by the U.S. Senate.

Most sincerely,

CARTER S. ROBERTS,  
President and CEO.

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THE NATURE CONSERVANCY,  
GOVERNMENT RELATIONS,  
Arlington, VA, March 11, 2009.

Hon. JEFF BINGAMAN,  
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington,  
DC.

Hon. LISA MURKOWSKI,  
Ranking Member, Committee on Energy and Natural Resources, U.S. Senate, Wash-  
ington, DC.

DEAR SENATOR BINGAMAN AND SENATOR MURKOWSKI: On behalf of The Nature Conservancy's one-million members, it is with great pleasure that I write to you and urge your support in the confirmation of David Hayes as Deputy Secretary of the U.S. Department of the Interior.

Mr. Hayes has had an illustrious career in government, law, and environmental conservation. His breadth of experience in the public and private sector provides him with a unique perspective that is so necessary to the Department's mission. Mr. Hayes has played a leading role in some of the Department's most important work, including the Bay-Delta ecosystem restoration project, conservation of some of our most threatened lands, endangered species protection, and energy development. He has extensive experience with climate change and has supported several conservation organizations through his service on various Boards (American Rivers, and the Environmental Law Institute).

The Nature Conservancy is pleased that someone with Mr. Hayes range of experience in water, public lands, and conservation has been nominated for this crucial assignment. The Nature Conservancy strongly urges you to support Senator Salazar's nomination.

Sincerely,

ROBERT BENDICK,  
*Director.*

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