

**JOHNSON, KOONIN, TRIAY, TOMPKINS, AND  
HARRIS NOMINATIONS**

---

---

**HEARING**  
BEFORE THE  
**COMMITTEE ON**  
**ENERGY AND NATURAL RESOURCES**  
**UNITED STATES SENATE**

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

TO

CONSIDER THE NOMINATIONS OF KRISTINA M. JOHNSON, TO BE THE UNDER SECRETARY OF ENERGY, STEVEN ELLIOT KOONIN, TO BE THE UNDER SECRETARY FOR SCIENCE, DEPARTMENT OF ENERGY, INES R. TRIAY, TO BE AN ASSISTANT SECRETARY OF ENERGY (ENVIRONMENTAL MANAGEMENT), HILARY CHANDLER TOMPKINS, TO BE SOLICITOR OF THE DEPARTMENT OF THE INTERIOR, SCOTT BLAKE HARRIS, TO BE THE GENERAL COUNSEL OF THE DEPARTMENT OF ENERGY

---

April 23, 2009



Printed for the use of the  
Committee on Energy and Natural Resources

---

U.S. GOVERNMENT PRINTING OFFICE

49-780 PDF

WASHINGTON : 2009

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON ENERGY AND NATURAL RESOURCES

JEFF BINGAMAN, New Mexico, *Chairman*

BYRON L. DORGAN, North Dakota	LISA MURKOWSKI, Alaska
RON WYDEN, Oregon	RICHARD BURR, North Carolina
TIM JOHNSON, South Dakota	JOHN BARRASSO, Wyoming
MARY L. LANDRIEU, Louisiana	SAM BROWNBACK, Kansas
MARIA CANTWELL, Washington	JAMES E. RISCH, Idaho
ROBERT MENENDEZ, New Jersey	JOHN MCCAIN, Arizona
BLANCHE L. LINCOLN, Arkansas	ROBERT F. BENNETT, Utah
BERNARD SANDERS, Vermont	JIM BUNNING, Kentucky
EVAN BAYH, Indiana	JEFF SESSIONS, Alabama
DEBBIE STABENOW, Michigan	BOB CORKER, Tennessee
MARK UDALL, Colorado	
JEANNE SHAHEEN, New Hampshire	

ROBERT M. SIMON, *Staff Director*  
SAM E. FOWLER, *Chief Counsel*  
MCKIE CAMPBELL, *Republican Staff Director*  
KAREN K. BILLUPS, *Republican Chief Counsel*

# CONTENTS

## STATEMENTS

	Page
Bingaman, Hon. Jeff, U.S. Senator From New Mexico .....	1
Harris, Scott Blake, Nominee to be General Counsel, Department of Energy ...	16
Johnson, Kristina M., Nominee to be Under Secretary of Energy .....	6
Koonin, Steven Elliot, Nominee to be the Under Secretary for Science, Department of Energy .....	8
Murkowski, Hon. Lisa, U.S. Senator From Alaska .....	2
Tompkins, Hilary Chandler, Nominee to be Solicitor of the Department of the Interior .....	14
Triay, Ines R., Nominee to be an Assistant Secretary for Environmental Management, Department of Energy .....	11
Udall, Hon. Tom, U.S Senator From New Mexico .....	2

## APPENDIX I

Responses to additional questions .....	31
---	----

## APPENDIX II

Additional material submitted for the record .....	63
--	----



## **JOHNSON, KOONIN, TRIAY, TOMPKINS, AND HARRIS NOMINATIONS**

**THURSDAY, APRIL 23, 2009**

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

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

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

The CHAIRMAN. Ok. Why don't we get started here? The committee meets this afternoon to consider five nominations for offices in the Department of Energy and the Department of Interior.

The 5 nominees are Kristina Johnson to be the Under Secretary of Energy.

Steven Elliot Koonin to be the Under Secretary of Science in the Department of Energy.

Ines Triay to be the Assistant Secretary of Energy for Environmental Management.

Scott Blake Harris to be the General Counsel for the Department of Energy.

Hilary Chandler Tompkins to be the Solicitor for the Department of Interior.

These are 5 very important offices. I believe the President has chosen well. He has presented us with very well qualified and capable people for each of these positions.

I'm very impressed with the scientific credentials of both Dr. Johnson and Dr. Koonin, of course. Believe that they, along with Secretary Chu, will provide the Department of Energy leadership worthy of the nation's premier science agency.

Dr. Triay has been the principle Deputy Assistant Secretary for Environmental Management for the past 2 years and has been the Acting Assistant Secretary since November. She brings to the job over 10 years of experience in the Office of Environmental Management and in the Carlsbad Field Office and another 14 years of experience at Los Alamos National Laboratory.

Mr. Harris and Ms. Tompkins are both very capable experienced lawyers who will bring their skills and experience to the top legal offices of their respective departments.

I note that Dr. Triay and Ms. Tompkins are from New Mexico. My colleague, Senator Udall is here to make an endorsement of

each of them. We're very glad that we have all five nominees before the committee.

Let me first, before I call on Senator Udall, let me call on Senator Murkowski for any statement she would like to make.

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

Senator MURKOWSKI. Thank you, Mr. Chairman. I want to welcome all the nominees before us and thank them for their willingness to enter into, or in one case, to remain in Government service.

I am gratified that the log jam of seems to have broken on the nominees at the Department of the Interior and Energy as well. We have before us today the folks who will be making a large percentage of the day to day policy and the legal decisions at these agencies. I think the importance of these positions cannot be overestimated.

Today we have before us the person who is responsible for overseeing the Department's nuclear waste program. In light of the administration's recent decision to reject the Yucca Mountain program before providing any alternative plan for meeting the government's growing liabilities, I tell you this is not a job that I envy.

The nominee for Solicitor General at Interior will also have her plate full as she walks in the door. I think we would agree that there never seems to be a shortage of issues or legal issues at Interior. But it does seem that recent days have brought an extra level of perhaps controversy in a whole range of areas.

One court decision that concerns me greatly is the DC's Circuit's recent decision to vacate and remand the 5-year OCS Leasing Program. So whether this case is appealed again or if the Department of Interior restructures the 5-year plan, Interior must make advancing a responsible and efficient program for our OCS resources in Alaska and elsewhere a priority.

Mr. Chairman, as I have mentioned to you, I have another hearing that I am ranking on and chairing this afternoon at 2:30. So I will have to leave. I will have a series of questions that I would submit to the nominees.

But I do look forward to continuing our discussion on these and other issues as the process moves forward. So thank you.

The CHAIRMAN. Thank you very much. Let me call on Senator Udall to make some introductions of two of the witnesses as I understand it or two of the nominees. Go ahead.

**STATEMENT OF HON. TOM UDALL, U.S. SENATOR FROM  
NEW MEXICO**

Senator UDALL. Thank you, Chairman Bingaman and Ranking Member Murkowski and other members of the committee. It's an honor to introduce two constituents of mine and Chairman Bingaman's, Hilary Tompkins, President Obama's nominee as Solicitor General of the Department of Interior and Dr. Ines Triay, President Obama's nominee for Assistant Secretary for the Department of Energy.

Ms. Tompkins has already seen just about everything the law has to offer from the Federal offices of Washington, DC, to the court rooms of the Navajo Nation to the highest levels of New Mex-

ico State Government. As a law student she clerked for the Navajo Nation Supreme Court giving her fluency in Indian law that few lawyers have. After graduation she was accepted into the prestigious Justice Department Honors Program. In that role she helped to use the power of the Federal Government to hold businesses accountable for violation of our nation's environmental regulations.

She also gained experience navigating the complex world of regulatory law as it is practiced at the highest levels. But Ms. Tompkins was not content to spend her whole life serving in Washington. After 2 years fighting crime in the Brooklyn United States Attorney's Office, she returned to the land of her birth.

As a practicing lawyer in Albuquerque, New Mexico, she focused on environmental and water law, two areas that loom large in the arid West. She also handled Federal and tribal law for her law firm. Then Governor Richardson called. In January 2003, Ms. Tompkins joined the New Mexico Governor's Counsel Office. She was the first Native American to be Chief Counsel to a New Mexico Governor.

From that position she saw every legal controversy that a State as diverse as New Mexico can produce. She advised on legislation, oversaw litigation, provided the legal expertise for an active State executive. She also managed a large staff of talented attorneys gaining their trust and respect.

Now Ms. Tompkins has been nominated for a new job. The Interior Department Solicitor General oversees 400 staff lawyers including 400 staff including 300 lawyers. The job demands a wide variety of legal knowledge ranging from water and environmental regulation to complex property law to constitutional doctrine.

It must be filled by a lawyer who has the skills, the dedication and values to protect our Nation's priceless natural legacy and pass it down to future generations. It requires a lawyer who understands and appreciates this Nation's special relationship with its Native American tribes. Ms. Tompkins is that lawyer. I hope the committee agrees. I hope you all join me in supporting her confirmation.

Dr. Triay is an extremely qualified scientist with a Ph.D. in physical chemistry from the University of Miami. She spent much of her successful career in New Mexico, first at Los Alamos National Laboratory and next as the head of the Carlsbad Field Office before serving in the Department's leadership in Washington, DC. She's a strong role model. Her career is a shining example for aspiring young scientists, particularly women and Hispanics who are today under represented in the scientific community.

She has devoted her career to a safe, cleanup of the environmental legacy of the Nation's cold war nuclear weapon production. This is the largest and complex environmental cleanup program in history with more than 100 sites in 30 States. I have witnessed Dr. Triay's work in New Mexico and attest to its quality.

Dr. Triay is able to handle both the difficult scientific issues and the critical public health issues involved in these cleanups. During her 10 years at DOE, Dr. Triay has tackled some of the Nation's most difficult cleanup challenges including completing cleanup at Rocky Flats in Colorado. She also played an instrumental role in

assuring that transeuranic waste disposal operations at the Department's Waste Isolation Pilot Project in New Mexico are safe and secure.

Mr. Chairman there is no scientist better qualified to be Assistant Secretary of the Office of Environmental Management at DOE. I hope you will join me in supporting Dr. Triay for this position. I thank you, Mr. Chairman for the opportunity to come and introduce these two very capable individuals.

The CHAIRMAN. Thank you very much for the strong endorsement of both individuals. Let me mention that Senator Barbara Mikulski was not able to be here today. But she has provided testimony\* which we'll include in the record strongly endorsing Dr. Kristina Johnson's nomination by the President as well.

Unless there's a question of our colleague Senator Udall, we'll allow him to leave. We will call forward the nominees. Why don't you all come forward and just remain standing. I will present this oath which we are required to do in our committee by our committee rules.

If each of you would stand and raise your right hand, please.

Ok, do you solemnly swear that the testimony you're about to give to the Senate committee on Energy and Natural Resources shall be the truth, the whole truth and nothing but the truth.

NOMINEES. I do.

The CHAIRMAN. Please be seated. Before we begin to hear your statement I will ask three questions that we address to nominees that come before this committee.

The first question is will you be able to—will you be available to appear before this committee and other congressional committees to represent departmental positions and to respond to any issues of concern to the Congress?

Ms. Johnson.

Ms. JOHNSON. I will.

The CHAIRMAN. Mr. Koonin.

Mr. KOONIN. I will.

The CHAIRMAN. Ms. Triay.

Ms. TRIAY. I will.

The CHAIRMAN. Ms. Tompkins.

Ms. TOMPKINS. I will.

The CHAIRMAN. Mr. Harris.

Mr. HARRIS. I will.

The CHAIRMAN. Thank you. Here's the 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?

Ms. Johnson, why don't you go first?

Ms. JOHNSON. All of my personal assets have been reviewed by both myself and appropriate ethics counselors with the Federal Government. I've taken every appropriate action to avoid any conflicts of interest.

The CHAIRMAN. Alright. Mr. Koonin.

---

\*See Appendix II.



Mr. KOONIN. All of my personal assets have been reviewed both by myself and by appropriate ethics counselors within the Federal Government. I've taken appropriate actions to avoid any conflicts of interest.

The CHAIRMAN. Ms. Triay.

Ms. TRIAY. All of my personal assets have been reviewed both by myself and by appropriate ethics counselors within the Federal Government. I have taken appropriate action to avoid any conflicts of interest.

The CHAIRMAN. Alright. Ms. Tompkins.

Ms. TOMPKINS. My investments, personal holdings and other interests have been reviewed both by myself and the appropriate ethics counselor in the Federal Government. I have taken appropriate action to avoid any conflicts of interest. There are no conflicts of interest or appearances thereof to my knowledge.

The CHAIRMAN. Mr. Harris.

Mr. HARRIS. All of my personal assets have been reviewed both by myself and by the appropriate ethics counselors within the Federal Government. I have taken appropriate action to avoid any conflicts of interest.

The CHAIRMAN. Alright. Thank you all very much. The third and final question is are you involved or do you have any assets that are held in a blind trust?

Ms. Johnson.

Ms. JOHNSON. No.

Mr. KOONIN. No.

Ms. TRIAY. No.

Ms. TOMPKINS. No.

Mr. HARRIS. No, sir.

The CHAIRMAN. Alright. Thank you all very much. Our tradition here in the committee is for nominees to have the opportunity at this point to introduce any family members that are with them. If you'd like to do that, please go right ahead.

Ms. Johnson.

Ms. JOHNSON. Thank you very much. Please allow me to introduce my sister, Jennifer Looney from Arizona. My sister Sarah Cullin and her daughter, Hannah who's here with bring a daughter to work day and my friends from West Virginia, Colorado, North Carolina, Maryland and Ontario joining us today. Thank you.

The CHAIRMAN. You've got a big crowd here. It's obvious. Thank you. Mr. Koonin.

Mr. KOONIN. With me this afternoon are my wife, Laurie, who has been my companion, advisor and support for almost 39 years and the second of our three children, Allison.

The CHAIRMAN. Very good. We welcome them.

Ms. Triay.

Ms. TRIAY. With me today is my husband of 24 years, Dr. John Hull and his parents, Mr. and Mrs. Harvey Hull.

The CHAIRMAN. Good. We welcome them too. Ms. Tompkins.

Ms. TOMPKINS. With me today are my parents, Ken and Nancy Tompkins from Southern New Jersey and my husband, Mike Prindle and our daughter, Haley are back in New Mexico fighting a cold.

The CHAIRMAN. Alright.

Ms. TOMPKINS. So they apologize for not being here.

The CHAIRMAN. That's fine. Mr. Harris.

Mr. HARRIS. Senator, I'd like to introduce my wife of 30 years, Barbara Harris. Also with me is my son, Colin, who is a senior at the Sidwell Friend School and will soon become a constituent of Senator Shaheen's as he enters Dartmouth next fall. I'd also like to introduce my daughter, Margo, who is a sophomore at the National Cathedral School. She has worked on the Hill as an intern for Senator Cantwell.

The CHAIRMAN. It sounds like you have an inside track around here.

[Laughter.]

The CHAIRMAN. Thank you all and we welcome all of your family members. Why don't, at this point, why don't we hear whatever statements you'd like to make, any opening statement.

Dr. Johnson, go right ahead.

**STATEMENT OF KRISTINA M. JOHNSON, NOMINEE TO BE  
UNDER SECRETARY OF ENERGY**

Ms. JOHNSON. Mr. Chairman, distinguished members of the committee, it is an honor and privilege to appear here today as President Obama's nominee for Under Secretary of Energy. I look forward, if confirmed, to working with Secretary Chu and members of the committee in serving our Nation in this capacity. Thank you for the opportunity to be here today and also to have met with you or your staff prior to today.

I wish to thank President Obama for asking me to join his administration as Under Secretary of Energy and Secretary Chu for his confidence in this appointment. If confirmed I look forward to being part of the stellar Department of Energy team that Secretary Chu has assembled, some of which are here today and some of which you will see in the future. I'm confident that this team and many others working with us are up to the challenges of achieving the goals of producing more jobs, reducing greenhouse gases and achieving energy security.

Together we will work tirelessly to bridge the gap between basic and applied research, technology development and commercial deployment to advance our economy and energy security through optimizing our electrical building infrastructures. As I stated in my written testimony I am a third generation engineer. My grandfather worked with George Westinghouse at the first turn of the last century. My father, Robert G. Johnson, was an electrical mechanical engineer also working for Westinghouse.

After serving in the United States Army during World War II, my dad rejoined Westinghouse. Developed most of the bid packages for the large hydroelectric power plants including Glen Canyon, Grand Coulee and Boulder Dam, to mention a few. Their example, along with my mother's determination that all seven of her children would have the opportunity for a college education which she was not able to have as she grew up during the depression has helped shape my own course and desire to similarly serve society through educating others and through the application of science and technology innovation to build new products, processes and companies to make lives better.

I've been a professor, an inventor, an entrepreneur, a small business owner and a senior university administrative leader. My career has focused on improving each institution as I have tried to make the whole greater than the sum of the parts. If confirmed I pledge to you and members of this committee that I will apply my knowledge, expertise and experience to work with you to serve the President, Secretary Chu and our country for the betterment of society. Thank you.

[The prepared statement of Ms. Johnson follows:]

PREPARED STATEMENT OF KRISTINA M. JOHNSON, NOMINEE TO BE UNDER  
SECRETARY OF ENERGY

Chairman Bingaman, Ranking Member Murkowski, and distinguished Members of the Committee, it is an honor and a privilege to appear before you today as President Obama's nominee for Under Secretary of Energy.

I wish to thank President Obama for asking me to join his administration as Under Secretary for Energy in the Department of Energy (DOE), and Secretary Chu for his confidence in my appointment. If confirmed, I look forward to working with the Department of Energy team Secretary Chu is assembling to advance the President's plans to restore our economy, secure our energy future and reduce our greenhouse gas (GHG) emissions. I am confident that the team you see here today will work together, tirelessly, to achieve these goals.

The Under Secretary for Energy has wide responsibilities in energy technology including the DOE Offices of Fossil Energy, Nuclear Energy, Energy Efficiency and Renewable Energy, Electricity Delivery and Energy Reliability, Environment Management, Civilian Radioactive Waste Management and Legacy Management, and the DOE Laboratories associated with energy technologies. While the duties are varied, one consistent challenge is better integration of the work of the science and technology offices and DOE laboratories. By bridging the gap between basic research, development and commercial deployment, DOE can deliver technologies that will help to improve our everyday lives and enable us to achieve our long-term energy and climate change goals.

I believe my background and experience have helped equip me with the skills and perseverance to tackle the challenges faced by the Under Secretary for Energy.

I am a third generation engineer. My grandfather, Charles W. Johnson, was a mechanical engineer and worked directly for George Westinghouse as his engineering assistant, during the early days of Westinghouse Corporation.

My father, Robert G. Johnson, was an electro-mechanical engineer, and also worked for Westinghouse. After serving in the U.S. Army during WWII, he rejoined the company, developing the bid packages for the Boulder, Grand Coulee and Glen Canyon hydroelectric power generation plants, to mention a few. I am inspired by my Grandfather's and Father's desire to improve their communities through technology. Their example, along with my Mother and Family's extraordinary support, has helped shaped my own course and desire to similarly serve society through the application of science and technology innovation.

After receiving my PhD in electrical engineering from Stanford University, I served on the faculty of the University of Colorado at Boulder for fourteen years, ultimately directing the cross-disciplinary National Science Foundation Engineering Research Center (ERC) in Optoelectronic Computing Systems. The NSF/ERC program emphasizes a systems-focus and market pull for academic research. Our mission was to create a new workforce and new industries for the 21st Century.

We succeeded in starting fourteen new companies, creating high paying jobs and new technologies in the optics and photonics industry sector. As an academic, I am most proud of the accomplishments of my 25 PhD students and postdoctoral fellows, and 48 bachelor and master independent study students who contributed mightily to the success of our research program and ERC.

After Colorado, I served as Dean of the Pratt Engineering School at Duke University for eight years, where I started programs to transition academic research and development into the commercial marketplace. I established the Fitzpatrick Center for Interdisciplinary Engineering, Medicine and Applied Sciences, an expanded professional master's of engineering management program and a technology accelerator called SouthEast Techinventions. Working with industry, academia and the state and federal governments, we spun out over twenty-two companies, creating jobs and

an educated workforce in the biotech and photonic industry sectors in North Carolina.

For the last two years I have been the Provost and Senior Vice-President for Academic Affairs at Johns Hopkins University. Johns Hopkins University is the largest research university in the country. It is comprised of nine Schools, the Applied Physics Laboratory, and numerous centers and institutes. In managing the academic affairs of a university with 20,000 full and part-time students and approximately 2,500 faculty, I was responsible for building a strong management team and launching university-wide strategic research and faculty hiring initiatives.

My entire career has focused on improving each institution I have served by making the whole “greater than the sum of the parts.” I relish the opportunity to do this by working with the outstanding DOE leadership and staff to develop an energy technology roadmap to inspire, guide and measure our progress toward achieving President Obama’s clean energy, job creation, and climate change goals.

If confirmed as Under Secretary of Energy, I look forward to working with members of this committee, and I pledge to you that I will apply my knowledge, expertise and experience to solving our nation’s energy challenges. Thank you.

The CHAIRMAN. Thank you very much.  
Dr. Koonin, go right ahead.

**STATEMENT OF STEVEN ELLIOT KOONIN, NOMINEE TO BE  
THE UNDER SECRETARY FOR SCIENCE, DEPARTMENT OF  
ENERGY**

Mr. KOONIN. Chairman Bingaman, Senator Murkowski and members of the committee, I am truly honored to appear before you as President Obama’s nominee for Under Secretary for Science in the Department of Energy. To aid your consideration of my nomination I’d like to say something about myself, something about science in the Department and something about what I hope to accomplish if my nomination is confirmed. I’ve worked in science for almost four decades largely as a Professor of Theoretical Physics at the California Institute of Technology.

As a researcher I have several times been thrilled to understand something new about nature. As a teacher I’ve had the satisfaction of supervising some 25 Ph.D. theses and educating hundreds of talented students. As Cal Tech’s Provost for 9 years, I gained a deeper understanding of the breadth of technical cultures and shaped programs in biology, astronomy, the earth sciences, the social sciences and information science.

For the past 5 years as BP’s chief scientist, I’ve help guide that company’s long range technology strategy and in particular catalyzing a major business and research initiative in biofuels. I also came to appreciate the dynamics, strengths and weaknesses of the private sector as well as the global context for United States. research and education efforts. In diverse advisory roles for the past 25 years, including work with the JASON Group, I’ve been exposed to many technical problems facing the government, particularly in national security and have even help solve some of them.

Throughout my career it’s been a privilege and pleasure for me to learn and understand deeply from many teachers, mentors and colleagues. Over the decades my tastes have broadened from the fascinating, but relatively circumscribed problems of basic science to the richer and more difficult problems that intertwined science, technology, economics and politics. My involvement with the DOE began as a Los Alamos summer graduate student in 1972. Since then more by inclination than design I’ve worked significantly in

the three major areas of DOE technical activities, basic science, nuclear security and energy technologies.

Let me offer a few observations about each. The basic research supported by the Office of Science is one of the jewels of the Federal research portfolio. The long tradition of peer reviewed support for university and national laboratory researchers and for forefront user facilities continues to drive advances on many fronts.

We're at the cusp of understanding the origin of mass. We're at the cusp of understanding what makes up most of the universe and how quarks and gluons combine to form nuclei. New instrumentation and new information technologies are enabling better understanding of the changing climate and new capabilities to predict, control and manipulate materials, biological systems and plasma. The commitments from Congress and from the administration to double support for these activities over the next decade are more than justified.

In nuclear security the President has set ambitious goals for reducing the United States stockpile of weapons while maintaining confidence in their safety, security and reliability in the absence of nuclear testing. But these goals will not be achievable without a robust technical enterprise in the NNSA. The ongoing stockpile stewardship program has been effective for more than a decade but faces growing challenges in maintaining technical capabilities. Strengthening those same capabilities will also be essential to achieving the President's non proliferation goals.

The President's energy goals are to enhance energy security and reduce greenhouse gas emissions while creating new jobs. Improvements in the technologies to produce, transmit, store and use energy are essential to meeting them. But the scale, duration, cost and complexity of energy matters poses significant challenges.

Technical understanding and judgment are important in making the right decisions. Novel forms of public, private and international partnerships will be required to address these global, societal problems. I have pledged to Secretary Chu that I will work closely with the Under Secretary of Energy on these matters. Indeed I'm confident that Dr. Johnson and I will be very effective together should we both be confirmed.

What do I aspire to accomplish as Under Secretary for Science? By statute the position has the dual responsibilities of overseeing the Office of Science and of being the principle scientific advisor to the Secretary. In the former capacity I would look forward to working with this committee, Secretary Chu, the Director of the Office of Science and the broader scientific community to see that Office of Science funds are wisely allocated and the programs are well executed.

As a scientific advisor I would hope to coordinate and harmonize technical activities across the department and bring the discipline of appropriate peer review, program management and project management to all parts of DOE. I would also hope to promote rigorous and unbiased technical assessments in all matters facing the department as these necessarily underpin good policy decisions. The tone that Secretary Chu has already set and the team he is assembling are highly conducive to achieving those goals.

In closing let me say that I am both humbled and energized by the confidence President Obama has placed in me through this nomination. If confirmed I will do my utmost to work with this committee, Secretary Chu and others to sustain and enhance the Department of Energy's basic research and to ensure quality technical thinking across the entire spectrum of the department's activities. Thank you for the opportunity to address the committee. I'm happy to answer any questions that you might have for me.

[The prepared statement of Mr. Koonin follows:]

PREPARED STATEMENT OF STEVEN ELLIOT KOONIN, NOMINEE TO BE THE UNDER SECRETARY FOR SCIENCE, DEPARTMENT OF ENERGY

Chairman Bingaman, Senator Murkowski, members of the Committee, I am honored to appear before you as President Obama's nominee for Under Secretary for Science in the Department of Energy. With me this afternoon are my wife Laurie, who has been my companion and support for 39 years, and the second of our three children, Alyson, a junior at the University of Richmond.

As you consider my nomination, I thought it would be useful for me to say something about myself beyond the bare biographical facts, something about my perceptions of Science in the Department of Energy, and about what I hope to accomplish if my nomination is confirmed.

I have worked in Science for almost 4 decades, most of that time as a professor of Theoretical Physics at the California Institute of Technology. As a researcher, I have several times had the thrill of understanding something new about Nature: in the Cosmos, in the atomic and subatomic realms, and in the Earth's climate system. As a teacher, I have had the satisfaction of supervising some 25 PhD theses and educating hundreds of talented undergraduate and graduate students. And as Caltech's Provost for nine years, I gained a deeper understanding of the breadth of technical cultures, supervised the selection and hiring of 1/3 of the Institute's professors, and shaped programs in the biological sciences, astronomy, the earth sciences, the social sciences, and information science.

For the past five years as BP's Chief Scientist, I've helped guide that company's long-range technology strategy, in the process forming a synthetic and synoptic understanding of energy and catalyzing a major initiative in biofuels. I also came to appreciate the dynamics, strengths, and weaknesses of the private sector, and to better understand the global context for US research and education efforts. And in diverse government advisory roles for the past 25 years, including work with the JASON group, I've been exposed to the variety of technical problems facing the government, particularly in National Security, and have even occasionally contributed to their solution.

Throughout my career, it has been a privilege and pleasure for me to learn and understand deeply from many teachers, mentors and colleagues, to apply the substance and methods of Science toward defining problems and seeking their solutions, to clearly communicate those learnings, and then to be a part of their implementation. Over the decades, my tastes have broadened from the fascinating, but relatively circumscribed, problems of basic science to the richer, and more difficult, problems that intertwine science, technology, economics, and politics.

My involvement with the DOE began as a Los Alamos summer graduate student in 1972. Since then, more by inclination than design, I've worked significantly in the three major areas of DOE technical activities—basic science, nuclear security, and energy technologies. Let me offer a few observations about each.

The basic research supported by the Office of Science is one of the jewels of the Federal research portfolio. The long tradition of peer-reviewed support for university and national laboratory researchers and forefront user facilities continues to drive advances on many fronts. We are on the cusp of understanding the origin of mass, the nature of most of what's in the universe, and how quarks and gluons combine to form nuclei. New instrumentation and new information technologies are enabling better understanding of the changing climate and new capabilities to predict, manipulate, and control materials, biological systems, and plasma. The commitments from Congress and the Administration to double support for these activities over the next decade are more than justified.

In nuclear security, the President has set ambitious goals for reducing the US stockpile of weapons while maintaining confidence in their safety, security, and reliability in the absence of nuclear testing. But these will not be achievable without

a robust technical enterprise in the NNSA. The National Nuclear Security Administration's ongoing Stockpile Stewardship program of simulation, non-nuclear experimentation, and warhead surveillance and refurbishment has been effective for more than a decade, but faces growing challenges in maintaining technical capabilities. Strengthening these capabilities will be essential to achieving the President's non-proliferation goals.

In Energy, President Obama has set ambitious goals to enhance energy security and reduce GHG emissions while creating new jobs. Improvements in the technologies to produce, transmit, store, and use energy are essential to meeting these goals. But the scale, duration, cost, and complexity of energy matters pose great challenges. Technical understanding and judgement are important to making the right decisions about which technologies to pursue and how each should be advanced from research and development through demonstration and deployment. Novel forms of public/private and international partnerships will be required to address these global problems. I have pledged to Secretary Chu to work closely with the Under Secretary of Energy on these matters, I am confident that Dr. Johnson and I will work well together, should we both be confirmed.

What might I aspire to accomplish in the position to which I've been nominated? As you know, by statute the Under Secretary for Science has the dual responsibilities of overseeing the basic research carried out in the Office of Science, and of serving as the principal scientific advisor to the Secretary. In the former capacity, I would look forward to working with this Committee, Secretary Chu, the Director of the Office of Science, and the broader scientific community to see that the existing and planned incremental funds for basic research are wisely allocated and the programs well-executed. In the latter capacity, I would hope to coordinate and harmonize technical activities across the department, looking for gaps and identifying synergies, bringing the rigor of appropriate peer review, program and project management to all parts of DOE. Indeed, the tone Secretary Chu has already set, and the team he is assembling, are highly conducive to achieving those goals. I would also hope to promote thorough and unbiased technical assessments in all matters facing the Department, as these necessarily underpin all good policy decisions.

In closing, let me say that I am both humbled and energized by the confidence President Obama has placed in me through this nomination. If confirmed, I will do my utmost to work with this Committee, Secretary Chu, and others to sustain and enhance the Department of Energy's basic research and to ensure quality technical thinking across the entire spectrum of the Department's activities.

Thank you for the opportunity to address the committee and I am happy to address any questions that you might have for me.

The CHAIRMAN. Thank you very much.  
Ms. Triay.

**STATEMENT OF INES R. TRIAY, NOMINEE TO BE AN ASSISTANT SECRETARY FOR ENVIRONMENTAL MANAGEMENT, DEPARTMENT OF ENERGY**

Ms. TRIAY. Mr. Chairman, Senator Murkowski, members of the committee, it's a great honor to appear before you today as President Obama's nominee to be the Assistant Secretary for Environmental Management at the Department of Energy. I thank President Obama and Secretary Chu for their confidence. I also thank the committee for considering my nomination.

In 1961 when my parents fled Cuba's communist regime and went into exile with a 3-year old daughter and nothing but their dreams for a better life and their love for freedom, it would have been impossible to believe that their daughter would ever be nominated by the President of the United States to serve this great country. My parents and I are proud to be naturalized citizens of the United States and are humbled by the honor of my being here today.

The pride that we feel has only served to deepen the great love that we have for this country and the admiration and respect that we have for the American people. That a girl born in Cuba was

welcome in Puerto Rico, encouraged to study math and science, received a Ph.D. in chemistry from the University of Miami was recruited by Los Alamos National Laboratory and mentored by giants in the field of nuclear science was asked to direct the beginning of the operational phase of the waste isolation pilot plant, the only nuclear waste repository of its kind in the world, was promoted to the top career position in the Department of Energy's Environmental Management Program, the most complex nuclear cleanup in the world. Is now being nominated to direct cleanup is something that only happens in America.

Mr. Chairman if I'm confirmed to this position I will work closely with you and with all of Congress to address the many local, State, regional and national issues that we face within the environmental management program. I commit to informing and consulting with Congress, the tribal nations, the States, our regulators, our stakeholders and individual concerned citizens. As I address you today I want to affirm my commitment to safety, the safety of our workers, the safety of the public and the safety of our environment. Safe operations and cleanup is our ever present and ultimate goal.

I come before you today with a unique understanding of the complexity and magnitude of the task that we face. I have firsthand experience in every aspect of environmental management. I have dedicated my life to the successful cleanup of the environmental legacy of the cold war.

While we have made significant progress in environmental management program I recognize the enormity of the remaining effort and the technical challenges that we face. I am eager to use science and technology, robust project management and our intergovernmental partnerships to reduce the cost and schedule of the remaining program. As the committee is aware the Environmental Management Program has come under considerable criticism for the execution of its projects. Under my leadership as Acting Assistant Secretary aggressive efforts are underway to transform the Environmental Management Program into a best in class project management organization.

I commit to you that if I am confirmed I will work tirelessly to make this effort successful and to continue to improve the Environmental Management Program. I would like to thank Congress for including \$6 billion of funding in the American Recovery and Reinvestment Act for Environmental Management. This funding will save and create jobs quickly for shovel ready work that is essential to our strategic objectives to reduce the footprint of the legacy cleanup complex. I recognize that discipline management and oversight of these funds will be critical to our success. I pledge to work with other offices in the Energy Department and the Congress to ensure that we meet this challenge.

I have a long history of demanding excellence from my team. Nothing less than performance that results in delivering our projects on time and within cost will be acceptable from the Environmental Management Federal team and our contractors. Should I be confirmed I will use every available tool to ensure the successful performance of the Environmental Management mission. Relentless focus on performance, utilization of science and technology, hard work, staff professionalism and competency, transparency and



accountability, this will be the cornerstones of my tenure if I am confirmed.

Mr. Chairman, members of the committee, I would be honored to serve this country that I so deeply love. As a Latina I embrace the responsibility of excelling. If confirmed I will do everything in my power to meet your highest expectations. I would be pleased to answer your questions.

[The prepared statement of Ms. Triay follows:]

PREPARED STATEMENT OF INES R. TRIAY, NOMINEE TO BE AN ASSISTANT SECRETARY FOR ENVIRONMENTAL MANAGEMENT, DEPARTMENT OF ENERGY

It is a great honor to appear before you today as President Obama's nominee to be the Assistant Secretary for Environmental Management at the United States Department of Energy. I thank Secretary Chu and President Obama for their support and confidence in recommending and nominating me. I also thank the Committee for considering my nomination. I would like to introduce my husband of 24 years, Dr. John Hall, and his parents Mr. and Mrs. Harvey Hall, who are with me here today.

In 1961, when my parents fled Cuba's Communist regime and went into exile with a three-year-old daughter and nothing but their dreams for a better life and their love for freedom, it would have been impossible to believe that their daughter would ever be nominated by the President of the United States to serve this great country. My parents and I are proud to be naturalized citizens of the United States of America and are humbled by the honor of my being here today. The pride that we feel has only served to deepen the great love that we have for this country and the admiration and respect that we have for the American people.

That a girl born in Cuba was welcomed in Puerto Rico; encouraged to study math and science; received a Ph.D. in Chemistry at the University of Miami in Florida; was recruited by Los Alamos National Laboratory in New Mexico and mentored by giants in the field of nuclear science; was asked to direct the beginning of the operational phase of the Waste Isolation Pilot Plant in Carlsbad, New Mexico, the only nuclear waste repository of its kind in the world; was promoted to the top career position in the Department of Energy's Environmental Management program, the most complex nuclear cleanup in the world; and is now being recommended by a Nobel laureate, Secretary Chu, and nominated by President Obama to direct that cleanup is something that only happens in the United States of America.

Mr. Chairman, if I am confirmed to this position, I will work closely with you and with all of Congress to address the many local, state, regional and national issues that we face within the Environmental Management program.

As I address you today, I want to affirm my commitment to safety—the safety of our workers, the safety of the public, the safety of our site communities and our stakeholders and the safety of our environment. Safe operations and cleanup is our ever present and ultimate goal.

I come before you today with a unique understanding of the complexity and magnitude of the task that we face in the Environmental Management program. I have first-hand experience in every aspect of environmental management and I have dedicated my life to the successful cleanup of the environmental legacy of the Cold War.

While we have made significant progress in the Environmental Management program, I recognize the enormity of the remaining effort and the technical challenges that we face. I am eager to use science and technology, robust project management, and our intergovernmental partnerships to reduce the cost and schedule of the remaining program.

As the Committee is aware, the Environmental Management program has come under considerable criticism over the years in the execution of its projects. We must strengthen our project management capability and improve the skill set of our project management teams. Under my leadership as Acting Assistant Secretary, aggressive efforts are underway to transform the Environmental Management program into a "best-in-class" project management organization. We are implementing processes and procedures for quality assurance and for identifying and managing project risks. I commit to you that if I am confirmed, I will work tirelessly to make these efforts successful and to continue to improve the Environmental Management program.

I would like to thank Congress for including \$6 billion in the American Recovery and Reinvestment Act for the Environmental Management program. This funding

will save and create jobs quickly for shovel-ready work that is essential to our strategic objective to reduce the footprint of the legacy cleanup complex. Footprint reduction can be accomplished by focusing cleanup activities on decontamination and demolition of excess contaminated facilities, soil and groundwater remediation, and solid waste disposition, all of which have proven technologies and an established regulatory framework. In addition to creating jobs, the Recovery Act funding will accelerate protection of human health and the environment at these sites. I recognize that disciplined management and oversight of these funds will be critical to our success. I pledge to work with other offices in the Energy Department and the Congress to ensure that we meet this challenge.

I would like to end my testimony by reaffirming my commitment to the safety of our staff and contractors, to the safety of the communities and stakeholders at our sites and to the protection of our environment. I commit to informing and consulting with Congress, the tribal nations, the States, our regulators, our stakeholders and individual concerned citizens.

I have a long history of demanding excellence from my team. Nothing less than performance that results in delivering our projects on time and within cost will be acceptable from the Environmental Management federal team and our contractors. Should I be confirmed, I will use every available tool to ensure the successful performance of the Environmental Management mission, relentless focus on performance, utilization of science and technology, hard work, staff professionalism and competency, transparency, and accountability. These would be the cornerstones of my tenure if I am confirmed.

Mr. Chairman, members of the Committee, I would be honored to serve this country that I so deeply love. As a Latina executive and scientist, I embrace the responsibility of excelling, and, if confirmed, I will do everything in my power to meet your highest expectations. It is an honor to testify before you today. I would be pleased to answer your questions.

The CHAIRMAN. Thank you very much. Ms. Tompkins, go right ahead.

**STATEMENT OF HILARY CHANDLER TOMPKINS, NOMINEE TO  
BE SOLICITOR OF THE DEPARTMENT OF THE INTERIOR**

Ms. TOMPKINS. Chairman Bingaman and members of the committee, I am honored to appear before you as President Obama's nominee to be the Solicitor of the Department of the Interior. I ask for your consent to his nomination. I thank you for providing me with the opportunity to present to you my background and qualifications for this position.

For the past year I've been a stay at home mom. I've taught a seminar at the University of New Mexico School of Law. For the majority of my career I have served in the public sector. I have represented the United States and the State of New Mexico. I also have represented various Indian tribes and pueblos.

I have expertise in the areas of environmental law, natural resources, water and Indian law as well as experience in the areas of constitutional law, administrative law and the legislative process. I have considerable litigation experience as well. I also have the experience of serving as a political appointee at the highest levels of the State of New Mexico government.

As Chief Counselor to Governor Bill Richardson of the State of New Mexico I was responsible for advising the Governor on all legal matters. As well as managing a legal team and overseeing the general counsels in 31 State agencies. From this experience I understand the importance of providing unbiased and intellectually honest advice to a chief executive and to governmental agencies.

I believe in working in a collaborative fashion and meeting with the interested parties, affected communities, experts and elected officials to learn the best solution to often difficult and complex

issues. If I am confirmed I will bring these experiences and values to the position of Solicitor. I understand that the Department of the Interior presents its own unique set of challenges where the balancing of competing interests is a frequent occurrence and the multitude of issues can be staggering at times.

I am prepared to take on these challenges. I have and will always have an open mind, a strong work ethic and a commitment to providing the best legal advice to my client and to my country. I also will have the benefit of working with the exceptional attorneys in the Solicitor's Office.

On a personal note, I was born on the Navajo reservation into a family that was burdened with the social ills of alcoholism and poverty. When I met my birth mother she told me that she did not want me to grow up in that situation and that was why she gave me up for adoption as a baby. I was fortunate to be placed with wonderful, caring parents who raised me in Southern New Jersey. It was far from Indian Country, but I never forgot where I came from.

At times it was difficult being a Native American without a culture or a community. I distinctly remember visiting the Natural History Museum here in Washington, DC, as a young child and seeing a display of Navajo Indians behind a pane of glass. I wanted to climb into the scene spread out before me and become a part of it. But at the same time I felt like it was foreign. It was the support and love and guidance of my parents that allowed me to navigate this world and find my place in it.

I attended Dartmouth College in part to join their Native American Student Program and learn more about my heritage. As a young adult I reconnected with my roots and lived on the Navajo Reservation. I learned about my Navajo culture which at its core stresses the importance of living in harmony with the Earth.

I went to law school after practicing in the Navajo Tribal Courts as a lay practitioner an opportunity provided to tribal members who pass the Navajo bar exam. It is because of these experiences that I am able to adapt and exist in different worlds. As a lawyer I am able to inhabit these worlds with a duty and purpose.

It would be the greatest honor and a privilege to serve the United States as Solicitor of the Department of the Interior. Thank you, Mr. Chairman, for the opportunity to testify before you and all of the committee members today. I stand ready to answer any questions you may have.

[The prepared statement of Ms. Tompkins follows:]

PREPARED STATEMENT OF HILARY CHANDLER TOMPKINS, NOMINEE TO BE SOLICITOR OF THE DEPARTMENT OF THE INTERIOR

Chairman Bingaman and members of the Committee, I am honored to appear before you as President Obama's nominee to be the Solicitor of the Department of the Interior. I ask for your consent to the President's nomination.

I thank you for providing me with the opportunity to present to you my background and qualifications for this position. For the past year, I have been a stay at home mom and taught a seminar at the University of New Mexico law school.

For a majority of my career I have served in the public sector. I have represented the United States and the State of New Mexico. I also have represented various Indian tribes and pueblos. In this regard, I have a broad and unique perspective. I am comfortable and conversant in the culture of these various governmental enti-

ties, which I believe gives me a valuable awareness of and sensitivity to their distinct interests.

I have expertise in the areas of environmental, natural resources, water, and Indian law, as well as experience in the areas of constitutional law, administrative law, and the legislative process. I have considerable litigation experience and have appeared on behalf of my clients in tribal, state, and federal courts. I've witnessed the challenges firsthand of bringing governmental entities and different groups together to tackle the difficult and complex issues of water management and compliance with laws such as NEPA and the Endangered Species Act.

I also have the experience of serving as a political appointee at the highest levels of the New Mexico state government. As chief counsel to Governor Bill Richardson of the State of New Mexico, I was responsible for advising the Governor on all legal matters as well as managing a legal team and overseeing the general counsels in over twenty agencies. From this experience, I understand the importance of providing unbiased and intellectually honest advice to a chief executive and to governmental agencies. I believe in working in a collaborative fashion and meeting with the interested parties, affected communities, experts, and elected officials to learn the best solution to often difficult and complex issues.

If I am confirmed, I will bring all these experiences and values to the position of Solicitor. I understand that the Department of the Interior presents its own unique set of challenges, where the balancing of competing interests is a frequent occurrence and the multitude of issues can be staggering at times. I am prepared to take on these challenges. I have and will always have an open mind, a strong work ethic, and a commitment to providing the best legal advice to my client and to my country. I also will have the benefit of working with the exceptional attorneys in the Solicitor's Office.

I am humbled to be considered to serve in this capacity. As a young Justice Department attorney, I received training from John Cruden—some of you may know him. He is a well-respected, senior lawyer in the Justice Department's Energy and Natural Resources Division. John told us that we must never forget that it is the greatest honor and privilege to stand before a court of law and state "I represent the United States of America." I have never forgotten his wise words and have carried them with me all these years. I would represent the Department of the Interior with great pride and with these words in mind if given the opportunity.

On a personal note, I was born on the Navajo reservation to a family that was burdened with the social ills of alcoholism and poverty. When I met my birth mother, she told me that she did not want me to grow up in that situation and that was why she gave me up for adoption as a baby. I was fortunate to be placed with wonderful, caring parents who raised me in Southern New Jersey. It was far from "Indian Country" but I never forgot where I came from. At times it was difficult being a Native American without any culture or community. I distinctly remember visiting the Natural History Museum here in Washington, D.C. as a young child and seeing a display of Navajo Indians behind a pane of glass. I wanted to climb into the scene spread out before me and become a part of it, but at the same time I felt like it was foreign. It was the love, support, and guidance of my parents that allowed me to navigate this world and find my place in it.

I attended Dartmouth College in part to join their Native American student program and learn more about my heritage. As a young adult, I reconnected with my roots and lived on the Navajo reservation. I learned about my Navajo culture which at its core stresses the importance of respecting and living in harmony with the earth. I went to law school after practicing in the Navajo tribal courts as a lay practitioner—an opportunity given to tribal members who pass the Navajo bar exam. It is because of these experiences that I am able to adapt and exist in different worlds. As a lawyer, I am able to inhabit these worlds with a duty and purpose.

It would be the greatest honor and a privilege to serve the United States as Solicitor of the Department of the Interior.

Thank you, Mr. Chairman, for the opportunity to testify before you today. I stand ready to answer any questions you may have.

The CHAIRMAN. Thank you very much.  
Mr. Harris, go right ahead.

**STATEMENT OF SCOTT BLAKE HARRIS, NOMINEE TO BE  
GENERAL COUNSEL, DEPARTMENT OF ENERGY**

Mr. HARRIS. Mr. Chairman, distinguished members of the committee, thank you for considering my nomination and for the oppor-

tunity to appear before you today. I'd also like to express my sincere appreciation to President Obama for his confidence in nominating me to be General Counsel of the Department of Energy and to Secretary Chu for asking me to serve as Counsel at the Department. I am most honored to be here today.

Mr. Chairman I've practiced law in Washington for 33 years. I've been a partner in three law firms. I've worked for a Federal judge and for two Federal Government agencies.

I have more experience than I sometimes like to admit to my younger colleagues with litigation, with administrative law, with trade law and with national security law. I have earned every gray hair that I possess.

[Laughter.]

Mr. HARRIS. But there are, I think, several benefits to having practiced law as long as I have in as many different substantive areas as I have and in so many different venues. One benefit is that there are few problems I am likely to encounter that I've not seen before in one guise or another. While the words of the relevant statutes may vary the key issues of statutory interpretation are remarkably alike.

A second benefit is that I've learned a deep respect for Congress and the laws it has enacted including critically the Administrative Procedure Act which provides the public with important safeguards against arbitrary government action.

Third, I know from both inside and from outside the government how important it is that agencies act within the law at all times in all things whether large or small and how important legal counsel is in assuring that happens. I long ago learned that sometimes you have to tell clients what they might not want to hear. A good general counsel needs more than a good mind and good training. A general counsel must have the experience, the wisdom and simply put, the backbone to provide on occasion unwelcome advice.

Finally, I've learned how important it is for government agencies to have open lines of communication with the Congress. If confirmed I promise I will be available to you and your staffs whenever and wherever you think I can be of assistance.

In summary, I hope to bring to the Department of Energy a wide range of experience that will allow me to provide informed, direct and clear advice. Above all, advice which is faithful to the laws that Congress has enacted. Mr. Chairman, I want to thank you and the committee once again for this opportunity to appear before you. I'm prepared to answer any questions you may have for me. Thank you.

[The prepared statement of Mr. Harris follows:]

PREPARED STATEMENT OF SCOTT BLAKE HARRIS, NOMINEE TO BE GENERAL COUNSEL,  
DEPARTMENT OF ENERGY

Mr. Chairman, Senator Murkowski, distinguished Members of the Committee, thank you for considering my nomination and for the opportunity to appear before you today.

Let me begin by expressing my sincere appreciation to President Barack Obama for his confidence in asking me to be part of his Administration as General Counsel of the U.S. Department of Energy. I am honored to have been nominated.

I also want to thank Secretary Steven Chu for asking me to serve as counsel to the Department of Energy. Secretary Chu is an extraordinary scientist and an extraordinary man. I would be thrilled to have the opportunity to advise him and his

management team as they develop and implement policies needed to make our country more energy secure while, at the same time, preserving and protecting our environment.

As you know, the General Counsel is responsible for providing legal advice and counsel to the Secretary, Deputy Secretary, and all operating DOE units (except for the Federal Energy Regulatory Commission), for effectively representing the Department as counsel before other Federal governmental agencies, and for working with the Department of Justice to represent the agency before the courts. Most importantly, the General Counsel assures that the Department operates in compliance with all applicable laws and regulations. Mr. Chairman, I come before this Committee with what I believe is the experience necessary to allow me to handle the challenges of the general counsel position for which I have been nominated.

I have practiced law in Washington for thirty-three years, both in the private sector and in the government.

I have been a partner at two large firms, Williams & Connolly and Gibson Dunn & Crutcher. Eleven years ago I started my own law firm, Harris, Wiltshire & Grannis, and have been the managing partner since its inception.

I have also spent several years—the most rewarding years of my career—in the government. I worked for a federal judge, the Hon. Gerhard A. Gesell, immediately after graduating from law school. Following sixteen years in private practice, I served as Chief Counsel for Export Administration at the U. S. Department of Commerce, and then as the first Chief of the International Bureau at the Federal Communications Commission.

In these various positions in both the private and public sectors, I've had a great deal of experience with litigation, administrative law, trade law and national security law. More importantly for the position to which I have been nominated, I have spent the last sixteen years working at the intersection of law, technology, and policy. The core of my experience over the last decade and a half is in providing legal advice to scientists, engineers and policy-makers. Additionally, I have managed divisions of key federal agencies at moments when they simply had to step up their game.

The result of practicing law as long as I have, in the public and private sectors, in as many different areas as I have, is that there are few issues I am likely to encounter that I have not seen before in one guise or another.

While the words of the relevant statutes may vary, the key issues of statutory interpretation are remarkably alike. And regardless of the federal agency involved, I have learned that a deep respect for Congress and the laws it creates, including, critically, the Administrative Procedure Act, provides the public with important safeguards against arbitrary government action. This means, as I long ago learned, that to provide good counsel, sometimes you have to tell clients—whether in the private sector or the public sector—what they might not want to hear. I know from both inside the government and outside the government how important it is that agencies act within the law at all times in all things, large and small, and how important legal counsel is in making that happen.

Simply put, a good general counsel needs more than a good mind and good training. A good general counsel must have the experience, wisdom and strength to provide unwelcome advice.

In summary, if confirmed, I will bring to the Department of Energy a wide range of experience in a variety of legal disciplines, all of which will allow me to provide the agency with informed, clear and direct advice—and, above all, advice which is faithful to the laws that Congress has enacted.

Finally, I understand how important it is for government agencies to have open and honest lines of communication with the Congress. If confirmed, I hope to have many opportunities to work closely with you and members of your staffs over the next few years.

Mr. Chairman, I want to thank you and the committee once again for this opportunity to appear before you and I am prepared to answer any questions you may have.

The CHAIRMAN. Thank you very much. Thank you all for your excellent testimony. As I said in my opening statement, I support each of your nominations.

I think the President has chosen well. Secretary Chu has chosen well. Secretary Salazar has chosen well. So I commend you for taking on these difficult jobs.

Let me call on my colleagues who may have questions at this time. Senator Bennett?

Senator BENNETT. Thank you very much, Mr. Chairman. Thank you to all of you for your willingness to serve in the Federal Government which is not the most financially remunerative thing you could do. But I'm impressed by the fact that you are all excited about the challenge.

I have no particular questions for most of you. But I've already warned the next Solicitor that I'm going to have a conversation with her. So let's get to it.

I want to thank you again to coming in to see me this week and giving me an opportunity to outline for you some of the issues that we have. I'll submit some questions for the record.

But here today I want to focus my time on the very controversial issue of wilderness in Utah, particularly the wilderness settlement between the United States of America and the State of Utah. Perhaps we are blessed in Utah with the most beautiful wilderness available or we're cursed with the most beautiful wilderness available because we seem to be ground zero for the wilderness debates that are going on. So as a consequence Utah public lands have been studied to death for wilderness going all the way back to the Carter administration.

Environmental groups tell the story of wilderness quality lands disappearing at record rates to OHVs and oil and gas development and so on. While they say that their proposals for wilderness have gone from 4.7 million acres which was a factor in my Senate race in 1992 when my opponent introduced a bill in the House of Representatives to create 4.7 million acres and as the public responded to that back pedaled from that.

At one point in one of our debates said I never said 4.7 million was the right number. I had to remind him that he had introduced a bill to that effect in the Congress of the United States which he then tried to down pedal. Now their proposals have gone from 4.7 to 5.7 to 8.4 to 9.1 and currently stand at 9.4 million acres in the latest proposal.

Now FLPMA has a 5 point process as to deal with wilderness.

Number 1, conduct an inventory.

Number 2, conduct a wilderness review of the inventory and establish what are known as wilderness study areas.

Number 3, report the recommendation to the President.

Number 4, the President reports a recommendation to the Congress.

The point that everyone must remember, No. 5, Congress is the only entity that can designate wilderness, the only entity under the law. All of the rest of this is advisory. Congress is the only entity.

A wilderness study area, once it has been designated and recommended is managed as if it were wilderness awaiting Congressional activity. What we have seen out of subsequent Departments of Interior is that they are willing to lock up BLM land as study areas and thus create de facto wilderness. Then the environmental groups block the Congress in every effort to designate wilderness so they have created de facto wilderness with WSAs. The Congress has been unable, for a variety of reasons to designate wilderness.

We've finally broken through that after more than 15 years with a designation of wilderness in the Washington County, one area of Utah. It's very interesting that many of the environmental groups that fought us tooth and nail up to 48 hours before the chairman ultimately submitted the bill that included the solution of the wilderness area in Washington County now claim credit for it. Say, isn't it wonderful that we have done a great job of creating this wilderness.

They didn't want the bill passed because they want the WSAs maintained as de facto wilderness forever. Previous Departments of the Interior have designated WSAs and inventory that goes beyond the FLPMA process. Now are managing those as wilderness. Do you see where I'm going?

As a lawyer you should understand that this is a significant way of getting around the law. The United States and Utah, there's been a legal case. There's been a lawsuit. A Federal judge has issued his opinions. The United States Government and Utah have entered into a settlement agreement with respect to that.

You are going to be the Solicitor that's going to have to defend that agreement because the environmental groups are trying to overcome it because of the history I've just described. They're going to try to say, no, no, no. The Secretary has the right to conduct an inventory outside of the FLPMA process approved by Congress.

The key issue in that lawsuit was once the FLPMA process approved in the Carter administration had expired could the Secretary continue to designate WSAs? The Federal judge said no. Once that it had expired Congress had acted. The Secretary didn't have the right to go beyond the time period given him for the inventory and the designation.

You're going to have to defend that lawsuit. You're going to have to defend that judge's opinion. We need to know your legal approach to this kind of thing.

My question is quickly, as my time is gone. But I'll just run through them. Then you can respond as you wish.

Do you agree that the Department's authority to establish new wilderness study areas under section 603 of FLPMA expired on October 21, 1993, which is the period of that first inventory conducted in the Carter administration?

Do you agree that the Department has no authority to establish new WSAs post 603 WSAs under any provision of Federal law?

Do you agree with Federal judge DeBenson that the settlement agreement between the State of Utah and the United States is consistent with FLPMA?

Finally, does the BLM have authority to apply the non-impairment standard as enumerated in the interim management plan for wilderness study areas to lands that are not designated as WSAs under section 603?

These are the 4 core questions going to this issue. Again, at the risk of taking too much time, I see a deliberate strategy on the part of groups that are not satisfied with what comes out of the inventory under FLPMA of saying we will get a friendly Secretary to designate something as a WSA and then recognizing that only Congress can resolve this issue. Once it's designated and being managed as a WSA, we will do everything we can to prevent Congress



from acting so that we can get de facto what we could never get under the legal process as established by the Congress.

That's the issue. You can respond here now if you like or you can respond in writing as you like. But I wanted to get all of that on the record very clearly so that we understand where we are on this most contentious issue and what I maintain is the most beautiful state in the Union. Thank you, Mr. Chairman.

Ms. TOMPKINS. Chairman, Senator, I appreciate your comments. It is a new area for me, this particular settlement involving Utah and the Department and these wilderness issues. So I do think it'd be premature for me today to respond to them.

But I would, certainly will look at those issues carefully if I were confirmed. Work with the Department and the Secretary and analyze all the applicable legal requirements involving the designation of wilderness areas. So I would look at the issue closely if I were confirmed and in the position of Solicitor.

So thank you for your comments.

Senator BENNETT. Thank you. I look forward to working with you.

The CHAIRMAN. Senator Shaheen.

Senator SHAHEEN. Thank you, Mr. Chairman. Welcome all the panelists. We very much appreciate your willingness to serve the country in the positions for which you've been nominated.

I'd like to particularly thank Ms. Tompkins and Mr. Harris for recognizing Dartmouth College. For all you young people in the audience, think about Dartmouth as you're looking at colleges. Certainly would disagree with Senator Bennett about Utah being the most beautiful State in the country.

[Laughter.]

Senator SHAHEEN. We obviously vie for that position. But I am going to give you a pass, Ms. Tompkins after those questions from Senator Bennett. I think you need a rest to think about those. I'm really going to focus first on the remaining members of the—nominees because you're all going to be in the Energy Department.

The energy issues that we're facing in the country are going to be very complex. We're going to be looking at energy from a variety of perspectives, new technologies. How it affects our need to address climate change.

So I guess my question for all of you in the Energy Department is how you see collaborating and cooperating around the very complex issues you will be addressing in a way that can make the Department as efficient and effective as possible.

[Laughter.]

Ms. JOHNSON. Senator, may I respond.

Senator SHAHEEN. Please.

Ms. JOHNSON. Thank you very much for that question. I really think that is the key question in that the problems that we face are very complex. They'll require a systems integrated approach.

I think you heard from my colleague, the Under Secretary for Science, that one of the things that both of us being provosts or former provosts, that we understand is our job is to make the whole greater than the sum of the parts. The way you do that is to vigorously fund research and development that's focused on the system, the outcome and the goals. Then work back the kind of

programs you need put in place so that you can take the breakthroughs in research, in science, applied technology into deployment and ultimately commercialization to achieve the goals of providing for our energy security, creating jobs and reducing greenhouse gases.

Without that system integration we can't do one or the other because they are so interconnected. You can even see in the programs that are within the technologies that we can borrow things that are happening, for example, in nuclear power, fossil fuel and apply them to energy efficiency and renewable. We're already seeing that even though we are not yet confirmed, but if confirmed, we will even explore that deeper.

Senator SHAHEEN. Ok. Would anyone else like to respond to that?

Mr. KOONIN. Energy technologies are really very different than other technologies like bio-matter, IT. Energy is everywhere in society. So the changes that you try to make really affect many different folks, you need to worry about that.

You need to worry about scale to solve the problems that we're facing energy security, greenhouse gas emissions. We need to look at technologies that can make a material difference. It's not enough to just solve a small piece of the problem.

In addition because we already have sources of heat, light and mobility, new technologies have to compete against existing technologies. All of these factors make change relatively slowly. But change will only happen if as we do the science and technology, we pay attention to the economic, political and social dimensions.

Senator SHAHEEN. Apropos that comment. Both Dr. Koonin and Dr. Triay have extensive knowledge of nuclear energy. I would like to ask both of you what role you see nuclear energy playing in the future economy, in the country. How you see it with respect to our need to address global warming and what you think can be done with the waste.

I was particularly interested in your comments, Dr. Triay about dealing with some of the technologies in a way that could be helpful.

Ms. TRIAY. As Secretary Chu has said, Senator, nuclear energy will be part of the mix of the energy future of the United States. With respect to the waste, the Environmental Management Office doesn't have responsibility for the commercial waste and spent nuclear fuel. But we do have spent nuclear fuel in the Environmental Management Program. We have high level waste that comes from our defense mission.

With respect to technology development we believe that it is essential and in fact, Secretary Chu has told me personally that he wants us to make an investment on ensuring that we reduce some of the cost associated with vitrifying the waste. We are poised to deal with the spent nuclear fuel with put it in dry storage. With respect to the actual high level waste, we know, as you know, we vitrify the majority of our waste and leave it in a very safe configuration.

With respect to that vitrification process we are looking very closely to work with some of our colleagues in Mr. Koonin's portfolio to look at better melter technologies. To look at ways to reduce

constituents that would then allow us to maximize the waste loading and the production of glass. In these vitrification plants we have both at Savannah River and we will have at Hanford.

So I assure you that Secretary Chu is very interested in transformational technologies that actually can help us do our job more effectively. We will be working very closely with Mr. Koonin's colleagues to accomplish that.

Senator SHAHEEN. Thank you.

The CHAIRMAN. Senator Barrasso.

Senator BARRASSO. Thank you very much, Mr. Chairman. Ms. Johnson, we had a chance to visit yesterday and very productive, very fruitful meeting. Thank you so much for coming by and for the time.

Something happened since we met yesterday and it was that the chairman of the Federal Energy Regulatory Commission said that there was no need to build new United States coal and nuclear power plants. This is since we visited yesterday. Mr. Wellinghoff went on to say that renewables like wind, solar and biomass will provide enough energy to meet base load capacity and future energy demands.

This kind of flies in the face of the things we discussed yesterday where we discussed an understanding that American energy needs at this point. We're using it all. I'm just interested, given that the estimated increases in energy demand and limitations of our transmission infrastructure and the need for power when the wind doesn't blow and the sun doesn't shine. Do you agree with Chairman Wellinghoff's statement or should we be taking energy generation options off the table at this point?

Ms. JOHNSON. Thank you, Senator for that question. Thank you also for the time to meet yesterday. As we spoke we need to have a comprehensive, strategic energy plan.

One of the first things, if confirmed, that I would like to work on with my colleagues and the Secretary is to come up with a technology energy road map that puts down what are the goals we're trying to accomplish which is securing our energy future, creating millions of jobs as we discussed and cutting greenhouse gases. Once we have that road map in place then we can look at the portfolio of energies that we have, coal, nuclear, renewables, etcetera and see how each one of those will contribute along with what I think is most important because it is the low hanging fruit is conservation and efficiency. I think there are a number of gains that can be made in the short term as we bring on carbon capture and sequestration with coal, as we restart the civilian commercial nuclear industry and some of these other areas that we'll be able to address the overall challenge of the three goals that I mentioned.

Senator BARRASSO. Thank you.

Ms. JOHNSON. Thank you.

Senator BARRASSO. Ms. Tompkins, I wanted—and I have a couple, Mr. Chairman, questions to submit in writing.

I just wanted to visit with Ms. Tompkins. Long before either you or I got here there was an issue of Washington owing Wyoming hundreds of millions of dollars from abandoned mine land funding. It's Wyoming's money. This has been collected and held in Washington for a long time.

In 2006 after decades of bipartisan effort, an agreement was found and signed into law to guarantee that States, like Wyoming that were owed money, would finally be paid without strings attached. President Obama and Secretary Salazar both voted for the bill. It's been signed into law and they voted for it when they were in the Senate.

The bill required certified states or Indian tribes to be paid back money owed in seven equal installments. I quote, this is the law. "The Secretary shall make payments to states or Indian tribes for the amount due for the aggregate, unappropriated amount allocated to the state or Indian tribe under sub paragraph A or B." A section, and it goes through the section numbers of this title.

It says, "The payments shall be made in seven equal and annual installments beginning with Fiscal Year 2008." The Interior Solicitor before you came to a different conclusion stated that what Congress meant was that the funds must be paid back in the form of a grant and not in seven, equal installments. I'd like to know your understanding of seven equal installments as well as whether you agree or disagree with the fine votes cast by President Obama and Secretary Salazar prior to their new positions in government.

Ms. TOMPKINS. Senator, thank you for this question. I have to say that I don't today, have an opinion on the issue. That it would be a new issue for me. I would have to look at it more closely before I could give you a definitive response. That's the best I can do today.

Senator BARRASSO. Thank you, Mr. Chairman. I'll submit some questions in writing. Hopefully you'll have a chance to take a look at this.

But it seemed very clear to people on both sides of the aisle what this meant. But in a previous administration and a previous solicitor came up with an idea that really I don't think anybody in the Senate had anticipated. So I hope that you see it the same way that we do. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman. I look forward to working with all the nominees here in their important capacity in both agencies. Ms. Triay, thank you for your visit to my office. We had a chance to talk about some of these issues and for your compelling personal story as well.

First of all it's great to see so many women in the fields of math and science. I hope that you can help us in recruiting more into the fields. But obviously one of the most urgent needs is Hanford cleanup and the 53 million gallons of radioactive waste that is stored in underground storage tanks. Sixty-seven of which have been confirmed to be leaking and are reaching ground water plumes that are moving toward the Columbia River.

We had a chance to talk about this. But the Department of Energy is obviously missing the milestones for the cleanup of Hanford in the tri party agreement. So getting into compliance is obviously a big part of the concerns that we have.

So I have a couple of questions about that. First of all do you think that there is adequate storage space in the double shell tanks to safely retrieve the waste until the waste plant is fully operational?

Ms. TRIAY. Senator Cantwell, thank you. First off, thank you for your leadership in the Hanford cleanup. We could not be where we are today and have a path forward without your leadership.

With respect to the double shell tanks space, I feel strongly that we need a systems plan analysis on an annual basis to ensure that we make the decisions as to whether or not we need additional tank space, a systems plan that takes into account every cubic meter of the waste in those tanks. I have been working with the field office as well as the State. I assure you that part of that systems plan will be to address exactly that question, do we need further tank space.

If we do, obviously we will press forward at fulfilling that need. Of course we would try to make every effort to prevent having to build more double shell tanks that then have to be cleaned up. But we assure you that that systems planning is going to be comprehensive. It's going to be done in a collaborative manner with the state that has excellent experts to assist us as well as the Environmental Protection Agency.

Senator CANTWELL. When would that be completed do you believe?

Ms. TRIAY. We are intending to have our first systems plan within this year. But after that that systems plan needs to be updated. Those modeling efforts that take into account every single cubic meter of that tank waste has to be refreshed on an annual basis, at least.

Senator CANTWELL. I'm sorry what do you mean by that? I mean obviously the tanks are leaking. They're contaminating ground water and so the annual analysis isn't so much the issue as to have a concrete plan to remove the tank waste until a reprocessing plant is up and running which is not until, well hopefully it will be 2019. That's the goal, but.

Ms. TRIAY. As you know we are aggressively pursuing removing the waste from the tanks as we speak. We are removing the waste from the single shell tanks and preparing them for when the waste treatment plant comes online. What I meant was that we can use evaporator technology to remove the liquid so that we actually increase the tank space available in the tank funds.

We already are looking at the integrity of the tanks to make absolutely certain that we do not have leaks that are going to compromise the environment. What I meant by the systems plan is that every time that that calculation gets performed, that modeling exercise gets performed, we have to make the decision as to whether or not we need to press forward with further tank space or whether we have enough tank space given that we have evaporator technology that we have removal technologies in order to be able to complete the cleanup and have enough feed for the waste treatment plant when it comes online in 2019.

Senator CANTWELL. Will the 2 billion in added stimulus funds help expedite the goal of the ground water contamination?

Ms. TRIAY. Absolutely, Senator.

Senator CANTWELL. If the goal was originally 2015 in cleaning up that plume, what would it be with \$2 billion?

Ms. TRIAY. We are, right now, as you know with this particular stimulus package, we have gone out of our way to consult with the

regulators as well as our stakeholders. So right now we are looking at what is the amount of acceleration that that particular, in essentially in this particular case is \$1.961 billion, you know, between the Office of Radioactive Protection in Hanford. That would accelerate the ground water.

We understand that our goal is to have absolutely no contaminants reaching the Columbia River. So a significant part of that \$2 billion is going to go toward that effort. In addition to that Secretary Chu has asked us to invest in technology development to also deal with the ground water, deal with barriers such as reactive barriers with minerals that can absorb the contaminants bioremediation.

So I think that you're going to see dramatic effort in making sure that contaminants do not reach the Columbia River.

Senator CANTWELL. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Stabenow.

Senator STABENOW. Thank you, Mr. Chairman. Welcome to each of you and to your families. We thank you for your willingness to serve at a very challenging time. It is also a time where we can make great progress in the country if we work hard and are focused. I appreciate the President's visions in each of the areas that you are hoping to work in.

I wanted specifically, Dr. Johnson, to thank you for the chance to have the opportunity to talk specifically about the loan programs and grants and how we move forward on technology and so on. I wondered if you might speak about the President's targets for getting us to electric vehicles. One that I support strongly is his goal of putting one million plug-in electric vehicles on the road by 2015.

We've been working very hard on that. Our recovery plan, of course, has the \$2 billion investment in grants. Working with the chairman and his leadership on the Finance Committee, we've been able to add manufacturing incentives. We're already in Michigan seeing the benefit of that by manufacturing facilities for batteries being announced and in just a few months we hope to see ground breakings on those which are very important.

I wondered if you might share with the committee how you view delivering on the President's goal in terms of electric vehicles and the importance of having a domestic battery manufacturing presence in the United States.

Ms. JOHNSON. Thank you very much, Senator. I too enjoyed our time to talk yesterday. So the President's goal is to have one million plug-in electrical vehicles on the road by 2015, I believe.

This will require a tremendous investment in infrastructure and components. So, as you mentioned batteries. As part of the American Recovery and Reinvestment Act we are funding programs in that area and look at batteries to look at applications for storage in the infrastructures that we can power the vehicles.

It is a complex problem. We have hundreds of millions of cars on the road today. We know how to build cars in this country.

What we need to do, as we just talked, is leverage that expertise now to retool and be able to apply it toward electrifying the fleet. To that end, I just, I think 2 weeks ago we announced \$40 million in grants as part of the American Recovery and Reinvestment Act toward different battery technologies, fuel cells that was matched

by 70 million from industry. It is looking at programs that have been in Arkansas and in Michigan with I think, Delphi received a \$2.8 million grant. Again to look at ways of leveraging what we have in place and to retool and to look at other manufacturers.

So, I think, promoting that, continuing to work together integrating the basic and applied science toward commercialization and deployment is what we will be able to do. I do believe we will be successful.

Senator STABENOW. Further on that point, as we had talked yesterday, I was pleased to have championed section 136 of the Energy Bill of 2007. At that time we focused on retooling, on getting the new technologies out and so on. There was a \$25 billion allocation set up for the fund.

President Obama has spoken about a \$50 billion commitment through that fund. I'm hoping that we can get to that point very soon. I wonder if you have any thoughts about raising that number to the President's expressed number as he talked about back in the fall.

Then second looking at the section 136 and the other loan guarantees and loan programs and grant programs, if you have any comments about what we had talked about yesterday as well with the different silos of these grants and loans when it's so critical right now to get capital out to businesses. There are hundreds of businesses in Michigan that are ready to take that next step on commercialization or be able to scale up right in the middle of the global credit crisis. So these areas of creating capital become incredibly important, but it is complicated and confusing right now for businesses to which ones to apply to and how they fit together and how much of a loan and how much of a grant and so on.

So, first about the number in terms of getting us up to the 50 billion that the President talked about in section 136. But then second, just the ability to move forward in a coordinated way with the current loans and grants that are available.

Ms. JOHNSON. Thank you. First of all the Loan Guarantee Program is critical toward moving new technologies forward. I believe that 2 or 3 weeks or most recently we had the first loan guarantee that went out to SOLYNDRA for about \$500 million for advanced photovoltaic systems.

So the process is working. I'm not familiar with the amounts. Haven't had a chance to be briefed on that, but I look forward to working with you and this committee to see what would be the best mechanism to continue that program. That would be, if confirmed, of course.

Senator STABENOW. Of course. Great. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Bennett, did you have additional questions or Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman. I wanted to ask Mr. Harris a few questions if I could. It's good to see you here in this capacity for your nomination.

One of the big issues obviously has been Hanford and Rocky Flats lawsuits related to the cold war radiation legacy of our nuclear program. Obviously for those who have been impacted as in the downwind population, has been an ongoing case. In fact the Energy Department seems to have sent quite a bit of money, more

than 125 million in just the contract or legal cost, that is the outsourced, legal dispute, I guess is the best way to characterize it.

It has been going on for many years. In fact we had one Federal judge last March concluding that quote, The financial cost of litigation is very high. The court concludes that continuing to resolve the claims in this manner is not economical and is unacceptable. Sorry, that manner is not economical and is unacceptable.

So what are your thoughts about how we get out of this just basically continuing to have, you know, law firms making tons of money off of the Department of Energy on cases that probably should be settled?

Mr. HARRIS. When I was a young lawyer the senior partner I worked for and I admired the most, said to me, you know, an ok settlement is better than the greatest trial. That's my view of litigation in general. If solutions can be found that are acceptable to the parties.

It is far better to do that and to attempt to do that than to waste years and enormous amounts of money on litigation. Not maybe the best thing for a litigator to say. But it's my view and has been for a long time.

I'm aware of the Hanford litigation. But because precisely it is in litigation, it was impossible for me, as not being an employee of the Department to discuss it very much with people who were there because of the risk of learning confidential information at a time that would not be appropriate. But I can promise you that if I am confirmed I will indeed look at that litigation as one of the first things I do in the Department.

Senator CANTWELL. Can you send the committee a written summary of the findings and intentions regarding Hanford and Rocky Flat cases within 90 days?

Mr. HARRIS. I would be pleased to do that.

Senator CANTWELL. Ok, thank you. Obviously you will be involved in the oversight and management of these cases?

Mr. HARRIS. Absolutely.

Senator CANTWELL. I mean in the context of one of the concerns is that so much has been outsourced to an outside legal firm that they're calling the shots and making the decisions. Obviously if they can continue a case for now that's been more than a decade and continue to just make great fees off of the Department of Energy then why not continue that?

Mr. HARRIS. I, having been in private practice as long as I have, I think I'm in a good position to review the practices of outside counsel.

Senator CANTWELL. Thank you. Thank you very much.

Mr. HARRIS. Thank you.

Senator CANTWELL. Appreciate that. Ms. Triay, actually a question for you that, definitely far easier than tank waste and ground water contamination. The B reactor has finally been designated as a national historical monument. To, I don't know if it's to our surprise, I visited the B reactor and it's an incredible part of the history of our country.

But we know that, you know, trying to make that more accessible to the public and do you have some suggestions on how to do that? I think the first set of tours that were supposed to now last



for the next year sold out in less than 72 hours. It's like the hottest—I mean Ticketmaster sales don't go as quickly as B reactor. So what else can we do given that it's on the Hanford reservation and that it's part of the complex?

Ms. TRIAY. Thank you for that question, Senator. I really appreciate that question because we are very proud of the fact that part of our history is being so well embraced by the public. We are going to be spending \$1.5 million, I believe, this year and about the same amount next year for safety and seismic upgrades to ensure that we can continue these tours and have the reactor well preserved.

In addition to that we are going to be working very closely with the Richland Field Office to see what can we do to increase the ability of these tours that are so popular. That frankly we are so proud because they are such an integral part of our history.

Senator CANTWELL. I have one question too, for Ms. Johnson about the transfer of Hanford Reservation property too. Obviously people are interested in reducing the size of the Hanford footprint. So do you see any legal barriers to transfer or lease of land at Hanford to third parties to establish something like a clean energy park or develop large scale energy related facilities?

Ms. JOHNSON. Senator, I'm not familiar in details with the matter of the legal aspects of it. But if confirmed I'd be happy to consult with my colleague at the far end of the table to understand the issue in more detail.

Senator CANTWELL. Or Ms. Triay? I know that the agency has some.

Ms. TRIAY. We have done land transfers in other parts, like Oak Ridge, like in Savannah River. So we would be working again, with Mr. Harris if we're confirmed and his staff. I assure you that we will find a path forward so that we can fully utilize, you know, the benefits of this footprint reduction, you know, that the Recovery Act will gain us.

Senator CANTWELL. Thank you. I thank the Chairman. I don't think there could possibly be a more important group of nominees for the State of Washington, literally for the country given that Hanford is the largest nuclear cleanup site. I would say probably in the world.

It just happens to be in Washington State. But our obligations there are immense. So I thank the chairman. I thank the nominees for their willingness to delve into these issues.

The CHAIRMAN. Again, thank you all for being here. We will allow members until 5:00 p.m. tomorrow to submit any additional questions for the record.

If any are submitted I hope you can respond quickly on those. If you can then we can try to take action here in the committee on your nominations next week. Thank you all very much. That will conclude our hearing.

[Whereupon, at 3:20 p.m. the hearing was adjourned.]



## APPENDIXES

---

### APPENDIX I

#### Responses to Additional Questions

---

RESPONSES OF SCOTT BLAKE HARRIS TO QUESTIONS FROM SENATOR MURKOWSKI

##### LOAN GUARANTEES

*Question 1a.* The Loan Guarantee Program established by Title XVII of the Energy Policy Act of 2005 has an important role in fostering clean energy technology for the country, including nuclear and renewable energy resources. Although the issue of loan guarantees by the Department has been authorized for four years, we have only just recently seen the first loan guarantee issued. Many questions still remain on the part of applicants regarding the program rules and interpretations of the 2005 law by the Office of the General Counsel.

Do you share the enthusiasm for this program that has been expressed by the Secretary of Energy?

Answer. Yes. Moreover, if I am confirmed, my office will fully support the objectives of the Department and the priorities of the Secretary including the Title XVII Loan Guarantee program that fosters clean energy technology while protecting the American taxpayer.

*Question 1b.* How will you work with industry to ensure that the program rules promote the greatest leveraging of the authorities granted by Congress to promote clean sustainable energy for the 21st century?

Answer. If I am confirmed as General Counsel, I will examine the rules and regulations governing the Title XVII Loan Guarantee Program and ensure that the program rules promote the greatest leveraging of the authorities granted by Congress to promote clean sustainable energy for the 21st century.

##### CYBER SECURITY

*Question 2.* Does DOE require additional emergency authority to deal with imminent cyber security threats that could impair the nation's electrical grid? If so, how would the Department propose to work with the Federal Energy Regulatory Commission to deal with these cyber security threats?

Answer. I understand that the Department has been working with the private sector for several years to enhance cyber security in the energy sector through the implementation of the Roadmap to Secure Control Systems in the Energy Sector. If confirmed, I will certainly work closely with the FERC and others to address cyber security threats, and to evaluate whether additional authorities are needed.

##### RES

*Question 3.* How does DOE propose to implement a new federal Renewable Electricity Standard? Currently 29 states plus the District of Columbia have some form of an RES in place. Each program contains at least one resource not permitted under draft Federal RES legislation proposals now under consideration. How would DOE reconcile existing state programs with a new federal program?

Answer. While I am not yet familiar with the details of the RES, I am keenly aware of the importance of an appropriate balance between state and federal authority. I understand that the proposed legislation would require the Department to promulgate rules for implementation, and as General Counsel, I would work to ensure that the rulemaking process allows for the consideration of the views and interests of states and other stakeholders, and proceeds promptly to an appropriate conclusion.

## EERS

*Question 4.* Is the Department capable of implementing and administering a federal EERS? Would your answer change if Congress also passed a stand-alone RES? What if both of those standards and climate change legislation all pass—is the Department ready to meet its responsibilities under all three of those measures?

Answer. My view is that the Department is, and must be, capable of implementing any authority that Congress chooses to give it. If confirmed, I will work diligently to ensure that the Department meets all of its legal obligations.

## RENEWABLE ENERGY ZONES/ADMINISTRATION

*Question 5.* Can you comment on Secretary Salazar's recent "Secretarial Order" calling for DOI to not only establish renewable energy zones on public lands, but also to handle the permitting and environmental review? Should a non-land management agency like DOE or FERC be given the coordinator role instead? Should Congress expedite environmental or judicial reviews?

Answer. I believe that siting of power lines is an issue of national importance; exploitation of our country's plentiful renewable energy resources is certainly an important driver in this area. However, I am not familiar with the details of Secretary Salazar's proposal. If confirmed, I look forward to working with Secretary Chu, the Administration, and Congress to help determine a path forward that facilitates renewable energy production on public lands while allowing for full consideration of other interests.

## SMART GRID

*Question 6.* Title 13 of EISA 2007 and the American Recovery and Reinvestment 2008 provided authorization and funding, respectfully, for modernization of the electricity grid (Smart Grid). ARRA specifically provided funding to DOE to support the demonstration, research, and matching funds along with funds for the interoperability standards framework. Are there any statutory barriers that prevent DOE from accelerating the standards development activity needed to provide the underpinning for deployment of smart grid technologies and products? If so, what are they and what obstacles do they present? Can this Committee count on you in your capacity as general counsel to assist DOE in accelerating smart grid deployment?

Answer. Given my background in telecommunications, it is perhaps not surprising that I believe smart grid deployment is extremely important. I am not aware of statutory barriers that prevent DOE from accelerating the standards development activity; however, I understand that progress—and the speed of that progress—does depend on cooperation from industry stakeholders through a consensus process. I understand that Secretary Chu has pushed to speed up the process, and if confirmed, I will assist him in any way that I am able.

## INTEROPERABILITY

*Question 7.* Title 13 of EISA 2007 lays out the need for "interoperability" as an objective of the smart grid. This entails businesses working with electric power to exchange some fairly detailed operating information about their technologies and products. Given this fact, what role does DOE foresee in managing the demonstration and research work to ensure a pro-competitive environment involving competing technologies and systems? What role can Standards Developing Organizations play with respect to developing standards through the DOE activity?

Answer. I am not familiar with the details of the interoperability issue, but I believe that my experience in telecommunications law will help me to get up to speed quickly. If confirmed, I will do so and to then work with Secretary Chu and the Department to push interoperability standards forward.

## TIMEFRAME FOR STANDARDS

*Question 8.* The DOE administers the Appliance Standards and Codes program authorized under EPCA, as amended. As you are aware, there have been significant delays by DOE in meeting statutory deadlines for issuing new or amended standards, if warranted. Some of these delays have been attributed to resource constraints within the legal review process in DOE according to the GAO. Can this Committee expect to see improved operational efficiencies in the processing and handling of DOE decision-making on appliance standards and code matters? Will you report back to the Committee on what steps you take within the General Counsel office to address the legal review processes?

Answer. If confirmed I will do everything possible to ensure the legal review process operates efficiently and will be happy to report back to the Committee. Though

I have not been briefed on all the details of this issue, I am aware that the Department of Energy (DOE) is required by a consent decree to issue appliance efficiency standards by a date certain for 22 consumer and commercial products. Furthermore, I understand that there are additional deadlines in statute, and that President Obama has identified appliance efficiency standards as an important focus of the Department. If confirmed, I will be fully committed to meeting these deadlines and working to improve this vital program.

RESPONSES OF SCOTT BLAKE HARRIS TO QUESTIONS FROM SENATOR CANTWELL

*Question 1.* In December, the Department of Energy's Office of Environmental Management released a white paper on its strategic planning efforts to identify ways to reduce the cleanup footprint and return its land to productive use while addressing our nation's energy crisis.

One such use specifically studied was converting land within the nuclear cleanup footprint to clean energy parks. There has been a very favorable response to DOE's proposals to reduce the footprints of the major cleanup sites.

The idea of combining the reduced footprints with making land available for Industrial Use for possible Energy Parks seems to have ignited a bonfire of creative ideas and proposals in these communities. Under DOE's proposal, designated tracts of land would be transferred to a third party for rapid development of large scale clean energy-related facilities.

DOE's plan to facilitate this development includes:

- (1) initial evaluation of land that will be available
- (2) optimizing the value of the land in relation to opportunity
- (3) enabling development by a third party; and
- (4) participation in achieving program goals.

Do you see any legal barriers to rapidly transfer or lease contaminated land at Hanford to third parties to establish a Clean Energy Park and deploy large scale clean energy-related facilities?

Answer. I am informed that DOE had broad property disposal authority pursuant to the Atomic Energy Act for some land that DOE owns, and that this authority could potentially be used in such cases. If confirmed, I will promptly and fully investigate how this authority can be utilized.

*Question 2.* The Hanford and Rocky Flats lawsuits represent major unfinished elements of Cold War radiation legacy of the U.S. nuclear weapons program. These lawsuits were filed in 1990 after previously secret information revealed that significant amounts of radioactive materials were released into the environment and had contaminated thousands of people and their property.

In both cases liability has been established and has been affirmed by the United States Supreme Court. Regarding Hanford, after nearly 20 years, with jury verdicts finding for two plaintiffs in bellwether trials and lengthy appeals, this litigation remains trapped in seemingly endless delays fueled at government expense. And DOE is allowing this to continue to proceed with no resolution in sight. Meanwhile thousands of people who lived on or worked at DOE nuclear facilities are being compensated under federal statutes, a compensation program that is unavailable to downwinders who were of very tender ages when exposed to these cancer and disease-causing radioactive releases. The Energy Department seems to have spared no expense to fight these cases and had paid more than \$125 million in contractor legal costs. On March 26, 2009, a Federal judge presiding over the Hanford litigation concluded that "the financial cost of the litigation is very high. The Court concludes that continuing to resolve claims in this manner is not economical and is unacceptable." In addition, in the Rocky Flats litigation a jury has arrived at verdict against the federal government and its contractors and there is a \$926 million judgment pending.

In light of DOE's determination to indemnify legal liability of its contractors in the Hanford and Rocky Flats litigation, will you commit to taking steps to explore resolution of these claims as required by the Price Anderson Act?

Answer. Yes. If confirmed I will certainly explore the possibility of resolving these cases in a manner that promotes the public interest.

*Question 3.* Given that DOE has paid at least \$57.8 million in contractor legal fees for the Hanford litigation and \$72 million for the Rocky Flats lawsuit it appears that the Office of General Counsel should be performing routine oversight of the status and validation of expenses for these cases and should be consulted by contractor attorneys, especially when settlement issues arise.

Do you intend to provide oversight over the management of these and other cases?

Can you send the Committee a written summary of its findings and intentions regarding the Hanford and Rocky Flats cases within ninety days of your confirmation?

What will you do to establish control over DOE's "spare no expense" policy for contractor legal costs?

Answer. If confirmed, I will oversee the management of all cases in which the Department has an interest. I am not sufficiently informed about the contractor legal costs issue you raise but I will certainly commit to investigating it. With respect to the particular cases mentioned, Hanford and Rocky Flats, if confirmed, I will provide the Committee with a written summary of my assessment and intentions within 90 days.

---

RESPONSES OF KRISTINA M. JOHNSON TO QUESTIONS FROM SENATOR MURKOWSKI

YUCCA MOUNTAIN

*Question 1.* In comments before this committee and elsewhere, the Secretary of Energy has stated that the Yucca Mountain waste repository is no longer an option for the permanent disposal of high level civilian and defense related nuclear waste.

Given that the Nuclear Regulatory Commission has barely had a chance to begin its review of the Yucca Mountain license application how would you reconcile this decision to the administrations stated commitment to science based policy making?

Answer. I do not consider myself an expert on the science related to Yucca Mountain. I do understand that President Obama and Secretary Chu believe that we need a better solution, and if confirmed, I look forward to working with Secretary Chu and this Committee on this matter.

SPENT NUCLEAR FUEL

*Question 2.* A primary component of the Secretary of Energy's approach to the spent nuclear fuel policy debate is to establish a blue ribbon commission to examine the issue.

a. How do you think the product of such a committee's deliberations will improve upon the many studies and reports on geologic disposal and nuclear waste management that have been conducted over the last half century?

b. How do you believe that such a committee should be structured to insulate it from political influence, and what should the scope of the committee's deliberations be?

Answer. Secretary Chu has stated that he intends to convene a Blue Ribbon Commission, composed of experts, to evaluate alternative approaches for meeting the Federal responsibility to manage and ultimately dispose of spent nuclear fuel and high-level radioactive waste. If confirmed, I will work with the Secretary to help structure the panel to provide recommendations that are based on science and insulated from political influence.

RENEWABLE ENERGY PRIORITIES

*Question 3.* Alaska has tremendous potential in tidal and wave energy, geothermal, biomass, wind, and other renewable resources. My question is how do you envision spreading your scarce resources among current and future prospective renewable energy technologies? Will you support funding for more than basic research, for not only demonstration, but also deployment grants until renewables become truly mature technologies? How do we avoid picking winners and losers, but at the same time funnel enough federal aid to get technologies economically off the ground?

Answer. As I stated during the hearing, I believe that we need to do better across the entire pipeline—from basic research, to applied research to deployment. Improving technology development and deployment has been a key focus of my career, and I look forward to continuing work in this area at the Department if I am confirmed. One of the early tasks that I would like to undertake if confirmed is development of an energy technology roadmap that can help guide the investments of the scarce resources to accelerate applied R&D on the most promising approaches early on, while supporting truly basic research that will lead to the next breakthroughs in the way we use energy, thus transforming for the better our society.

FOSSIL FUELS

*Question 4.* In all the talk about renewables, and perhaps because of last year's price spike for crude oil—prices that are a receding memory—aid to the fossil indus-

try to get more conventional hydrocarbons out of the ground seems to have gone out of style. But given that in the best case scenario we are still going to be dependent on fossil fuels for decades, should we not continue research into how to better extract heavy oil, like the billions of barrels under Prudhoe Bay in northern Alaska? Should we not provide greater funding for research into production of methane hydrates—Alaska is forecast to contain 32,000 trillion cubic feet of hydrates—enough to power the nation for a millennium? Should we not aid the industry to find better environmentally sensitive ways to produce the trillions of barrels of oil shale in the West? What is your view about the need for continued federal research into improvements in fossil fuel production?

Answer. I believe that oil and natural gas will continue to play a large role in energy supply for decades. While oil and gas companies have ample resources and a strong incentive to invest in research and development, I believe that there are areas where government investment is appropriate, including long-term, high-risk research and development on methane hydrates.

#### CASH FOR CLUNKERS

*Question 5.* A proposal known as “Cash for Clunkers” is receiving much greater attention after the President endorsed it. “Cash for Clunkers” would provide owners of older cars with vouchers to purchase better performing vehicles, in exchange for scrapping their “clunkers,” and it would be administered by the Department of Energy. In the past, many supporters have urged its passage as part of an effort to stave off bankruptcy for struggling automakers. Now that some form of bankruptcy appears increasingly likely, however, would you still support this proposal? Or do you believe it could simply trade billions of taxpayer dollars for little or no environmental benefit?

Answer. While I am generally familiar with the “Cash for Clunkers” concept, I am not fully briefed on the Administration’s plans in this regard. If confirmed, I will look into this matter and would be glad to report my findings to you.

#### BIOFUELS

*Question 6.* In consultation with the EPA, the Department of Energy is conducting research on the impact that higher blends of ethanol—greater than 10 percent by volume—could have on existing vehicles, equipment, and infrastructure. There is significant concern that the EPA Administrator will approve Growth Energy’s waiver petition before this testing is complete, and raise the blend cap to 12%, 13%, or even 15%. If consulted as Under Secretary of Energy, will you commit to advising against any such increase until sufficient scientific data indicates there will be no adverse consequences?

Answer. If confirmed, I will look into this matter and will provide advice to Secretary Chu and to the EPA after consideration of the relevant scientific information.

#### NIETC

*Question 7.* What is your assessment of the National Interest Electric Transmission Corridor process established by Congress in the 2005 Energy Policy Act?

Answer. I am not yet familiar with the details of the National Interest Electric Transmission Corridor process established by Congress in the 2005 Energy Policy Act. However, I believe that addressing the transmission and distribution system has become a national issue. The system is aging and in need of investment and modernization. The key is to strike the right balance between local, state and federal authorities and interests, something I look forward to working on with you if I am confirmed.

#### SITING

*Question 8.* Do you support an enhanced federal role for the siting of interstate power lines? Do you believe that any enhanced federal role should be limited to proposals that give preferential siting and permitting for “green” power lines? Is such a concept even consistent with the physical reality of how power flows through the grid?

Answer. As noted above, I believe that siting of power lines is an issue of national importance; exploitation of our country’s plentiful renewable energy resources is certainly an important driver in this area. The key is to strike the right balance between local, state and federal authorities and interests, something I look forward to working on with you if I am confirmed.

## HYDRO

*Question 9.* Do you agree that hydroelectric pumped storage is an excellent means of providing zero emissions backup to intermittent wind and solar plants? Would you support allowing pumped storage to qualify for credits under a federal Renewable Electricity Standard?

Answer. Pumped storage offers excellent capability to assist electric utilities with integrating wind and solar energy. For example, a Colorado utility has modified operation of an existing hydroelectric pumped storage facility in its system to enhance the utility's capability to integrate its rapidly growing levels of wind energy. While many operational and infrastructure changes are available to assist with wind and solar energy integration, hydroelectric pumped storage provides integration capability at a scale that warrants strong consideration for federal subsidy to increase its viability. I do not have a view at this point in time about whether inclusion in an RES is appropriate, but if confirmed, I will look into it and work closely with you and other members of the committee on it.

## MSW

*Question 10.* A number of Senators have called for the inclusion of Municipal Solid Waste as an eligible resource for purposes of meeting any federal Renewable Electricity Standard. What is your position? Are there additional resources Congress should consider?

Answer. I have not had an opportunity to review the RES proposal in detail, but pledge to do so if confirmed.

## CYBER SECURITY

*Question 11.* Does DOE require additional emergency authority to deal with imminent cyber security threats that could impair the nation's electrical grid? If so, how would the Department propose to work with the Federal Energy Regulatory Commission to deal with these cyber security threats?

Answer. I understand that the Department has been working with the private sector for several years to enhance cyber security in the energy sector through the implementation of the Roadmap to Secure Control Systems in the Energy Sector. I do not have a view at this point about whether additional legislative authority is needed, but if confirmed, I will examine the issue closely.

## NUCLEAR

*Question 12.* Do you agree that nuclear power must be part of our supply mix going forward?

Answer. I do.

## COAL

*Question 13.* Do you agree that there is "no such thing as clean coal"?

Answer. I believe that we can and we must develop technology to enable us to continue to use coal while sharply reducing our greenhouse gas emissions. Developing carbon capture and storage technology will be a key priority for me if I am confirmed.

## WAPA

*Question 14.* The Stimulus bill provided brand new borrowing authority for the Western Area Power Administration (WAPA) in the amount of \$3.25 billion, to plan and construct transmission lines for renewable energy projects. How is DOE moving forward with this new authority? What will such federal authority mean for private transmission efforts and existing regional grid planning?

Answer. It is my understanding that WAPA published a proposal regarding the use of the ARRA authority in a March 4, 2009 Federal Register notice. That proposal provides for collaboration with public and private entities across the region, and coordination with existing planning efforts. If confirmed, I would be glad to look into this matter and provide you with additional information.

## RESPONSES OF KRISTINA M. JOHNSON TO QUESTIONS FROM SENATOR CANTWELL

*Question 1a.* What is your position on the importance of ensuring the recruitment and retention of a highly skilled and knowledgeable workforce to carry out essential clean-up tasks at sites like Hanford?

Answer. I think it is essential that we have a highly skilled and knowledgeable workforce at the Hanford Site in carrying out our cleanup program. If confirmed,



I will look first to retaining these skilled workers and then recruit workers who have the required skills and knowledge to successfully perform work.

*Question 1b.* Do you view these highly skilled workers as assets that DOE has already spent million of dollars in taxpayer funds to train?

Answer. I do.

*Question 1c.* Will you commit to providing sufficient funding to maintain the current workforce at Hanford and other sites while attracting candidates of equally high caliber when current workers choose to retire?

Answer. It is my understanding that the funding for the ongoing base program as well as the accelerated cleanup funding provided under the American Recovery and Reinvestment Act will be sufficient to maintain the current Hanford Site workforce as well as provide new employment opportunities for skilled and qualified workers.

*Question 1d.* Will you commit to ensure that contractors have prior experience in cleaning up legacy atomic sites and that they give priority to employing members of the current workforce with invaluable knowledge of the site itself?

Answer. If confirmed, one of the principles that I will apply is that we will not perform EM cleanup work at the Hanford Site unless we are assured it can be conducted safely. Workers who perform EM cleanup work must be trained and qualified to perform their assigned tasks. In my view, prior experience as a former cleanup worker or as a current qualified worker is extremely beneficial and should be considered in employment decisions.

*Question 1e.* Will you commit to make certain that current and future workers who perform equal work at these sites receive compensation in the form of equal wages and benefit?

Answer. If confirmed, I commit to assuring equal wages and benefits to workers at the Hanford Site in accordance with the requirements of existing labor union agreements.

*Question 2.* In January 2004, Energy Secretary Samuel Bodman introduced a plan to establish a two-tiered pension and medical benefits system whereby a successor contractor at Hanford or elsewhere would only be required to contribute to the workforce's current defined benefit pension plan for the first five years of the contract.

After five years, all employees would be subject to a new 401(k) style plan. Due to my opposition and that of my other colleagues, Republicans and Democrats, in April 2006 Secretary Bodman modified the plan to allow incumbent workers to maintain a defined benefit pension plan (Ref. DOE Notice 351.1).

The following month, the Senate and the House blocked funding to implement DOE Notice 351.1. As a result, in June 2006 Secretary Bodman suspended 351.1 to allow him to consult with Congress and other stakeholders.

Despite this suspension, DOE continued with efforts to establish a two-tiered pension system through Request for Proposals and the recent awarding of three contracts at Hanford, including the Tank Operations Contract, Mission Support Contract and the Plateau Remediation Contract.

Given that a bipartisan group of Senators, Members of the House, a number of Governors, labor unions and other stakeholders oppose such a two-tiered pension and medical system, what steps will you take to remove any such existing contract requirements at DOE sites?

Answer. If confirmed, I will review the existing contract requirements to ensure that they balance DOE's needs to mitigate cost growth and volatility of pension funds, and are fair to incumbent and future contractor employees.

*Question 3.* Our new national energy priorities, such as increased renewable electricity generation accelerated adoption of hybrid electric vehicles, and ambitious goals for improving end-use efficiency, can only be addressed if we also transform our US electrical infrastructure. Accomplishing this transformation very quickly is key, and likely a focus of additional debate in the 111th Congress, beginning with the economic stimulus package. This transformation will benefit from the unique resources in the Pacific Northwest, including leadership at the Pacific Northwest National Laboratory (PNNL), BPA and utilities throughout the region.

Transforming the grid requires incorporation of modern monitoring, communication, and computing technologies in our electrical transmission and distribution systems while continuing to deliver highly reliable and affordable electricity. This modernization will deliver new levels of efficiency, flexibility, security, and resiliency, serving the energy interests of the U.S. for decades. This transformation will also spark new economic activity analogous to markets created by the Internet and the nationwide efficiencies of the Interstate Highway System, resulting in major economic growth and both near-term and sustained job creation.

PNNL has identified three key Federal actions that will provide a framework for massive private sector investments in new infrastructure and innovation to create new energy markets. Each of these actions can be completed or deliver material progress within the next four years. These actions include:

- establishing the authority and resources for effective national grid planning by 2010,
- establishing a real-time, nationwide grid monitoring system and
- demonstrating the national benefits of grid intelligence across transmission to distribution to customers by 2012.

Our national energy priorities, such as increased renewable electricity generation, accelerated adoption of hybrid electric vehicles, and ambitious goals for improving end-use efficiency, can only be addressed if we also transform our electricity grid to make it more intelligent and flexible. Accomplishing this transformation very quickly is an important focus of my activities on this Committee, and its an issue where the Pacific Northwest is poised to help lead the nation, leveraging our institutions such as the Pacific Northwest National Lab, Bonneville Power Administration and other regional stakeholders.

What is your plan to move the Department forward in this regard?

More specifically, do you support the vision of and are you prepared to make critical R&D investments to realize the vision of a more transparent, flexible and intelligent grid?

Answer. Through the American Recovery and Reinvestment Act, the Department is already taking steps to move in that direction. The Department allocated funds in the Recovery Act specifically targeted at building this national capability and demonstrating the national benefits of grid intelligence across the transmission and distribution system. DOE is also leveraging the funding to accelerate the facilitation of regional transmission analysis and planning by states and industry, which is needed to integrate diverse clean energy resources into the grid. As you point out, PNNL and BPA have important resources that can be brought to bear on this problem. If confirmed, I will continue to build on these efforts. I support this vision of a more intelligent, secure grid, and will support research efforts needed to achieve it.

*Question 4.* It seems clear that working together, China and the US can do more to drive our world toward sustainable development than any other pair of nations in the world. Washington State has a special trade relationship with China (especially maritime) and, through very strong science and technology collaborative research relationships between the University of Washington and PNNL, the major Chinese universities and the Chinese Academy of Science (CAS). We have a unique and urgent opportunity to expand these activities by launching immediate, aggressive multi-track technology, policy and industrial initiatives across the buildings, transportation, utility and industrial sectors of our two economies. These efforts would be designed to help stabilize the global economy, create jobs and trade opportunities and sustainably transform the energy economies of both countries.

The Under Secretary will have a key role in shaping DOE's approach to advancing partnerships with Chinese Science and Technology Institutions to accelerate progress on challenges such as decarbonizing our energy systems, advancing renewables and modernizing the electric infrastructure. PNNL, working with the Chinese Academy of Sciences, is making important progress on a Technology and Policy Roadmap designed to jump start this cooperation and progress.

How do you see DOE's role in shaping and advancing partnerships with Chinese science and technology institutions to accelerate progress on shared energy challenges?

Carbon dioxide and GHG emissions reduction in particular is a global problem for which a global solution is needed and for which there seems to be great opportunity for accelerating solutions with leveraged investments across these two nations. Would you support a significant partnership in this area?

Answer. If confirmed I would indeed support partnership with China in this area. In fact, a former professor from my former institution, Johns Hopkins University, is dean of the newly formed engineering school at Beijing University. I have visited both Tsinghua and Beijing universities twice in the past year, and also the Chinese Academy of Science. These personal experiences and connections would help to inform my work at the Department. In that regard, I understand that the Department already plays an active role in working with China across a broad horizon of energy issues. I envision DOE continuing to play a critical role in advancing scientific cooperation between our two nations to address the many challenges we face in common. One of the most pressing common challenges is climate change, and the miti-

gation of carbon dioxide and greenhouse gas emissions. I look forward to greater cooperation with China in this critically important area.

*Question 5.* What the Department of Energy's current efforts in supporting the development of biofuels for commercial and general aviation? In the event that there is created a Federal Aviation Administration Center of Excellence for the Development and Use of Biofuels for Commercial and General Aviation, would the Department of Energy be willing to partner with the selected Center of Excellence and support program elements that are outside the mission of the FAA but within the Department's mission?

Answer. Development of biofuels for aviation is a key technology, and if confirmed, I will work within the Department and with external partners, such as the FAA Center you mention, to accelerate research and development in this area.

*Question 6.* Dr. Johnson, as you may know, the previous Administration did not support R&D in ocean and tidal energy so Congress added funding each year to support this research. What will be your strategy for this program in Fiscal Year 2010 and beyond? The Department's only marine sciences laboratory is located in Sequim, Washington and I believe it can be a real asset to the Department in addressing marine energy R&D opportunities. Before our nation can fully realize the potential of water power as a carbon-free energy source, we must accurately assess our regional and national resources, and evaluate new technologies in marine environments to determine potential environmental impacts. Can I have your assurance that you will engage the Marine Sciences Laboratory as you move this program forward?

Answer. I believe that we need to explore and utilize all of our renewable resources. Pacific Northwest National Laboratory's (PNNL's) Marine Sciences Laboratory (MSL) has valuable capabilities in physical oceanography and marine biology as they relate to the development of ocean energy. DOE currently employs the MSL, where researchers work collaboratively with DOE-supported ocean energy projects, including Snohomish Planned Unit Development of a tidal energy site in the Admiralty Inlet section of the Puget Sound and the Northwest National Marine Renewable Energy Center, a joint Oregon State University-University of Washington program addressing wave and tidal energy R&D and testing. If confirmed I will build on this work and engage the MSL going forward.

#### RESPONSES OF KRISTINA M. JOHNSON TO QUESTIONS FROM SENATOR BARRASSO

*Question 1.* As we strive to make the United States more energy independent, do you think we need all U.S. energy resources to meet future energy demands?

Answer. The United States should continue to make use of all its resources as part of a comprehensive energy mix that puts us on a path toward greater energy independence. It is particularly important to accelerate the development and deployment of energy technologies that enable the use of domestic energy resources in a manner that enables us to reduce greenhouse gas emissions. If confirmed, I will work to improve the Department's efforts to develop and deploy such clean energy technologies, including carbon capture and storage.

*Question 2.* Do you believe the U.S. has the responsibility to take the lead in developing clean coal technology?

Answer. I believe the United States should continue its leadership role in developing clean coal technologies. The development of clean coal technology represents not just a responsibility, but also a significant opportunity. We are one of the most prolific producers of coal and also one of the chief consumers of coal. The United States has demonstrated a significant track record in developing clean coal technologies, and if confirmed, I will endeavor to accelerate this work.

*Question 3.* How would you move forward with respect to carbon sequestration R&D and eventual deployment?

Answer. I believe that we need to pursue a range of promising CCS technologies. It is my understanding that the Department's Carbon Sequestration Program is pursuing such an approach, developing a portfolio of technologies with potential to reduce greenhouse gas emissions and ultimately move those technologies to commercial readiness for deployment. In addition to demonstration projects, large-scale development projects are also underway. If confirmed, I will make management of this CCS portfolio one of my highest priorities.

*Question 4.* The Rocky Mountain Oilfield Testing Center is a 10,000-acre facility located within the Naval Petroleum Reserve No. 3 (NPR-3) also known as Teapot Dome Oil Field. It provides a venue for service companies and equipment manufacturers to test new ideas and products leading to increased recovery or reduced operating costs—combining all technologies to strengthen integrated energy development. The Center is also a tremendous resource for students to learn and research.

Its partners include academia, inventors, small and large businesses, and government entities, including national labs. If confirmed, what would you propose for as the long-term plan to extend the operation and production of the Rocky Mountain Oilfield Testing Center and ensure its continued success as a research and education resource?

Answer. I am not familiar with all of the details about this matter, but I understand that production is currently authorized until April 2012. If confirmed I will look into options for the RMOTC and would be glad to discuss the long-term plans that you mention.

RESPONSE OF KRISTINA M. JOHNSON TO QUESTION FROM SENATOR BUNNING

CAP AND TRADE

*Question 1.* Dr. Johnson, it's good to see you again. In our meeting we discussed the issue of cap and trade. As you know, I have concerns about mandating a system that would not only punish American consumers and producers but would restrict domestic economic growth. You indicated in our meeting that through implementing a cap and trade system America can take a global leadership position on climate change. You argued that developing nations will "follow, not lead" on the issue of climate change and that mandatory agreements with these nations would not be necessary as they will voluntarily adopt emissions standards in the future. Is this correct? Follow up: Cap and trade advocates have argued that without mandates, the marketplace will not make the adjustments to advocate a "follow, not lead" voluntary approach with developing nations while dismissing the same approach in America?

Answer. I believe that the United States should provide leadership by moving forward with a program to reduce greenhouse gas emissions. At the same time, I recognize that climate change is a global problem that will require a global solution. I also realize the importance of American competitiveness; this applies not only to energy and trade intensive industries, but also to positioning the United States as a leader in development of clean energy technologies. The challenge is to develop a policy that addresses all of these issues, something I pledge to help do if confirmed.

---

RESPONSES OF STEVEN ELLIOT KOONIN TO QUESTIONS FROM SENATOR MURKOWSKI

NATIONAL LABS

*Question 1.* During the Cold War the national laboratories were an important part of a national innovation engine that was the envy of the world. This engine included basic research at universities, applied research at the national laboratories, and commercialization by private industry. Many would say that the energy and climate change challenges our nation faces are at least as compelling as the challenges of the Cold War.

As Under Secretary for Science, what steps would you take to promote this type of collaboration between the universities, the laboratories, and industry in meeting the challenges our nation faces in the 21st Century?

Answer. I think that the kind of collaboration that you describe is critical to meeting our energy challenges in the 21st century. I have had initial discussions with Secretary Chu about better integration of research efforts across institutions, and I know that he also believes this is an important priority. I understand that the DOE Office of Science has taken several steps in this direction in recent years. One example is the scientific workshops. Over 25 workshops led by the Office of Science over the past 8 years have brought together scientific and technical experts from academia, the national laboratories, the private sector, and government, including program managers from the DOE applied technology programs, to identify the scientific and technical challenges our nation must overcome to develop new and advanced energy technologies and to address environmental concerns. These workshops bring the communities together from the very beginning to identify scientific priorities, and in the process encourage the building of partnerships.

If confirmed, I will build on this and other ongoing work to promote ideas that will result in more beneficial collaborations.

*Question 2.* The Office of Science is responsible for 10 national laboratories and the largest share of the Department's national laboratory budget after the NNSA. This Committee recently approved legislation that would double the funding authorization for the Office of Science over the next 6 to 7 years. Even this funding may not be sufficient to address the diverse mission of the Office of Science.

How do you plan to coordinate the missions of the Office of Science laboratories so that they can collaborate rather than compete for scarce funding?

Answer. While competition is important to spur new ideas and new discoveries, and continue to push the frontiers of science and technology, it is also important that we encourage collaboration between the laboratories, particularly when resources are scarce. I understand that the Office of Science (SC) has in place several mechanisms to encourage collaboration. For example, through the annual laboratory planning process, SC coordinates discussions on the laboratories' core competencies to enable an understanding of where the laboratories' priorities for future investments are and better position SC to facilitate coordination between the laboratories where it is most beneficial. If confirmed, I will build on this and other efforts to improve coordination across the SC labs.

#### BIOFUELS

*Question 3a.* I noticed some of your former comments where I believe you have somewhat the same view as I do, that com-based ethanol is not the best answer to our need for biofuels to ethanol and related fuels. In Alaska right now, for example, there is a test underway that shows that sugar beets are growing much better in cool temperatures than anyone predicted, the beets containing 16% to 22% more sucrose than the average sugar beet. That sucrose can then be utilized to manufacture Dimethylfuran (DMF) that initial tests show requires 40% less refining costs than ethanol to become a finished fuel.

What is your view on whether we should be concentrating more of our research dollars and subsidies to perhaps speed cellulosic ethanol development, compared to the 15 billion gallons of com-based ethanol mandated by the Energy Independence and Security Act of 2007?

Answer. It is my understanding that nearly all the research dollars that the Department of Energy (DOE) is devoting to biofuels are aimed at developing cost-effective means of producing cellulosic biofuels on a commercial scale—and not just cellulosic ethanol, but cellulosic hydrocarbon fuels, including green gasoline, diesel, and perhaps even jet fuel. We are beginning to understand how these latter fuels, which would be fungible replacements for our current petroleum-based fuels, can be produced by both microbial and chemical catalytic means. Cellulosic biofuels—biofuels from nonfood plant fiber—really hold the key to a new biofuels economy. But we will need transformational breakthroughs in basic science to develop cost-effective methods of producing them, and that is the focus of DOE research.

*Question 3b.* As a former BP official, where in your view should the biofuel industry be headed?

Answer. There is a growing understanding among most energy companies that we need to transition to alternative energy. We have concerns about the security of our energy supplies, especially petroleum. We have major concerns about the climate if we continue reliance on fossil fuels. In the area of liquid transportation fuels, I think the real future lies in cellulosic biofuels, for the reasons discussed above.

*Question 3c.* Do you support the addition of promising new feedstocks, such as algae, into the Renewable Fuel Standard?

Answer. I do not have a view at this point about the inclusion of additional feedstocks into the RFS. However, I do believe that our choice of feedstocks should be determined by the results of our research, and that we should be careful not to prematurely close off any promising technological pathways.

#### OCEAN-GEOTHERMAL RENEWABLE ENERGY

*Question 4.* In the past, you have also talked about the need to improve our focus on new energy technologies given our nation's finite resources. I am almost scared to ask this question coming from a state with 34,000 miles of coast line and thousands of miles of rivers that make ocean hydrokinetic power: wave, tidal and current projects, all irresistibly attractive, and coming from a state where nearly 50% is located above potential geothermal hydrovent hotspots that might make geothermal an attractive baseload power source, compared to the 65 cents per kilowatt that diesel-fired generation is currently costing on average in rural Alaska. But the question is, where should we be placing our research dollars to gain the most energy in the future at the lowest capital and fuel costs? Could you rank the order on which prospective technologies we should be spending our dollars for promotion of renewable energy in the future?

Answer. As you point out in your question, the attractiveness of energy resources varies greatly by region. Therefore, I think it is important for DOE to invest in a range of technologies, including the hydrokinetic and geothermal technologies that you have identified.

## BIOFUELS

*Question 5.* In consultation with the EPA, the Department of Energy is conducting research on the impact that higher blends of ethanol-greater than 10 percent by volume—could have on existing vehicles, equipment, and infrastructure. There is significant concern that the EPA Administrator will approve Growth Energy's waiver petition before this testing is complete, and raise the blend cap to 12%, 13%, or even 15%. If consulted as Under Secretary of Science, will you commit to advising against any such increase until sufficient scientific data indicates there will be no adverse consequences?

Answer. Should I be confirmed, I will review the relevant scientific data and provide my best judgment on the matter.

## GAS TAX

*Question 6.* Last July, during a speech you gave at the University of California-San Diego, you indicated that you believe the United States should establish a floor for the price of gasoline. If confirmed, will you urge the Secretary and the President to seek such a policy? At what price per gallon would you suggest setting a floor?

Answer. It is my understanding that President Obama has ruled out a gas tax such as I described. If confirmed, I would work to implement the President's policies and to advise Secretary Chu and President Obama in the development of new policies.

## RESPONSES OF STEVEN ELLIOT KOONIN TO QUESTIONS FROM SENATOR CANTWELL

*Question 1a.* Now, more than ever, the ability to quickly and efficiently leverage U.S. science and technology to solve our nation's challenges is critical. Nowhere is that more evident than in the sphere of energy innovation, where national lab assets play a unique role in defining the of DOE research and development and lab-derived energy discoveries, the national laboratories must have the tools to effectively and efficiently collaborate with industry to turn these discoveries into commercial innovations.

For many years, the national laboratories have commercialized innovative technologies through licensing agreements with industry, and by opening specialized lab resources for collaboration through mechanisms like the Cooperative Research and Development.

While these agreements have been used effectively, they have their limits. Certain features constrain DOE's ability to collaborate and leverage the results of that collaboration to deliver complex innovation at the scale and speed required by current national energy policy objectives.

Most importantly, the Department's current organization results in a system where commercialization is a secondary priority rather than a central consideration when it comes to the effective deployment of technology. In addition, outdated contract and intellectual property terms can discourage industry engagement, as can varying implementation at each laboratory and field office. At the same time, Management and Operations (M&O) contractors are limited in their ability to bridge the "Valley of Death" between basic research and technology development by making investments and taking risks that could facilitate commercialization and speed.

In Title X of the Energy Policy Act (EPACT) of 2005, Congress attempted to empower DOE to address issues related to commercialization by directing the Secretary to create a technology transfer coordinator within the Department responsible for advising the Secretary "on all matters relating to technology transfer and commercialization." Congress also created a Technology Transfer Working Group—consisting of representatives from each of the DOE national laboratories—to coordinate tech transfer activities, exchange information on best practices and resolve disputes over intellectual property rights.

Almost two years after the enactment of EPACT, the Bush Administration finally assigned the Under Secretary of Science, Dr. Raymond Orbach, the role of tech transfer coordinator, which he assumed in addition to overseeing the day-to-day operations of the Office of Science and serving as chief policy advisor to the Secretary on Department-wide science and technology issues.

The Bush Administration also created a Technology Transfer Policy Board to assist in coordinating and implementing DOE's tech transfer policies and activities. In November 2008, the DOE Office of Science posted a notice of inquiry in the Federal Register inviting comments on a series of questions concerning tech transfer practices at DOE laboratories, not moving aggressively in this area, and, as a whole, has done little else to improve technology transfer at its national laboratories.

While the Secretary has yet to select a tech transfer coordinator, and has not indicated whether he will create a stand-alone tech transfer coordinator or assign the responsibility to an existing individual, entity, or office, one thing is clear—the Department’s commercialization policies and mechanisms will dictate how quickly and efficiently the nation can leverage our federal investment in science and technology to address energy security and climate change, among other pressing issues. The previous Administration assigned the Under Secretary for Science the role of Technology Transfer Coordinator. Do you aim for that to be your responsibility as well?

Answer. I understand that the Secretary is personally engaged in considering how the function should be organized. Regardless of the outcome, I can commit to you that if confirmed, one of my top priorities will be to better focus DOE research to deliver solutions to our energy and climate challenges.

*Question 1b.* The National Academy Report, “Rising Above the Gathering Storm” as well as GAO and other industry reports conclude that industry remains frustrated in engaging the national laboratories. How do you intend to improve those interactions?

What will you do to facilitate partnerships among national laboratories, universities, and industry, and improve technology transfer and commercialization within the Department and at the national laboratories?

Do you recognize that there are impediments to national laboratory collaboration with industry, universities, not-for-profit organizations and other national laboratories?

Answer. As a result of my time at BP and my efforts to work with Secretary Chu when he was the Lawrence Berkeley Lab Director, I understand first-hand the frustrations that industry encounters in dealing with the Department and its national laboratories. I know that barriers also exist to better collaboration with universities and other labs as well. If confirmed, I pledge to work to remove these barriers and to improve partnerships between DOE labs and other entities. Doing so will help to realize the potential that Department of Energy and its laboratories have to be a major driving force for addressing many of the technological, environmental, ecological and economic challenges our Nation now faces.

*Question 1c.* Will you be open to new and innovative mechanisms to accomplish these objectives?

Answer. Absolutely. As Chief Scientist of BP working with Berkeley Laboratory I had first hand experience of these barriers, and I am committed, and know that the Secretary is absolutely committed, to soliciting and implementing new and innovative mechanisms to facilitating interaction with industry, not-for-profit organizations, and academia.

*Question 2.* The Department has many elements that are a part of the climate change agenda, such as Fossil Energy, Nuclear Energy, Energy Efficiency, Policy, and Office of Science.

What is your role in the climate change agenda within the Department of Energy?

Who is the principal point of contact for climate change issues within the Department, other than the Secretary?

As Chairman Bingaman indicated in the last Congress, the need for accurate modeling is essential if we are to design legislation around long-term emissions mitigation targets. It is particularly important that these tools provide timely assessments at scales useful for decision making—e.g., assessments of climate change impact at the regional vs. global scale, and within the next decade.

Given that DOE is the principal federal funder of this research, would you support increased investment for integrated assessment tools for research and analysis?

Answer. As the Under Secretary for Science my primary role with respect to climate change will be to oversee and coordinate related research and development activities across the Department, and to serve as the principal science advisor to the Secretary, which includes ensuring that we make sound, science-based decisions with respect to the Department’s investments in advanced energy technologies that will mitigate current and future CO<sub>2</sub> emissions.

With respect to modeling, I agree that we must have effective tools that provide timely assessments of climate change impacts at scales useful for decision making. DOE has significant work underway in this area, and if confirmed, I will look for opportunities to build on this work.

#### RESPONSE OF STEVEN ELLIOT KOONIN TO QUESTION FROM SENATOR CORKER

*Question 1.* After falling behind for a number of years, today the U.S. has regained world leadership in high performance computing and computational sciences, as recognized by the Gordon Bell Prize for the scientists at the Leadership Com-

puting Facility at the Oak Ridge National Laboratory, where they built DOE's petaflop machine on time and ahead of schedule.

Dr. Koonin, what is your plan to sustain and expand U.S. leadership in computing and computational sciences, especially in energy, climate and environment by accelerating the development and deployment of leadership computers through Exascale and beyond? As the Office of Science funding doubles over the next few years, do you expect the budget for computing also to double so that the U.S. can maintain its leadership?

Answer. As you point out, high performance computing and computational sciences are an important area of investment. I am not in a position to make judgments about future budgets at this time, but if confirmed, I will work closely with you on this matter.

---

RESPONSES OF INES R. TRIAY TO QUESTIONS FROM SENATOR MURKOWSKI

DEFENSE CLEANUP

*Question 1.* The American Recovery and Reinvestment Act provided more than \$5 billion dollars for defense environmental cleanup. My recollection is that these funds would be used largely to finish smaller projects in the hope that the overall footprint of the defense cleanup effort could be decreased.

Is this still the plan for using these funds and can you comment on how well the additional funding is being incorporated into the overall cleanup effort?

Answer. Over the past year and a half, the Environmental Management (EM) program has conducted strategic planning analysis, which indicates that substantial benefit in terms of life-cycle cost savings and cleanup completion can be achieved with additional investments in the areas of decontamination and decommissioning of facilities, remediation of contaminated soils and groundwater, and disposition of solid waste (low-level and transuranic) to achieve footprint reduction. These results were discussed in the EM progress report mandated in the Fiscal Year 2008 National Defense Authorization Act and submitted to Congress in January 2009.

EM is well poised to effectively implement efforts for the \$6 billion in Recovery Act funding because the proposed cleanup is associated with projects that have a well-defined scope, cost and schedule and are ready to be implemented; technologies that are proven and with which EM has a successful record; the regulatory framework is established; the contract vehicles are in place which allows quick expansion of the environmental cleanup workforce; and the project management structure is in place which provides the ability to track and measure performance.

The American Recovery and Reinvestment Act (Recovery Act) funding for EM will be applied towards the implementation of the footprint reduction initiative. Our strategic planning analysis was based on EM's achieving a 90 percent footprint reduction by 2015. The Recovery Act funding will allow a 40-50 percent footprint reduction by 2011, and will go a long way toward achieving the 2015 goal.

*Question 2.* You may not be the best person to ask this question since the Energy Employees Occupational Injury Compensation Program Act for nuclear workers health assistance was largely taken from DOE and given to the Department of Labor for implementation in 2004. But you are here, and in my home state there were nuclear tests conducted between 1965 and 1971 at the direction of DOE on Amchitka Island. At the time people who worked on the tests were paid under contracts, some from DOE's predecessor, the Atomic Energy Agency, and others under military contracts to private contractors paid by the Department of Defense. Under EEOICPA, however, only the DOE-paid workers are receiving compensation, while the workers whose contracts were paid by DOD—even though they often did nearly the same jobs in digging of the underground tunnels on the island and faced the same radiation hazards—are getting no special assistance, not even health care under the Veterans Administration. I have been seeking to once again reopen this act and to include DOD contract employees in the compensation scheme. As the person that will be in charge of defense nuclear cleanup dollars, what would be your view, when DOE is asked, about such a change in the law?

Answer. The Department of Energy supports the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). Since 2004, the Department's role in the program has been limited to verifying employment records and providing exposure information to the Department of Labor (DOL) and the National Institute for Occupational Safety and Health (NIOSH); the Department's Office of Health, Safety and Security (HSS) has the primary role in providing that information. We want to assure you that DOE is committed to the safety and health of our workforce and to ensuring continued availability of records that could be critical for the



EEOICPA. If I am confirmed, I will work with HSS as well DOL, NIOSH, and others in the Administration to assure that we promote the safety and health of our workforce and fulfill our commitments to former workers.

*Question 3.* In December, the Department of Energy's Office of Environmental Management released a white paper on its strategic planning efforts to identify ways to reduce the cleanup footprint and return its land to productive use while addressing our nation's energy crisis. One such use specifically studied was converting land within the nuclear cleanup footprint to clean energy parks. There has been a very favorable response to DOE's proposal to reduce the footprints of the major cleanup sites.

The idea of combining the reduced footprints with making land available for Industrial Use for possible Energy Parks seems to have ignited a bonfire of creative ideas and proposals in these communities. Under DOE's proposal, designated tracts of land would be transferred to a third party for rapid development of large scale clean energy-related facilities. DOE's plan to facilitate this development includes:

- (5) initial evaluation of land that will be available
- (6) optimizing the value of the land in relation to opportunity
- (7) enabling development by a third party; and
- (8) participation in achieving program goals.

What is your plan to more quickly reduce the Hanford cleanup footprint and transfer the land and local economy to clean energy development?

Answer. At Hanford, the Office of Environmental Management (EM) has estimated there would be approximately a 50 percent site footprint reduction by 2011, leading to a 90 percent reduction by 2015. Investment in the 100 Area cleanup, including the River Corridor project, will result in the decommissioning and demolition of nuclear, radiological and industrial facilities and structures along the Columbia River, thereby eliminating any risk of additional contamination of this key water resource. Specifically, the Plutonium Finishing Plant (a large nuclear processing facility) and over 40 plutonium-contaminated support facilities will be decommissioned and demolished by 2011. Achieving these objectives will go a long way toward restoring the River Corridor and protecting the Columbia River.

Footprint reduction makes large tracts of EM land and infrastructure available to support new beneficial site missions, such as the establishment of Energy Parks that will sustain local and regional economies and increase the supply of green energy to enhance environmental quality and reduce emissions associated with global climate change.

*Question 4.* I understand that the Department of Energy may be considering utilizing diesel generators to secure the tremendous amount of power needed to run Hanford Waste Treatment Plant once it is up and running. However, with the Department's 2015 plan for reducing the legacy waste footprint at cleanup sites like Hanford and transition these areas to Clean Energy Parks it seems be an ideal opportunity to secure the tremendous amount of clean power to run the Hanford Waste Treatment Plant once it is up and running.

What, if any, barriers are there to securing tremendous amount of power to run the Hanford Waste Treatment Plant once it is up and running from future Clean Energy Parks on cleanup sites?

Answer. If confirmed, I commit to look across the full spectrum of energy sources to supply the future power needs of the Hanford Waste Treatment Plant and other facilities cost-effectively. This includes negotiating favorable rates from Bonneville Power Administration, on-site generation and possible green sources like solar. Some of these options could be implemented through the Energy Parks concept.

Under the Energy Parks concept, land would be returned to productive use for clean energy development using current authorities. The Department has authority under the Atomic Energy Act, for example, to transfer and lease some of its property. If confirmed, I pledge to work to review and where appropriate transfer or lease cleaned up land in response to requests by third parties at Hanford, and after all appropriate consultations.

*Question 5.* The Environmental Management (clean-up) budget for Technology Development and Deployment is \$32 million, to support a \$5-6 billion investment of federal resources. A recent National Academy of Sciences (NAS) report evaluated the DOE-EM Science and Technology Roadmap and made the following findings:

- the challenges in the EM scope are technically challenging and long term
- the national labs, particularly those visited as part of the NAS study (INL, ORNL, PNNL and SRNL), have unique site technical knowledge and capabilities that should be brought to bear on the EM challenges

- the Roadmap is directionally correct but more work needs to be done to define insertion points for the technology and knowledge
- the technical complexity and the life-cycle costs of the EM program justify a larger investment in science and technology.

PNNL is the leading technical authority for Hanford tank waste issues including waste processing and is also the technical authority for subsurface contamination including the fate and transport of contaminants impacting the Columbia River (see attachment 1 for distinguishing capabilities, distinguishing performance and mission relevance). As pointed out in the NAS report, PNNL's unique capabilities and facilities are critically important to the success of the EM cleanup mission, and these core competencies must be retained and refreshed. Under Jim Rispoli's leadership, there was a trend towards expanded utilization of the laboratories with the site-specific technical knowledge at the most complex DOE cleanup sites (Hanford, Oak Ridge, Idaho, and Savannah River). With the change of administration it is essential that there be a continued investment focus in the core competencies at these laboratories to ensure that the technical resources are available to reduce technical uncertainties, lead transformational approaches to the EM mission challenges, and provide the technical basis for protecting human health and the environment.

Consistent with the needs and recommended scope in the DOE-EM Roadmap, the department has increased the Office of Engineering and Technology (OET) (EM-20) budget for FY-09 from \$22 million to \$32 million. However, recent funding allocations of OET funds reflect a trend away from the NAS recommendation to rely on the laboratories with site-specific domain knowledge, such as PNNL, to address their cleanup challenges.

A recently issued National Academy study acknowledges that while much has been done towards cleanup, DOE's remaining cleanup sites present the greatest challenges. The study presents a list of significant uncertainties that, if unresolved, can delay the schedule and increase the cost of cleanup. The study also notes that DOE's national laboratories have unique site knowledge and technical expertise that can be usefully brought to bear on reducing those uncertainties. What is your position on the role that science and technology, and the National Laboratories, can play in reducing the risks associated with cleanup?

Current understanding of the fate and transport of contamination in the subsurface will in large part define the options and schedule for ultimate site closures.

Can you articulate EM's plans to further define the issues and risks relative to long term contamination in the subsurface and protection of the Columbia River?

Answer. I believe that science and technology is the key to reducing risks associated with the Environmental Management (EM) program in such high risk areas as radioactive tank waste stabilization, treatment, and disposal and groundwater remediation. EM will invest in technology development and deployment to address high risk areas at Hanford as well as other EM sites.

The EM Program seeks to become a world-class technical organization—fully credible to and trusted by its customers and stakeholders—to reduce the technical risks and uncertainties of DOE's cleanup programs and projects. The Technology Development and Deployment Program invests in mid-and long-term range research and development projects focused on high priority cleanup issues. EM plans to expand its efforts in working with scientists and engineers from DOE's National Laboratories, including Pacific Northwest National Laboratory (PNNL) and Savannah River National Laboratory which are co-located at our two largest clean-up sites, as well as with those in private industry and academia to exchange information and develop and demonstrate innovative technologies.

Under my leadership, EM has added several world-class scientists to its staff through the Intergovernmental Personnel Act (IPA) from the National Laboratories, including experts from PNNL, Oak Ridge National Laboratory, Argonne National Laboratory, Idaho National Laboratory; additional IPAs from other National Laboratories are in process. The two PNNL scientists are experts in tank waste processing and subsurface science. In addition, we are planning to work more closely with other parts of DOE to leverage and apply their research and expertise.

Currently, EM is working with stakeholders in the Richland area to further define the issues and risks of concern to the community, including tribal concerns. The collaborative process will then allow EM to develop appropriate scientific approaches to reduce contamination and mitigate risks from the long-term contamination of the site. A new initiative underway will support applied research in computational modeling to improve the predictive capabilities of the subsurface models. The initiative will also leverage investments in basic computational research in the Office of Science, especially at PNNL.

The EM Engineering and Technology Roadmap developed in March 2008 will continue to provide a guide to develop strategies to address the technology gaps.

In an effort to realize this vision, EM will:

- Invest in new technologies to reduce project costs, reduce the time to project completion, and provide enhanced health, safety, and technical performance capabilities;
- Ensure the technology readiness of EM cleanup technologies;
- Utilize state-of-the-art modeling and simulation tools; and
- Assure current technologies are meeting or exceeding safety, cost, schedule, and technical objectives.

Currently, eight innovative approaches are being implemented to address hexavalent chromium, strontium-90, and carbon tetrachloride at Hanford.

These are:

- Injected micron-sized iron into deteriorating portions of the existing In-Situ Redox Manipulation (ISRM) Barrier to determine if the deteriorating portions of the chromium barrier in the 100-D and 100-K areas of Hanford can be mended.
- Investigated in-situ biostimulation amendments for reducing hexavalent chromium to the less mobile and less toxic trivalent chromium at the Hanford Site.
- Conducted vadose zone characterization and geochemistry studies to better understand the fate, transport, and reduction of chromium at Hanford.
- Refined the location of chromium sources using innovative drilling and sampling technologies at the Hanford 100-D Area to identify areas for directed remediation.
- Completed field test of phytoremediation along the 100-N Columbia River riparian zone to extract or isolate strontium-90 from the soil and incorporate it into above ground biomass.
- Completed the testing of in-situ sequestration of strontium by surface infiltration of an apatite solution in the 100-N area.
- Continued 300 Area Uranium Plume Treatability Demonstration project that will evaluate uranium stabilization through polyphosphate injection.
- Continued carbon tetrachloride and chloroform attenuation parameter studies for heterogeneous hydrolytic reaction.

In addition, funds under the American Recovery and Reinvestment Act will be used at Richland to accelerate cleanup of facilities, waste sites, and groundwater along the Columbia River. This accelerated cleanup at the 586-square-mile Hanford Site is expected to shrink the remaining cleanup work to 75 square miles or less by 2015. At the Office of River Protection, Recovery Act funds will be used to upgrade infrastructure and systems to transfer radioactive liquid waste from aging underground tanks to a waste treatment facility for immobilization and disposal to meet the 2019 startup date. All of these efforts will help to mitigate the risks associated with site contamination and will result in improved protection of the Columbia River.

#### RESPONSE OF INES R. TRIAY TO QUESTION FROM SENATOR BUNNING

##### PADUCAH CLEANUP

*Question 1.* Dr. Triay, as you know, Paducah is home to the last operating uranium enrichment plant in the United States. This plant, along with two others—one in Tennessee and one in Ohio—allowed America to make rapid advancement in nuclear energy and weapon technology in the last century. These plants pushed the envelope, often without realizing the environmental and safety consequences. It has been 17 years since the 1992 agreement on decontamination and decommissioning of these plants. I have worked to ensure that the cleanup of these plants stays on track and that D.O.E meets their target deadline for completion. It has recently been brought to my attention that D.O.E.—through problems in budgeting outlays—may have not have budgeted enough money to meet the 2019 cleanup for Paducah. Is this the case? If confirmed can you assure me that D.O.E. will meet this completion date at Paducah and will allocate enough funding to do so?

Answer. In a memorandum from April 2009, I advised the Manager of the Portsmouth & Paducah Project Office that it is my direction and expectation that the Department will meet its commitment to complete the environmental cleanup at the Paducah Site by 2019. I am committed to ensuring that funding levels and targets will support and be consistent with the Paducah Site life-cycle baseline for each fiscal year through 2019, which is consistent with the 2003 Agreed Order, and subse-

quently approved Tri-Party Site Management Plan. The Department remains committed to the Paducah completion date of 2019 as reflected in the site's regulatory compliance agreements and in the current certified life-cycle baseline.

RESPONSES OF INES R. TRIAY TO QUESTIONS FROM SENATOR WYDEN

*Question 1.* You spoke about all the positive measures you are now taking at the Hanford site. Yet I note that (a) the clean-up of Hanford is over budget and behind schedule, (b) safety problems with the high-level waste vitrification plant and the high-level waste tanks continue to occur, (c) every year the DOE Inspector General puts the DOE clean-up program on its "Management Challenges" list, and (d) you have been at DOE's headquarters in senior positions overseeing this program since January, 2004. Please explain why it has taken you so long to start cracking down on the contractors, given your involvement in this troubled program for the past five years.

*Answer.* The cleanup of the Hanford site and the protection of the Columbia River and the people of the Pacific Northwest is one of the Department's highest priorities. If confirmed, I will work closely with your office and Congress to ensure the completion of cleanup projects at Hanford on schedule and within budget, with an emphasis on the Waste Treatment Plant, a first-of-a-kind construction project to address radioactive waste in underground tanks. The safety of our workers is and will continue to be EM's top priority. In fact, the Waste Treatment Plant was just awarded the Department's Voluntary Protection Program (VPP) MERIT status for safety excellence and leadership, and has committed to achieving VPP STAR status within the next five years.

With regard to procurement and project management, aggressive efforts are underway in EM to identify and implement improvements in personnel capabilities and systems to transform EM into a "best-in-class" project management organization. EM is also developing and implementing processes and procedures for quality assurance and for identifying and managing project risks.

If confirmed, under my leadership, EM will identify and minimize the programmatic risks associated with start of construction during the early stages of the design phase. In addition, if confirmed, I intend to look within the Department to the Office of Science, which has had an excellent record of completing their construction projects on time and within cost. The Secretary has made their lead project management expert available to advise us, and we have developed a review process modeled after the DOE Office of Science project reviews, tailored for the EM projects. These construction project reviews determine if project performance is consistent with agreed upon mission and project requirements; has reached the appropriate level of maturity; and can be completed successfully as planned, budgeted and scheduled.

While the Government Accountability Office (GAO) continues to include DOE contract and project management on its list of government programs at high risk, the GAO believes "that DOE as a whole has met three of the five criteria necessary for removal from the high risk list." The two criteria that remain before DOE can be removed entirely from the list are having the capacity (people and resources) to resolve the problems, as well as the capacity to monitor and independently validate the effectiveness and sustainability of corrective measures. I am committed to completing the actions in DOE's Corrective Action Plan, which will address these two criteria.

If I am confirmed, my personal goal will be to see that we are removed from the GAO high-risk list during my tenure.

*Question 2.* Even though you are now increasing your oversight of the contractors, we seem to have gone through several years of missed opportunities. How can I be sure that we will not miss other opportunities in the future to accelerate the clean-up?

*Answer.* Under my leadership, the Office of Environmental Management (EM) has taken a number of specific steps recently to ensure improved project performance:

- Initiated a thorough review of the contract type and fee structure for all construction projects in order to ensure that the contract type and fee structure will result in maximizing improved performance in the EM projects.
- Required the parent companies carrying out the major EM projects (including all construction projects) to justify and improve the composition of the contractor management teams in charge of executing the EM projects.
- Increased the EM on-board count during the past two years by approximately 300 federal employees (from 1370 to 1680) in the areas of project and contract management, safety, engineering, and quality assurance. The Office of River Protection alone has increased its federal staff from 95 to 145 employees specifi-

cally targeted for oversight of the Waste Treatment Plant and the cleanup of highly radioactive waste in the Hanford underground tanks. The EM program is poised to increase its federal staff to approximately 1800 to further strengthen our oversight capability. While EM hires federal personnel, continued use of staff augmentation through the U.S. Army Corps of Engineers will be employed to fill the gaps.

- Established an Office of Quality Assurance at Headquarters, and required federal and contractor quality assurance professionals at every field site. This is needed to assure quality is incorporated into EM projects, thus avoiding cost increases and schedule delays. Federal quality assurance resources now account for almost six percent of the total number of EM employees, which is within the industry range of four to seven percent.
- Continued training sessions and supplier workshops attended by hundreds of large and small businesses alike, in order to increase the cadre of suppliers qualified to the high standards of nuclear quality assurance.
- Implemented the Department of Defense and National Aeronautics and Space Administration Technology Readiness Levels to judge the relative maturity of new technologies prior to approving full-scale development.
- Established a cost-estimating group at the EM Consolidated Business Center, in order to improve the quality of the EM program's independent government estimates for construction and cleanup projects.
- Initiated the process of implementing a project management software tool to further increase transparency of the health of EM projects not only to EM management but also to the DOE's Office of Engineering and Construction Management.
- Increased the frequency of the EM headquarters and field project management reviews from quarterly to monthly to increase management attention and accountability at all levels. These reviews are attended regularly by DOE's Office of Engineering and Construction Management and often times by the Office of Management and Budget.

If confirmed, I will address high EM life-cycle costs by further focusing on strategic planning efforts to identify and evaluate alternative approaches for radioactive waste in tanks, spent nuclear fuel, and special nuclear materials. Strategic planning efforts are underway in these areas which have the highest overall life-cycle costs of the program.

Coincident with these planning efforts, we are also proposing to focus additional resources towards technology development, particularly for tank waste and groundwater remediation. We are looking to make investments in new technologies and computer modeling.

In summary, if confirmed, I will assure that EM uses science and technology, robust project management, and our intergovernmental partnerships to ensure that we are taking advantage of every opportunity to complete the cleanup of Hanford safely, on schedule and within budget.

*Question 3.* As the acting Assistant Secretary with day-to-day responsibility for Hanford, where do you stand on the DOE proposals to bring more waste to Hanford? Please address (a) bringing highly radioactive commercial spent fuel and low-level radioactive waste to Hanford for waste disposal and (b) bringing waste from other DOE sites to Hanford for disposal.

*Answer.* Regarding commercial spent fuel, the Department has no plans to ship commercial spent nuclear fuel to the Hanford facility.

As for low level radioactive waste, the Department entered into a settlement agreement with the State of Washington in 2006, in which the Department agreed to suspend importation of low-level, mixed low-level and transuranic wastes from other DOE sites to Hanford until a new Environmental Impact Statement (EIS) and Record of Decision are issued. This EIS evaluates the impacts of disposal of wastes from other DOE sites at Hanford. The State of Washington is a cooperating agency in this EIS, which will provide the basis for decisions on future disposal of other sites' wastes at Hanford. In fact, the EM program has published waste disposition paths for all of its wastes that do not involve waste disposal at Hanford. If confirmed, I assure you that I will consult with you, other members of Congress, the tribal nations, the States of Washington and Oregon, the regulators, and other stakeholders to ensure a path forward that is mutually agreeable.

*Question 4.* What will you do specifically to prevent any more waste from going to Hanford?

*Answer.* As stated above, the Hanford Tank Closure and Waste Management EIS will provide the basis for decisions regarding waste disposition at Hanford. I have and will continue to ensure that this EIS presents a highly credible and unbiased

scientific evaluation of the impacts of such activities. I will also ensure that the public has adequate time to review and provide comment on this important document. Under my leadership, the EM program has published waste disposition paths for all of its waste that do not involve waste disposal at Hanford. If confirmed, I assure you that I will consult with you, other members of Congress, the tribal nations, the States of Washington and Oregon, the regulators, and other stakeholders to ensure a path forward that is mutually agreeable.

*Question 5.* What will you do to make sure that Oregon has a seat at the table when decisions are made about Hanford? I am not expecting that Oregon will become a site regulator, like the State of Washington, but I am expecting that there will be more consultation with the Governor, and Oregon energy and environmental agencies, and the Congressional delegation.

*Answer.* If confirmed, you will have my commitment to meet on a regular basis with your staff, other members of the Oregon Congressional delegation, and other interested parties from the State of Oregon. The State of Oregon currently provides advice and recommendations to the Environmental Management program as a current member of the Hanford Advisory Board, the National Governors Association's Federal Facilities Task Force and the State and Tribal Government Working Group. I value the advice of these and other stakeholder groups that the EM program supports and regularly interacts with and I will continue my outreach efforts to all these advisory bodies. If confirmed, I will redouble my efforts to meet and reach out to the Governor and Congressional delegations, and plan to do so specifically on the Hanford Tank Closure and Waste Management Environmental Impact Statement, waste disposition, groundwater issues and any other matters of interest to the State of Oregon.

#### CONTRACTS

*Question 6.* DOE at Hanford is currently in the midst of trying to award the mission support contract. This was undertaken in 2006. It has not been awarded.

The proposals were evaluated and scored, so why has it taken so long to award the mission support contract?

*Answer.* The competitive procurement process for the award of the mission support contract followed the procedures established by federal acquisition regulations. This competitive process is thorough and extensive. The Mission Support Contract was one of the three integrated contracts for the Hanford site and was based on a significantly new contract strategy aimed at improving the delivery of the mission. Prior to release of the final solicitation, DOE conducted extensive market research and communications with industry and other stakeholders to ensure that competition for this extremely complex and challenging work scope would be optimized. On September 3, 2008, contract award was made to Mission Support Alliance, LLC in which it was determined the offeror provided the best value to the Government.

An unsuccessful offeror, Hanford Mission Support Company, LLC filed an initial protest with the Government Accountability Office (GAO) on September 22, 2008 and a supplemental protest to the GAO on October 16, 2008 challenging the basis of the award. Following a meeting with the GAO, DOE notified GAO on December 23, 2008 that it intended to implement corrective action by re-evaluating the existing procurement record, and if necessary, amend the solicitation and/or soliciting proposal revisions from the offerors. Based on this corrective action, the GAO dismissed the protests as academic on December 29, 2008.

Following the dismissal of the protest, DOE implemented a corrective action process whereby the existing procurement record was re-evaluated, including the technical evaluation of the offerors' cost proposals. DOE completed the corrective action and awarded the mission support contract to Mission Support Alliance, LLC on April 28, 2009 formed by Lockheed Martin Integrated Technology, LLC, Jacobs Engineering Group, Inc., and Wackenhut Services, Inc.

If confirmed, I commit to reducing acquisition lead times (currently upward of two years), achieving sustainable process improvement, and recruiting and developing a highly qualified acquisition staff. As EM continues to move away from the management and operations contract model to discrete performance-based contracts, both the number of planned acquisitions and the associated complexity will continue to increase. EM forecasts approximately 15 to 20 major procurement actions over the next three years, more than double the number in 2002, and anticipates the same level through Fiscal Year 2018. If confirmed, I commit to use the newly established EM Acquisition Center, continuous process improvement, particularly from lessons learned, and continued recruitment and training, to address these challenges as EM moves towards implementing a centralized, standardized, and streamlined acquisition process that reduces the time that it takes from request to award.

## URANIUM PLUMES

*Question 7.* The CTUIR analyzed the extent and nature of the subsurface contamination under the B-BX-BY tank farms and sent you a report (Interpreted Extent of Subsurface Contamination Resulting from the 241-BX-102 Tank Leak 200 East Area, Hanford Site, Washington, November 2004). The Initial SST Performance Assessment (DOE/ORP-2005-01) predicted that the groundwater contamination from tank wastes would arrive in 12,000 years. In the March 30, 2009 response letter to Gabriel Bohnee, Director NPT ERWM, the DOE ORP noted in the RCRA Facility Investigation RFI Report for Single shell Tank (SST) Waste Management Areas (WMA), DOE/ORP-2008-01, Rev 0, that BX 102 has contaminated the groundwater and that the identification and implementation of corrective measures is an important priority. The conclusions and plans will be released later as part of the WMA C phase 2 activities as explained in Appendix 1 of the Hanford Federal Facility Agreement and Consent Order and through BP-5 OU follow on activities.

Can the CTUIR be assured that the analysts developing the characterization and modeling for WMA C report have higher standards than the authors that developed the wrong conclusions (wrong by 11,996 years too early) for the BX-102 report?

Answer. The Initial SST Performance Assessment (DOE/ORP-2005-01) used available data and simplified modeling methods to evaluate the future impacts of tank waste and historic leaks on the environment. This assessment was performed in recognition that significant additional data collection would occur prior to making final decisions regarding tank farm clean-up and closure. The performance assessment provided insights by identifying that contamination already in the soil from historic leaks or overflow events will have a greater future impact on the environment than residual wastes remaining in tanks after retrieval. These insights have helped define the necessary Phase 2 activities, which include extensive additional soil characterization, followed by additional risk assessment.

Phase 2 soil investigations and remediation have been initiated for Waste Management Area C. The soil characterization activities for that waste management area are being performed to comply with data quality objectives developed with the Washington State Department of Ecology in collaboration with the U.S. Environmental Protection Agency (EPA). Prior to initiating the Phase 2 risk assessment, a series of working sessions have been planned that will include both DOE Hanford Offices, Ecology, the EPA, and the U.S. Nuclear Regulatory Commission. Tribal Nations, such as the CTUIR, and organizations representing public interests have been invited to participate in these working sessions to ensure that the risk assessment input data, assumptions, modeling parameters and methods reflect the state of the art and address the key issues.

Future activities to address waste management area B-BX-BY will follow the same pattern. Extensive additional data collection will occur with input from regulators and stakeholders. Risk assessment modeling will incorporate the input of regulators and stakeholders. As new information becomes available, it will be used to revise and update risk assessments to allow selection of the most effective remediation and closure approaches. If confirmed, I assure you that state-of-the-art modeling will be performed for risk assessment in order to gain the highest degree of credibility in our findings in consultation with the tribal nations, the States of Washington and Oregon, the regulators, and other stakeholders.

## TANK CLOSURE WASTE MANAGEMENT EIS

*Question 8.* After several years and millions of dollars, DOE is going to release the Tank Closure Waste Management Environmental Impact Statement (TCWM EIS) on May 15, 2009. The public and stakeholders and Natural resources trustees have not had the opportunity to review this document. Requests for an extended review period are needed. DOE has recently extended it from 90 days to 140 days.

This may not be enough time for the CTUIR to meaningfully review the document and develop comments, considering the enormous amount of accelerated work due to the ARRA investment in DOE efforts?

Answer. If confirmed, I assure you that EM will work with the tribal nations, the States of Washington and Oregon, the regulators and other stakeholders to ensure that enough time is provided for the full review of this important document. I also commit, if confirmed, that EM will conduct workshops and provide detailed briefings to the CTUIR and the other tribal nations before issuance and during the comment period of the draft EIS in order to facilitate review of the document.

*Question 9.* Is DOE truly seeking a technically feasible clean up, or a legally defensible approach to tank closure and waste management?

Answer. Both. The draft Tank Closure and Waste Management EIS covers three programmatic areas: tank waste treatment and closure of single shell tanks, closure

of the Fast Flux Test Facility, and related waste management activities. There are seventeen alternatives being evaluated which, in accordance with National Environmental Policy Act (NEPA) regulations, cover the full range of reasonable actions the agency is to consider. I completely understand that the tribal nations, the States of Washington and Oregon, the regulators, and other stakeholders are all important in defining and selecting the path forward for the Hanford cleanup. If confirmed, I assure you that EM will engage in ample consultation with the tribal nations, the States of Washington and Oregon, the regulators, and other stakeholders as we move forward with the cleanup.

*Question 10.* If trustees and stakeholders identify major scientific and technical concerns about the TCWM EIS, will review time be extended and will new alternatives with CTUIR participation be developed?

Answer. If confirmed, I assure you that EM will work with the tribal nations, the States of Washington and Oregon, the regulators and other stakeholders to ensure that enough time is provided for the full review of this important document. I also commit, if confirmed, that EM will conduct workshops and provide detailed briefings to the CTUIR and the other tribal nations before issuance and during the comment period of the draft EIS in order to facilitate review of the document. All comments received will be addressed in a comment response document which will be published as part of the final EIS. Changes will also be made in the final EIS based on issues raised during the public comment process, as appropriate. I completely understand that the tribal nations, the States of Washington and Oregon, the regulators, and other stakeholders are all important in defining and selecting the path forward for the Hanford cleanup. If confirmed, I assure you that EM will engage in ample consultation with the tribal nations, the States of Washington and Oregon, the regulators, and other stakeholders as we move forward with the cleanup.

#### GREATER THAN CLASS C NUCLEAR WASTE

*Question 11.* DOE by congressional request is currently preparing an Environmental Impact Statement for the disposition of Greater than Class C Nuclear Waste (GTCC EIS).

Answer. With extensive groundwater and soil contamination at Hanford without a comprehensive site-wide baseline characterization and risk assessment, why is DOE considering adding additional sources of contamination to Hanford including commercial Greater than Class C Waste?

Answer. The National Environmental Policy Act (NEPA) requires the Department of Energy (DOE) to consider a range of alternatives in preparing an environmental impact statement (EIS) for the disposal of greater-than-class C (GTCC) low-level radioactive waste (LLW). Hanford is one of nine such alternatives that were identified by DOE in its July 23, 2007, Notice of Intent to prepare an EIS for the disposal of GTCC LLW. The Department is currently preparing the Draft GTCC EIS, which will identify and evaluate the potential environmental consequences for each disposal alternative. I fully agree with you that a site-wide baseline characterization and risk assessment is required in order to evaluate the impacts of GTCC LLW disposal at Hanford as one of many alternatives being considered. Decisions on a disposal alternative or alternatives will be made only after DOE consults with Congress as directed in the Energy Policy Act of 2005. If confirmed, I assure you that DOE will consult with members of Congress, the tribal nations, affected States, including Washington and Oregon, regulators, and other stakeholders to ensure an acceptable path forward for GTCC LLW.

#### RESPONSE OF INES R. TRIAY TO QUESTION FROM SENATOR CORKER

*Question 1.* Dr. Triay, it is my understanding that almost every Environmental Management project is behind schedule and over-budget, and that the primary reason blamed for this is a flawed EM management model. I am particularly concerned about EM project delays in light of the recent stimulus funds that have been provided. Do you believe that the current model that gives management authority to DOE headquarters in Washington, DC, is causing unnecessary delays in completing EM projects? Do you think that shilling the management authority to the environmental staff of the regional DOE offices is a good idea? Would you support this type of reform to the EM program? Are you confident that under the current model projects funded by the stimulus will be completed on time?

Answer. Within the current model, the field managers, and the field staff have the authority to manage the contracts and oversee the contractors' performance with respect to delivering EM projects on time and within cost. However, I do believe that it is important to delegate as much authority as possible and appropriate to the field offices and their managers. If the field managers had more authority than



they do now, the EM program, in my opinion, would be more efficient. However, the additional authority would come with the responsibility to deliver excellent performance. Performance is measured by the results obtained, and the manner in which they are obtained. Therefore, if confirmed, I will support a reform to the EM Program to align authority with performance at each site to deliver projects on time and within cost.

EM has a high degree of confidence that the projects funded by the stimulus will be completed on time and on budget. EM's confidence is centered on the following key point: the projects funded by stimulus contain a mix of clean-up projects from EM's Portfolio of Decontamination and Decommissioning and Environmental Remediation Projects. These types of projects were specifically chosen because of EM's track record of completing the scope on time and within cost, the required technologies are proven, there is agreement on the regulatory framework, the contract vehicles are available, and the project management structure is in place providing the ability to track and measure performance. Table 1\* compares the approved project cost and project schedule to the actual completion cost and schedule for Environmental Management cleanup projects completed since 2005. These 19 projects were projected to cost over \$12 billion dollars. Sixteen of the projects completed within 10% of the projected budget, 18 of these projects were completed on schedule, and each of these projects completed all remediation and disposition of waste required by regulatory compliance agreements.

---

RESPONSES OF HILARY CHANDLER TOMPKINS TO QUESTIONS FROM  
SENATOR MURKOWSKI

*Question 1a.* I know you understand there is a great debate about climate change that is ongoing and on renewable energy as well. Several of the proposals on renewable energy would put federal lands off limits in terms of renewable biomass that can be used in a Renewable Fuel or Electricity standard. Given the hundreds of thousands of acres of dead material in the Intermountain States (CO, NM, AZ, UT, WY, MT, and ID) does it make any sense to you to restrict the use of woody biomass from federal land?

Answer. I know that the Department of the Interior has programs in its bureaus, particularly in the Bureau of Land Management, that supply woody biomass for energy production and other uses. If confirmed as Solicitor, I will provide the Secretary and the relevant bureaus with the legal advice they need to appropriately carry out this program.

*Question 1b.* In advising the Secretary of the Interior on this issue will you recommend a federal lands moratorium when it comes to biomass use, or will you advocate for a policy that facilitates the treatment and removal from these lands to protect the soil, water, and wildlife?

Answer. I am advised that the BLM has an existing biomass utilization program and neither the BLM nor the Department of the Interior is considering a moratorium on biomass use. If confirmed as Solicitor, any legal recommendations I would provide to the Secretary or the Department's bureaus would be informed by the proposals of the relevant policy makers and my review of the legal underpinnings of such proposals.

*Question 2a.* A significant number of acres of DOI lands have burned in the last decade which is causing tremendous impacts on sensitive, threatened, and endangered species. As solicitor would you be willing to advise the Secretary and the U.S. Fish and Wildlife Service that the impact of these fires may be causing more harm to endangered species than many of the other activities the Department has been restricting?

Answer. If confirmed as Solicitor, I will work with all of the agencies within the Department of the Interior to advise the Secretary about the legal issues that he must consider regarding managing fires when threatened and endangered species are present.

*Question 2b.* If not, are you willing to ask the agencies to assess ALL natural and man-made disturbances when considering a listing request or developing a habitat management plan?

Answer. The Endangered Species Act requires consideration of a number of factors when making a decision to list a particular species and determining critical habitat. If confirmed, I will advise the Department to consider all appropriate factors and associated information when making these kinds of determinations.

---

\*Table has been retained in committee files.

*Question 2c.* Do you agree that it may be penny wise and pound foolish to put lands off limits to management activities such as thinning and hazardous fuel removal if the lands are at high risk for catastrophic fires when those fires could otherwise destroy critical habitat for threatened, sensitive, or endangered species?

Answer. If confirmed as Solicitor, my role will be to advise the Secretary and other decision-makers within the Department of the Interior of their management options under the law.

*Question 3a.* With regard to the recent DC Circuit decision on the 5 year OCS program, what will be the Department's approach to handle the leases currently ongoing, as well as royalty payments already negotiated with states?

Answer. To date I have not been involved in those deliberations, but I have been informed by the Minerals Management Service that this is a significant issue. According to MMS, there are 1872 leases issued in the Gulf of Mexico (GUM) under the 2007-2012 program and 487 in the Alaska Region (from Chukchi Sea Sale 193). No exploration or production plans have been submitted for the Chukchi Sea, however, there are 95 approved exploration plans in the GOM, 21 previously approved development plans, 4 leases under production, and numerous approvals and pending approvals for action on those GOM leases. If confirmed, I look forward to working with the Secretary on this issue.

*Question 3b.* What will be the remedy with regard to the Court's reference to ranking leases according to environmental sensitivity?

Answer. I am aware of the significance of this decision and the fact that it was just recently issued and is still under review in the Department. If confirmed, I will work with the Minerals Management Service and the Department of Justice to determine how best to respond to the court's remand.

*Question 4.* With regard to the 5 year lease program, are you committed to ensuring that the United States will continue to develop more of its oil and gas domestically?

Answer. I know that the Secretary has recently conducted a number of meetings around the country to inform his decision as to where development on the Outer Continental Shelf will be pursued during the next 5 year leasing program. The OCS appears to be a significant part of the solution to dependence on foreign sources of oil and gas. If confirmed, I will provide the Secretary with the necessary legal advice to implement the President's program to achieve energy independence.

*Question 5.* What does the Department of Interior think about private versus public funding for a seismic inventory of the OCS? Would the Department move forward on such a process as expeditiously as possible?

Answer. While I am not familiar with the process for funding seismic surveys on the OCS, if the Secretary determines to implement a new policy for funding such an inventory, I commit to providing the Secretary and any DOI bureaus with all relevant legal options for gathering this information.

*Question 6.* Do you consider the Endangered Species Act to be the proper statute for regulating greenhouse gas emissions through protections of the polar bear and other Arctic species?

Answer. I agree with the other Departmental nominees that have come before this Committee that the Endangered Species Act is not particularly well suited for regulating greenhouse gas emissions.

*Question 7.* Recently the Department found justification for the listing of the yellow billed loon. How will legal challenges to Interior's scheduled lease sales that overlap or abut the related species range and critical habitat to be handled?

Answer. My understanding in this case is that the U.S. Fish and Wildlife Service determined that listing the yellow-billed loon range wide under the Act is warranted but precluded by other higher priority listing actions. As a result, the species is not presently listed nor has a proposed listing or critical habitat rule been issued, and neither the consultation nor conferencing provisions of Section 7 apply.

*Question 8.* When the government has entered into a valid, binding contract, do you believe it is important for the government to honor the contract as a means of demonstrating respect for the law and setting an example for the business world? When, if ever, would there be a basis for the government to fail to honor a valid binding contract?

Answer. As a general proposition, I believe that it is very important for the Government to honor its contractual obligations for many reasons, including those that your question suggests. With that said, government contracts are administered under an elaborate—series of laws and regulations. Many of these laws and regulations, such as those governing acquisition of goods and services for the government, are specifically geared towards assuring fair and open competition in the selection of contractors, regularity and transparency in contract administration, obtaining the best value for the taxpayer, and protection of government funds, property, and re-

sources. These legal requirements—all of which are designed ultimately to protect the taxpayer—distinguish government from private sector contracting and they may necessitate in some circumstances the cessation of a contractual relationship in order to protect the public interest. Ultimately, properly drawn contracts, under any statutory or programmatic setting, should contain provisions that define the parties' mutual understanding of how the contract may be terminated.

*Question 9.* Secretary Salazar recently issued a Secretarial Order calling for the identification of renewable energy zones on public lands. How will DOI identify and define these renewable energy zones? Is the Interior Department also seeking to handle the siting for renewable energy projects and needed transmission?

*Answer.* I am advised that the Department is working with stakeholders, including the Western Governors' Association (WGA) as well as other agencies, on energy zone evaluation, specific corridor planning, and siting. I further understand that the BLM is preparing a programmatic solar EIS, has completed wind and geothermal programmatic EISs, and is working with project proponents on specific renewable energy proposals. I am informed that the BLM will continue to authorize and site solar, wind, and renewable energy transmission projects on the public lands under its right-of-way program, pursuant to the provisions of the Federal Land Policy and Management Act and other applicable laws. If confirmed, I look forward to engaging on the legal aspects of this important energy issues.

*Question 10.* Section 368 of the 2005 Energy Policy Act directed the Energy Department and the land management agencies to designate Rights-of-Way Corridors on Federal western lands for oil, gas, and hydrogen pipelines, as well as for electricity transmission lines. How does DOI's Secretarial Order comport with the Rights-of-Way work the Department recently completed?

*Answer.* It is my understanding that the Secretary's energy task force will look at a variety of issues, including rights-of-way corridors on federal lands. It would be premature to determine how the work of the task force relates to the Department's efforts under section 368 of the Energy Policy Act. If confirmed, I will support the Secretary in his efforts to develop a balanced energy portfolio that places a high priority on renewable energy.

*Question 11a.* Over the years Congress has passed a significant number of land exchanges and land conveyance laws because they involve both the Department of Agriculture national forest lands and Department of the Interior lands. In some of those exchanges Congress has exempt [sic] the exchange from FLPMA and NEPA; in some they provide the agency direction to complete those processes in a compressed time frame; and in some they require not only a FLPMA process, but an Environmental impact Statement followed by a finding by the Secretary of net public benefit. Some in Congress believe that Congress has the right to exempt land exchanges from these processes, and some do not. a. Where do you come down on this issue? Will you oppose legislation that exempts land exchanges from FLPMA and or NEPA?

*Answer.* Congress has the ability to enact legislation that exempts land conveyances and exchanges from the processes that are laid out in FLPMA and NEPA. I cannot make a blanket statement regarding whether I would recommend that the Department support or oppose legislation that would make these exemptions without knowing the context for the proposed exemptions. The FLPMA and NEPA procedures provide assurance to the public and to Congress that a proposed conveyance or exchange is consistent with Federal goals and good policy, and that the effects, costs, and benefits of the proposed exchange have been fully examined. I would individually examine proposed legislative land exchanges or land conveyances before giving advice to the Secretary.

*Question 11b.* If you believe that land exchanges and land conveyances should be subject to FLPMA and NEPA do you believe that other Congressional actions, such as the designation of Wilderness should also be subject to FLPMA and NEPA? If not, why not?

*Answer.* Again, it is my view that any such proposed or enacted legislation, including legislation to designate wilderness, would have to be examined on a case-by-case basis. Only Congress can designate wilderness. The legislative process does generally provide an opportunity for public involvement and oversight through the Congressional hearing process. As I stated in my answer above, FLPMA and NEPA procedures can provide policy-relevant information. But overall, I believe this is an area where there are not onsize-fits-all policies and all proposals must be evaluated individually.

*Question 12.* In reviewing your paperwork I am struck by how little it revealed concerning your past participation or experience with the natural resources issues that you will be expected to deal with as Solicitor, should you be confirmed. And I do not feel that your oral testimony provided additional enlightenment.

Could you provide the Committee with a detailed list of the cases you participated in while working at the Department of Justice and what federal land issues you had personal involvement in while working for Governor Richardson?

Answer. While working for the U.S. Department of Justice, I brought civil prosecutions against defendants for violations of various environmental statutes such as the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act ("RCRA"), and CERCLA Superfund. The geographical regions for which I was primarily responsible were the Midwest and the Pacific Northwest. I handled a wide variety of cases. For instance, I worked on a significant and complex CERCLA case in the Coeur d'Alene Basin in Idaho filed against a number of mining companies, including Asarco and Hecla Mining (referred to as the "Bunker Hill case"). A large component of this case was the natural resource damage claims under CERCLA. Another case I worked on was a Clean Water Act case filed against Texaco and Mobil for violations of the Clean Water Act due to their oil and gas operations in southern Utah. A central issue in that case was whether the intermittent arroyos in the desert were "navigable waters of the United States" under the Clean Water Act.

In my position as legal counsel to Governor Richardson, I worked on the Otero Mesa litigation, which was a NEPA, APA, and FLPMA challenge to a resource management plan issued by the Bureau of Land Management. As you are aware, I have submitted a written recusal to the Committee on this matter.

I also handled a number of other natural resources and environmental issues that did not involve federal lands under the jurisdiction of the Department of the Interior but that are worth mentioning to demonstrate my level of experience in this area.

I co-authored an amicus brief with the New Mexico Attorney General's Office in the recent Tenth Circuit decision in *HRI, Inc. v. EPA*, 2009 WL 1027184 (April, 2009) regarding the question of whether land in close proximity to a Navajo chapter was "Indian Country" for the purposes of the Safe Drinking Water Act. The Environmental Protection Agency argued that the land was Indian Country and HRI, Inc., argued that it was not. The Navajo Nation was an intervenor in the case. The State of New Mexico appeared as amicus curiae in a neutral capacity.

I have assisted the New Mexico Environment Department and the New Mexico Energy and Natural Resources Department in negotiations with regulated entities that were conducting activity subject to various environmental and natural resources laws. For instance, I assisted in negotiations with a prominent mining company regarding its mining activity and financial assurance components of an agreement.

I provided assistance to the Natural Resources Trustee of the State of New Mexico and the New Mexico Attorney General on the natural resources component of Superfund cases, such as the South Valley litigation that was filed against the DOE, DOD, USAF and various private companies. In that case a settlement was reached in 2006 and the Natural Resources Trustee adopted a Restoration Plan in 2007.

I participated with the New Mexico Environment Department in its negotiations with Louisiana Energy Services, a company that was seeking to locate a uranium enrichment facility in Eunice, New Mexico. The agreement with the State contained requirements that were in addition to requirements imposed by the Nuclear Regulatory Commission.

I worked on the State of New Mexico's approach to responding to a decision by the U.S. Forest Service in 2005 to change the 2001 Roadless Area Conservation Rule and adopt a new rule authorizing Governors on a state-by-state basis to determine which areas would remain roadless in their respective states.

I received briefings from the general counsel of the State Engineer's Office and Interstate Stream Commission regarding pending adjudications, water management and delivery issues, and administrative, rulemaking issues.

I drafted Executive Orders on behalf of the Governor regarding renewable energy, clean energy, renewable fuels, energy efficient building standards, energy efficiency, climate change and greenhouse gas reduction initiatives. I also drafted Executive Orders regarding emergency funding for the prevention and suppression of wildfires, disaster assistance, drought declarations, drought plans, establishment of a drought task force, water infrastructure development, establishment of a water cabinet, establishment of a Blue Ribbon Task Force on Water, and adoption of an environmental justice policy.

I reviewed all legislation involving natural resources and environmental issues and provided legal advice to the Governor before he took action on these bills.

There is one additional matter in which I participated on behalf of tribal clients in New Mexico that is beyond the scope of your specific question but that reflects my experience with natural resources issues, including the Endangered Species Act. I participated in an intergovernmental collaborative workgroup on behalf of my trib-

al clients regarding the Rio Grande Silvery Minnow and monitored the pending litigation, which involved the Department of the Interior, environmental groups, the State of New Mexico, and other intervenors. My tribal clients were not parties to the litigation.

*Question 13a.* Due to your capacity as Deputy Counsel and Chief Counsel to Governor Richardson, I am forced to ask you about the ongoing investigation by the Federal Prosecutor in New Mexico related to the Governor, his Administration, and campaign finance irregularities.

Can you provide the Committee any information you have on your involvement in that investigation or work you did to prepare Governor Richardson or any of his staff for any meetings related to that investigation?

Answer. I have had absolutely no involvement in the investigation and I did not conduct any work for the Governor, his staff, or any other person regarding that investigation.

*Question 13b.* Would you provide this Committee with communication from the Department of Justice that will give us some assurance that you are not a target or potential target of the grand jury investigation in question?

Answer. I would be happy to ask the Justice Department for such an assurance, but of course, I cannot guarantee that the Justice Department will deliver such a communication.

*Question 14a.* I note that you have spent a significant part of your career working for or representing a number of tribal entities. Can you describe how you and the Department of Interior's Office of Ethics will address any communications or issues that come before you, if confirmed as solicitor, related to any of the tribal entities you worked for or represented?

Answer. I will consult with the Department of the Interior's Office of Ethics on any potential conflicts of interest, and I will abide by all applicable ethical rules and regulations should any matter come before me involving a former client. I will also abide by the Committee's 1993 recusal policy. Lastly, I will abide by the rules of professional conduct that apply to me as a licensed attorney.

*Question 14b.* Given your long time representation and advocacy for a number of Native American Tribes and groups, how will you deal with the decades old Cobell v. Secretary of the Interior case? Do you expect to reclude [sic] yourself from those proceedings; if not how will you ensure that your past advocacy does not color your work on this issue while at the Department of the Interior?

Answer. I have never worked on or represented a party in the Cobell v. Secretary of the Interior case. I do not have any financial interest in this case and I am not aware of any relative who may have an interest in this case. I also do not believe that my past representation of Indian tribes and pueblos, my participation in Native American groups, or my ethnic identity will impair my ability to work on this case in an unbiased fashion. Under these circumstances, I do not believe that a recusal is warranted.

I believe it is also important to note that I have represented the United States and the State of New Mexico in an impartial and unbiased fashion notwithstanding my prior affiliations with Indian tribes. If I am confirmed, I will solely represent the interests of the United States and will be a zealous advocate for the Department of the Interior in accordance with the highest ethical standards.

*Question 15.* Would you describe your understanding of the Surface Mining Control and Reclamation Act of 1977 settlement in the 2005 Energy Act and compare and contrast your interpretation of that settlement with that of the last administration?

Answer. I am unaware of any Surface Mining Control and Reclamation Act of 1977 settlement that was part of the Energy Policy Act of 2005, and both legal and policy staff at the Office of Surface Mining in the Department of the Interior have been unable to identify the referenced settlement. If confirmed, I would be happy to work with you and your staff on this issue.

*Question 16.* In July 2007, a legal opinion was issued in the Interior Regional Solicitor's Office that the Department has sufficient statutory authority to accept State transportation funds, and transfer them to Tribes under self-determination and self-governance agreements, under 23 U.S.C. § 204(d) and 25 U.S.C. § 450i. Section 204(d) of Title 23 specifically concludes that the Department may accept funds from States for the construction and improvement of roads on federal lands highway programs. This is a program of which the Indian Reservation Roads program is a part. Section 450i of Title 25 states that the Secretary may accept donations of funds to further any program authorized by other provisions of the law for the benefit of Indians. Despite this authority, the Department of Interior has refused to accept funds on behalf of tribes. If confirmed, would you be willing to work with Interior officials

to establish a clear guidance so that tribes or Alaska Native villages in my case can continue to make necessarily investments in critical infrastructure?

Answer. Yes, if confirmed I will be willing to review existing authorities and to work with Interior officials to provide guidance on accepting State funds to make necessary investments in critical infrastructure.

RESPONSES OF HILARY CHANDLER TOMPKINS TO QUESTIONS FROM  
SENATOR BENNETT

*Question 17.* Do you agree that the Department's authority to establish new Wilderness Study Areas under Section 603 of FLPMA expired no later than October 21, 1993?

Answer. It is my understanding that in a brief filed in the 10th Circuit, the Department of the Interior took the position that its authority to establish new Wilderness Study Areas under section 603 of FLPMA expired on October 21, 1993. I also understand that there is new litigation concerning this issue. If confirmed, I look forward to learning more about this topic.

*Question 18.* Do you agree that the Department currently has no authority to establish new WSAs (post-603 WSAs) under any provision of federal law, such the Wilderness Act of Section 202 of FLPMA?

Answer. It is my understanding that other provisions of FLPMA, such as section 202 and the Wilderness Act, have been interpreted to give the Department of the Interior the authority to manage land for wilderness values. I have not had an opportunity to review the various concerns that have been raised with respect to the Department's use of these authorities. I am also aware that there is new litigation concerning this issue. If confirmed, I look forward to learning more about this topic.

*Question 19.* Do you agree that the Department has not had the authority to create any new WSAs since the expiration of FLPMA Section 603 on October 21, 1993?

Answer. As I noted in my response to question 17, it is my understanding that in a brief filed in the 10th Circuit, the Department of the Interior took the position that its authority to establish new Wilderness Study Areas under section 603 of FLPMA expired on October 21, 1993. As I also noted in that response, I understand that there is new litigation concerning this issue and I look forward to learning more about this topic.

*Question 20.* Do you agree with federal Judge Dee Benson that the settlement agreement between the state of Utah and the United States is consistent with FLPMA?

Answer. Thank you for providing me with a copy of the settlement agreement approved by Judge Dee Benson in *Utah v. Norton* during our meeting last week. It is my understanding that the Department took the position in the 10th Circuit that this settlement agreement was consistent with FLPMA. As I stated earlier, I am aware that there is new litigation concerning this issue and I look forward to learning more about this topic. I do understand that the decisions made by agencies in Washington D.C. have serious repercussions on the lives of people who live near vast Federal land holdings in the West. If confirmed, I will advise the Secretary regarding his options under applicable laws as well as the impacts of proposed changes in applicable statutes.

*Question 21.* Does the BLM have authority to apply the non-impairment standard, as enumerated in the Interim Management Plan for wilderness study areas, to lands that are not designated as WSAs under Section 603?

Answer. As I discussed in my previous answer, I believe that wilderness management is a complex topic with serious repercussions. If confirmed, I will advise the Secretary on how he can manage lands consistent with the requirements of FLPMA. I have not had an opportunity to review the question of whether BLM has the authority to apply the non-impairment standard, as described in the Interim Management Plan for wilderness study areas, to lands not designated as WSAs under Section 603 of FLPMA. However, if confirmed, I look forward to learning more about this topic and advising the Secretary.

*Question 22.* Under what legal authority did Secretary Salazar cancel the 77 leases earlier this year?

Answer. I was not involved in this decision, nor have I discussed the basis for this decision with Secretary Salazar. My general understanding is that in this situation the Secretary was acting in accordance with his general discretion to offer parcels for lease/sale or to determine not to offer parcels for lease/sale. If I am confirmed I will certainly learn more about this topic.

*Question 23.* Utah has made significant progress on the R.S. 2477 issue. The legislature recently established a process to record rights-of-way that were accepted under the terms of R.S. 2477. The state has submitted approximately 2,500 such

rights-of-way for non-binding determinations to the Utah Office of the Bureau of Land Management. Could you please explain how the recorded data will be used for such determinations?

Answer. If I am confirmed as Solicitor, you have my commitment that I will study the issues that surround the RS 2477 claims and work towards a resolution.

*Question 24.* Do you support the use of non-binding administrative determinations to help resolve the R.S. 2477 issue in each state?

Answer. I have not had the opportunity to examine whether the use of non-binding administrative determinations may be able to help resolve R.S. 2477 issues. If confirmed, I will commit to studying this issue and supporting policymakers at DOI in their efforts to resolve issues surrounding R.S. 2477.

*Question 25a.* Much of the evidence of the acceptance of the R.S. 2477 grant is in the form of personal knowledge. Since the people who have this knowledge won't always be with us, the state has been gathering affidavits from witnesses to road construction or continuous use and will include the affidavits in its requests for non-binding determinations of the validity of the rights-of-way. I am concerned that the DOI solicitor's office in Utah has refused to consider individual affidavits that provide some evidence of either construction or continuous use, but do not prove evidence of the complete acceptance of the R.S. 2477 grant. This would be tantamount in a criminal trial to ignoring all witnesses that didn't see the entire spectrum of the crime—if they didn't see the murder suspect purchase the gun, shoot the gun, and hit their target, their testimony wouldn't count. Who is the factfinder in a non-binding determination?

Answer. It is my understanding that BLM is the fact finder in a non-binding determination involving BLM lands.

*Question 25b.* Is the fact finder entitled to arbitrarily and capriciously ignore evidence that, when taken in a totality, would prove the acceptance of the R.S. 2477 grant, even if the information were contained in more than one affidavit?

Answer. I agree with your general premise that government decisionmakers are not entitled to act arbitrarily and capriciously. I would need specific knowledge of the affidavits in question in order to evaluate whether a particular decision might be arbitrary or capricious.

*Question 25c.* Is there any rule of law or policy in the Department of the Interior that would preclude the factfinder from considering affidavits that did not, per se, show acceptance of the R.S. 2477 grant, but tended to show some evidence of either construction or continuous use for the statutory period?

Answer. I have not had the opportunity to examine the non-binding determination process in detail, including any rule of law or policy addressing the types of information that would be relevant when considering a request for a non-binding determination.

*Question 25d.* May the factfinder in a non-binding determination consider information in an affidavit that tends to show some evidence of either construction or continuous use for the statutory period but not all evidence?

Answer. I have not had the opportunity to examine the non-binding determination process in detail, including the types of information that would be relevant when considering a non-binding determination for a claimed R.S. 2477 right-of-way.

RESPONSES OF HILLARY CHANDLER TOMPKINS TO QUESTIONS FROM  
SENATOR BARRASSO

*Question 26.* Last month a federal judge blocked an Interior Department rule allowing people to carry concealed weapons in national parks and wildlife refuges if that state's laws allow it in public places. The rule is intended to respect Second Amendment rights of law-abiding gun owners, while providing a consistent application of state weapon laws across all land ownership boundaries. The judge argued in her ruling that adequate environmental analysis had not been done. The Obama administration has said it will not appeal the federal court ruling, but that Interior will continue to review the policy.

- If confirmed, how do you plan to address this lone federal judge's ruling that strips Americans of their Second Amendment rights simply because they might be standing or driving on federal land?
- As a matter of legal policy, do you think it makes sense for the Interior Department to have inconsistent gun regulations within the lands it oversees?
- Based on your experience, what type of environmental study could be done to determine the environmental impact of someone standing in or driving through federal lands with a concealed weapon?

Answer. I understand that Secretary Salazar told this Committee during his confirmation process that he is a strong supporter of the Second Amendment. I am aware that litigation with respect to this regulation is ongoing. If I am confirmed as Solicitor, I intend to carry out my responsibilities in accordance with laws enacted by Congress, including applicable laws related to conducting environmental review, as well as the applicable provisions of the Constitution. The Department and its land managing bureaus have extensive experience carrying out environmental analyses under the applicable statutes. My past experiences working with general environmental statutes and on public lands issues will enable me to provide sound legal guidance to those tasked with carrying out such a review.

*Question 27.* Leases issued for oil and gas development in the Outer Continental Shelf in 1998 and 1999 did not contain price thresholds. This decision was made by the Clinton Administration and officials within the Department of Interior. There was legislation in the previous Congress to effectively force the lease holders to renegotiate their leases to include a price threshold.

Do you think it weakens the value of government contracts if the federal government—after signing a contract—decides it no longer likes the contract and therefore bullies companies into renegotiating?

Isn't that a breach of contract, or at a minimum, a breach of good faith?

Do you think it is constitutional to confiscate property interest of leaseholders without just compensation?

Answer. If confirmed as Solicitor, I will closely evaluate any contract or takings issue according to all applicable laws, regulations, and the Constitution. I am unable at this time to make a blanket statement regarding contracts, takings issues, and Congressional legislation without having had the opportunity to review the specific relevant materials, but I can assure you that I will approach any such legal question with care and an open mind. Generally speaking, I believe it is vital that the federal government performs its duties in accordance with all legal requirements when taking action that impacts the property and livelihood of individuals.

*Question 28.* Washington owes Wyoming hundreds of millions of accumulated Abandoned Mine Land funding. It is Wyoming's money. In 2006, after decades of bipartisan effort, an agreement was found and signed into law to guarantee Wyoming receives the money it was promised without strings attached. President Obama and Secretary Salazar both voted for this bill when they served in the Senate. The bill required certified states or Indian tribes to be paid back money owed in seven equal installments.

I quote—"the Secretary shall make payments to States or Indian tribes for the amount due for the aggregate unappropriated amount allocated to the State or Indian tribe under subparagraph (A) or (B) of section 1232(g)(1) of this title." "Payments under subparagraph (A) shall be made in 7 equal annual installments, beginning with fiscal year 2008."

The previous Interior Solicitor came to a different conclusion and stated that what Congress meant was that the funds must be paid back in the form of a grant, and not in seven equal installments. What is your legal interpretation of "7 equal annual installments?" Do you agree or disagree with the previous Solicitor's opinion?

Answer. As I noted at my hearing, this is not an issue that I am familiar with. I do agree that an initial reading of the language appears to support the interpretation you note in your question. However, I have not had an opportunity to review the previous Administration's legal analysis. If confirmed, I would be happy to look into this issue.

*Question 29a.* The State of Wyoming strongly disagrees with the Fish and Wildlife Service's decision not to defend in court the wolf management plan agreed to in Wyoming between the federal government and the State. Will the Obama Administration stand by the States when recovery goals are set and achieved, and then they are challenged in court by outside groups?

Answer. I recognize that states play an important role in many aspects of wildlife management. If confirmed, I will work with the DOI Bureaus and the Department of Justice to uphold Endangered Species Act decisions and actions based on the provisions of the law and its implementing regulations.

*Question 29b.* What steps would you take in order to ensure that listing and delisting decisions under the Endangered Species Act are made 'solely on the basis of the best scientific and commercial data available' as required by Section 4(b) of the ESA?"

Answer. If confirmed as Solicitor I will work with the Director of the U.S. Fish and Wildlife Service to ensure that the Endangered Species Act is administered and implemented with the highest ethical standards and professional integrity and respects the work of the Service's biologists. ESA listing decisions must be made based



on the best available science and need to be undertaken in an accountable, transparent fashion that involves the public

*Question 29c.* Do you believe that distinct population segments can be divided by state lines? Political boundaries are not based upon ecological characteristics. How is this practice in accordance with the biological parameters of a distinct population segment?

Answer. The Endangered Species Act requires consideration of various factors when making a decision to list a particular species. It is my understanding that consistent with Fish and Wildlife Service's policy on distinct population segments, political boundaries do not map ecological characteristics, but they are relevant to survival of a species because the applicable State laws and the resources and capacity of State wildlife agencies to provide support to conservation programs are relevant to the survival chances of a species within that jurisdiction. While I am not familiar with the details of how the Service has applied the distinct population segment policy with respect to the gray wolf, if confirmed my role will be to advise the U.S. Fish and Wildlife Service and other DOI Bureaus on their management options under the ESA and its implementing regulations.

*Question 29d.* What are the specific legal hurdles that must be overcome in order to delist the gray wolf in Wyoming? How will you advise the Secretary to overcome each of these hurdles?

Answer. I am aware that the Service has determined that the States of Wyoming, Montana, and Idaho must include in their management regime provisions to ensure the population never falls below the minimum recovery goal of 10 breeding pairs and 100 gray wolves per State. If confirmed, I will advise the U.S. Fish and Wildlife Service as it moves forward in its efforts to work with the State of Wyoming to address issues associated with the State's management plans and laws that concern the delisting of the gray wolf in Wyoming.

*Question 30.* We have a significant problem at the BLM with grazing permit renewals. Completing NEPA paperwork takes months, even years, and threatens ranchers' livelihood. Currently, we have legislative language in place that allows permits to continue while NEPA paperwork is completed. This is responsible stewardship and good business. However, ranchers live under threat of this language expiring annually.

Absent legislative language with regard to NEPA on permit renewals, would you support continuing grazing with the existing permit under the Administrative Procedures Act until NEPA paperwork is completed?

Answer. While I am not familiar with this issue, I am advised that the congressional permit renewal language has been extremely helpful to the BLM in prioritizing the processing of over 18,000 permits and leases based on environmental considerations, while meeting its NEPA obligations. If confirmed as Solicitor, I will study the issue and provide advice to the Secretary as he works with Congress to strengthen the tools available to the BLM concerning grazing permit renewals while ensuring resource protection and fiscal accountability.

*Question 31.* Do you support the 2007 Solicitor's opinion defining "significant portion of the range" in order to focus the Fish and Wildlife Service's efforts on protecting endangered species in areas where they are struggling to survive? What is your definition of "significant portion of the range"? What are the implications of your definition for managers on the ground in Wyoming?

Answer. While I am aware that this is a question of law that the Solicitor examined in detail, I have not personally dealt with either this M-opinion or the underlying legislative history for this term. I therefore am not in a position to provide you with a specific definition at this time. I understand that this interpretation is implicated in a case pending before the United States Court of Appeals for the 9th Circuit, and the court's decision may provide further clarity in this area.

#### RESPONSE OF HILLARY CHANDLER TOMPKINS TO QUESTION FROM SENATOR BUNNING

*Question 32.* As you may know, on December 8, 2008, the Department of the Interior published a rule that reversed its longstanding restrictions on transporting and carrying firearms in national parks. This rule was recently struck down in U.S. District Court because it did not adhere to environmental impacts. Secretary Salazar originally said before this committee that he supported the Bush Administration rule but has come back and said that the Department of the Interior will conduct an environmental impact study on the Bush Administration's rule. Is it possible to make the Bush Administration's rule comply with the court decision? Will you support rescinding this rule?

Answer. I understand that Secretary Salazar told this Committee during his confirmation process that he is a strong supporter of the Second Amendment. I am

aware that litigation with respect to this regulation is ongoing. It is my understanding that the March 19, 2009, opinion granting the injunction reveals the court's view that the rule had not been subject to the evaluation of reasonably foreseeable environmental impacts required by the National Environmental Policy Act and that substantial information in the rule's administrative record concerning environmental impacts had not been considered or addressed.

In a step towards resolving this matter, the United States has advised the court it will seek a stay so that the Department can undertake an environmental analysis. My role as Solicitor will be to advise the Secretary and other decision-makers within the Department of their management options under the law, the impacts of any court rulings, and applicable laws related to conducting that environmental review, as well as the applicable provisions of the Constitution.

## APPENDIX II

### Additional Material Submitted for the Record

---

STATEMENT OF HON. BARBARA A. MIKULSKI, U.S. SENATOR FROM MARYLAND

Mr. Chairman—I appreciate the opportunity to express my strong support for President Obama’s nominee for Under Secretary of Energy—Dr. Kristina Johnson.

I have known Kristina Johnson since she became provost and senior vice president for academic affairs at Johns Hopkins University in September 2007. She is one of the preeminent scientists of her generation—as well as an accomplished teacher and administrator.

I have three criteria that I use to evaluate all executive branch nominees: competence, integrity, and commitment to the core mission of the Department. Based on these criteria, I wholeheartedly support Dr. Johnson to be our Under Secretary of the Department of Energy Secretary.

Dr. Johnson is the Provost of Johns Hopkins University and former Dean of the Pratt School of Engineering at Duke University. Since receiving her PhD from Stanford University in electrical and computer engineering, Dr. Johnson has written extensively and holds 45 patents. She has received numerous awards—including being the only woman to win the John Fritz medal—the highest award in the engineering profession.

Dr. Johnson will effectively implement President Obama’s priorities of developing clean energy and addressing global warming. She has the unique combination of scientific, leadership, and policy skills needed to be an effective and respected Under Secretary of the Department of Energy.

Dr. Johnson would bring vision, new ideas and energy to the position of Under Secretary of the Department of Energy. I wholeheartedly support her for this important position.

---

ENERGY COMMUNITIES ALLIANCE,  
*Washington, DC, April 16, 2009.*

Hon. JEFF BINGAMAN,  
*Chairman, Senate Committee on Energy and Natural Resources, 364 Dirksen Senate Building, Washington, DC.*

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

Re: Dr. Ines Triay, Nominee for Department of Energy Assistant Secretary of Environmental Management

DEAR CHAIRMAN BINGAMAN AND RANKING MEMBER MURKOWSKI: The Energy Communities Alliance (ECA) respectfully requests that you expeditiously confirm Dr. Ines Triay to be the new Department of Energy Assistant Secretary of Environmental Management. As the organization of local governments and communities that are adjacent to or impacted by Department of Energy Environmental Management (DOE-EM) activities, ECA has developed a close relationship with Dr. Triay in her current capacity as Acting Assistant Secretary and through her former positions within the DOE-EM program.

As you consider Dr. Triay’s nomination, we believe she should be confirmed for the following reasons:

- (1) Significant work experience in the challenging arena of complex environmental cleanups.—Dr. Triay has developed a technical expertise in the EM program through her past leadership roles in the “field” at the Waste Isolation Pilot Plant and the Los Alamos National Laboratory. In addition, her recent

roles at DOE Headquarters have equipped her with the skills to execute at the programmatic level;

(2) She is open and honest with external groups such as states, tribes, and local governments.—Dr. Triay not only has much technical expertise in the environmental cleanup arena, she also has the ability to work well with state, tribal, and local governments around the DOE cleanup sites. Communications and partnerships with external stakeholders is critical to the success of the EM program by avoiding costly disputes and achieving mutually agreeable cleanup solutions; and

(3) She will provide a continuity of leadership at this critical time for the DOE-EM program.—The DOE-EM program must effectively implement \$6 billion in funding it received under the American Reinvestment and Recovery Act, and as such, a continuity of leadership is paramount. Given the current conditions and the goal of the EM program to stimulate the economy through shovel-ready cleanup and construction jobs, we believe that an EM-1 should be put in place immediately. Further, Obama administration initiatives such as the Energy Parks Initiative, which takes federal land that requires environmental remediation and turns it into an opportunity to provide energy to our country, will require her strong leadership to succeed.

The work of the DOE-EM program is extremely important to the public health and environmental well being of ECA communities across the nation, and as such we recommend Dr. Ines Triay to be confirmed as the new DOE Assistant Secretary of Environmental Management.

Sincerely,

ROBERT THOMPSON,  
*ECA Chair,*  
*Council Member, City of Richland, WA.*

---

STATE OF NEW MEXICO,  
OFFICE OF THE STATE ENGINEER,  
*Santa Fe, NM, April 21, 2009.*

Hon. TOM UDALL,  
*B 40D Dirksen, Senate Office Building, Washington, DC.*

Re: Nomination of Hilary Tompkins as Solicitor of the Department of the Interior

DEAR SENATOR UDALL: On behalf of the New Mexico Office of the State Engineer and Interstate Stream Commission, we strongly support the nomination of Hilary Tompkins as Solicitor of the Department of Interior. Hilary provided excellent legal counsel to Governor Richardson and will be a valuable member of the Interior team. Hilary provided guidance to our agency on a broad range of water-related issues and we look forward to working with her in her new position on the numerous issues that overlap between our agency and the Department of Interior.

Sincerely,

JOHN R. D'ANTONIO, JR., P.E.,  
*State Engineer.*  
JIM DUNLAP, CHAIRMAN,  
*Interstate Stream Commission.*  
ESTEVAN R. LÓPEZ, P.E., DIRECTOR,  
*Interstate Stream Commission.*

---

STATE OF NEW MEXICO,  
OFFICE OF THE STATE ENGINEER,  
*Santa Fe, NM, April 21, 2009.*

Hon. JEFF BINGAMAN,  
*703 Hart Senate Office Building, Washington, DC.*

Re: Nomination of Hilary Tompkins as Solicitor of the Department of the Interior

DEAR SENATOR BINGAMAN: On behalf of the New Mexico Office of the State Engineer and Interstate Stream Commission, we strongly support the nomination of Hilary Tompkins as Solicitor of the Department of Interior. Hilary provided excellent legal counsel to Governor Richardson and will be a valuable member of the Interior team. Hilary provided guidance to our agency on a broad range of water-re-

lated issues and we look forward to working with her in her new position on the numerous issues that overlap between our agency and the Department of Interior.  
Sincerely,

JOHN R. D'ANTONIO, JR., P.E.,  
*State Engineer.*

JIM DUNLAP, CHAIRMAN,  
*Interstate Stream Commission.*

ESTEVAN R. LÓPEZ, P.E., DIRECTOR,  
*Interstate Stream Commission.*

○