

GREENBLATT AND JORJANI NOMINATIONS

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

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

TO

CONSIDER THE NOMINATIONS OF MARK LEE GREENBLATT TO BE INSPECTOR GENERAL, DEPARTMENT OF THE INTERIOR AND DANIEL JORJANI TO BE SOLICITOR OF THE DEPARTMENT OF THE INTERIOR

MAY 2, 2019



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GREENBLATT AND JORJANI NOMINATIONS

THURSDAY, MAY 2, 2019

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

The Committee met, pursuant to notice, at 10:06 a.m. in Room SD-366, Dirksen Senate Office Building, Hon. Lisa Murkowski, Chairman of the Committee, presiding.

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

The CHAIRMAN. Good morning, everyone. The Committee will come to order.

We are here this morning to consider the nominations of two individuals for the Department of the Interior (DOI). But before we do the introduction on that, I would like to turn to my colleague and Ranking Member, Senator Manchin, just for a few words here this morning to start the morning off right.

Senator MANCHIN. Madam Chairman, thank you, thank you so much and sorry to take just a few minutes, but I think it is extremely important for all of us on this Committee to recognize and say thank you to a gentleman who has given us tremendous service. So it is with great pleasure that I take a moment to recognize the Committee's longest serving staff member, David Brooks.

David joined the Committee staff 30 years ago in February 1989. To put in perspective how long David has worked for the Committee, consider this. There are only four Senators who are still in the Senate who were here when David arrived.

The CHAIRMAN. Wow.

[Laughter.]

Wow.

Senator MANCHIN. You can take that any way you want.

[Laughter.]

David has faithfully served seven of the eight Democrats who have been either the Chairman or Ranking Member in the entire history of this Committee. That is unbelievable also.

David serves as our General Counsel for Public Lands. He is our foremost authority on National Parks and Public Land issues. Unquestionably, he has staffed more park and public land hearings and helped enact into law more park and public lands legislation than anyone in the Committee's 42-year history.

David's most recent accomplishment was the 700-page John D. Dingell, Jr. Conservation, Management, and Recreation Act which passed both the House and the Senate with broad, bipartisan ma-

jorities and was signed into law two months ago. That law, like so many before, was made possible, in large part, by David's hard work, his many years of experience, his deep knowledge of our public land laws, his skills as a negotiator and as a legislative draftsman, and his dedication to this Committee.

I am proud and grateful to have David on our staff, and I take great pleasure in recognizing him for his 30 years of devoted service to the Committee, the Senate, and the nation. David, thank you so much and come forward.

[Applause.]

Let's get everybody up here.

The CHAIRMAN. Congratulations.

Senator MANCHIN. Come on, everybody get up.

The CHAIRMAN. We are going to get a picture here.

Senator MANCHIN. Get everybody in here.

He deserves 30 years of recognition for just enduring.

[Members surround David for a photo.]

The CHAIRMAN. Senator Manchin, thank you for recognizing David.

David, I, too, want to extend my thanks and appreciation for your good work on the Committee. By my calculations, now I have been here 16 years, so the entire time I have been here, you have been here, so about half of your tenure.

We have gotten to know one another through some of these public lands' issues, and your expertise, the value that you bring to the Committee, is appreciated on both sides. So thank you for that. We will look forward to giving you a 40-year pin. So 2029 is coming up, just hold on. But thank you again for your good work for the Committee.

It is always nice to start the Committee out on, kind of, an upbeat note.

Let's talk about our two nominees that we have before us this morning. Mark Lee Greenblatt, who is nominated to be Inspector General, and Mr. Daniel Jorjani, nominated to be Solicitor. These are critical positions. I want to thank both our nominees for their willingness to serve.

The Interior Department has numerous, wide-ranging responsibilities, including the administration of more than a quarter of the land in the United States. Almost two-thirds of the land in Alaska is under the oversight of the Department of the Interior. It is also the primary federal agency charged with meeting our nation's trust responsibilities to American Indian and Alaska Native people.

In order to carry out its mission, the Department needs a strong, independent watchdog who can ensure that it operates efficiently, effectively, and legally. It also needs a top lawyer who can provide good advice, counsel, and legal representation.

Both of these positions have been vacant since President Trump took office. In fact, the Interior Department has been without a permanent Inspector General (IG) for more than ten years. We have to change that. The Inspector General must appreciate the responsibilities the IG's office has to the Department's Secretary as well as to Congress, and that is why I welcome the nomination of Mr. Greenblatt, who is well-qualified for this position. He has more

than 15 years of oversight experience, including several positions in the Office of the Inspector General at the Department of Commerce and as Staff Director and Chief Counsel on the Senate Permanent Subcommittee on Investigations.

The Department's Solicitor must have a commitment to the careful interpretation of both the law and precedent, regardless of how that advice may be received. Mr. Jorjani has been performing the Solicitor's duties largely since President Trump took office, but his experience at Interior extends beyond that. This is actually his second tour at the Department, having previously served in the Bush Administration. Mr. Jorjani clearly knows the issues and is demonstrating that he can do the job.

For members who have questions for our nominees, I am going to be here this morning until we can get through everybody. If members have additional questions after the hearing, questions for the record will be due at the close of business tomorrow.

As usual, it is my intent to report these nominees as soon as possible.

I would just note that we still have five nominees who have already been favorably reported from the Committee that are still awaiting full confirmation by the Senate. That includes Susan Combs, the President's nominee for Assistant Secretary of Policy, Management, and Budget. She was reported out of our Committee three separate times. She has now been awaiting confirmation for a total of 661 days. We have got to get moving on these nominations.

Secretary Bernhardt and Secretary Perry need their teams in place. I would encourage members to recognize the importance of confirming these individuals and the importance of encouraging Americans who want to enter public service, and to work with me to secure their approval.

At this point I will turn to Senator Manchin for your comments, and then we will swear in our witnesses and proceed.

**STATEMENT OF HON. JOE MANCHIN III,
U.S. SENATOR FROM WEST VIRGINIA**

Senator MANCHIN. Thank you, Madam Chairman, especially for holding this hearing today.

Thank you, Mr. Jorjani and Mr. Greenblatt, for your willingness to serve and for appearing here before the Committee this morning, and thank you for having your families with you. I know they'll enjoy this. I hope they do.

[Laughter.]

The positions to which Mr. Jorjani and Mr. Greenblatt have been nominated are among the most important at the Department of the Interior. The Solicitor is responsible for providing legal advice and counsel to the Secretary and to all of the bureaus and offices within the Department of the Interior. The Inspector General is responsible for detecting and deterring waste, fraud, and abuse in the Department's programs and operations; for reporting any problems to the Secretary and Congress; and for recommending any corrective actions that may be needed.

Both of these important jobs have gone too long without a Senate-confirmed appointee. The Department has been without a con-

firmed Solicitor since the beginning of the Trump Administration and without a confirmed Inspector General since early in the Obama Administration.

In fairness though, I must note that the Office of the Inspector General has been very ably filled on an acting basis by Mary Kendall for the past ten years. I was pleased to hear that Ms. Kendall will become the Deputy Inspector General for Amtrak when she leaves the Interior Department. I would like to take this opportunity to thank her for her public service and wish her well in her new position.

But the Department should not be run by acting officials. Our laws and our constitution require Senate confirmations of its principal officers. So I am pleased we finally have these nominations before us this morning.

Unfortunately, as we are all aware, some of the Department's highest officials have been the subject of conflict of interest allegations.

The Solicitor, as the Department's Chief Legal Officer, and the Inspector General, as its internal watchdog, must play lead roles in ensuring the integrity of the Department and its officials, ensuring that they meet the highest ethical standards. They both must be willing and able to speak truth to power.

I regret that I did not have a chance to meet with Mr. Jorjani before today's hearing, so I look forward to hearing from him this morning. In particular, I am interested in hearing more about his background and how he views the Solicitor's role within the Department. I believe the Solicitor must be more than just an advocate defending the policies of the Secretary or even the President. He must be willing to give them candid, principled, and independent legal advice, even when it is not what they want to hear. The Solicitor, like any appointee to the Department, bears the very important responsibility of creating a culture of integrity and ensuring the protection of our public lands and the taxpayer dollar, and the Solicitor must do so by upholding the law above all else.

I appreciate having had the opportunity to meet with Mr. Greenblatt several weeks ago. I am favorably impressed by his many years of experience as an investigator with the Senate's Permanent Subcommittee on Investigations, the Department of Justice Office of Inspector General, and most recently, the Department of Commerce Office of Inspector General.

I look forward to hearing from both of you all today.

Thank you so much, Madam Chairman.

The CHAIRMAN. Thank you, Senator.

Gentlemen, at this time the rules of the Committee which apply to all nominees require that they be sworn in in connection with their testimony. I would ask that you rise and raise your right hand.

Do you solemnly swear that the testimony you are about to give to the Senate Committee on Energy and Natural Resources shall be the truth, the whole truth and nothing but the truth?

[Witnesses respond favorably.]

The CHAIRMAN. You may both be seated.

Before you begin your statement, I will ask you three questions addressed to each nominee before the Committee.

First, will you be available to appear before this Committee and other Congressional committees to represent departmental positions and respond to issues of concern to the Congress?

Mr. JORJANI. Yes.

Mr. GREENBLATT. Yes.

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

Mr. JORJANI. No.

Mr. GREENBLATT. No.

The CHAIRMAN. Are you involved or do you have any assets held in blind trusts?

Mr. JORJANI. No.

Mr. GREENBLATT. No.

The CHAIRMAN. Very good.

We appreciate, again, your willingness to serve and the opportunity to ask questions of you in Committee here.

I note that there are some younger members of the society that have joined us behind you, so I am assuming that they may have some connection to each of you. As you present your statements, we would certainly invite you to introduce any of your family members or supporters or fan club that you may have brought with you.

We will begin comments or statements from you, Mr. Jorjani, and then we will go to Mr. Greenblatt.

We would ask you to try to keep your comments to about five minutes. I do note that we have a series of votes that are scheduled to begin about 10:45, so we are probably going to have to be jumping up and down between all this because we want to get all the questions in as we can, but we apologize in advance for the disruption.

Mr. Jorjani, if you would like to begin?

STATEMENT OF DANIEL JORJANI, NOMINATED TO BE SOLICITOR OF THE DEPARTMENT OF THE INTERIOR

Mr. JORJANI. Chairman Murkowski, Ranking Member Manchin, and members of the Committee, it is my honor to appear before you today as the President's nominee to be Solicitor of the Department of the Interior. I humbly ask for your consent to the President's nomination.

If confirmed, I will bring over 20 years' experience to this role, including approximately ten years at the Department of the Interior, where I have spent two years as the Principal Deputy Solicitor, four years as the Counselor to the Deputy Secretary, and almost four years as the Counselor and Chief of Staff to the Assistant Secretary for Policy, Management and Budget. It is my understanding that no other nominee for Solicitor has ever brought this much DOI experience to the role.

If confirmed, I will serve as the chief legal officer for the Department and as the principal legal advisor to Secretary Bernhardt. I first met Secretary Bernhardt in 2001 and consider myself fortunate to have had the opportunity to work for him directly. He is a lawyer's lawyer and a person of the highest integrity.

I am joined today by my extraordinarily awesome wife, Aimee, and my three children, Nickolas, Lucy, and Flora. Nickolas is named for my oldest cousin, Nick, a recently retired federal civil servant who has worked tirelessly at home and abroad to protect our country since 9/11.

As a child of physicians who immigrated to this great country in the 1950s, I learned from both of them to appreciate the wonders of America and the importance of public service. I grew up hearing my mother's stories of living in Scotland during the Second World War and the aftermath she endured in London while doing her residency there. I learned early on the challenges that women face in the workplace and the importance of creating a safe and secure work environment.

On the farm in Kentucky is where my father first taught me to shoot at the age of five with a Browning SA-22, a rifle I still own today and will pass on to my children. There I also learned coal's importance to the hardworking families of southeastern Kentucky. And I learned the equally important lesson that government has an important role to play in ensuring the safety of those same hard-working men and women.

From 2001 to 2009, I was incredibly fortunate to have been mentored by senior career members of the Senior Executive Service (SES) on DOI operations and on the Executive Branch inter-agency process more broadly. I re-joined the Department in January 2017 after serving on the Trump-Pence Transition Team. Starting in May 2017, I began my service as Principal Deputy Solicitor and have served in that capacity for the past two years. During this time, I have been fortunate to work with highly talented lawyers and administrators, both at Main Interior and in the regions.

The Solicitor's Office is currently composed of 407 employees, including 352 attorneys. Our portfolio covers all ten bureaus and is organized by issue area including ethics, energy and minerals, parks and wildlife, Indian affairs, Indian Trust Litigation, land, water, general law, and administration. Almost half of our lawyers are located in regional and field offices that span from Anchorage to Albuquerque to Knoxville, Pittsburgh, and beyond. The Solicitor's Office also houses Interior's Freedom of Information Act (FOIA) Office, which is managed by the newly created SES level role of Deputy Chief FOIA Officer. The career civil servant who holds that role is a senior lawyer with over 20 years federal experience, much of it in FOIA policy and litigation.

In addition to my responsibilities over the past two years as Principal Deputy Solicitor, I've also served as the Regulatory Policy Officer on Interior's Regulatory Reform Task Force and as a member of Interior's Executive Resources Board, which plays an important role in managing the Department's SES corps.

If confirmed, I welcome the opportunity to use my legal, policy, regulatory, and management skills to further the Department's mission to protect and manage the nation's lands, natural resources, and cultural heritage and to ensure that the Department fulfills its responsibilities to the Insular areas and its trust responsibilities to American Indian tribes and their members.

Thank you very much for your consideration.

[The prepared statement of Mr. Jorjani follows:]

**Written Testimony of Daniel Jorjani
Nominated to be Solicitor for the Department of Interior
Senate Committee on Energy and Natural Resources
Thursday, May 2, 2019**

Chairman Murkowski, Ranking Member Manchin, and Members of the Committee, it is my honor to appear before you today as the President's nominee to be the Solicitor of the Department of the Interior. I ask for your consent to the President's nomination.

If confirmed, I will bring over 20 years' experience to this role, including approximately 10 years at the Department of the Interior, where I have spent 2 years as the Principal Deputy Solicitor, 4 years as the Counselor to the Deputy Secretary, and almost 4 years as the Counselor and Chief of Staff to the Assistant Secretary for Policy, Management and Budget.

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If confirmed, I welcome the opportunity to use my legal, policy, regulatory, and management skills to further the Department's mission to protect and manage the Nation's lands, natural resources, and cultural heritage and to ensure that the Department fulfills its responsibilities to the Insular areas and its trust responsibilities to American Indian tribes and their members.

Thank you very much for your consideration.

The CHAIRMAN. Thank you, Mr. Jorjani, and welcome to you and your lovely family back there. Nice to have you here.

Mr. Greenblatt, welcome to the Committee.

**STATEMENT OF MARK L. GREENBLATT, NOMINATED TO BE
INSPECTOR GENERAL, U.S. DEPARTMENT OF THE INTERIOR**

Mr. GREENBLATT. Thank you, Chairman Murkowski, Ranking Member Manchin, and members of the Committee. It's an honor to appear before you as the nominee to serve as the Inspector General of the Department of the Interior.

At the outset, I'd like to thank my family, friends, and colleagues, many of whom are here today, for their support. My colleagues, who inspire me with their intelligence, sound judgment, good humor, and work ethic. My family, who instilled in me the value of honesty, integrity, and hard work from a young age. My wife, Jana, who's been a wellspring of support for the past 19 years. And lastly, my two boys, Micah and Levi, who are always energetic and sometimes well-behaved reminders of why we are all here, to improve our country for future generations.

[Laughter.]

The CHAIRMAN. Exceptionally well-behaved.

[Laughter.]

Mr. GREENBLATT. The desire to improve our country drove me to dedicate my career to public service.

In that vein, I've spent the last 16 years rooting out waste, fraud, and abuse in the Federal Government. I started my public service right here in the U.S. Senate, conducting oversight for the Permanent Subcommittee on Investigations (PSI). After almost six years at PSI, I joined the special investigations team of the Department of Justice OIG. Then after five years, I moved to the Department of Commerce OIG, first as the Director of Special Investigations and later as the Assistant Inspector General for Investigations.

Over the years, I have led hundreds of inquiries involving a variety of federal agencies including the Justice Department, FBI, DEA, the Patent and Trademark Office, Census Bureau, NOAA, and Fortune 500 companies, and the United Nations. These matters have included high-profile investigations into the highest-ranking officers in our agencies, and run the gamut of misconduct from conflicts of interest to misuse of office, from whistleblower retaliation to revolving door violations, from nepotism to contract and grant fraud.

I take great pride in the fact that, throughout my career, investigations under my watch have been conducted in a fair, independent, and objective fashion that uncovered the truth and affected positive change, even under highly politicized and challenging circumstances.

In one case, we investigated allegations of misconduct in a Census Bureau office. The atmosphere there had grown toxic. Witnesses were scared. Whistleblowers were threatened. In fact, one subject, while cutting a cake at an office party, moved the knife up and down in a stabbing motion and said, "This is for the ones who went to the OIG." Our investigation ultimately uncovered extensive abuses, including roughly 40 employees who falsely claimed to work nearly 20,000 hours, more than \$1 million stolen from the

taxpayers. We also found a variety of other misconduct, like multiple cases of employees misusing their position to hire their friends and family. As a result of our report, the Census Bureau took action and disbanded the unit. They implemented substantial changes and attempted to fire or discipline many of those employees. That investigation is particularly gratifying to me because it is a great example of how IGs can have a positive impact on its agencies by uncovering misconduct, holding officials accountable, protecting whistleblowers, and empowering the agency to make necessary reforms. That is what I love about serving in the IG community.

Therefore, it's an honor to be nominated to be an Inspector General, particularly at an agency with such far-reaching impact as the Department of the Interior. Simply put the Department touches every American in significant ways and that includes my own family.

Several months ago, I took the boys with my father to the battlefields at Antietam and Gettysburg. Walking around Cemetery Hill and Devil's Den, Burnside Bridge and the Sunken Road, we discussed those pivotal moments in American history and the stories of self-sacrifice and leadership like Clara Barton and Joshua Chamberlain. Months later we still talk about what Chamberlain and his boys from Maine did to hold that crucial left flank on Little Round Top, what it meant for this country, and what we can learn from it all these years later.

Those were meaningful experiences for us, all made possible by the Department's efforts to preserve our national parks. So I'd be especially honored to contribute to this important mission as DOI's Inspector General.

If confirmed, I'd strive to be an agent of positive change, focusing on eliminating waste, fraud, and abuse and making effective recommendations to Interior's leadership, all designed to make the Department the best it can be.

I would also maintain strong relations with Congress. In light of my tenure conducting oversight for this very body, the significance of that relationship resonates with me on a personal level.

Thank you for your consideration of my nomination and, if confirmed, I would look forward to working with you toward our common goal of making our country better now and for future generations.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Greenblatt follows:]

**Statement by
Mark L. Greenblatt
Nominee for Inspector General of the
United States Department of the Interior
Before the Committee on Energy and Natural Resources
United States Senate
May 2, 2019**

Thank you, Chairman Murkowski, Ranking Member Manchin, and Members of the Committee. It is an honor to appear before you as the nominee to serve as the Inspector General of the Department of the Interior.

At the outset, I would like to thank my family, friends, and colleagues, many of whom are here today, for their support:

- My colleagues, who constantly inspire me with their intelligence, sound judgment, good humor, and work ethic;
- My mother, who passed away 31 years ago yesterday, and my father, who is here with us today, both of whom instilled in me the value of honesty, integrity, and hard work from a young age;
- My wife Jana, who has been a wellspring of support for the past 19 years; and
- Lastly, my two boys, Micah and Levi, who are energetic—and sometimes well-behaved—reminders of why we are all here: to improve our country for future generations.

The desire to improve our country drove me to dedicate my career to public service. In that vein, I have spent the last 16 years uncovering waste, fraud, and abuse in the Federal Government.

I started my public service right here in the U.S. Senate, conducting oversight for the Permanent Subcommittee on Investigations (PSI), where I served under the leadership of former Senators Norm Coleman and Carl Levin – strong role models who ran exhaustive, apolitical investigations that sought to uncover the truth and bring about positive change.

After almost 6 years at PSI, I joined the special investigations unit of the Department of Justice OIG. Then after 5 years at Justice, I moved to the Department of Commerce OIG, first as the Director of Special Investigations and later the Assistant Inspector General for Investigations. Currently, as the Acting Executive Director of the Council of Inspectors General on Integrity and Efficiency (CIGIE), I am leading initiatives for the entire OIG community. The Council's core mission is to support all the Federal inspectors general, bolstering their independence and addressing important challenges confronting the IG community.

Over the years, I have led or supervised hundreds of inquiries involving a variety of Federal agencies, including the Justice Department, FBI, DEA, the Patent and Trademark Office, Census

Bureau, and NOAA, as well as Fortune 500 companies and the United Nations. These matters have included high-profile investigations into the highest-ranking officials in our agencies, and run the gamut of misconduct, from conflicts of interest to misuse of office, from whistleblower retaliation to revolving door violations, from nepotism to contract and grant fraud.

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That investigation is particularly gratifying to me because it exemplifies the impact an IG can have on its agency—by uncovering misconduct, by holding officials accountable, by protecting vulnerable whistleblowers, and by empowering the agency to make necessary reforms.

Producing that type of positive change is what I love about serving in the IG community.

Therefore, it is an honor to be nominated to be an Inspector General, particularly at an agency with such far-reaching impact as the Department of the Interior. Interior is responsible for some of the most pressing issues facing our country, such as:

- Enhancing our energy security;
- Managing our vast public lands and natural resources;
- Protecting endangered species; and
- Meeting our responsibilities to our native American communities.

Simply put, the Department touches the lives of every American in significant ways. That includes my own family. Several months ago, I took the boys with my father to the battlefields at Antietam and Gettysburg. Walking around Cemetery Hill, Devil's Den, Burnside Bridge, and the Sunken Road, we discussed those pivotal moments in American history and stories of self-sacrifice and leadership. Months later, we still talk about what Joshua Chamberlain and his boys from Maine did to hold the crucial left flank on Little Round Top, what it meant for this country, and what we can learn from it all these years later. Those were meaningful experiences for us, all made possible by the Department's efforts to preserve our national parks.

So, I would be especially honored to contribute to this important mission and lead the OIG's dedicated professionals as DOI's Inspector General. If confirmed, I would strive to be an agent of positive change, focusing on eliminating fraud, waste, and abuse, and making constructive recommendations to Interior's leadership, all designed to make the Department the best it can be. I would also maintain strong relations with Congress. In light of my tenure conducting oversight for this very body, the significance of that relationship resonates with me on a personal level.

Thank you for your consideration of my nomination and, if confirmed, I look forward to working with you toward our common goal of making our country better now and for future generations.

Thank you, and I look forward to answering your questions.

The CHAIRMAN. Thank you, Mr. Greenblatt. We appreciate your comments, your willingness to serve and your family that is here to support you in every way. We appreciate that.

Let me begin with questions here, beginning with you, Mr. Jorjani.

You are certainly not the first nominee who has worked somewhere else in the past, but in your case I suspect there is going to be some interest in your work and how it will affect your work going forward within the Department. So if you can just give the Committee some insight as to how you handle ethics and potential conflicts, both for yourself and for those within the Department?

Mr. JORJANI. Thank you for the question, Senator.

I handle that issue the way I handle a lot of issues which is at the very first step, consulting with the career civil service ethics officials, whether it's meetings that I take or topics that I review. The role of ethics is incredibly important to the U.S. Department of the Interior.

And just to build out from my past experiences working focused on compliance and the legal component but also at the U.S. Department of the Interior, the role of the Ethics Office is incredibly important. Secretary Bernhardt has prioritized that as a top priority.

And we look forward to continuing to perform the massive reforms we already have underway, including the hiring of 42 career ethics officials, on schedule to hire another 25 by the end of this fiscal year. Additional training, additional professionalization of the core, but making sure from top to bottom, everybody understands the importance of ethics. It's not optional. It's a core part of what we're seeking to accomplish.

The CHAIRMAN. Well, I appreciate that.

I also recognize that in order to do that which we have tasked you at the Department, you have to have a workplace that is respectful, safe, free of harassment, free of retaliation of all kinds and really creating a positive workplace environment and combating misconduct. That is a key part of what you have to do as well.

You have been there as Principal Deputy Solicitor for some time. What have you done, in terms of either specific policies or practices, to improve the Department's workplace environment and, really, the morale as well within the Department and each of its bureaus because that too is important?

Mr. JORJANI. Thank you for the question, Senator.

The first thing at the policy level is an issuance of Personnel Bulletin 18-01 which established broad-reaching criteria to address the issue of workforce harassment, not just protected classes and not just what is the legal definition of harassment but trying to be proactive in addressing the issues of workplace harassment.

If we've seen anything, not just in the previous Administration, but for decades now, it's the ongoing issues of harassment that employees in the field, for example, the Park Service, have been experiencing. In our most recent survey, the numbers show over 40 percent of Park Service employees had experienced harassment in the workplace within the past two years.

Kudos to the entire team, not just Secretary Bernhardt, but the employment and labor law unit for pursuing this issue aggressively. It is something we take very, very seriously and are allo-

cating significant resources to. It's part of an ongoing process. We're not there yet, but it remains a top priority.

The CHAIRMAN. It needs to be that top priority.

Mr. Greenblatt, let me ask you.

You are sitting at the table today with Mr. Jorjani who, if confirmed, will be the Department's Solicitor. How should the Office of Inspector General and the Solicitor's Office be working together?

Mr. GREENBLATT. There are a number of areas, actually, where we do, at least in my experience from Commerce and Justice, where the OIG and the Solicitor's Office or there, the General Counsel's Office do overlap or not overlap, but they do have to work together.

For example, in employee misconduct cases, if we have an investigation that finds one or more employees have engaged in misconduct, we would then turn that over to the agency. Usually it's going to be the Solicitor's Office or the General Counsel's Office that would then take the lead on exerting some sort of discipline or whatever process they want to do. So there is some engagement there.

And then there's also refined engagement, uh, misconduct, with respect to contractors or grant recipients, then we would proceed with the suspension in—to stop more money going to those, that contractors and grant recipients. That again, usually would go through the General Counsel's Office or, in this case, the Solicitor's Office.

The CHAIRMAN. Thank you.

Very quickly, back to you, Mr. Jorjani.

During Secretary Bernhardt's confirmation we talked about the Trans-Alaska Pipeline which is our economic backbone up north. It has been running about three-quarters empty and that is certainly not due to lack of resources, you know that. But so much of it has been because we have just had issues with lack of permission to access our federal areas.

But thanks to some of Interior's policies, we are seeing a turn-around there. Obviously this is critical for my state, our economic livelihood, for public services and the like. I would just ask for your continued commitment to the full resources and focus of the Solicitor's Office to help us turn this around and really refill that Trans-Alaska Pipeline.

Mr. JORJANI. Yes, Chairman, it is a top priority. You'll have the full commitment of the Solicitor's Office both at main Interior and with the regional Solicitor based out of Anchorage. It remains a top priority from the Secretary all the way down to the field.

The CHAIRMAN. I appreciate that.

Mr. JORJANI. Yes, ma'am.

The CHAIRMAN. Senator Manchin.

Senator MANCHIN. Thank you, Madam Chairman.

Mr. Jorjani, as the Department of the Interior's chief legal officer, the Solicitor must be able to provide an accurate and honest appraisal of the law, even if the Solicitor may not personally agree with that law and even if the law may constrain the Secretary or President's desired policy goals.

If confirmed, will you be able to set aside your ideology and personal policy views and provide the Secretary and the Department with principled, objective, and forthright legal analysis?

Mr. JORJANI. Thank you for the question.

Yes, I take seriously my responsibilities that the Solicitor is not simply the legal advisor to the Secretary, he is the Chief Legal Officer for the Department and the ability to provide robust challenge and accurate legal advice is incredibly important, even if it is initially unwelcome.

Senator MANCHIN. One of the foundations of the rule of law in the country is respect for established precedent—the same law that is applied to one person one day should be applied to the next person the next day. I understand the Solicitor is the legal advisor, not a judge or a court. The Solicitor is not bound by the legal opinions of his or her predecessors.

The Department of the Interior, like other Executive Branch agencies, has considerable leeway to change policies from one Administration to the next, but laws do not change unless we, in Congress, amend them. So the Department's interpretation of the law should not change, wholesale, every time an Administration changes. Congressional intent is Congressional intent.

So I am troubled by the fact, Mr. Jorjani, that seven of the eight legal opinions you have issued as Acting Solicitor overturned well-reasoned, legal opinions of the previous Solicitor.

So my question would be what weight do you afford the legal opinions of previous Solicitors? I can give you three examples of the seven of the eight you overturned. One was a page-and-a-half opinion summarily overturning Ms. Tompkins' exhaustive 30-page analysis of the Department's statutory authority to require companies permitted to develop energy development or other infrastructure projects on public lands to mitigate environmental harm. The second one, an opinion that concluded railroad companies holding railroad rights-of-way over public lands under the 1875 law can lease portions of those rights-of-way to other companies for non-railroad purposes. And a third one of the seven, an opinion that concluded that the Migratory Bird Treaty Act (MBTA) makes it unlawful to kill migratory birds without a permit at any time. Those are just three of the seven.

Mr. JORJANI. Thank you for the question, Ranking Member Manchin.

The previous sets of M Opinions are important. They provide guidance to us. I'm not sure if you want me to go each of the three—

Senator MANCHIN. I'm just saying—

Mr. JORJANI. But it is important. And we do our—

Senator MANCHIN. As coming in as acting, you came in and overturned seven of the eight. I heard that those things were basically approved as the previous Administration was outgoing.

We found also these had been exhaustively studied and Ms. Tompkins was well regarded in following the rule of law. And in all honesty, the observance that I have is that your political ideology overtook, basically, the rule of law that was in the previous opinions.

Mr. JORJANI. Thank you for the question, Ranking Member Manchin. We take our responsibilities very seriously.

Of the three I can go through each of them, but I'll just start with MBTA. It was an interesting issue looking at the statute and the interpretation because, essentially, we had a split in circuits between the second and tenth on one side regarding its take and the fifth, eighth and the ninth circuit taking a different interpretation. There's a long process for reviewing M Opinions, what the catalyst is for it.

In this case, we received a directive from the Chief of Staff to the President saying take a fresh set of eyes on every reg in any interpretations of statutes with general applicability.

So, as part of that process, actually before I became the Principal Deputy Solicitor, those were withdrawn and then we did a multi-month process involving senior career lawyers as well as consultation through the interagency process and a lot of feedback from DOJ before we rolled out that specific opinion.

Senator MANCHIN. I will talk further on my second round, but I want to go right to Mr. Greenblatt, if I may.

Several years ago, the Inspector General's Office found systematic sexual harassment and gender discrimination in the National Park Service which seems to be of epidemic proportion. Three years later this is still a serious problem, as you know, and I think you have been made aware of that. Will you commit to giving that problem the utmost attention that it needs and what is your thought process of how we can cure it?

Mr. GREENBLATT. So that is absolutely something I'm committed to addressing. Normally or in other IG offices, sexual harassment doesn't quite fall in the purview of the OIG. I'm happy to report that Interior does take a proactive view with respect to the OIG engaging on some of those issues.

That doesn't mean we can do all of those cases, but when it rises to a pervasive level that impacts the operations of the entity, then that's when it gets OIG involvement and that's when we've been, I think, proactive and adding real value. I look forward to continuing doing just that.

Senator MANCHIN. Thank you.

Thank you, Madam Chairman.

The CHAIRMAN. Senator Wyden.

Senator WYDEN. Thank you, Madam Chair.

Madam Chair and colleagues, the grotesque scandals at the Interior Department, in effect, are going to be part of an especially bizarre twist this morning.

At the witness table there are two nominees, Mr. Daniel Jorjani, who believes he deserves an ethics job promotion even though his current ethics job coincides with the blizzard of ethical lapses by Ryan Zinke. Sitting next to him is Mr. Mark Greenblatt, the nominee to be the Interior Inspector General which is a job charged with being a key line of defense against corruption at the Interior Department.

As Senators consider whether to promote Mr. Jorjani, here are several considerations.

First, there is Mr. Jorjani's non-existent record of ethics enforcement during his time as Acting Solicitor. By my count there are at

least four investigations into wrongdoing at the Interior Department that were closed or found inconclusive due to a lack of cooperation or records production and this took place on Mr. Jorjani's watch. These investigations ranged from the political or potential misuse of expensive chartered air flights to a halted study on the crucial health impacts of potentially dangerous Interior Department policies.

Second, on March 28th of 2017, Mr. Jorjani boasted in an email he sent to another Interior official that he, "worked for and successfully protected DOI politicals who have undergone IG travel investigations."

Mr. Barrasso, as Acting Chair, I would ask unanimous consent that that email be put into the record.

Senator BARRASSO [presiding]. Without objection.

[The information referred to follows:]

3/28/2017

DEPARTMENT OF THE INTERIOR Mail - Fwd: Virgin Islands



Cousins, Debbie <debbie_cousins@ios.doi.gov>

Fwd: Virgin Islands

1 message

Jorjani, Daniel <daniel_jorjani@ios.doi.gov>
 To: "Cousins, Debbie" <debbie_cousins@ios.doi.gov>
 Cc: Edward Keable <edward.keable@sol.doi.gov>

Tue, Mar 28, 2017 at 9:48 AM

Debbie - Please add this email traffic to the file for this trip. Thank you. Dan

----- Forwarded message -----

From: **Roddy, Russell** <russell_roddy@ios.doi.gov>

Date: Tue, Mar 28, 2017 at 9:15 AM

Subject: Re: Virgin Islands

To: Daniel Jorjani <daniel_jorjani@ios.doi.gov>

Cc: Scott Hommel <scott_hommel@ios.doi.gov>, Douglas Domenech <douglas_domenech@ios.doi.gov>, Megan Bloomgren <megan_bloomgren@ios.doi.gov>

Thanks, Dan. I should have considered that I probably shouldn't have been included and not taken it personally. Yesterday was a long, frustrating day at times here. There is a lot of "probably" this and "maybe" that per events here...and different contacts saying different things. They have put in a lot of hard work here and I understand the depth of their planning. It is just hard for me to be dealing with probably's and maybe's at this point and not be able to totally control the situation. I'm sure things will run smoothly in the long run. One other thought per travel, had I not arrived when I did, I would have missed a walkthru yesterday of 30 or more people which included representatives from security, the Governor's Office, and the Prime Minister's Office (who arrived earlier than I did), etc. Thanks for the reply back.

Rusty

On Tue, Mar 28, 2017 at 6:44 AM, Daniel Jorjani <daniel_jorjani@ios.doi.gov> wrote:

Rusty - Not your fault. Tim Nigborowicz should have prepared the paperwork in advance. \$4,000 for a 6-day advance in the Virgin Islands is not a small sum and will draw the OIG's attention. (OIG's love travel investigations. They are easy to document and spin in a negative way.) Doug and I know this because we have both worked for and successfully protected DOI PASs who have undergone OIG travel investigations.

Regarding the request itself, asking for "approval" after you departed reflects poorly on Tim. We not only have to do things correctly, we must also document that we are doing them correctly. Otherwise, it will be easy for the OIG or the Washington Post to spin things negatively.

As I said to you last week, you have a difficult job and I appreciate your hard work. Nevertheless, at the end of the day our job is to protect the Secretary. Documenting that we are carefully stewarding public resources is a key part of that effort.

Sorry that you weren't in my response to Tim or the follow-up email with Gen Law, but part of the process was determining whether Tim had actually produced a justification other than his brief after-the-fact email included in Debbie's request.

Adding Scott, Doug, and Meg to keep in loop. (Will forward email traffic to them.)

Will also place this email in the file, so that we have a record in place documenting that we tried to do this in a 10,000% compliant manner.

<https://mail.google.com/mail/u/0/?ui=2&ik=7399e19811&view=pt&search=inbox&th=15b152d423879343&siml=15b152d423879343>

1/2

Senator WYDEN. In that same email, Mr. Jorjani says, and I quote, "At the end of the day, it's our job to protect the Secretary." Colleagues, last time I looked, Interior lawyers are responsible for protecting the best interest of the American people before those of the Secretary or special interests, and I found that comment particularly troubling.

Third, Mr. Jorjani oversees Interior's new Freedom of Information Act policies that give political appointees the opportunity to review document productions. What this means is it is harder for the press to report on what actually is going on there at Interior and for the American people to access public documents.

In addition, it appears that under Mr. Jorjani's leadership Interior has so far stonewalled Congressional requests as two House Committees investigate whether Secretary Bernhardt complied with record keeping laws.

Here's my conclusion. The way Interior has acted under the Trump Administration is the textbook definition of a political cartel using state resources to help the special interests, and it sure looks to me like Mr. Jorjani has been a key member of the cartel.

So I have only one question and that is, Mr. Greenblatt, if you are confirmed, you are going to have your work cut out for you and I want to know what you are going to do to maintain your independence and avoid an appointee, like Mr. Jorjani, attempting to interfere with your work.

You and I talked about this yesterday and I want to hear some specific examples this morning of what you are going to do to maintain your independence and keep these political appointments from interfering with protecting the public, not the Secretary and not politics, at Interior.

Mr. GREENBLATT. Thank you.

This is a crucial issue for Inspectors General. Independence, fairness, objectivity, these are core principles for us. And as we discussed yesterday, I have a good, long track record of doing just that—fair, objective, independent oversight.

Now in terms of specific steps. I've gone toe-to-toe with the biggest lawyers in town. I didn't back down then. I'm not going to back down now. What does that mean? That means, in particular, you know, we have a number of different responsibilities and prerogatives under the IG Act that we can use to ensure that we're getting the materials, we're getting access to the materials and witnesses that we need.

There's a seven-day letter where we can write to the agency and insist that they then go to Congress and report on deficiencies and abuses.

If we have obstruction in terms of obstructing our investigations, you know, I have no problem making referrals over to the Department of Justice if there's an obstruction of our investigation into agency employees. I'll have DOJ on speed dial if I need to.

So we are going to do our investigations in a fair, objective, independent way. We're going to follow the evidence wherever it goes. Wherever it goes we're going to do thorough, exhaustive investigations, and we will close them when they're closed in accordance with—

Senator WYDEN. My time is up and my colleagues are waiting for the vote.

I would like you, within five days, to present in writing specific steps of what you are going to do to make sure there is no political interference with your work.

I would like to know, for example, what specifically your timetable will be with respect to requests for document production. We are seeing that as a problem in the House.

I would like to hear about a regular reporting schedule to this Committee that has oversight responsibilities.

Five days, I want to hear specific steps.

I have not made up my mind on how I am going to vote for you, but I want to see independence.

Thank you, Mr. Chairman.

Mr. GREENBLATT. Understood.

Senator BARRASSO. Thank you, Senator Wyden.

Well, I would like to thank Senator Murkowski and Ranking Member Manchin for holding this hearing. I am glad that we are here taking steps to fill two very important Senate-confirmed positions that have been sitting vacant for far too long.

Nearly half of the land in Wyoming is owned by the Federal Government, so I believe we are particularly affected by the decisions made by the Department of the Interior.

I would like to begin with a question for Mr. Jorjani.

Since President Trump has taken office, many of his actions have been subject to litigation. I wanted to get into that.

But first, it seemed you were chomping at the bit to respond to some of the comments that were being made by the previous Senator in his comments. I would like to give you some of my time to respond as you wish.

Mr. JORJANI. Thank you, Senator.

Yeah, I believe Senator Wyden was referring to a March 28, 2017, email when I was on duty as a Special Assistant in the Secretary's office before I had moved to the Solicitor's Office. The context for that email was a mid-level political, essentially expending dollars for a trip that I considered to be poor use of taxpayers' dollars. I was politely reprimanding him about the use of those dollars, and he responded negatively.

And I do take seriously in that role the obligation to protect the Secretary and the Secretary's immediate office against misuse of taxpayers' dollars. But it's also sometimes, as a senior member of the political team, you're protecting the Secretary against poor judgment of other political appointees who do things that reflect badly upon the Department, on the Secretary and upon the Administration.

So no, I agreed with that chastisement of that particular official. He lasted less than a year in the Department before finding other opportunities.

Senator BARRASSO. Well, I appreciate your willingness to come forward here today, to bring your family and to present yourself, and I appreciate your service to the nation.

Interior is faced with an increasing number of legal challenges, unfavorable decisions and it must determine the appropriate legal strategy in moving forward in a lot of things. The DC District

Court's recent Wild Earth Guardians decision is just one example that severely impacts my home State of Wyoming. Attorneys at the Department of Justice represent Interior in this litigation. So while the Interior Solicitor works closely with the Department of Justice on these cases, they have ultimate authority over the case, including the decisions to litigate, to settle, to appeal.

Mr. Jorjani, I would just like to ask you about your relationship with the attorneys at the Department of Justice. How would you describe the relationship between Interior and Justice and how closely are you able to work with them?

Mr. JORJANI. I consider the working relationship between all the attorneys at the U.S. Department of the Interior and ENRD, who is our primary point of contact of DOJ, is to be a highly positive.

The new Assistant Attorney General at ENRD is Jeff Clark, a very aggressive, very talented litigator. My team and his team speak on a daily basis.

We understand Department of Justice controls litigation strategy and we're the client, but it's a productive, highly productive, working relationship.

Senator BARRASSO. Thank you.

Mr. Greenblatt, oversight in Indian Country, and I have been former Chairman of that Committee, must be carefully navigated to respect tribal sovereignty while ensuring accountability in the use of taxpayer dollars.

I would just like to ask you how you would approach investigations that implicate the BIA or the tribes?

Mr. GREENBLATT. Those are a particularly sensitive issue for us and in my communications with the folks currently at the IG's office, that's one area of growth, one place we could go and develop a little bit more of a robust practice. That's one place they, you know, the current team there and I would agree, want to expand and develop a little bit more of an infrastructure there, perhaps, even opening an office in that area of the country.

That would be something that's absolutely crucial because of the very reason you said, the 638 grants, the contracts that have self-determination in them, make it very difficult to exert oversight. But that's exactly the void we need to fill. And so, I would look forward to working with you on that.

Senator BARRASSO. Thank you very much.

Senator Heinrich.

Senator HEINRICH. Thank you.

Mr. Jorjani, I want to go back to the Migratory Bird Treaty Act, because you referenced the Circuit split. What you omitted was that the Department of the Interior and that the U.S. Fish and Wildlife Service have a 70-year history of supporting the opposite view and protecting the resource. And in 1989 alone, roughly half a million birds died in oil waste pits in the Southwest. That is twice what were killed by the *Exxon Valdez* spill.

I would just ask unanimous consent to add to the record this letter signed by administration officials from the last eight administrations, Republican and Democrat, ranging from the Nixon Administration all the way through to the most recent Administration, because these are not just esoteric legal questions. They have

real impacts on the resources that the Department of the Interior is entrusted to protect.

[Letter regarding the Migratory Bird Treaty Act follows:]

The Honorable Ryan Zinke
 Secretary of the Interior
 1849 C St., NW
 Washington, D.C. 20240

January 10, 2018

Dear Secretary Zinke:

We are all conservation professionals who have formerly served the Department of the Interior, from 1971 to 2017: Deputy Secretaries, Assistant Secretaries, U.S. Fish and Wildlife Service Directors, and Migratory Bird Conservation Chiefs. We are former Senate-confirmed political appointees, of Republican and Democratic Presidents, and we are former career civil servants. We are, each and all, very concerned by the Interior Department's December 22, 2017 announcement of a new legal memorandum (M-37050) reinterpreting the Migratory Bird Treaty Act.

This legal opinion is contrary to the long-standing interpretation by every administration (Republican and Democrat) since at least the 1970's, who held that the Migratory Bird Treaty Act strictly prohibits the unregulated killing of birds. This law was among the first U.S. environmental laws, setting this nation and continent on the enviable path to conserving our natural resources. It was passed to implement the first of four bilateral treaties with countries with which we share migratory bird populations (Canada, Mexico, Japan, and Russia). Its intent, and your obligation in enforcing it, is to conserve migratory bird populations. Therefore, we respectfully request that you suspend this ill-conceived opinion, and convene a bipartisan group of experts to recommend a consensus and sensible path forward. We would be pleased to work with you, involving the public, toward this end.

The Solicitor's opinion takes 41 pages to turn the MBTA's straightforward language — "it shall be unlawful to hunt, take, capture, kill ... *by any means whatever* ... at any time or *in any manner*, any migratory bird" (emphasis added)— into a conclusion that the killing of migratory birds violates the act only when "the actor [is] engaged in an activity *the object of which was to render an animal subject to human control*" (emphasis added).

This is a new, contrived legal standard that creates a huge loophole in the MBTA, allowing companies to engage in activities that routinely kill migratory birds so long as they were not intending that their operations would "render an animal subject to human control." Indeed, as your solicitor's opinion necessarily acknowledged, several district and circuit courts have soundly rejected the narrow reading of the law that your Department is now embracing.

We recognize that, at the margin, reasonable people can disagree about the extent to which prosecutions under the MBTA are appropriate for activities that are not intended to kill birds, but which are reasonably likely, and indeed, quite likely to kill them. That is why, over the course of our collective careers, significant progress has been made in defining the limits of this law through refined interpretations, court decisions, and common sense. Over the years, career professionals and political leadership in the U.S. Fish and Wildlife Service (FWS), the Department of the Interior, and Department of Justice have adapted to ensure that the enforcement of this law fairly balances the goal of economic progress with the impact of that progress on bird populations.

Birds are, quite literally, the proverbial "canary in the coal mine." How birds fare in the world indicates how all wildlife and habitat, and by extension human populations, will fare. It is not just poetry that led

Rachel Carson to title her seminal work, *Silent Spring*. All the past administrations for which we have worked have struck a balance and worked diligently and in good faith with industries that had significant impacts on birds, such as oil and gas, coal, electric utilities, commercial fishing, communications, transportation, national defense, and others to reasonably address unintended take. It can be done. In fact, it has been done.

Successes in applying this law to minimize the incidental killing of birds are numerous. For example, we worked with oil producers to ensure that exposed crude oil waste pits were covered with nets to keep birds from landing in them. We worked to improve the techniques of commercial fishing to reduce the drowning of seabirds in fishing lines and nets. Additionally, government has used the law to work with wind energy companies to improve the siting of turbines to avoid and minimize the killing of birds. It has never been the goal to entirely eliminate the unintentional killing of birds, but when we find techniques and technologies that can be used at reasonable cost to protect bird populations, we had a responsibility to do so. Although the proximate reason for the passage of the MBTA may have been to protect migratory birds from unregulated market hunting (we note the absence of oil waste pits and wind farms at the time of bill passage), the ultimate reason was the protection of migratory birds.

The MBTA can and has been successfully used to reduce gross negligence by companies that simply do not recognize the value of birds to society or the practical means to minimize harm. Your new interpretation needlessly undermines a history of great progress, undermines the effectiveness of the migratory bird treaties, and diminishes U.S. leadership.

In a world where connections to nature are becoming ever more tenuous, birds are the wildlife that Americans encounter daily. Whether we are conservationists, birdwatchers, hunters, or just citizens who enjoy the natural world, conserving birds is a common interest. In addition, we must consider how our treaty partners in Canada, Mexico, Japan and Russia will view this new interpretation. Only a few years ago, the U.S. exchanged formal diplomatic notes with Canada reaffirming our countries' common interpretation that incidental killing of birds was prohibited by the treaty.

Just as Theodore Roosevelt declared and demonstrated, we, as Federal officials, endeavored to strike a balance between development and conservation. We recognized that strict liability must be tempered with common sense notions of reasonable foreseeability and readily available alternatives. We are anxious to explore this balance and provide you with an approach that we can all support, and one that will continue the proud record of U.S. leadership in conserving birds.

We await your response.

Sincerely,

Lynn Scarlett
Deputy Secretary of the Interior
President George W. Bush

David J. Hayes
Deputy Secretary of the Interior
Presidents William Clinton and Barack Obama

Nathaniel Reed
Assistant Secretary of the Interior for Fish and Wildlife and Parks
President Richard Nixon

Donald Barry
Assistant Secretary of the Interior for Fish and Wildlife and Parks
President William Clinton

Lyle Lavery
Assistant Secretary of the Interior for Fish and Wildlife and Parks
President George W. Bush

Lynn Greenwalt
U.S. Fish and Wildlife Service Director
Presidents Richard Nixon, Gerald Ford, and Jimmy Carter

John Turner
U.S. Fish and Wildlife Service Director
President George H. W. Bush

Jamie Rappaport Clark
U.S. Fish and Wildlife Service Director
President William Clinton

Steve Williams
U.S. Fish and Wildlife Service Director
President George W. Bush

Daniel M. Ashe
U.S. Fish and Wildlife Service Director
President Barack Obama

John Rogers
U.S. Fish and Wildlife Service
Chief, Migratory Bird Management (1972-84)

Rollin Sparrowe
U.S. Fish and Wildlife Service
Chief, Migratory Bird Management (1984-89)

Tom Dwyer
U.S. Fish and Wildlife Service
Chief, Migratory Bird Management (1989-93)

Paul Schmidt
U.S. Fish and Wildlife Service
Chief, Migratory Bird Management (1993-99)
Assistant Director Migratory Birds (2003-11)

Jon Andrew
U.S. Fish and Wildlife Service
Chief, Migratory Bird Management (1999-2002)

Robert Blohm
U.S. Fish and Wildlife Service
Chief, Migratory Bird Management (2006-11)

Brad Bortner
U.S. Fish and Wildlife Service
Chief, Migratory Bird Management (2011-17)

CC:

The Honorable Rob Bishop, Chairman, House Committee on Natural Resources
The Honorable Raúl Grijalva, Ranking Member, House Committee on Natural Resources
The Honorable John Barrasso, Chairman, Senate Committee on Environment and Public Works
The Honorable Tom Carper, Ranking Member, Senate Committee on Environment and Public Works
The Honorable Lisa Murkowski, Chairwoman, Senate Committee on Energy and Natural Resources
The Honorable Maria Cantwell, Ranking Member, Senate Committee on Energy and Natural Resources
The Honorable Ed Royce, Chairman, House Committee on Foreign Affairs
The Honorable Eliot Engel, Ranking Member, House Committee on Foreign Affairs
The Honorable Bob Corker, Chairman, Senate Committee on Foreign Relations
The Honorable Ben Cardin, Ranking Member, Senate Committee on Foreign Relations
The Honorable Rodney Frelinghuysen, Chairman, House Committee on Appropriations
The Honorable Nita Lowey, Ranking Member, House Committee on Appropriations
The Honorable Thad Cochran, Chairman, Senate Committee on Appropriations
The Honorable Patrick Leahy, Ranking Member, Senate Committee on Appropriations
Mr. David Bernhardt, Deputy Secretary of the U.S. Department of the Interior
Ms. Aurelia Skipwith, Deputy Assistant Secretary, Fish and Wildlife and Parks, U.S. Department of the Interior
Mr. Greg Sheehan, Director of the U.S. Fish and Wildlife Service (Acting)

Senator HEINRICH. So let me move on to another question which is, do you believe that the programs and services for Indian tribes and their members as currently implemented are constitutional?

Mr. JORJANI. Yes, our sovereign-to-sovereign relationship with Indian tribes is incredibly important. It's set forth in the Constitution, in federal treaties, and in federal statutes. That relationship is incredibly important. It's one we value and one we're working constantly to strengthen.

Senator HEINRICH. Some have suggested in this Administration that programs like the Indian Housing Block grant are not constitutional and that the thought process there is that these are basically not, that tribal membership is not so much a reflection of affiliation with a sovereign government but more of a racial status. That is the view that I am deeply opposed to and I think as you point out, is deeply incongruous with 240 years of legal history. Would you agree with that interpretation?

Mr. JORJANI. Yes, I'm not aware of the counter interpretation being an official position.

It is definitely the position of the Department of the Interior. We value the sovereign-to-sovereign relationship with the tribes and with their individual members as well.

Senator HEINRICH. I am very pleased to hear that.

Let me ask you, climate change, is it happening?

Mr. JORJANI. Yes.

Senator HEINRICH. Do you have a view on what is causing it?

Mr. JORJANI. I don't have a comprehensive view but man certainly plays a role.

Senator HEINRICH. Okay.

Do you think that the Department of the Interior has an obligation to consider the effect of those changes in Departmental actions?

Mr. JORJANI. It's an interesting question. It's incredibly important. I'm not aware of a precise statutory requirement for the Department of the Interior the way there might be for the Environmental Protection Agency. But certainly, when we're looking at issues involving climate change, how it might impact our analysis for NEPA and elsewhere, it's something we're taking very seriously, under the leadership of Secretary Bernhardt.

Senator HEINRICH. Okay.

Thank you, Madam Chair.

The CHAIRMAN [presiding]. Thank you, Senator.

Senator Cantwell.

Senator CANTWELL. Thank you, Madam Chair.

I understand earlier you honored David Brooks for his service on the Committee. I want to thank you and Ranking Member Manchin for doing that and thank David for his service here in the United States Senate. I think when somebody writes the book on the last 100 years of public land debate, there will definitely be a chapter in there about David Brooks.

I certainly appreciate all that he has done to continue to hold present the history and the understanding of these issues and, frankly, for helping us negotiate this package last time because we certainly would not have been able to do that without his great insight and, certainly, Sam Fowler as well.

The CHAIRMAN. We will go ahead and photoshop you into that picture where we all stood to congratulate him.

Senator CANTWELL. Okay.

The CHAIRMAN. We knew you were there.

Senator CANTWELL. Okay.

Mr. Jorjani, I have concerns, obviously, about drilling in the Arctic Wildlife Refuge and many of my constituents do. It is one of the largest and wildest refuges that we have on the planet, and I believe it is very fragile.

I am concerned that the rush to jam through drilling by the Department of the Interior has ignored some legal obligations to conduct a meaningful analysis on the impacts of the industrial development and what impact it will have on the refuge and species like polar bear and others.

It is my understanding that this expedited review is resulting in a lack of sound and updated science, that the Department of the Interior is taking action without the information needed on potential impacts that drilling will have on the refuge, even if other agencies like Fish and Wildlife have flagged that there are gaps and issues with the Department's environmental review and failure to obtain all science and information.

So I have some questions for you regarding that. Mr. Jorjani, do you believe the Endangered Species Act, the Alaska National Interest Lands Conservation Act (ANILCA), and the National Wildlife Refuge System Administration Act apply to the Arctic National Wildlife Refuge?

Mr. JORJANI. Yes, they do.

ANILCA is an incredibly important statute. Both ANCSA and ANILCA and the Department of the Interior needs to do the best it can to make sure we're fulfilling our obligations under those statutes.

Senator CANTWELL. Thank you.

Mr. JORJANI. But all three apply.

Senator CANTWELL. Thank you.

Given the serious issues with BLM's environmental review process to date, will you advise BLM to revise and release its draft EIS for an additional round of public review?

Mr. JORJANI. Thank you for the question, Senator.

I am not aware of a rushed process for it, but I commit to going back to the Department and speaking with the policymakers on that issue. And if it is advised to fulfill our legal obligations, I will make that recommendation.

Senator CANTWELL. I think I am going to follow up with you on another written question for the record on that so that it will give you a little more time maybe to evaluate that information and come back with either more of a yes or a no.

If the court rules that there were flaws in the legal process at BLM or the analysis, will you commit to revoking any leases that may be issued pursuant to a lease sale based on a flawed EIS?

Mr. JORJANI. If a decision from a District Court is reached with that conclusion, I commit to consulting with the Department of Justice and with the Department's leadership at Interior regarding appropriate next steps as a policy matter as well as a legal matter.

Senator CANTWELL. If the court ruled that there were legal flaws, why wouldn't you continue to, you know, hold up, I guess, would be the best. Why wouldn't you hold up?

Mr. JORJANI. Thank you for the question.

I would like to see what the decision is and what the rationale is for this hypothetical decision. But if we get the decision it will receive full, careful review both at the Department of the Interior and the U.S. Department of Justice.

Senator CANTWELL. Okay. I think I will follow up with you on maybe an even more direct question on that so that you can, again, give us—I know it is hard because there are lots of different elements of this but, you know, I will never forget asking John Ashcroft at his confirmation hearing when he was about to become the Attorney General whether he would uphold the Roadless Rule. I said, it is now law, according to the APA under the Clinton Administration, but you are now going to work for the Bush Administration and are you going to uphold it? He hesitated for a minute and he said, well, if it's the law of the land then yes, I will uphold it.

Pretty soon as we saw the Bush Administration try to roll back various environmental reviews, various issues on Friday afternoons, we reminded the Attorney General that he made that commitment and at least he let the Roadless Rule, I would not say he was an effective advocate in court but he definitely didn't try to revoke it based on his testimony.

So I am just trying to get an understanding of your commitment to what is law and whether you will help follow the law. That is the key thing I am after. I get that there are many scenarios, but I want to know just as I wanted to know from Attorney General Ashcroft whether he would uphold the law in the responsibility and area that he had.

So thank you very much.

The CHAIRMAN. Thank you, Senator Cantwell.

Let's go to Senator Hirono.

Senator HIRONO. Thank you.

I ask all nominees who come before any of the five committees on which I sit, the following two questions. And so, I would like both of you to respond to these questions.

I will start with you, Mr. Jorjani, and then you can answer, Mr. Greenblatt.

Since you became a legal adult have you ever made unwanted requests for sexual favors or committed any verbal or physical harassment or assault of a sexual nature?

Mr. JORJANI. No.

Mr. GREENBLATT. No.

Senator HIRONO. Have you ever faced discipline or entered into a settlement related to this kind of conduct?

Mr. JORJANI. No.

Mr. GREENBLATT. No.

Senator HIRONO. Mr. Greenblatt, the DOI IG's office recently opened an investigation into allegations that Secretary Bernhardt has taken steps to suppress a Fish and Wildlife Service report on the impacts of pesticides on endangered species. This was in re-

sponse to a letter that I led with some of my colleagues requesting an investigation into these allegations.

If confirmed, do you commit to maintain open communications with my office during the course of this investigation and, of course, to see that this investigation continues?

Mr. GREENBLATT. Let me be very clear, I have zero intent of walking in the door and shutting down that investigation or any other matter in front of the OIG.

In terms of open communication, this is true, speaking broadly, we can't convey what's going on with an ongoing investigation but the extent to which we can, I'm happy to engage with the Committee in terms of what's happening, but that's difficult in the context of an ongoing investigation.

Senator HIRONO. So I can be assured that you will commit to being responsive and communicative with Congress during any future requests?

Mr. GREENBLATT. Yes, absolutely.

Senator HIRONO. Mr. Jorjani, in both your testimony and biography that you provided to the Committee, there is no discussion of what you did between 2009 and 2017. That is a pretty long period of time.

I understand you were working for various Koch Brothers-supported entities. It is hard to believe that your time with the Koch Brothers did not influence your opinion that incidental take, for example, is not prohibited under the Migratory Bird Treaty Act, something that has been a top priority of the oil and gas industry and is contrary to how the Fish and Wildlife Service has implemented the Act since the 1970s.

Your opinion discussed how the scope of incidental take is virtually unlimited, yet the Fish and Wildlife Service Office of Law Enforcement has stated in a briefing that, "Despite the wide range of activities that can potentially incidentally kill birds, Fish and Wildlife Service and DOJ have been careful to bring enforcement actions only in limited circumstances," and that, "DOJ does not ordinarily prosecute pure accidents."

Are you aware that prosecution of incidental take under the MBTA has been limited?

Mr. JORJANI. I'm aware there are different interpretations of the statute and prosecution depends on a certain degree of discretion on individual prosecutors. And that—

Senator HIRONO. Well, the question is that that has not been unfettered prosecutions, that there are limitations. They are not going to go and sue everybody in sight.

And by the way, you are aware that before they file these kinds of losses that they give the affected entity a chance to remedy the situation. Are you aware of that?

Mr. JORJANI. I'm aware different prosecutors have different approaches and, again, the task of the M Opinion is to focus on the statute itself.

Thank you for the question.

Senator HIRONO. Yes, you take the plain meaning of the statute.

So really why did you issue this opinion if prosecution—yes, they do have discretion but it is not as though they are just running wild for incidental take—has been so limited? You acknowledge

that, I hope that you acknowledge that it has been limited? So why did you feel you needed to issue an opinion that just totally opened the floodgates for non-prosecution for incidental take?

Mr. JORJANI. Senator, thank you for the question.

Senator HIRONO. You do not have to thank me for the questions. Please respond.

Mr. JORJANI. When we review M Opinions and M Opinions have been, we've issued them to the Solicitor's Office for almost 100 years, there's usually a process in place that we adhere to. Usually the first step for revising any M Opinion is we get an options paper from the career lawyers. The second stage—

Senator HIRONO. I think, excuse me, I realize there is a process, but nonetheless you came to the conclusion that you should totally open the floodgates for no prosecutions under the incidental takes. And in the opinion you issued, you cite to a number of cases. A lot of these cases had to do with the oil industry, the United States v. Citgo Petroleum Corporation, United States v. Brigham Oil and Gas LP. A lot of these challenges under this law have come from or have been lawsuits involving the oil and gas industry. So who benefits most from your opinion that totally stopped prosecutions for incidental take under this law? What industry most benefits from your opinion?

Mr. JORJANI. I'm not aware of any particular industry that benefits from this. I'd like to think the American people benefit from a restrained approach to statutory interpretation.

Senator HIRONO. Yes, I would like to think so too. But I think you cannot escape the conclusion that the people you used to work for before, the Koch Brothers, that this is one of their biggest issues that they wanted to have done away with and that was prosecutions under the Migratory Bird Treaty. So I would say the oil and gas industry are the biggest beneficiaries.

And you know, may I just say one more thing that I think you could have considered under this law—some other suggestions such as maybe lowering the penalties for incidental take or clarifying that these kinds of takes would not be subjected to a strict liability standard if, you know, I realize that was not applied across the board. But there was some other things you could do rather than to issue an opinion that just gave unfettered right mainly to the oil and gas industry that they do not have to even pay any attention to unintended takes.

Thank you, Madam Chair.

The CHAIRMAN. Thank you.

Let's go to Senator King.

Senator KING. Thank you.

Mr. Greenblatt, you had me at Chamberlain.

[Laughter.]

Mr. GREENBLATT. And the Gettysburg book on your desk or on your table.

Senator KING. You are a very astute guy—

[Laughter.]

—and that is why I am going to vote for your confirmation.

Mr. GREENBLATT. I appreciate that.

Senator KING. No, I appreciate your answers to your questions, the questions, your attitude, I think. You and I discussed how im-

portant the role of Inspector General is in any federal agency. It is essential to undergirding public confidence in the efficacy of our federal agencies.

Mr. Jorjani, it is true, is it not, that you worked for an organization called Freedom Partners Chamber of Commerce which was at least partially funded by the Koch Brothers. Is that correct?

Mr. JORJANI. Yes, it is true, I believe from February 2012 to January 2017 I worked for Freedom Partners Chamber of Commerce.

Senator KING. And since you have been in the Department of the Interior, have you had any oral or written contact with any of the personnel associated with Freedom Partners or the Koch Brothers regarding either business or political interests? This is a very specific question. Have you had written or oral communication with any of those individuals?

Mr. JORJANI. If it's any oral communications with anyone who has ever worked at Freedom Partners Chamber of Commerce, I went to a holiday party, not an official one, for somebody who used to work at Freedom Partners Chamber of Commerce. I still have friends there. But to the best of my recollection, I've never had a meeting nor any official communications with them. I will double check.

Senator KING. No communication with any of those individuals?

Mr. JORJANI. Well, that's to the best of my recollection but I will double check for you.

Senator KING. Thank you.

I would like to go back to this email that Senator Wyden raised. A couple of phrases in the email which is dated March 28th, 2017. You are talking about an expenditure for a trip to the, I believe, the Virgin Islands or to Puerto Rico.

There is a parenthetical in the first paragraph of your email. "OIGs love travel investigations. They are easy to document and spin in a negative way." What in the hell do you mean by that?

Mr. JORJANI. Oh, if you're engaged in violations of travel policy, it's incredibly easy to document and when you have—

Senator KING. It is the "spin in a negative way" that implies a disrespect for the Office of the Inspector General. Can you respond?

Mr. JORJANI. Oh, yeah, not for the Office of Inspector General. I will say they—

Senator KING. It says OIGs.

Mr. JORJANI. Oh yeah. There are two things, very quickly.

Office of Inspector General at Interior, phenomenal. I had the pleasure of working with Earl Devaney for eight years.

Senator KING. That is not what you said in this email. You said OIGs can spin it in a negative way. What did you mean by that?

Mr. JORJANI. I will take that—

Senator KING. Doesn't that imply disrespect for the Office of Inspector General?

Mr. JORJANI. I can only say I have the highest, utmost respect for the Office of Inspector General.

Senator KING. Well, I can only say that is inconsistent with what you said in your email.

The second piece of the email is, "nevertheless at the end of the day our job is to protect the Secretary."

Isn't your job to protect the American people? Are you the Secretary's lawyer or are you the Department of the Interior's lawyer?

Mr. JORJANI. Thank you for the question. That email——

Senator KING. Don't—I am like Senator Hirono, never mind the thank you for the question.

Mr. JORJANI. —March 28th, 2017, at that point that was several months before I joined the Solicitor's Office. I was a Special Assistant in the Office of the Secretary and it is important when you have senior political officials, it's not just, they sometimes have to be protected against junior politicals who are taking travel and expending taxpayers' dollars and doing it in a way that's inconsistent with our obligations to the American people.

So that email was focused on a mid-level political, from my perspective, taking advantage of a trip for what were non-personal experience, personal expenses and I considered it inconsistent use of dollars.

Senator KING. So your position was the meaning of that phrase was you were protecting the Secretary from misuse of public funds by another, a lower down member of the Department? I want to give you fair—that is your——

Mr. JORJANI. Oh sure. Well, there are different components to it. That particular political appointee who didn't last long at the U.S. Department of the Interior. This just being one example of what I considered not adhering to the point that public trust is a public responsibility.

Senator KING. I appreciate that.

One final question.

I am a little unclear from the pre-hearing materials and your testimony. As of now, who is in charge of FOIA requests in the Department of the Interior? Is it a career professional or is it a political appointee?

Mr. JORJANI. Day-to-day management of the FOIA Office is run by the Deputy Chief FOIA Officer who is a career lawyer of 20 years' experience.

I don't have the statute in front of me, but I believe it's 5 U.S.C. 552(j)(1), which states that each agency must have as the FOIA Officer someone at the Assistant Secretary's level or above.

At the U.S. Department of the Interior all Assistant Secretaries are political or are presidentially appointed and Senate-confirmed by definition.

Senator KING. So it is your testimony that that is a statutory requirement across the government to have a political appointee deciding ultimately on FOIA requests?

Mr. JORJANI. I'll be careful. The statute says Assistant Secretary or above.

At the U.S. Department of the Interior, all Assistant Secretaries are, by definition, political officials. Guidance from U.S. Department of Justice, the Acting Associate AG made the point that these should all be, in effect, Assistant Secretary or above. It's a mark of how seriously we take FOIA that we're trying to reprioritize it and give it the highest-level review. I, myself, don't manage it day-to-day.

Senator KING. But isn't it true that the changes you have made in the FOIA regulations within the Department make it harder, not easier, to process FOIA, to get FOIA responses?

Mr. JORJANI. I don't want to be pre-decisional on how the regulation is going to end. We recently received some very good comments from Department of Justice. All of those comments have been integrated into the revised rule and we'll have to see what the final interpretation is.

But consistent with the practice at DOJ, DoD and State, where it is a political official who is literally designated as the Chief FOIA Officer. I, myself, don't review FOIAs or make determinations.

Senator KING. Thank you.

Thank you, Mr. Chairman.

Senator BARRASSO [presiding]. Senator Manchin, additional questions?

Senator MANCHIN. I am working on that right now. Yes.

Mr. Jorjani, one of your opinions that I have a question about is on the Bureau of Land Management's authority to address impacts of its land use authorization through mitigation.

The previous solicitor, Hilary Tompkins, issued a 30-page opinion. We talked about that. You overturned her opinion with a page-and-a-half opinion. We talked about that. And you said, I think, her opinion was no longer needed since Secretary Zinke had revoked the Department's mitigation policy. So you were following that.

So I have said before I believe energy producers and other users of our public lands who have been granted the privilege of doing business on those lands should leave them in better condition. I come from a state where we do not have BLM and, basically, land-owners get their land back better than it was when they turned it over to a producer.

So you can understand why I am a little bit concerned why people doing business on BLM land are getting preferable treatment in the way I understand we have always done business in West Virginia.

Can you explain your views on the Secretary's authority to protect the public lands and why we should not hold them more accountable or as accountable as we do in private transactions?

Mr. JORJANI. Well, generally for the purpose of that specific M Opinion, we try, as with all M Opinions, to focus on what the statute says and the relevant statutes on the topic of compensatory mitigation we couldn't find anything mandatory within FLPMA or elsewhere that directed us to follow that, essentially, policy decision that was institutionalized as an M Opinion. Thus, we withdrew it.

I know Secretary Bernhardt plays particularly close attention to this issue, and we'll be looking for policy guidance from him.

If states and others want to take advantage of compensatory mitigation, that is up to the states. We don't oppose it.

Senator MANCHIN. I understand there are quite a bit of royalties that have not been paid to the Federal Government for the work or the extraction that has been done on BLM land. I don't know how much you have looked into that, but how much of this is still

owed in royalties and how would you suggest that we collect that money? Do you know the amounts? Let me see if I have them.

[Senator Manchin confers with his staff.]

My reason for the questioning is that again in the private sector, East of the Mississippi, you pay a certain royalty, you pay a certain severance tax, and basically life goes on. It does not seem to have the same weight as far as with BLM and how we basically protect or collect from those who do business on federal lands.

On hardrock mining we collect nothing, nothing, and those laws are over, I think, almost 200 years old.

Can you give me some insight on how you feel about that or what should be done to correct that?

Mr. JORJANI. As a policy matter and as a contractual matter and as a legal matter, if royalties are owed to the Federal Government, it's incredibly important that we make sure that those obligations are fulfilled.

Regarding this particular matter, I can commit to going back and discussing this with the Department's leadership to make sure this remains a priority and everything that we do complies with the law and that those who are West of the Mississippi are not—and that we treat everyone equally, consistent with the law.

Senator MANCHIN. Well, the Hardrock Mining Law, I mean, I think we all agree, even those from hardrock mining states, that we have to have some changes that bring it into the 21st century. I think it is well past due.

If I can go to Mr. Greenblatt.

If confirmed, will you ensure that energy producers pay their royalties and can you go back and make sure that what is owed to the country is paid to our Treasury?

Mr. GREENBLATT. So that is a crucial issue. The current IG staff in their top management challenges identified that. That's, literally, the first one in the top management challenge report is the collection and verification of those royalties. And so, that's clearly an issue.

The extent to which the IG can add value, I'm happy to entertain that. I'm happy to work with you on that. I understand from our meeting that's a significant issue for you.

Senator MANCHIN. Yes.

Mr. GREENBLATT. And I'm happy to go back with the team and see how we can add value, where we can do so and engage with you on that.

Senator MANCHIN. We are doing extensive research also to find out exactly what is owed, what has not been paid and then also looking at the rates that we are charging and what can be done to bring them into parity.

Mr. GREENBLATT. Sure.

Senator MANCHIN. Because right now there is no parity whatsoever, public versus private, and they should not be treated different, you know? The ownership belongs to us, as far as taxpayers, citizens of this great country, the same as if you had a farm and you were basically leasing out your gas or oil rights. Same way.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Manchin.

Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you.

And gentlemen, welcome. Congratulations on the nominations.

Mr. Jorjani, I would like to start with questioning with you.

During your tenure, the BLM has pursued an aggressive energy dominance agenda prioritizing oil and gas development as the dominant use of our public lands, no matter the negative impact it may have on any other value that public lands yield to the American people. You played a central role in this policy, penning legal opinions that consistently favor industry at the expense of other interests.

Furthermore, since you were appointed in May 2017, the BLM has offered over 17.7 million acres of public land for lease to the oil and gas industry, yet just 60 percent of it has actually been leased.

So my question to you is this. Given that the Mineral Leasing Act limits oil and gas leasing to public lands, which are known or believed to contain oil or gas deposits, can you please describe for me the legal basis for leasing public lands that, according to BLM, have little to no actual drilling potential?

Mr. JORJANI. Thank you for the question.

I am not aware of the BLM conclusion that they have little to no potential. I commit to going back to the Department and finding out BLM's rationale for making these decisions and via the Office of Congressional Legislative Affairs, reporting back to you directly.

Senator CORTEZ MASTO. Thank you.

Last year the Trump Administration issued new guidance pertaining to land parcel reviews for oil and gas leasing as part of their energy dominance agenda, again, to open more public lands for potential leasing.

Prior to the Administration's new guidance, the public was assured a 30-day comment period before parcels were included on a lease sale list and 30 days to file a protest. Under the new guidance, comment periods are optional and the protest period is ten days.

Would you commit to a meaningful public participation environmental review process for all oil and gas leasing activities, including by restoring the previous process?

Mr. JORJANI. Senator, thank you for the question.

I commit to going back and speaking to departmental leadership on this very important issue which has legal and policy implications and then via the Office of Congressional Legislative Affairs, reporting back to you promptly.

Senator CORTEZ MASTO. Thank you.

Mr. Greenblatt, you obviously have a background in providing oversight investigations in many different forms. I appreciate you providing us with an example of such oversight regarding the misconduct in the Census Bureau Office.

You are being considered for a role that has multiple open investigations into very senior officials within the Department. Can you talk a little bit, if you can, about how you intend to continue these investigations and how you intend to retain your impartiality within these clouded circumstances that you would be stepping into?

Mr. GREENBLATT. Sure, I appreciate the question.

So, and this is obviously a sensitive issue, as I said to Senator Hirono earlier, I have zero intent of walking in the door and shutting down those matters or any other matters, that we will continue them, follow the evidence wherever they go, in accordance with our IG community standards. Close them down when they're ready to be closed, when we've exhausted all of the, you know, angles, gotten all the evidence we need.

And in terms of dealing with senior level folks, that that's what I've done throughout my career. I'm very comfortable in that space. I've done them both, you know, here at the Senate, at DOJ and at the Department of Commerce. Those don't scare me.

And so, that's the sort of thing. We'll go. We'll follow the evidence. We'll do what we need to do. We'll research the law and write up a report and that will be shared, you know, if we elect to publicize, make it public, which by the way, DOI, OIG is on the cutting edge of transparency and making investigative reports public. So I fully anticipate that that would be public both, you know, for Congress and in the public domain.

Senator CORTEZ MASTO. Thank you. Thank you.

Gentlemen, again, congratulations on the nominations.

Welcome to your family members, although I do notice that I went to vote and came back and Mr. Greenblatt, your boys are no longer here. I hope they were still well behaved.

[Laughter.]

Mr. GREENBLATT. Yeah, yeah. The medicine only lasted so long.

[Laughter.]

Senator CORTEZ MASTO. Thank you.

Senator BARRASSO. Well, thank you.

Senator Manchin, any final comments or thoughts?

Senator MANCHIN. I want to thank both of you all for coming and being direct with us. And we have concerns, but basically what we do is I think we are all here for the same reason, to make our country better and stronger and make sure that we can speak truth to power.

It is difficult, I understand. I have been around for a long time. But the country depends on you. I don't care whether you are Democrat or Republican, we just want you all to do the job that you know you can do best. You are all trained to do it, and we hope for the best.

Senator BARRASSO. I would like to ask if either of you have anything that you would like to add to summary, clarification, anything that has come to your mind.

Mr. Greenblatt?

Mr. GREENBLATT. No, thank you. I appreciate it.

Senator BARRASSO. Okay.

Mr. Jorjani?

Mr. JORJANI. Thank you, Senator. Again, thank you for the opportunity.

If confirmed, I am deeply humbled by the opportunity. I am greatly appreciative.

One potential clarification. The way Senator King has phrased his question regarding my previous employers was phrased incredibly broadly, including personal interactions and what have you. So, if it is very broadly and personal, I commit to going back and

checking my personal Gmails, my personal calendar and reporting accurately to the Committee. I just want to be, out of an abundance of caution, completely truthful.

Thank you.

Senator MANCHIN. Thank you.

Senator BARRASSO. Well, we appreciate both of your service. We congratulate both of you and your families. We thank your families for the service and your sacrifices that they make for you to be able to play this important role in governing of the United States.

There will be questions for the record that may be submitted by other members of the Committee who have not been able to do that today. The deadline for that is tomorrow, and we ask that you try to get those answered and back as quickly as possible.

Congratulations again to both of you.

This hearing is adjourned.

[Whereupon, at 11:22 a.m. the hearing was adjourned.]

APPENDIX MATERIAL SUBMITTED

Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019

Questions from Ranking Member Joe Manchin III

Question 1: During your confirmation hearing, I expressed my concern that seven of the eight legal opinions that you have issued as Acting Solicitor overturned well-reasoned legal opinions of the previous Solicitor. I cited the mitigation, railroad rights-of-way, and migratory bird opinions as three specific examples of prior opinions that you had overturned. I asked you what weight you afforded the prior legal opinions. You replied that the “catalyst” for overturning the prior opinions had been a January 20, 2017, memorandum to the heads of executive departments and agencies from the President’s Chief of Staff directing them to review recent regulations adopted during the Obama Administration with “a fresh set of eyes.”

My question went to the standard of review you apply. How much weight do you believe should be given to the Department’s prior legal opinions? Should a prior Solicitor’s decision stand unless it is clearly erroneous or can each Solicitor look at previously decided legal questions with “a fresh set of eyes” and substitute his opinion for that of his predecessors?

Response: Respect for precedent is a foundational American legal principle critical to maintaining certainty and consistency in the application of the rule of law. While legal precedent is given considerable weight in American jurisprudence, it is not irrefutable. In examining questions of law and whether an extant legal opinion, or M-Opinion, should be corrected, the Department’s Solicitor should consider a number of factors including the text and purpose of the statute or statutes upon which the opinion is based, legislative history, current underlying facts and legal doctrines, and reliance on and workability of the opinion. M-Opinions issued by the Solicitor are important legal guidance for the entire Department; they are based on the law and developed through an exhaustive process.

Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019

Questions from Ranking Member Joe Manchin III

Question 2: In response to my question about environmental mitigation, you defended your decision to withdraw your predecessor's opinion on the grounds that you "couldn't find anything mandatory" in the Federal Land Policy and Management Act or elsewhere that "directed" you to require mitigation.

- But wasn't the focus of your predecessor's opinion on the Secretary's "general authority to require mitigation"? And wasn't your predecessor's conclusion that the Secretary "has the authority and discretion to ... require appropriate mitigation" under the Federal Land Policy and Management Act, rather than that the law mandates mitigation?
- If so, why was it necessary for you to withdraw your predecessor's opinion that the law gives the Secretary "the authority" to require mitigation, even if Secretary Zinke declined, as a matter of policy, to exercise that authority?

Response: The Federal Land Policy and Management Act does not provide the Secretary with the authority to require compensatory mitigation as a condition of authorization for the use of public lands or to require that project proponents implement compensatory mitigation. Because of this, Secretary Zinke signed S.O. 3349 which revoked the compensatory mitigation policies of the previous administration and directed a thorough review.

Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019

Questions from Ranking Member Joe Manchin III

Question 3: The second example I cited involved your decision to overturn your predecessor's opinion that concluded that railroad companies holding railroad rights-of-way over public lands under the General Railroad Right-of-Way Act of March 3, 1875, can lease portions of those rights-of-way to other companies only for railroad purposes, not other unrelated purposes like the Cadiz Water Pipeline. Her opinion rested on the text of the 1875 Act, its legislative history, and prior judicial decisions. Your opinion rests instead on the "long established and settled expectations of landowners and companies" and your belief that the judicial decisions relied on by your predecessor were wrong. What weight do you give prior court decisions?

Response: Respect for precedent is a foundation of American law and is given considerable weight in American jurisprudence; it is not irrefutable. In examining questions of law and whether an existing legal opinion should be corrected or withdrawn, the Department's Solicitor should consider a number of factors including the text and purpose of the statute or statutes upon which the opinion is based, legislative history, current underlying facts and legal doctrines, and reliance on and workability of the opinion. M-Opinions issued by the Solicitor are developed through an exhaustive process.

Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019

Questions from Senator Ron Wyden

Question 1: Mr. Jorjani -- as I mentioned during your confirmation hearing, the House Committee on Oversight and Reform and the House Committee on Natural Resources are investigating whether Secretary Bernhardt is complying with transparency and recordkeeping laws, including whether versions of his calendar were deleted and kept secret. On March 28, 2019, the Committees sent a joint letter to Interior requesting transcribed interviews with employees familiar with Secretary Bernhardt's scheduling.

It has been five weeks since the Committees issued their letter, and Interior has refused to schedule the interviews or to allow the employees to contact the Committees. I understand that the Department of the Interior has provided a sizeable number of documents to the House Committees, but it is often the case that documents fail to provide a full account of the activity in question, particularly where an investigation is related to the possible deletion or destruction of documents. In such cases, it is absolutely necessary to talk to the people involved about the activity in question.

Do you believe that it is up to Congress to decide what Congress intends to investigate, and how?

If confirmed, will you commit to doing everything in your power to ensure that Interior complies in a timely manner with Congressional requests and Subpoenas, such as these interview requests?

Please provide examples of how, if confirmed, you will accomplish the goal of ensuring Interior complies in a timely manner with Congressional requests and Subpoenas, such as these interview requests?

Response: I am committed to cooperating with congressional oversight requests to the fullest extent, consistent with the Department's constitutional and statutory responsibilities. I am informed that the Solicitor's office, together with the Office of Congressional and Legislative Affairs, is in the process of responding to approximately 17 individual requests for information and documents from the two committees you mention in your question. It is my understanding that as of May 10, 2019, the Department had produced over 66,000 pages of documents to the committees.

As part of the process for responding to requests from Congress, the Solicitor's Office has the lead responsibility in the Department for ensuring that congressional oversight productions protect the legal interests of the Department, including our litigation and ongoing rulemaking interests. I take this commitment seriously. Since I became Principal Deputy Solicitor in April, 2017, I have worked with the Department to ensure that appropriate resources are provided and dedicated to fulfill the Solicitor's Office responsibility in the Department's oversight response process. If confirmed, I will work with the Department's Office of Congressional and Legislative Affairs to continue to do so.

**Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019**

Questions from Senator Ron Wyden

Question 2: During an exchange you had with Senator King regarding your role overseeing the Department's Freedom of Information Act (FOIA) policies, you stated that the Department of Justice provided comments on the Department of Interior's revised FOIA rulemaking, and that "all of those comments have been integrated into the revised rule..."

When this revised FOIA rule is finalized, will you commit to providing my office, as well as the U.S. Senate Committee on Energy and Natural Resources, with any and all comments or guidance that the Department of Justice provided?

Response: While the Office of the Solicitor has the responsibility to assure that any materials potentially responsive to a congressional oversight request are reviewed to ensure that the legal interests of the Department are protected, the Office of Congressional and Legislative Affairs would be the primary point of contact and would be responsible for communicating directly with Congress.

**Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019**

Questions from Senator Ron Wyden

Question 3: You testified that you do not review FOIA requests or productions. Records provided to this committee show that you have been given the opportunity to review FOIA records prior to release under the “awareness review” process. Given this information, would you like to correct or clarify your testimony?

Response: As indicated in my testimony, day-to-day management of the FOIA office is done by the Deputy Chief FOIA Officer, who is a career lawyer. As a policy matter, I typically did not review records prior to their release under the FOIA. Further, any review that is conducted is done so in accordance with the Department’s Awareness Process for Freedom of Information Act Productions issued in May 24, 2018, and updated on February 28, 2019. This document is publicly available on the Department’s website:

https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_2.0.pdf.

**Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019**

Questions from Senator Ron Wyden

Question 4: What actions did you take in reviewing FOIA requests under the Department's "awareness review" process? Please describe your involvement in reviewing FOIA records under the Department's "awareness review" process.

Response: As I indicated in the response to the previous question, as a policy matter, I typically did not review records prior to their release under the FOIA. Further, any review that is conducted is done so in accordance with the Department's Awareness Review Process for Freedom of Information Act Productions issued in May 24, 2018, and updated on February 28, 2019. This document is publicly available on the Department's website:
https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_2.0.pdf.

Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019

Questions from Senator Ron Wyden

Question 5: What counsel or advice have you given Mr. Hubbel Relat on issues related to specific FOIA requests or the FOIA process at the Department of the Interior, generally?

Response: In general, we have discussed the ongoing reassessment of the Department's FOIA program and implementation of necessary improvements, including acquiring and deploying better FOIA processing and tracking technology, establishing more robust training, standardizing and professionalizing the Department's FOIA processing workforce, and issuing policies and procedures to ensure that the FOIA processing offices can properly respond to the increased volume of incoming FOIA requests.

Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019

Questions from Senator Ron Wyden

Question 6: What is the difference between the “awareness review” and “heightened awareness” process regarding FOIA requests? During your time as Acting Solicitor, how many times has the “awareness review” or “heightened awareness” process been implemented in response to FOIA requests?

Response: The Department does not have a “heightened awareness” process. The Department’s Updated Awareness Process for Freedom of Information Act Productions, issued on February 28, 2019, contains the implementation guidelines that pertain when the Department is producing records in response to FOIA requests. The guidance document is publicly available and can be accessed on the Department’s website:

https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_2.0.pdf

Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019

Questions from Senator Ron Wyden

Question 7: How many times has the “awareness review” or “heightened awareness” process resulted in the Interior Department missing litigation deadlines for document production?

Response: The Department does not have a “heightened awareness” process. Although I cannot discuss individual litigation matters, awareness reviews are conducted in accordance with the timelines articulated in the February 28, 2019, Department’s Updated Awareness Process for Freedom of Information Act Productions, which is publicly available and can be accessed on the Department’s website:
https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_2.0.pdf

**Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019**

Questions from Senator Ron Wyden

Question 8: Did the “awareness review” or “heightened awareness” process lead to Interior missing court deadlines for document production in the whistleblower lawsuit brought by former career official Joel Clement?

Response: The Department does not have a “heightened awareness” process. Although I cannot discuss individual litigation matters, awareness reviews are conducted in accordance with the timelines articulated in the February 28, 2019, Department’s Updated Awareness Process for Freedom of Information Act Productions, which is publicly available and can be accessed on the Department’s website:
https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_2.0.pdf

Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019

Questions from Senator Ron Wyden

Question 9: At any time, did Mr. Relat or anyone in the Solicitor's Office instruct or suggest FOIA officers remove documents from FOIA responses that were under court order? What was the result of those suggestions or instructions?

Response: Although I cannot discuss particular litigation matters, awareness reviews are conducted in accordance with the February 28, 2019, Department's Updated Awareness Process for Freedom of Information Act Productions, which is publicly available and can be accessed on the Department's website:
https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_2.0.pdf

**Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019**

Questions from Senator Ron Wyden

Question 10: If there are any records from the FOIA Office or Solicitor's Office memorializing conversations with Mr. Relat or other Solicitor's Office employees regarding document production or FOIA responses, please provide them to this committee within ten business days.

Response: While the Office of the Solicitor has the responsibility to assure that any materials potentially responsive to a congressional oversight request are reviewed to ensure that the legal interests of the Department are protected, the Office of Congressional and Legislative Affairs would be the primary point of contact and would be responsible for communicating directly with Congress.

Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019

Questions from Senator Ron Wyden

Question 11: On February 27, 2019, three Solicitor's Office employees received an email regarding "FOIA requests related to profanity and Bernhard't [sic] google docs schedule." Within ten business days, please provide this committee with an unredacted copy of that email and any other records related to that email.

Response: While the Office of the Solicitor has the responsibility to assure that any materials potentially responsive to a congressional oversight request are reviewed to ensure that the legal interests of the Department are protected, the Office of Congressional and Legislative Affairs would be responsible for communicating directly with Congress.

**Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019**

Questions from Senator Ron Wyden

Question 12: On April 16, 2019, CQ Roll Call reported that “Secretary David Bernhardt’s staff intentionally left controversial meetings with representatives of fossil fuel, timber and water interests off his public calendar, citing ‘internal protocol’ governing his schedules. The department also confirmed that Bernhardt used a personal itinerary kept on a single Google document that was regularly overwritten by his scheduling staff.” Did you or anyone within the Solicitor’s Office advise Secretary Bernhardt or his staff regarding this method of keeping his calendars?

Response: I did not advise the Secretary or his administrative staff regarding how they notated entries on calendars, nor did I advise anyone in the Solicitor’s Office to do so. However, I am informed that the Office of the Solicitor staff has reviewed the Department’s record-keeping and calendar maintenance practices, and has advised that the Department is appropriately capturing and preserving information documenting the Secretary’s meetings pursuant to 36 C.F.R. 1222.22. I am informed that this finding has been confirmed by the Department’s Senior Agency Official for Records Management and the Departmental Records Officer, who have reported to the National Archives and Records Administration that Interior has and continues to comply with the Federal Records Act (FRA) and relevant regulations and policies with regard to calendars and calendar entries.

Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019

Questions from Senator Ron Wyden

Question 13: A review of then-Deputy Secretary Bernhardt's public calendars shows a significant change in May of 2018, when more than 30 meetings or calls are listed only as "external" with no details. Did you or anyone within the Solicitor's Office suggest or approve of this change?

Response: I did not advise the Deputy Secretary or his administrative staff regarding how they notated entries on calendars, nor did I advise anyone in the Solicitor's Office to do so.

**Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019**

Questions from Senator Ron Wyden

Question 14: Did you or anyone within the Solicitor's Office consult with the National Archives regarding whether this change was consistent with the Federal Records Act?

Response: I have been informed that the Department worked with the National Archives and Records Administration to review and report findings to ensure that the Department's practices fulfill its obligation to create and maintain adequate and proper documentation of the persons, places, things or matters dealt with by the agency pursuant to 36 C.F.R. 1222.22. I have been informed that the Department's Senior Agency Official for Records Management and the Departmental Records Officer have reported to the National Archives and Records Administration that Interior has and continues to comply with the Federal Records Act (FRA) and relevant regulations and policies with regard to calendars and calendar entries.

Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019

Questions from Senator Ron Wyden

Question 15: CQ Roll Call also reported that “on some days, staff would print out [Bernhardt’s] public calendar along with any relevant meeting request forms.” Faith Vander Voort, an Interior department spokesperson, said that “Meeting requests are a huge part of the puzzle that makes up [Secretary Bernhardt’s] calendar. It shares what they want to meet about, who asked for the meeting. It’s a puzzle piece that fits together, and when you have the public calendar and the daily card and the meeting request, if you put those things together, you could have a very good picture of what his day looks like.” Given the importance of these meeting request forms to deciphering the “puzzle” that is Secretary Bernhardt’s calendar, will you release all of his meeting request forms to this Committee within 10 business days?

Response: I am informed that meeting request forms have been provided to the House Committees on Oversight and Reform and Natural Resources. I would be happy to recommend to the Department’s Office of Congressional and Legislative Affairs, which serves as the primary point of contact and is responsible for communicating directly with Congress, that they provide the same in response to a request for such documents from the Chairman.

Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019

Questions from Senator Ron Wyden

Question 16: As the Chief FOIA Officer, did you oversee the process by which Secretary Bernhardt's "daily cards" were re-created from the version history of the original Google Document?

Response: I have been informed that all daily cards were preserved and that no daily cards were re-created, as this was not necessary. It is my understanding that the Department's Senior Agency Official for Records Management and the Departmental Records Officer have reported to the National Archives and Records Administration that Interior has and continues to comply with the Federal Records Act (FRA) and relevant regulations and policies with regard to calendars and calendar entries. Furthermore, I have been informed that these same individuals have attested that every daily card that was created is and always has been preserved consistent with law, regulation, policy, and the Department's record schedule.

Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019

Questions from Senator Ron Wyden

Question 17: Why has the FOIA office not provided that version history in response to FOIA requests for it?

Response: I am not aware of any FOIA request related to the daily cards that is unfulfilled. I am informed that all of the Secretary's "daily cards" are being posted on the Department's website.

Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019

Questions from Senator Ron Wyden

Question 18: Will you release that full version history to this committee within 10 business days?

Response: I am informed that all versions of the Secretary's daily cards are being posted on the Department's website. Additionally, it is my understanding that information pertaining to the Secretary's calendar has been provided to the House Committees on Oversight and Reform and Natural Resources. To the extent information beyond that already posted or otherwise provided to Congress is requested, I would be happy to recommend to the Department's Office of Congressional and Legislative Affairs, which serves as the primary point of contact and is responsible for communicating directly with Congress, that they provide such information in response to a request for such documents from the Chairman.

**Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019**

Questions from Senator Ron Wyden

Question 19: Did you or anyone in the FOIA or Solicitor's office consult with an IT forensics expert or the National Archives and Records Administration about the proper way to re-construct Secretary Bernhardt's calendars from the version history?

Response: As noted above, I have been informed that no daily cards required re-construction and that all daily cards were preserved. The Department's Senior Agency Official for Records Management and the Departmental Records Officer have reported to the National Archives and Records Administration that every daily card that was created is and always has been preserved consistent with law, regulation, policy, and the Department's record schedule. As noted previously, these same individuals have warranted that Interior has and continues to comply with the Federal Records Act (FRA) and relevant regulations and policies with regard to calendars and calendar entries. There is no need or role for "IT forensics" activities.

Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019

Questions from Senator Ron Wyden

Question 20: If not, how can you be sure the re-construction process was thorough, complete, and did not destroy data along the way?

Response: As noted above, I have been informed that no daily cards required re-construction and that all daily cards were preserved. The Department's Senior Agency Official for Records Management and the Departmental Records Officer have reported to the National Archives and Records Administration that every daily card that was created is and always has been preserved consistent with law, regulation, policy, and the Department's record schedule. As noted previously, these same individuals have warranted that Interior has and continues to comply with the Federal Records Act (FRA) and relevant regulations and policies with regard to calendars and calendar entries.

**Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019**

Questions from Senator Ron Wyden

Question 21: In response to Senator Manchin's question at the hearing, you said that your office reviewed your predecessor's opinion in a "multi-month process" that involved career lawyers and consultations with other agencies, including the Department of Justice. Did you or anyone in the Department of the Interior have any contact with anyone whose interests may have been affected by the opinions concerning any of these opinions? If so, please provide the Committee with a list of those contacts, identifying the parties to the contact and a summary of the substance of each contact.

Response: I cannot speak to the actions of every employee in the Department of the Interior. Many of the staff at the Department and its bureaus routinely meet with stakeholders on a variety of issues. I do not personally recall meeting with external entities to discuss the matter raised by the Ranking Member at my hearing. Regardless, I have fully complied with my ethics agreement, the ethics laws, and my ethics pledge and I will continue to do so in the future.

Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019

Questions from Senator Maria Cantwell

Question 1: Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act

For over 15 years I have been working with the Spokane Tribe of Indians to get legislation signed into law that would provide the Tribe just and equitable compensation for the thousands of acres that were lost when the Grand Coulee Dam was constructed in the 1930s. This legislation is non-controversial, has passed out of the Senate Committee on Indian Affairs almost every Congress, and has passed the U.S. House of Representatives and U.S. Senate, but unfortunately, not at the same time. I worked with Assistant Secretary for Indian Affairs Tara Sweeney last Congress and she provided a letter that confirmed the Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act will not result in any obligation or legal exposure to the federal government.

On November 30, 2018, Assistant Secretary Sweeney sent a letter to Representative Rob Bishop asserting the Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act will not result in legal exposure to the federal government and it does not relate to water claims against the United States. Mr. Jorjani, do you agree with this letter?

Mr. Jorjani, can you commit to working with myself, Senator Murray and Representative McMorris Rodgers to get this bill signed into law?

Response: I am generally familiar with this matter and recall the Department's interpretation of the language in the previous Congress. While I cannot speak to the Administration's views on the bill at this time, should I be confirmed as Solicitor, I commit to ensuring that policy makers within the Department have accurate, reliable and timely legal guidance in their review of this and other issues pertaining to federal responsibilities to Indian Country and fulfilling this Administration's commitment to maintaining strong and productive government to government relationships with tribes.

Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019

Questions from Senator Maria Cantwell

Question 2: Arctic National Refuge

I share the concerns of many of my constituents and the majority of Americans that drilling in the Arctic National Wildlife Refuge—our nation’s largest and wildest Refuge—will cause irreparable damage to one of the most unique and fragile ecosystems on the planet. I am very concerned that in the rush to jam through Arctic drilling, the Department of Interior has ignored its legal obligations to conduct a meaningful analysis on the impacts industrial development will have on the Refuge and on species, like the polar bear, that call the Refuge home.

Mr. Jorjani, do you agree with Secretary Bernhardt’s April 25th announcement to suspend opening federal waters to offshore drilling, following U.S. District Court Judge Gleason’s decision to overturn Executive Order 13795?

Why did you not agree to commit to revoking Arctic Refuge leases issued based on an Environmental Impact Statement that is found to be unlawful by a federal court?

In light of your stated commitment to “follow the law,” are you willing to let leases that a federal court determines were issued without a lawful environmental impact analysis proceed?

Mr. Jorjani, since polar bears are listed as a threatened species under the ESA, ANILCA and the Refuge Act both require the Secretary to manage the Arctic Refuge primarily to conserve habitat, does the Department of the Interior have a legal obligation to provide for conservation of polar bear species within the Refuge?

Response: The Secretary is evaluating what effect, if any, the decision by the district court will have on the development of a National OCS oil and gas leasing program and the Department’s policy options to determine the best pathway to accomplish the mission entrusted to it by the President. I am committed to providing the Secretary and the Department’s bureaus with the legal advice necessary to make these important policy decisions. With regard to the Coastal Plain leasing program, the BLM’s Draft Environmental Impact Statement was released in December 2018. Public comments received on that document are currently being reviewed, and no leases have been issued to date. With regard to polar bear conservation, the BLM has been successfully managing polar bear impacts over the course of the last four decades in implementing the oil and gas leasing program for the nearby National Petroleum Reserve in Alaska, and is applying that experience to the ANWR Coastal Plain in coordination with career scientists from the Fish and Wildlife Service and U.S. Geological Survey.

**Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019**

Questions from Senator Mazie K. Hirono

Question 1: According to the Organic Act, the purpose of the National Park Service is to “conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

Did the decision to keep units of the National Park Service open during the 35-day government shutdown threaten the above-stated purpose?

Response: The decisions made by the Department during the 35-day lapse in appropriations related to national parks were in accordance with the National Park Service’s Organic Act.

Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019

Questions from Senator Mazie Hirono

Question 2: A lot of uncertainty surrounds the Department of the Interior's plan to reorganize, including placement of funding and the role that Interior Regional Directors will play.

Can you describe how FY19 funds are being utilized for the reorganization of the Department as well as where the FY20 requested funds would be placed to support the reorganization? In addition, what role will Regional Directors play?

Response: While I am aware of the Department's reorganization efforts, the policy decisions and budget information related to these activities fall under the offices of the Assistant Secretary for Policy, Management and Budget. Information related to the Department's efforts regarding reorganization can be found here, <https://www.doi.gov/employees/reorg>, and specific budget related information regarding the reorganization can be found at the following sites:

Budget Justification for Department-wide Programs:
https://www.doi.gov/sites/doi.gov/files/uploads/fy2020_os_budget_justification.pdf

Interior Budget In Brief document: <https://www.doi.gov/budget/appropriations/2020/highlights>

**Nomination of Daniel H. Jorjani
Senate Committee on Energy and Natural Resources
May 2, 2019**

Question from Senator Angus S. King, Jr.

Question: As discussed during yesterday's hearing, you were previously employed at Freedom Partners Chamber of Commerce, an organization that is partially funded by the Koch Brothers. You stated that you were employed there from February 2012 to January 2017. Since you have been in the Department of the Interior, have you had any oral or written contact with any personnel associated with Freedom Partner Chamber of Commerce or any other Koch Brothers business or political interests?

Response: Information regarding former employers is contained in the Statement for Completion by Presidential Nominees that I completed and submitted for this nomination. I have actively sought and consulted with the Department's designated ethics officials for advice and I have a robust screening process in place to ensure that I fully comply with my ethics agreement, the ethics laws, and my ethics pledge, both with respect to former employers and any other person.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

Memorandum

To: Assistant Secretaries
Heads of Bureaus and Offices
Bureau/Office FOIA Officers

From: Cindy Cafaro
Departmental FOIA Officer *Cindy Cafaro* FEB 28 2019

Subject: Updated Awareness Process for Freedom of Information Act Productions

For more than 6 years, the Department of the Interior (Department) leadership and the Solicitor's Office (SOL) were made aware of impending Freedom of Information Act (FOIA) responses on a case-by-case basis. This allowed the Department's leadership and SOL to efficiently respond to queries and legal ramifications arising from FOIA responses. Given the unprecedented number of incoming FOIA requests¹ and increased FOIA litigation the Department has faced in the past few years,² we formalized the awareness process on May 24, 2018 to ensure it was consistent and effective. We are now updating this process, clarifying it, and making it more efficient.³

The Department will continue to process FOIA requests as usual, including: directing searches for responsive records;⁴ searching for and providing responsive records;⁵ processing responsive records;⁶ and reviewing proposed responses.⁷ After these steps are completed, the awareness process is now as follows:

¹ In Fiscal Year (FY) 2016, the Department received 6,428 FOIA requests; in FY 2017, 8,005 FOIA requests; and in FY 2018, 8,402 FOIA requests. Some Bureaus have particularly large increases in FOIA requests. For example, in FY 2016, the Office of the Secretary (OS) received 512 FOIA requests; in FY 2017, 1,226 FOIA requests; and in FY 2018, 1,597 FOIA requests. For more information, see the Department's [FOIA Annual Reports](#).

² For example, at the close of FY 2018, the Department had a total of 129 active FOIA cases in litigation (39 in OS alone) compared to a total of just 6 cases in litigation at the close of FY 2015 and a total of 30 cases in litigation at the end of FY 2016.

³ Please note that this process, in its entirety, still does not apply to the Office of Inspector General's (OIG) FOIA personnel or processes. Other Bureaus should continue, however, to consult with OIG as they normally would for any documents that originated with or contain reference to OIG business, including OIG investigations, audits, or inspections. See [43 C.F.R. § 2.13](#) (outlining the consultation and referral process).

⁴ See [383 DM 15 § 15.6.H](#) (outlining the responsibilities of the office and/or employee that will be making a final decision on a particular FOIA request).

⁵ See [383 DM 15 § 15.6.L](#) (outlining the responsibilities of all employees of the Department to respond promptly and accurately to FOIA-related requests).

⁶ See [5 U.S.C. §§ 552\(a\)\(8\) & \(b\)](#) (outlining FOIA exemptions and foreseeable harm); [43 C.F.R. § 2.13\(b\)](#); see also [383 DM 15 § 15.6.H](#); and the Department's [Foreseeable Harm Standard Memorandum](#).

⁷ See [43 C.F.R. § 2.23\(c\)](#) (requiring Bureaus to consult with SOL before withholding a record in full or in part).

- 1) FOIA personnel search responsive calendars, emails, and attachments to emails for the names and/or email addresses of:
 - a. Current Department employees who are Presidentially Appointed, Senate Confirmed (PAS), Non-Career Senior Executive (NCSE), and/or Schedule C employees; and/or
 - b. Former Department employees who left the Department within the last 3 months and were PAS, NCSE, and/or Schedule C employees.
- 2) If such names and/or email addresses are identified:
 - a. FOIA personnel notify their Bureau contact for awareness reviews (hereinafter, the “reviewer”) and provide him/her:
 - i. Access to the full set of responsive records⁸ in the same format and with the same withholdings that have been approved by SOL (so he/she will see the records exactly as the FOIA requester will); and
 - ii. A list of the PAS, NCSE and/or Schedule C employees whose names and/or email addresses are identified in the set of responsive records.
 - b. FOIA personnel simultaneously notify a SOL attorney. When applicable, this will be the attorney who reviewed the proposed redactions and/or is handling related FOIA litigation, otherwise the FOIA personnel will contact the SOL Division or Region he/she would contact to review proposed redactions.
 - c. The reviewer and SOL attorney have 3 *workdays* to review the responsive records.⁹
 - i. The reviewer ordinarily reviews the requests according to their order of receipt within their processing track.
 - ii. If the reviewer needs a reasonable amount of additional time to review the responsive records, he/she must inform the FOIA personnel within 3 workdays.
 - iii. If the reviewer does not reply to the FOIA personnel within 3 workdays, *his/her silence will be taken as an affirmation that he/she has concluded his/her review.*
- 3) FOIA personnel will then respond to the FOIA requester in accordance with their usual response process.

As you know, FOIA is a statutory requirement, and full and timely compliance with FOIA obligations is a responsibility of every Department employee.¹⁰ The awareness process discussed above does not change the Department’s statutory or, when applicable, litigation deadlines and must be conducted within those existing deadlines.

⁸ This is true even if the identified PAS, NCSE, and/or Schedule C employees are not in the same Bureau as the FOIA personnel and the reviewer.

⁹ The reviewer and/or SOL attorney may follow up as necessary to understand the basis of the proposed production.

¹⁰ See Secretary’s Order 3371, The Department of the Interior Freedom of Information Act Program (November 20, 2018).

If you need assistance with a particular FOIA request, please contact your Bureau FOIA Officer using the information found at <https://www.doi.gov/foia/contacts>. If you have general FOIA questions, please contact me at (202) 208-5342 or cindy_cafaro@ios.doi.gov.

cc: Daniel Jorjani, Chief FOIA Officer
Rachel Spector, Deputy Chief FOIA Officer
Edward Keable, Deputy Solicitor for General Law
FOIA Contacts

U.S. Senate Committee on Energy and Natural Resources
May 2, 2019 Hearing: *Jorjani and Greenblatt Nominations*
Questions for the Record Submitted to Mr. Mark Greenblatt

Questions from Senator Ron Wyden

Questions: Mr. Greenblatt, as I mentioned during your confirmation hearing, I expect the Interior Inspector General to do everything in its power to avoid political interference by political appointees at the Interior Department.

Within five days, please respond with an outline of specific steps you will take, if confirmed, to ensure there is no political interference in your work, and what you will do to make sure you have access to documents and records and the Department. For example, I would like to know if you will hold Interior staff to a strict timeline for document production and records requests and whether you will have a regular reporting schedule to this committee for status updates and investigation conclusions.

Response:

As discussed both in our meeting and at the hearing, I have operated in a fair, objective, and independent fashion throughout my career and will continue to do so if I am confirmed as the DOI Inspector General. These are essential principles for any inspector general, and I will take specific, concrete actions to ensure that the OIG's investigations and other work are not tainted by any interference.

In particular, I intend to take the following proactive steps to safeguard my independence and that of my office:

1. Limit interactions with political appointees to appropriate meetings and communications. As described below, if I learn that the content of any interaction with the agency threatens to compromise the OIG's core principle of independent and objective oversight, I will promptly alert this Committee.
2. Prohibit agency attorneys from attending OIG investigative interviews—including interviews of political appointees or senior executives—in order to preserve the integrity of our investigations and prevent a chilling effect on witnesses.
3. Request that Secretary Bernhardt, in keeping with all Secretaries of the Interior from Gale Norton to Ryan Zinke, issue a directive to all DOI personnel emphasizing the requirement to not only provide information to the OIG, but also to cooperate with the OIG in carrying out its authority.
4. Ensure that the OIG's document requests include reasonable deadlines as appropriate, consistent with best practices within the OIG community. OIG employees will be instructed to report any unreasonable delays to OIG senior leadership.
5. Maintain a strong relationship with this Committee and other stakeholders in Congress, including making myself available for briefings or testimony before this

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Committee within 7 days of issuing a report, as well as prompt reporting if the OIG encounters threats to our independence or unacceptable delays in investigations.

6. Explore opportunities to bolster the OIG's whistleblower program. Whistleblowers play a crucial role in rooting out misconduct and OIGs must do everything they can to protect those who come forward to report waste, fraud, and abuse. With that in mind, I commit to looking for ways to expand the OIG's efforts to educate agency personnel about their whistleblower rights and make sure they know that the OIG is a safe place to report waste, fraud, and abuse.

Beyond taking these proactive measures, if the OIG encounters any improper delay or attempted interference in our work, I will take aggressive action to secure timely access to materials and witnesses and protect the integrity and independence of our office. Based on my experience working at two OIGs, I fully appreciate the importance of operating without any interference and getting timely access to materials and witnesses; without such access, an IG's work will be delayed, or worse, completely stymied.

I am particularly attuned to these issues because I saw an agency impede an OIG's efforts during my tenure at the Justice Department OIG, and I witnessed firsthand how a strong IG like Michael Horowitz took aggressive steps to achieve a positive result. When Department of Justice personnel refused to turn over key materials to the OIG, IG Horowitz responded in numerous ways, such as immediately alerting the Attorney General about the problem; objecting to the White House and Office of Management and Budget; notifying the committees of jurisdiction in Congress and the appropriations committees; testifying in more than one hearing about the agency's hinderance of his investigation; writing an op-ed in the *Washington Post* to alert the public about the agency's actions; and working with the Council of Inspectors General on Integrity and Efficiency (CIGIE) to enlist IG community support in the fight for unfettered access to agency materials. Mr. Horowitz's efforts were ultimately successful, and in large measure, resulted in the passage of the IG Empowerment Act in 2016, which codifies that IGs are entitled to full and prompt access to agency records.

Like Inspector General Horowitz, if I am confirmed as the IG at the Department of the Interior and my office encounters any improper delay or attempted interference in our work, I will not hesitate to use all available tools under the IG Act and other measures to preserve the integrity of our work and ensure that we obtain whatever materials we need to do our job. I will promptly notify the agency's senior leadership that such actions are unacceptable. If the Department continues to withhold responsive materials or attempts to interfere with our efforts, I would not hesitate to invoke Section 5 of the IG Act and issue what is known as a "7-day letter" to report such abuses to the agency and Congress. Section 5(d) of the Inspector General Act is rarely used – it requires IGs to alert their agency heads to "particularly serious or flagrant problems, abuses, or deficiencies," which the agency head must then transmit via the IG's letter to Congress within 7 calendar days. The issuance of a 7-day letter is significant. Nevertheless I would not hesitate to invoke that mechanism if necessary.

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I would also engage with the relevant Congressional stakeholders, specifically this Committee, other committees of jurisdiction, and appropriations committees, to address the issue. I would elevate the issue to CIGIE to secure IG community support and explore speaking publicly about the issue, as taxpayers should know about Government efforts to delay or thwart appropriate oversight.

Moreover, if the OIG faces a consistent pattern of withholding of responsive materials or attempted interference in our work, I would strongly consider publishing a report enumerating such abuses and identifying the officials responsible.

Finally, if the OIG has reasonable grounds to believe agency officials have violated Federal criminal law in the context of an OIG investigative matter, such as obstruction of justice, my office will promptly refer the matter to the Justice Department in accordance with the IG Act and the Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority.

In sum, I hope it is clear that I will not tolerate any attempted interference in the OIG's work or the agency failing to produce information or witnesses to the OIG in a timely and complete fashion.

Questions from Senator Maria Cantwell

Questions: IG Investigation of Senior Interior Department Appointees

Mr. Greenblatt, I am a big supporter of Inspector Generals because they play a critical role in ensuring executive branch political appointees and civil servants are following the law, making decisions based on the public interest, and in some cases rooting out corruption.

Given the long list of troubling activities under the leadership of former Secretary Zinke, the role of the Interior Department IG is more critical than ever.

- a) Mr. Greenblatt, last month the current Interior Department IG opened an investigation into whether six senior department officials used their positions to swing policy favors to former employers. Will you commit to follow through on this investigation to the end if you are confirmed to this position?**

Response:

If confirmed, I am fully committed to following through on this investigation and any matter currently in front of the OIG. Under my leadership, DOI OIG will conduct its work in a fair, objective, independent manner. We will follow all evidence, and we will close cases and audits in accordance with IG community standards.

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- b) Mr. Greenblatt, with so many ongoing IG investigations at the Interior Department and seemingly many other areas of troubling activity that likely warrant IG review, how will you prioritize the use of your office's limited resources?**

Response:

Based on my experiences at DOJ and Commerce OIGs, I believe the most pressing matters for the OIG's attention involve protecting public health and safety, stopping ongoing fraud, and addressing allegations of senior-level misconduct. Other considerations include the scope of the alleged problem or misconduct and whether taxpayer dollars are at stake. In general terms, the following questions should guide an OIG in determining what matters should receive its attention and resources:

- Is the matter one that could affect the health and safety of our citizens?
- What is the extent of the problem we are asked to address – is it a systemic problem that could be adversely affecting an entire unit or geographical area?
- What are the ramifications if we do not examine the issue – are there victims who will continue to be victimized, or losses to the taxpayer that will continue?
- Does the matter involve significant dollar amounts?
- Does the situation have a high-risk analysis ranking?
- If the allegations are substantiated, what is the likelihood that our work will result in meaningful impact on the Department?
- Does the matter involve allegations of misconduct by senior officials, who set the tone for an entire agency?

- c) Mr. Greenblatt, what do you believe the role of the IG is in ensuring that taxpayers receive a fair return on the public lands we all own, particularly in regards to fossil fuel leasing?**

Response:

DOI is the second largest revenue producer in the Federal Government, and our nation depends on the royalty payments that the law mandates. The OIG plays a critical role in ensuring that companies pay fair market value on fossil fuel leases, as with all revenues collected by the DOI. A robust investigative unit, proactive audits, and quick-hitting inspections can deter and detect underreporting, and I intend to focus substantial resources in this critical area.

Question from Senator Mazie Hirono

Question: The Environmental Protection Agency's (EPA) Office of Inspector General (OIG) recently sent a letter to the Office of Management and Budget (OMB) expressing frustration with their lack of response to provide information for an audit that the EPA

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OIG is conducting at the request of Congress. In the letter, they note their intention to notify Congress should OMB fail to respond by a certain date.

If confirmed, do you commit to contacting Congress about instances such as the one described above where Federal agencies refuse to provide information that you request?

Response:

I will not tolerate the agency withholding or failing to produce information or witnesses to the OIG in a timely and complete fashion. Under Section 6(a) and (b) of the Inspector General Act, OIGs are entitled to timely access to all records and other materials that are available to the Department within the OIG's jurisdiction.

If DOI fails to produce responsive materials as required, I will not hesitate to raise the issue to the attention of the Secretary, then, if necessary, invoke Section 5 of the IG Act and issue what is known as a "7-day letter" to report such abuses and inform Congress. Moreover, if the OIG faces a consistent pattern of delay in producing or withholding of responsive materials, I would strongly consider publishing a report enumerating such abuses and identifying the officials responsible.

