

CONSIDER PENDING NOMINATIONS

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

ON

THE PENDING NOMINATIONS OF **KRISTINE L. SVINICKI**, TO BE A
MEMBER OF THE NUCLEAR REGULATORY COMMISSION AND **LYLE
LAVERTY**, TO BE ASSISTANT SECRETARY FOR FISH, WILDLIFE AND
PARKS, DEPARTMENT OF THE INTERIOR

JULY 17, 2007

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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED TENTH CONGRESS
FIRST SESSION

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¹Note: During the 110th Congress, Senator Craig Thomas, of Wyoming, passed away on June 4, 2007. Senator John Barrasso, of Wyoming, joined the committee on July 10, 2007.

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CONSIDER PENDING NOMINATIONS

TUESDAY, JULY 17, 2007

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m. in room 406, Dirksen Senate Office Building, Hon. Barbara Boxer (chairman of the committee) presiding.

Present: Senators Boxer, Inhofe, Carper, Whitehouse, Warner, Voinovich, Isakson, Craig, and Barrasso.

Senator BOXER. The committee shall come to order. I am very pleased to welcome one of the senior members of this committee, a great Senator, John Warner. I thought, just given your schedule, Senator, before other Senators speak, I would love for you to introduce Kristine to the committee.

Senator WARNER. Thank you, Madam Chairman. Perhaps the distinguished Ranking Member might like to make a remark or two and then I will proceed.

Senator BOXER. All right, well, it was his idea to say you should go first.

[Laughter.]

Senator INHOFE. It was my idea, I thought you might want to join us up here in your regular position. Since Kristine was a staffer for you, I understand, as well as for Senator Larry Craig, I knew you had some comments you wanted to make and this might be a good time to go ahead and do that, if you would like. I am sure Senator Craig will want to make a comment or two about Ms. Svinicki also.

Senator BOXER. Senator Warner, please.

STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

Senator WARNER. Thank you, Madam Chairman.

I am extremely pleased to be here this morning. All of us have these opportunities. This one I particularly look forward to, because this is one of the extraordinary persons that I have been privileged to serve with my now 29 years here at the U.S. Senate. She was on the staff of the Armed Services Committee following service with our distinguished colleague, Senator Craig, for well over 2 years. She is also a resident of my State, and for that reason, in addition to her career, I am happy to be here.

She was a senior policy advisor to Senator Craig. I interviewed her at that time for the position on our staff. Senator Craig warmly endorsed her and it all worked out extraordinarily well. Not well

known in some quarters, but the Armed Services Committee has jurisdiction over approximately two-thirds of the budget of the Department of Energy, including the very sizable nuclear weapons production sites and laboratory complex as well as the extensive environmental program to clean up the legacy of nuclear contamination created during the cold war era. These are programs which we engaged Kristine to work on with our staff.

With her extensive background and experience in nuclear matters, both at the Department of Energy and subsequently in her work in the Senate, she ably discharged her responsibilities, very, very ably, I might say. Her service has been appreciated not only by me, but by the other members of the Armed Services Committee, including our distinguished Ranking Member of this committee.

I recall the first interview with this outstanding nominee. She informed me a little bit about her family, and I would like to mention that, because it strikes me as the very pillars of the foundation of our great Nation, what her family did. Her grandfather had come from their native country of Slovakia in the early part of the last century. He worked off the cost of his passage in the iron mines of Michigan's upper peninsula. He saved up enough money to bring his wife and daughters to America, and Kristine's father was born in this country after the family was reunited in Michigan.

Ms. Svinicki's father served with distinction in the Army's Fifth Infantry Division in Europe during World War II, earning two Bronze Stars for distinguished valor in combat. The service secured for him the opportunity to attend college under the G.I. Bill, the first in his family to do so.

I mentioned to the nominee when she greeted me this morning that I was going to tweak her a little bit. In these 2½ years, I expect you have been in my office probably 30 or 40 times. On the wall is a picture of my father, who served in World War II, likewise wounded and decorated—excuse me, in World War I. He served in the Fifth Division, and you never told me about the story of your father having succeeded my father in the Fifth Division.

[Laughter.]

Senator WARNER. Now, following in her father's footsteps, she went on to college, choosing to major in nuclear engineering at the University of Michigan. I inquired of her during the first interview as to why she would have majored in nuclear engineering in college. I recall that she commented to me that because she had lost both of her parents when she was still quite young, a teenager, she had wanted to honor their memories by cherishing the value they held highest, which was education in the sciences.

Madam Chairwoman, members of the committee, this is a very able nominee of the President. I urge the committee to confirm this nominee and send her name to the floor, where I will be privileged to once again address the Senate on your behalf. Good luck.

[The prepared statement of Senator Warner follows:]

STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE
COMMONWEALTH OF VIRGINIA

Madame Chairwoman, I am pleased to introduce to the Committee the nominee to serve as Commissioner of the Nuclear Regulatory Commission—Ms. Kristine Svinicki (Suh-ven-e-key). Ms. Svinicki is both a long time resident of my State, and

a staff member on the Senate Armed Services Committee, which I have had the privilege to serve on for over 28 years.

I was first introduced to Ms. Svinicki, then a Senior Policy Advisor for Senator Larry Craig, when I interviewed her for a position on my Armed Services Committee staff in December of 2005, as I needed someone to take on the nuclear issues for the committee after the departure of another capable staff person.

It is not well known in some quarters, but the Armed Services Committee has jurisdiction over approximately two-thirds of the Department of Energy—including the very sizable nuclear weapons production sites and laboratory complex, as well as the extensive environmental program to clean up the legacy of nuclear contamination created during the Cold War. These are the programs which I hired Kristine to staff. With her extensive background and experience in nuclear matters both at the Department of Energy and subsequently in her work here in the Senate, she has ably taken on this challenge. Her service has been appreciated by not only me, but the other members of the Armed Services Committee—on both sides of the aisle.

I recall in that first interview that I asked Ms. Svinicki about the origin of her last name. She informed me that her grandfather had come to this country from his native Slovakia in the early part of the last century and that he had worked off the cost of his passage in the iron mines of Michigan's upper peninsula. He saved up money to bring his wife and daughters to America, and Kristine's father was born in this country, after the family was reunited in Michigan.

Ms. Svinicki's father served with distinction in the Army's Fifth Infantry Division in Europe during World War II earning two bronze stars for distinguished valor in combat. His service secured for him the opportunity to attend college under the GI Bill, the first in his family to do so.

Following in the her father's footsteps, Ms. Svinicki went on to college, choosing to major in nuclear engineering at the University of Michigan. When I inquired with Kristine, during that first interview, as to why she would have majored in nuclear engineering in college, I recall that she commented to me that because she had lost both of her parents when she was still quite young—a teenager—she had wanted to honor their memories by cherishing the value they held highest—which was education.

Madame Chairwoman, Kristine Svinicki will be a favorable addition to the Commission and she has my full support. It is my hope that both the committee and the Senate will move favorably and quickly to approve her nomination, as the seat she is nominated to fill is currently vacant and I believe we all support having a Commission at full strength (of five commissioners).

Senator BOXER. Thank you so much, Senator Warner.
Senator Craig.

STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM THE STATE OF IDAHO

Senator CRAIG. Madam Chairman, thank you very much. I have the unique opportunity this morning of being amongst friends on both sides of me here, and very talented people. But I am here specifically to introduce you to Kristine Svinicki, who, as Chairman Warner has said, served on my staff as a senior policy advisor for 7 years prior to going to the Armed Services Committee. You have heard a good deal of her background.

I must tell you, when you can get the support of the diversity of a Craig, a Warner and a McCain in your person, I think that speaks fairly highly, because we are all very different people around here. But I would like to approach her nomination to you this morning, Madam Chairman, in this way. I don't know of another time in our country when we need on the Nuclear Regulatory Commission some very unique talents.

As you know, from the establishment of the Energy Policy Act of 2005 until today, when there was not one nuclear reactor on the drawing board, there are now some 35 or 37. Clearly, for this country to get back into the business of building nuclear generating reactors, in a way that our country and our economy demands it, we

are going to need a very strong Nuclear Regulatory Commission. The personalities that make up the Commission, I believe, are going to have to be multi-task capable.

What do I mean by that? They are going to have to have background in the nuclear energy industry itself, they are going to have to have knowledge of it. They are also going to have to have knowledge of the public policy that we have shaped to drive that industry at the rate that it appears to be driven today. The new concepts of licensing that we are trying to perfect, not unlike other countries around the world have, that bring us back into this business, are going to be tremendously important. Kristine brings that uniqueness to the Commission. She has worked here on the Hill, she has worked in policy, she has helped shape a good deal of that policy while she was with me before she went over to the Armed Services Committee with Senator Warner.

All of those experiences, I think, are very unique combinations that make her a highly qualified person. So when the President nominated her, I was, to say the least, very pleased and excited. Sure, to have somebody who had been on my staff is a pleasing kind of thing. But I have been under the evil eye of Kristine for a long while.

[Laughter.]

Senator CRAIG. Maybe that is a better way of saying it. No, no, I mean the very instructive, clear-thinking eye of Kristine for a long while, who would say it the way it was in a very frank and forthright manner, in a way that was always appreciated by me while she was working with me on the committee and on my personal staff. So when I look at those combinations, and having been somebody that has helped shape the policy that is now driving us in a direction that takes us from the 104 commercial reactors that are out there today that she would have immediate jurisdiction over and the 4,000-plus licensees that handle radioactive materials in our country. But to take it a step further and into a whole new generation is going to take the uniqueness of talent that I think Kristine has, has demonstrated to me and is a blend of those experiences.

So I speak very highly of her to this committee and hope, as Senator Warner does, that we can handle her expeditiously and take her to the Senate desk for our consideration.

Last, let me say that my experience with Lyle Laverty, who sits to my immediate left here, as the Assistant Secretary for Fish and Wildlife and Parks, has been a tremendously positive one over the years. I don't know of anyone who brings to this nomination the credentials that Lyle has. I highly recommend him. He and I worked on the Continental Divide National Trail System. We have worked on fire issues over the years. The West is burning today, maybe you ought to be out fighting fire, Lyle, and not here in front of this committee. But it is the nature of the process.

So I certainly can recommend both of these people with their skills and their talents to this committee without reservation. Again, I feel very privileged to be here speaking on Kristine's behalf as it relates to the position she is aspiring to. Thank you, Madam Chairman.

Senator BOXER. Well, Senators Craig and Warner, thank you so much. Kristine, you must be so honored. You have two just really notable Senators who have just spoken so beautifully of you. You should be very, very proud.

I want to talk to both my colleagues here for a minute. You can all listen in on where I see we are in this whole situation.

Senator Reid has a great interest, Senator Craig and Senator Warner, of course, in what happens on the NRC. We all do. He is particularly concerned because of Yucca Mountain. You all know that, regardless of where we stand, it is in his State and Senator Ensign's State. Now, he has been trying to get Greg Jaczko renominated by the President since April. My own belief, because I want to get this done, is I'm looking at a pairing here, because Greg Jaczko has been on there and Harry Reid feels very strongly.

The reason there was a little give and take on-off in where we were going is that I decided I am excited about this nominee too, and I want to give her her chance, and I want to get her on there with you. But I also understand the fact that in this Commission, we just need some balance here. So I think we have the makings of making this happen really quickly, if you can help me with the White House, because we have not, as I understand it, heard a word back since Harry Reid made this renomination in April.

So I, just because, in the interest of openness and fairness and honesty, I want you to know that this would be very helpful, if we could get both of these good people together. So I wanted to say that.

Senator CRAIG. Madam Chairman——

Senator BOXER. I will be happy to yield.

Senator CRAIG. If you would, please.

Senator BOXER. I would be happy to.

Senator CRAIG. I am simply seeking instruction from you as to how we proceed here——

Senator BOXER. Yes.

Senator CRAIG [continuing]. With Ms. Svinicki's nomination. How would you plan to handle that, hold a hearing? Would you plan to move her, if it is the desire of the committee, to the full Senate committee?

Senator BOXER. Yes.

Senator CRAIG. With the understanding that she would not move until the other issue were resolved, or what is your plan?

Senator BOXER. Well, I want to work with you. I want to work with Senator Warner, I want to work with Senator Inhofe, Senator Voinovich, if he is interested in this, and Senator Reid.

Senator CRAIG. Sure.

Senator BOXER. I want to do this in a way where everybody wins this thing. Because I have absolutely no interest in delaying 1 minute on this nomination.

But the reason I wanted to have this hearing today was to get us started. We will all work together to determine how we will do this. Now, as I say, Senator Reid made this nomination in April. Mr. Jaczko isn't up for a while, but there is precedent for this in many cases in the past. This is so important to Senator Reid that I think we need to work with him. There is no reason why we can't make this all happen.

This isn't anything that I consider to be that unusual. We have had situations before where both sides work together. So I wanted to get that out on the table.

Senator CRAIG. I appreciate your work.

Senator BOXER. I have every interest in getting them both done as quickly as possible.

Senator INHOFE. Madam Chairman?

Senator BOXER. Yes.

Senator INHOFE. I am sorry I was out of the room when this conversation started. I guess I overheard that somehow this might be paired with Jaczko who, it is another year before he even comes up. Is there precedent for that?

Senator BOXER. Yes.

Senator INHOFE. I do not recall that.

Senator BOXER. Yes, there is—we will give you the precedents in writing. We don't have them in writing right now, but we will give you the precedents in writing for that.

Senator INHOFE. OK. I just think that, on behalf of the minority, it is a very, very significant position that needs to be fulfilled, and we have such a quality individual. I would hate to see that happen.

Senator BOXER. Well, we don't intend to hold up either of them. I am just trying to work with the White House and with all of you so that we can get this done. That's the facts. I am the kind of chairman that, I want to be totally open with everybody. Because what happens on these commissions, as you know, is that we have diversity on these commissions. Senator Craig made a point, that Kristine has worked for him and John Warner and John McCain, and it has made every—it says a lot about you that you can do that.

Well, these commissions also have different points of view on them, and it is very important to Senator Reid. Senator Reid was once chair of this committee and gave it up to go into the leadership. He is very interested in this NRC as is Senator Ensign.

So in any case, here is what I intend to do. After we have this hearing, I hope we can huddle on the floor with Senator Reid and figure out a way to move all this and get it done. But let me make my opening statement, because these two positions are so important to all of us. So let me put out a few concerns, not about the individuals but about the issues you will face.

STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator BOXER. Today the Senate Committee on Environment and Public Works meets to consider the nominations of Mr. Laverty and Ms. Svinicki to be Commissioner for the Nuclear Regulatory Commission and Mr. Laverty, Secretary of Interior for Fish, Wildlife and Parks.

Mr. Laverty, the position to which you are nominated is so important, and I understand you are a California native. So I welcome you. As you know, California is a State rich in biodiversity and stunning natural beauty. I hope, if you are confirmed for this position, you will always remember what is at stake for California and all of America's natural treasures. Because truly, Californians and all Americans live in a Nation blessed with spectacular public

lands and a rich array of wildlife, which I consider to be God-given, and it is our role to protect.

Yet despite the richness we have been given, we have seen an unprecedented assault on our Nation's wildlife laws, conservation system and the science that underpins them. From silencing scientists to gutting our successful conservation laws to underfunding our public lands, I believe there have been many occasions where this Administration, and this is my view, I certainly don't speak for anybody else who is here presently, is breaching the public trust owed to America's natural heritage, instead of honoring its duty to serve as effective stewards.

Indeed, in April of this year, the then-Deputy Assistant Secretary for Fish, Wildlife and Parks, Julie McDonald, resigned following an investigative report of the Inspector General of the Interior Department. In that report, the Inspector General revealed, among other things, how that official leaked non-public information to special interests that had a stake in the outcome of the Fish and Wildlife Service decisions.

The IG report also describe how this senior official, and these are the IG's words, "got into the face of" Fish and Wildlife Service personnel over their 5-year Endangered Species Act reviews. This kind of bullying of career scientists and policy experts cannot be tolerated.

Additionally, recent news reports have documented how the Vice President personally intervened in the important Endangered Species matter. Reportedly, he rode roughshod over the process and the expert opinions of Department scientists in order to influence the decision on the water flows to the Klamath River, something I am sure you are aware of, and I am.

As a result of this political intervention, the Department reportedly reversed course, and thousands of salmon died on the Klamath. We will never forget those pictures. This ecological disaster greatly affected our fragile rural economies that depend upon those species for commercial and recreational fishing business and related industries in the State of California and the Pacific Northwest.

There are similar reports of White House officials editing EPA's scientific documents about global warming. I feel very strongly that the Government must honor the science and not let politics override the facts. It is fine for politicians like any one of us or the President or the Vice President to simply say after they see a scientific report, you know what, that may be so, but I think it will hurt the country if this happens, but not to try and interfere in the report itself.

We must recognize, as hundreds of the world's leading scientists on the U.N. Governmental Panel on Climate Change recently found, that 40 percent of the planet's species are at risk of possible extinction from global warming. We had a scientist sitting right in your chair, and said that to us. Mr. Lavery, I was stunned when she said that. It is a staggering thought, and one of the most important issues, Mr. Lavery, that you will have to face if you are confirmed.

In this position, you will be thrust into the middle of many crucial challenges and clashes between science and politics. All I ask

you to do is let us see the science. We will deal with the politics. We have to, we will. But let us see the science. We must use the best science to protect our rich, God-given heritage. We owe it to our children and our grandchildren.

Ms. Svinicki, the NRC has so many important issues to be considered. I feel after I have heard from your two colleagues that you are very well prepared to face any of them. One key issue facing the NRC is nuclear waste disposal and plans to transport it to Yucca Mountain. Protecting the public health is so crucial, and in my view, Yucca fails the test. My State of California is one of the most affected by the Yucca Mountain project, which is only 17 miles from California's border. People forget that.

Studies have shown that the groundwater under Yucca Mountain flows into Death Valley, one of the hottest and driest places on Earth. If radiation should contaminate this groundwater, it would be the demise of the national park and the surrounding communities.

The threat posed by the nuclear waste transport is also clear, and I would ask for another minute and would happily give it to Senator Inhofe. The threat posed by nuclear waste transport, over 7.5 million people live within just a mile of a possible nuclear transport route. Yucca's geology remains a concern.

So I will put the rest of my statement in the record about Yucca. I would say also, I would close with this one issue. The GAO recently completed a sting operation in which the NRC issued a materials license to a fake corporation in West Virginia. Once GAO received the license for their fake company, they altered it, so it appeared that the company was allowed to receive an unlimited quantity of radioactive sealed sources, rather than the small amount that had been approved by the NRC. After altering the license, GAO was able to receive commitments from suppliers of Category 3 sealed radioactive sources to provide more than 10 times the materials the original license would have allowed.

I have serious concerns about the NRC's ability to ensure that these licenses are not going to individuals who want to attack us. I understand that there is a delicate balance between ensuring that legitimate users, like hospitals and construction companies, they get what they need. But certainly, we need to do a lot better.

So I am going to ask you a couple of questions about that. But again, having worked for Senator Warner, whose life has been dedicated to national defense, I have a feeling you will be diligent on that.

So thank you very much, both of you. I wish you the best of luck and I will turn the microphone over to Senator Inhofe, with additional time.

**STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM
THE STATE OF OKLAHOMA**

Senator INHOFE. That is fine. Thank you, Madam Chairman. I do appreciate it.

I guess I will direct this opening comment at Mr. Lavery. I too am one who will be looking into science all the way across. It is kind of interesting when those individuals who really want to believe that anthropogenic gases cause climate change, when the evi-

dence now from the recent scientific community refutes that, and that natural variability is causing it, it is kind of interesting, you see panic on the other side. People like Claude Allegre, who was one of the strongest supporters of anthropogenic gases causing climate change, from France, perhaps considered by some to be the top scientist in France, now saying, I was wrong, he is saying that these are other causes and we need to reexamine. The same with David Bellamy from the United Kingdom, the same with Nir Shariv from Israel.

So we have literally hundreds of scientists who totally refute that any dramatic change is due to the release of man-made gases. Also, I would say that while I consider the Chairman to be a very close personal friend, we joke around a lot with each other, I do not agree with her characterization of the Administration and their performance.

I am pleased we are holding a nomination hearing today. This committee has a longstanding bipartisan tradition of considering nominations in a timely fashion. Nominees, I say to my good friend Senator Craig, have historically been given an up or down vote by the committee the week following the hearing. I am sure Senator Warner will remember that has been the tradition of this committee, and I am hoping we will be able to do that.

The first nominee before us is Lyle Lavery, who is being considered for the Assistant Secretary for Fish, Wildlife and Parks at the Department of Interior. Mr. Lavery has a long, distinguished record of resource management, which has well prepared him for this position. He has actually had 35 years as a career employee at the U.S. Forest Service, and then more recently serving as the director of the Colorado State Parks. So I can't think of anyone in America today, anyone, who could be as qualified as Mr. Lavery.

The second nominee today is Kristine Svinicki. I have no doubt that she will be an excellent commissioner at the NRC. She has proven herself to be knowledgeable on technical matters and also possesses a deep understanding of policy issues. If that is not enough, Senators Craig, Warner and others, she has been in a top notch position with them and they are happy to give support to her.

Ms. Svinicki, you and I discussed my belief that our Nation needs new nuclear plants to help meet our growing demand for energy. Revitalizing this industry is a complicated effort and the NRC's role in ensuring public health and safety in protecting the environment is an integral part. Safety first isn't just a cliché, it must be the top priority. However, the NRC must also carry out its responsibilities in a predictable and efficient manner. Balancing these objectives will be quite challenging for the Commission to consider in the growing number of applications for new plants it will receive over the next few years.

I think we have for now, I guess 12 years, my personal experience on this committee, we have talked about the fact that we can't really resolve the energy crisis in this country without a big nuclear part. Certainly, you have the credentials to address that.

Madam Chair—oh, you can stay there, I just want to be sure you are listening to my opening statement here. They talk about the, Madam Chairman, the outrage over the allegations that a DOI po-

litical released internal documents to industry groups, I think specifically the Farm Bureau. The fact is, I remember so well back in the late 1990s, just this past March, Fish and Wildlife career staff leaked a draft ESA regulation to the media, then circulated by the Center of Biological Diversity.

In 2005, a draft of the National Park Service management policies were leaked. I didn't see or hear all the outrages about that. The DOI Inspector General report of 1998 and 1999 oil leases was released to *The New York Times* 2 days before the IG was to testify. The released document, the decision to propose listing the polar bear, appeared first in *The Washington Post* before officially released by the Department. So those leaks have been occurring over a period of time. By the way, I don't know what your order of things would be, Madam Chairman, but we have our newest member, Senator Barrasso, here, and I would like to have an opportunity to welcome him. Could I do that at this time?

Senator BOXER. Absolutely.

Senator INHOFE. OK, Senator Barrasso, there is no one, as you have heard so many times since you have been here, who is more loved than your predecessor, Craig Thomas and his tenure on the committee. Alan Simpson actually also served on this committee, and Senator Barrasso joins us after having served as Chairman of the Transportation, Highway and Military Affairs Committee in the Wyoming State Senate. I am sure your contribution to this committee will be most valuable.

Under Republican Senate rules, Madam Chairman, since Senator Barrasso selected this committee as one of his first two choices, he will be seated in seniority between Senators Vitter and Craig. As far as subcommittee assignments, that isn't clarified yet. I will want a chance to visit with all of our members, our Republican members, which is the ones that would be concerned with this, so we can kind of get that resolved. But we did have a reading from Dave Sharp that showed that your seating here in terms of seniority is proper, and we welcome you, Senator Barrasso, to this committee.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE
STATE OF OKLAHOMA

I'm pleased we are holding this nominations hearing today. This committee has a long-standing, bipartisan tradition of considering nominations in a timely fashion. Nominees have historically been given an up or down vote by the committee the week following their hearing. I hope the Chairman continues this tradition and schedules a business meeting to consider these nominees next week.

The first nominee before us is Lyle Laverty, who is being considered for the Assistant Secretary for Fish, Wildlife, and Parks at the Department of the Interior. Mr. Laverty has a long and distinguished record in resource management which has prepared him well for this position. This experience includes 35 years as a career employee of the U.S. Forest Service and most recently serving as Director of Colorado State Parks for 6 years.

The second nominee before today is Kristine Svinicki, and I have no doubts that she be an excellent commissioner at the NRC. She has proven herself to be knowledgeable on technical matters and also possesses a deep understanding of policy issues. If that's not enough, Senators Craig and Warner say she is top notch so I'm happy to give her my support.

Ms. Svinicki, you and I discussed my belief that our Nation needs new nuclear plants to help meet our growing demand for energy. Revitalizing this industry is a complicated effort and the NRC's role in ensuring public health and safety, and

protecting the environment, is an integral part. "Safety First" isn't just a cliché it must be the top priority. However, the NRC must also carry out its responsibilities in a predictable and efficient manner. Balancing these objectives will be quite challenging for the Commission considering the growing number of applications for new plants it will receive over the next few years and the long-awaited receipt of a repository application next year. It is my expectation that, as a Commissioner, you will endeavor to achieve an appropriate balance.

Recently, there have been lapses in the NRC's efforts to openly communicate. Open communication is fundamental to maintaining the public's trust and the trust of this committee. I encourage you to learn from these mistakes. My door is always open and I hope you visit often.

The nominees testifying before us are qualified individuals and I hope they receive fair consideration based on their qualifications rather than unrelated politics over which they have no control.

Senator BARRASSO. Thank you very much, Senator Inhofe, Madam Chairman. I am very pleased to serve on this committee. The issues that we deal with here are very important to the State of Wyoming. Wyoming is the Nation's largest coal-producing State, and it is a debate and role that we take very seriously. In the Wyoming legislature, as you mentioned, I was chairman of the Transportation Highways Committee with jurisdiction over the highways. I am looking forward to working with this committee on those issues of highway funding, infrastructure.

Finally, not a day goes by in Wyoming when we don't talk about the endangered species, Endangered Species Act. The law continues to have a profound impact on the people of Wyoming. We are very concerned about the environment, all of the issue of public works. So I am looking forward to working hard with you and following up in the great tradition of Senator Craig Thomas.

Senator WARNER. Madam Chairman?

Senator BOXER. Yes, Senator Warner, before I call on you, I wanted to say something to our newest member.

Welcome. We welcome you here. We look forward not only to getting to know you but your staff and this committee. I am trying to bring a feeling that this isn't about partisanship, because you know, the role that we play, and you pointed out just some of the areas, from the environment to public works. Originally when I came to the Senate, I thought, why do they marry those two together? It seemed so strange. But at the end of the day, I think they need to go together. Because in my view, you take your State, the beauty of your State is really the engine of your economy, the beauty of that State. To preserve it and do it in the right way and allow the job growth and the infrastructure to be built in the right way to accommodate that is so key. So we really want to welcome you.

Senator Warner, do you want to add a word of welcome?

Senator WARNER. I just wanted to say that this outstanding individual who stepped up to take the place of our beloved colleague we lost has such an engaging personality and diversity of interests. I make a prediction here and now he will be warmly received on both sides of the aisle. Extraordinary man, and we thank you for coming.

Might I add a word on behalf of the nominee, Mr. Laverty?

Senator BOXER. Certainly.

Senator WARNER. Yesterday, I had the opportunity to sit down and visit with him. I thought, you know, another sort of a perfunc-

tory call on a Senator. But it turns out that both of us started our careers in the Forest Service as young men, working on the trails and fighting the fires and just loving the national forests, all forests, for that matter. I am just extremely pleased to see such a distinguished nominee from the President to come up and take on this job.

But what perplexes me is why anyone would give up a job as State Director of all the parks in one of the most beautiful States to come down here and do this daily combat.

[Laughter.]

Senator WARNER. Good luck to you, my friend.

Thank you, Madam Chairman.

Senator BOXER. Thanks, Senator.

OK. Just to let you know where we are going here with opening statements, we are now going to go to Senator Voinovich, followed by Senator Barrasso, if he has an opening statement today, followed by Senator Isakson. Then we will hear from our distinguished nominees.

Senator Voinovich.

**STATEMENT OF HON. GEORGE VOINOVICH, U.S. SENATOR
FROM THE STATE OF OHIO**

Senator VOINOVICH. Thank you, Madam Chairman.

John, I welcome you to this committee also. I think the fact that Senator Barrasso has had experience on the State level is very, very important. Too often I think that this committee fails to recognize the relationship between what we do on the Federal level to what is happening in our States. John, we are looking forward to having that perspective brought to our attention as often as possible.

I welcome our two nominees. Thank you for your willingness to serve. I am sure my colleagues know, I am very interested in the management of our Federal Government and its work force. Finding the right people with the right skills to put them to work at the right time and place is extremely important to the future of our Nation.

The Subcommittee on Clean Air and Nuclear Safety has oversight responsibility for the NRC. Madam Chairman, Senator Carper and I are also very interested in the nominees to the NRC. We think it is important. We need Ms. Svinicki on that as soon as we possibly can, and maybe we can work something out with Mr. Jaczko.

Senator BOXER. We are hoping so.

Senator VOINOVICH. The industry today, the nuclear industry, is pursuing new power plants for the first time in decades. I think the best information I have, we have proposed 28 reactors from 12 companies. At the same time, the Agency is going to have to deal with a wave of retirements. More than 40 percent of the people who work there are eligible to retire. So we are going to really need some attention in that NRC to human capital.

I had the opportunity to meet Ms. Svinicki last week. We had a frank discussion about her background and her regulatory philosophy, the fact that she has had such glowing tributes from Senator Warner and Senator Craig is also something that all of us should

take into consideration. I came away from that meeting with her that she has the breadth and depth of experience and energy in environmental policy as well as nuclear technology that will serve her as a good member of the NRC.

I think the fact that you have also had extensive experience here in the Senate working for two distinguished individuals also is going to give you insight into how this place works. I think you will be a better member of the NRC as a result of that experience.

Senator BOXER. Thank you so much, Senator Voinovich.

Senator Barrasso, do you have an opening statement?

Senator BARRASSO. No, Madam Chairman, but I did notice that everyone else's name tag said Senator and mine said Mister.

[Laughter.]

Senator BOXER. Who is responsible, staff? That is an error. We will make sure that is corrected.

Senator BARRASSO. If it had said Doctor, Madam Chairman, I would have understood.

Senator BOXER. I understand. We will make sure we correct that.

Senator Isakson.

STATEMENT OF HON. JOHNNY ISAKSON, U.S. SENATOR FROM THE STATE OF GEORGIA

Senator ISAKSON. Thank you, Madam Chair. I too want to welcome Dr. Barrasso, who is a very engaging, articulate individual. As many old men as there are around the Senate, we need another doctor in the house. We are glad to have you today.

I have had the privilege of meeting both the nominees. Both of them paid a visit to my office, I am very grateful for that and had a great time talking to them. I have an acute interest, as the members of the committee know from previous testimony, in the nuclear issue and expansion of nuclear energy. I think with the challenges that we have before us vis-a-vis climate, carbon and all those things, the capacity of nuclear is the best and most efficient that you can find to deal with those issues. We need to do everything we can to promote it.

I too was very impressed with Ms. Svinicki in our interview and I look forward to hearing the questions today and your answers. Thank you, Madam Chairman.

Senator BOXER. Thank you so much.

Why don't we start with you, Kristine, and please, if you can summarize in 5 minutes, and we'll put the remainder of your statement in the record.

STATEMENT OF KRISTINE L. SVINICKI, NOMINEE FOR MEMBER OF U.S. NUCLEAR REGULATORY COMMISSION

Ms. SVINICKI. Thank you very much.

Madam Chairman, Ranking Member Inhofe and committee members, it is an honor to appear before you today as the President's nominee to be a member of the U.S. Regulatory Commission. Even though Senator Warner has admonished me not to be too humble, I will say that I am humbled by the kind words and support of both Senator Warner and Senator Craig. Their support of me far exceeds, in my view, any meager service it has been my privilege to provide to them over the past 10 years. I am deeply grateful for

the trust they have resided in me as a member of their staff, and for the unique and wonderful opportunities to serve that have accompanied that trust.

I also want to express my appreciation to the staff of this committee for their professionalism and to my many colleagues in the Senate. Although my family was not able to be here today, I have many members of my Senate family here, and I appreciate their support and encouragement.

I appreciate also the time of the committee members who have met with me throughout this process to discuss this position and my nomination. Hearing the views of the members of this committee and of other Senators on nuclear policy is very instructive to me. If I were confirmed, I would seek to continue that communication.

In preparing for my appearance here today, I reviewed the statements of previous Commissioners during their confirmation hearings. I was struck by a common theme in their statements. Each nominee stated their belief that they had been nominated to the Commission at an unprecedented and uniquely challenging moment in the Commission's history. I feel similarly both honored and challenged by my nomination.

Over the next 2 years, in addition to its responsibility for regulating the continued safe operations of nuclear reactors and the many material licensees, the NRC expects to receive, as has been referenced by committee members, applications for new plants as well as applications to extend licenses and to increase power output of existing reactors. To meet this increasing workload, the NRC has embarked upon a significant effort to increase the size of its technical work force and to expand its office facilities. At the same time, as has also been noted, the Commission will be experiencing the retirement of many of its most experienced staff.

Throughout this very dynamic and demanding period, the Commission and its staff must, in my view, not only maintain regulatory stability but also strive to meet the performance metrics the Commission has outlined for itself with respect to the timeliness of reviews of new applications, while continuing to hold itself to very high standards of performance. This combination of operational and organizational challenges is daunting by any measure.

If confirmed, I am eager to confront these challenges and will commit myself fully to contributing to the continued success of the Commission. Madam Chairman, I have worked in Government service at the State and Federal level for nearly 20 years. While I honor the choice of those working in the private sector, I have made a very different and conscious choice to remain in public service. The work I have done in the Executive and Legislative branches, in technical positions at the Department of Energy, and subsequently as an advisor to Senators here in the Senate has provided the opportunity to participate in some of the most compelling energy, environmental and national security challenges confronting the Nation.

I believe that my career up to this point has prepared me for the challenge of serving as an NRC commissioner. If the Senate acts favorably on my nomination, I am eager to apply my skills and experience in this new capacity.

In conclusion, I would note that the NRC is charged with protecting the public health and safety, which I believe to be a sacred trust between the people and their Government. Consequently, the accountability of an NRC commissioner is first and foremost to the public she serves. If confirmed by the Senate, I would approach my duties as commissioner with this as my core principle.

That concludes my statement, and I look forward to your questions.

[The prepared statement of Ms. Svinicki follows:]

STATEMENT OF KRISTINE L. SVINICKI, NOMINEE FOR MEMBER OF U.S. NUCLEAR
REGULATORY COMMISSION

Madam Chairman, Ranking Member Inhofe and Committee Members, it is an honor to appear before you today as the President's nominee to be a member of the U.S. Nuclear Regulatory Commission (NRC). I am humbled by the kind words and support of Senator Warner and Senator Craig. Their support of me far exceeds any meager service it has been my privilege to provide to them over the past 10 years. I am deeply grateful for the trust they have resided in me as a member of their staff and for the unique and wonderful opportunities to serve that have accompanied that trust.

I also want to express my appreciation to the staff of this committee for their professionalism and to my many colleagues in the Senate. Although members of my family are spread across the country and were not able to be here today, I appreciate the presence of many members of my "Senate family". Their support and friendships have been the foundation of any achievements I have had during my service as Senate staff.

I appreciate the time of the members of the Committee who have met with me throughout this process to discuss this position and my nomination. Hearing the views of the members of this committee, and of other Senators, related to nuclear policy has been very instructive to me. If confirmed, I would seek to continue this communication.

In preparing for my appearance here today, I reviewed the statements of previous Commissioners during their confirmation hearings. I was struck by a common theme. Each nominee stated their belief that they had been nominated to the NRC at an unprecedented and uniquely challenging moment in the Commission's history. I feel similarly—both honored and challenged.

Over the next 2 years, in addition to its responsibility for regulating the continued safe operation of the existing 104 commercial nuclear reactors in this country and approximately 4,500 materials licensees, the NRC expects to receive numerous combined license applications for the construction of new nuclear power plants, as well as additional applications to extend the licenses and to increase the power output of existing reactors. To meet this increasing workload, the NRC has embarked upon a significant effort to increase the size of its workforce and to expand its office space. At the same time, the Commission will be experiencing the retirement of many of its most experienced staff.

Throughout this very dynamic and demanding period, the Commission and its staff must not only maintain regulatory stability, but also strive to meet the performance metrics the Commission has outlined for itself with respect to the timeliness of review of new applications, while continuing to hold itself to very high standards of performance. This combination of operational and organizational challenges is daunting by any measure. If confirmed, I am eager to confront these challenges and will commit myself fully to contributing to the continued success of the Commission in fulfilling its obligations to the Nation.

I have worked in government service, at the State and Federal level, for nearly 20 years. While I honor the choice of those working in the private sector, I made a different and very conscious choice to remain in public service. The work I have done in the executive and legislative branches, in technical positions at the Department of Energy and, subsequently, as an advisor to policy makers here in the Senate, has provided the opportunity to participate in some of the most compelling energy, environmental, and national security issues confronting the Nation. I believe that my career up to this point has prepared me for the challenge of serving as an NRC Commissioner. If the Senate acts favorably on my nomination, I am eager to apply my skills and experience in this new capacity.

The NRC is charged with protecting the public health and safety, which I believe to be a sacred trust between the people and their government. Consequently, the

accountability of an NRC Commissioner is first and foremost to the public she serves. If confirmed by the Senate, I would approach my duties as Commissioner with this as my core principle.

This concludes my statement. I look forward to your questions.

RESPONSES BY KRISTINE L. SVINICKI TO ADDITIONAL QUESTIONS
FROM SENATOR BOXER

Question 1. What will you do as an NRC commissioner to ensure that oversight of materials licensing is improved?

Response. I understand the Commission is looking at a variety of ways to strengthen the materials licensing process including consideration of site visits, web-based licensing systems, increasing the tamper-proofing of licenses, and red teaming/testing the licensing process. If confirmed, I would be eager to examine these proposals, as well as others such as examining the required procedures before a supplier ships a source to a license holder, as part of a comprehensive evaluation of ways to improve the materials licensing process.

Question 2. The NRC does not require an inspection of the license applicant prior to issuing a license for a Category 3 radioactive sealed source. Other States, such as Maryland, have determined that pre-license inspections are necessary. Do you think the NRC and agreement States should have the same requirements?

Response. I have not been briefed on the current basis for the differences in procedures between the Commission and the agreement States in processing applications to possess Category 3 sealed sources. If confirmed, I would examine the basis for these differences and scrutinize the justification, if any, in light of the results of the GAO investigation. Although States may have unique circumstances which are reflected in their procedures, it would seem reasonable that best practices, as were demonstrated in Maryland's process, should be encouraged.

Question 3. Will you support pre-license inspections for Category 3 radioactive sealed source materials?

Response. I have not been briefed and consequently do not fully understand the basis for not requiring pre-license inspections for Category 3 radioactive sealed sources in non-agreement States. If confirmed, I pledge to acquaint myself fully with this issue and take part in Commission review of this requirement.

Question 4. Will you support and encourage the NRC's efforts to create a web-based licensing system? If so, would you support including Category 3 radioactive sealed materials into any such system created by the NRC?

Response. If confirmed, I will support and encourage the timely development and implementation of a web-based licensing system and will evaluate further the inclusion of Category 3 radioactive sealed materials into such system, as the Commission considers ways to strengthen controls over these radioactive materials.

Question 5. I understand you have worked in the Department of Energy's Civilian Radioactive Waste Management Office. As an employee in that office, please explain what your involvement was in transportation and waste disposal issues as they relate to Yucca Mountain.

Response. Between May of 1994 to December of 1996, I worked as an engineer in the DOE Office of Civilian Radioactive Waste Management, Office of Storage and Transportation. The engineering position I filled was responsible for collecting technical information related to federally-owned radioactive waste, such as high-level radioactive waste produced by defense programs, waste arising from the environmental remediation of DOE cleanup sites, and spent nuclear fuel created in research programs at DOE national laboratories, and assuring that sufficient information on each of these waste forms existed in order to evaluate the transportation and disposal of such waste, should such waste eventually require deep, geologic disposal.

Question 6. What is your view on whether DOE and NRC should move forward with the Yucca Mountain project as it is currently envisioned?

Response. As directed by Congress, the Nuclear Waste Policy Act requires the DOE to submit a license application to the NRC for the establishment of a geologic repository at Yucca Mountain and requires the NRC to review and act on this application within 48 months of receipt. If confirmed, I would support the NRC in fulfilling its obligations under this law, which is to receive and process this application in an objective and timely manner, on the basis of the facts before it.

Question 7. Several applications for new nuclear facilities are expected to be received by the NRC in the coming years. What role do you see the NRC playing in addressing waste disposal issues that these new facilities will face?

Response. In my view, the obligation of the NRC is to act as an impartial arbitrator; making decisions based on the safety and security of licensed activities while executing the roles assigned to it under law. As I understand it, the Commission relies upon its confidence that this country will continue to make progress on the development of disposal capacity as called for in the Nuclear Waste Policy Act. If confirmed, I believe my duty would be to ensure that any waste generated by a plant could be stored safely and without significant environmental impact as the Nation works toward the implementation of the waste disposal policies laid out in current law.

Question 8. Do you expect licenses for new facilities to be approved regardless of the status of Yucca Mountain?

Response. If confirmed as a Commissioner, I would judge each application coming before the Commission on its merits. Based upon my experiences as Senate staff, I know that resolving nuclear waste disposal issues is essential to the Nation. If confirmed, I believe my duty would be to ensure that any waste generated by a plant could be stored safely and without significant environmental impact during such time as the Nation works toward the implementation of the waste disposal policies laid out in current law.

RESPONSES BY KRISTINE L. SVINICKI TO ADDITIONAL QUESTIONS
FROM SENATOR LAUTENBERG

Question 1. The transportation of nuclear waste could pose a serious national security, environmental and health risk to the communities which the waste passes through while transporting. How would you evaluate these risks when making decisions about the future of the Yucca Mountain application?

Response. As required under the Nuclear Waste Policy Act, transportation of materials to a deep geologic repository must be conducted in packaging developed and licensed to the NRC requirements contained in 10 CFR Part 71. These standards require the evaluation and analysis of the transportation packaging against accident, fire, and flooding scenarios. The NRC also shares responsibility with the U.S. Department of Transportation for the safe carriage of these materials over the Nation's highways. If confirmed, I pledge to evaluate closely the safety and security aspects of the transportation of nuclear materials and to work closely with DOT to ensure that protecting the public and environment remains paramount.

Question 2. The Oyster Creek nuclear facility in New Jersey will turn 40 years old in 2009, and the re-licensing decision for this facility is a very controversial issue. Would you give me your view on the future of Oyster Creek, specifically, as well as how you would approach re-licensing for older nuclear facilities?

Response. Although I am not familiar with the details of the Oyster Creek application, in my view a similar question must be answered at Oyster Creek and in all other license renewal projects: can this plant be operated safely beyond its initial licensing period and on what basis can we be confident that this safety is assured? This is a decision that must be made on a case-by-case basis, impartially, under the Commission's regulations, and on the available scientific evidence. Safety should be the highest priority. If confirmed, I would pledge to evaluate such matters based on the record before the Agency.

Question 3. The NRC has allowed radioactive waste to build up at the Shieldalloy Metallurgic Corporation in Newfield and now plans to allow them to leave 28 thousand cubic meters of radioactive waste at the decommissioned site. Can you assure me that, if confirmed, you will review this plan and work to have this radioactive waste removed?

Response. Although I am not familiar with the specifics of this situation, if confirmed, I commit to familiarizing myself with this plan and reviewing the adjudicatory record before the Commission.

RESPONSE BY KRISTINE L. SVINICKI TO AN ADDITIONAL QUESTION
FROM SENATOR CARDIN

Question. We are all aware of the fact that GAO investigators posing as businessmen in West Virginia were able to obtain an NRC license which, once manipulated, allowed for the purchase of enough radioactive material to make a dirty bomb. In-

investigators attempted to purchase similar radioactive materials in Maryland, a State which has its own licensing process. The GAO withdrew its application when the State informed them numerous checks including an on-site interview were needed before the license was granted. The process in Maryland was shown to be decidedly more thorough than the NRC process. How will you ensure that all 34 States that conduct their own licensing procedures do so in a comprehensive manner that is commensurate with practices which have proven successful?

Response. If confirmed, I would pledge to review the best practices of all the agreement States and make sure they are communicated among the agreement States. I would further work to understand the differences between the procedures of the Commission and the agreement States, and the justification, if any, for such differences. In my view, Maryland should be commended for the vigilance it demonstrated in overseeing the issuance of material licenses in its State.

RESPONSES BY KRISTINE L. SVINICKI TO ADDITIONAL QUESTIONS
FROM SENATOR VOINOVICH

Question 1. One of the things that Senator Carper and I have been stressing is the need for the NRC to improve and be more proactive in its public relations efforts. The recent communication problems on the part of the Agency associated with the GAO sting operation and the spill of highly enriched uranium at a nuclear fuel facility do not bode well to increase the public's trust in the Agency. I would like to hear your thoughts on how a regulatory agency such as NRC can improve in this area.

Response. Through public outreach and information initiatives, I believe the NRC can strengthen its role both as a credible source of information related to regulated nuclear activities as well as an educator of the public more generally about regulatory processes and radiological safety. While not a technology advocate, the NRC should seek to increase public confidence by building greater awareness of its inspection and oversight programs and by communicating its findings in a clear and understandable manner to interested stakeholders and the public in general. Further, the Commission must be prompt and forthcoming, at all times, in its communications to the Congress.

Question 2. There has been a lot of talk of building new reactors in this country. What do you think are the major road blocks to getting these licensed and built? What would you do to try to help solve these problems as a Commissioner?

Response. I believe that the principal challenges to getting new reactors licensed and built are access to financing and credibility of the regulatory process. The NRC is responsible for only one of these challenges—the regulatory process. By completing its reviews in a timely and transparent manner, the NRC will increase public confidence in the regulatory process. As the NRC gains experience with the regulatory process and timelines for new reactor applications that the Commission has laid out for itself, I would pledge, if confirmed, to continually review and seek to improve the Commission's internal processes, while keeping safety and security always as the top priority.

Question 3. You and I briefly discussed about human capital being a significant challenge not only with the NRC but affecting both the public and private sectors including the electric utilities, component manufacturers, government agencies, and national laboratories. I am not convinced, however, that government agencies and the industry are taking the problem seriously enough. I am interested in any suggestions you might have on how the government-industry-academia can work together more effectively to meet this challenge.

Response. As outlined in the sober assessment of the National Academy of Sciences report, "Rising Above the Gathering Storm: Energizing and Employing America for a Brighter Economic Future," the scientific and technological building blocks critical to our economic leadership are eroding at a time when many other nations are gathering strength. The report makes a number of recommendations to increase America's talent pool by improving science and mathematics education. Through my current responsibilities on the Senate Armed Services Committee staff, I am familiar with science and technology educational programs initiated by the Department of Defense, reaching as deep as middle school science programs and extending up to graduate fellowships. The Department is currently gathering data on the sustainability of the impacts of its outreach to middle school and high school students. I am also aware that the NRC has authorities, provided under the Energy Policy Act of 2005, to fund scholarships and fellowships in return for service with the NRC. Although I am not familiar with the extent of NRC resources for these

scholarship programs, if confirmed, I would endeavor to continue to follow the results of all of these programs, as well as others in government and industry, with the intent of finding approaches to address this strategic national vulnerability.

Question 4. Going forward, NRC's relationship with other Federal agencies and State/local governments will be absolutely critical in accomplishing its mission. I would like to hear your thoughts and plans on how you intend to work at this issue.

Response. As demonstrated by both the attacks of September 11, 2001, as well as natural disasters such as Hurricane Katrina, our Nation must improve its ability to marshal the entirety of our government resources in response to events such as these. Reviews by the Government Accountability Office and other commissions have found uneven progress in this regard, and not on a pace sufficient for the vulnerabilities we face. Although I have not been briefed on the details, I am aware that the NRC is a part of operational drills and government-wide exercises to test our preparedness and inter-agency coordination. If confirmed, I would participate in these efforts with the intent of strengthening this coordination and the mechanisms which support it.

Senator BOXER. Thank you so much.

Mr. Laverty, why don't you go ahead, take us to a whole other world for a moment, and then we will ask questions of both nominees as each Senator wishes.

**STATEMENT OF LYLE LAVERTY, NOMINEE FOR THE POSITION
OF ASSISTANT SECRETARY FOR FISH, WILDLIFE AND
PARKS, U.S. DEPARTMENT OF THE INTERIOR**

Mr. LAVERTY. Thank you, Madam Chair, Senator Inhofe and distinguished members of the committee. It is truly an honor for me to appear before you today as I seek your confirmation to become the Assistant Secretary of the Interior for Fish, Wildlife and Parks.

I began my professional journey over four decades ago in the mountains of northern California, along the Klamath River in Orleans. It was there that I brought my new wife and we have spent four decades together. My wife is able to join me here this morning, as is my brother-in-law and my niece and nephew. My nephew, Ryan Struck, is scheduled to be deployed to Iraq in mid-September. So I am honored to have him here.

Senator BOXER. We would ask if they could all stand.

Mr. LAVERTY. Thank you very much.

Senator BOXER. The young man who is going to Iraq, would you just raise your hand. We say thank you, Godspeed, and we will all do what we can to make sure that you are safe when you are there and get home as fast as you can.

Mr. LAVERTY. Thank you, Madam Chair.

Just a little bit of background. I completed my undergraduate degree at Humboldt State with a Bachelor in forest management and security, a Masters in public administration from George Mason University. I am a registered professional forester in California and a certified forester with the Society of American Foresters.

As Senator Warner mentioned and Senator Craig, I have worked across the country for the past 35 years as a career employee with the U.S. Forest Service, and most recently, 5 years as the director of Colorado State Parks. Through a variety of leadership assignments, I have really come to develop a profound understanding of the importance of the harmony and balance between good public resource policy and successful management of America's natural resources.

In 1999, I led the Agency's effort to develop an integrated strategy to develop a response to the hazardous fuel conditions across the national forests. This strategy became then the foundation of the National Fire Plan, which was in fact supported by the Congress and funded after the catastrophic fires of 2000. I was subsequently asked to lead the Agency's implementation of that National Fire Plan and did so through 2001.

Since the enactment of the Endangered Species Act, I have been involved in a variety of project design, implementation and coordination of natural resource management activities that truly integrate the protection of habitat with the goal of recovering species. I say the goal of recovering species, because that is a very, very critical part.

As a regional forester in the Rocky Mountain region, I worked with the U.S. Fish and Wildlife Service and the Division of Wildlife in the recovery lynx. Ten years ago, I served on the Interagency Grizzly Bear Committee, that we were involved in the coordination of the activities to support the recovery of the grizzly bear in the Yellowstone ecosystem. As a forest supervisor of the Mendocino National Forest in California, I worked with the Fish and Wildlife Service as well as the Department of Fish and Game to manage that complex habitat of the spotted owl, the southern portion of the spotted owl.

Madam Chair, if confirmed, I am going to commit my energy to the stated purposes of the Endangered Species Act, to the mission of the National Wildlife Refuge System and those laws and regulations supporting, under the jurisdiction of the U.S. Fish and Wildlife Service. I will work aggressively with other agencies, tribes and States, tribal land owners and other non-governmental organizations to further our country's conservation goals.

I am aware of the many challenges and unique opportunities facing this position. I have read closely and studied the Inspector General's report on the allegations associated with Julie McDonald. One of the principal leadership responsibilities of this position is to distinguish between questions of science and questions of policy, and all of you have articulated that very, very clearly. I believe that science is the foundation of sound public policy.

I am committed to ensuring the scientific integrity is maintained and scientific determinations are accurately and clearly communicated to policymakers. I believe that leadership is an active responsibility. As I worked with fire commanders in my past, it is very, very clear that the importance of presence is the essence of leadership. I believe that the presence provides that forum for communications and conversations to determine, are we doing what we said we would do. Doing what we said we would do is the essence of trust, and I am committed to earn the trust from you.

If confirmed, I have several actions that I want to share with you that I will take. I will be happy to expand on these in the questions. First of all, I would invite the solicitor and the designated agency ethics officer to brief the entire staff of this unit, to talk about the rules and regulations as it relates to the protection and disclosure of information received by that office.

Second, I will ensure that the staff understands the importance and the difference between questions of science and questions of

policy. Third, I will establish a code of conduct for employees to treat people with dignity and respect. It became very, very clear to me in that report that that is one of the fundamental roles of that position.

Fourth, I will actively engage with the Agency, in conversations with agency leaders, both Director Bomar and Dale Hall, and agency employees, and talk about performance expectations. I will monitor performance. I believe that is the function of leadership and it is the essence of what this position is about.

Finally, I want to commit to work personally and closely with all of you. I believe that being open and transparent in terms of conversations to hear from you and what are the concerns and also then be able to share with you what my concerns are, I want to have that kind of a dialog and relationship with you.

I am honored to be here, and I look forward to the conversations and being able to answer any questions you might have for me. Thank you.

[The prepared statement of Mr. Laverty follows:]

STATEMENT OF LYLE LAVERTY, NOMINEE FOR THE POSITION OF ASSISTANT SECRETARY FOR FISH, WILDLIFE AND PARKS, U.S. DEPARTMENT OF THE INTERIOR

Madam Chair, Ranking Member Inhofe, and Members of the Committee, I am truly honored to appear before you today as I seek your confirmation to become the Assistant Secretary of the Interior for Fish and Wildlife and Parks. As a career resource manager and public servant, the opportunity to be entrusted with the care and stewardship of the icons of America's heritage, is the ultimate experience. I want to thank both President Bush and Secretary Kempthorne for their confidence in me as shown through my nomination.

My personal connection with America's great outdoors begins in Montana nearly 60 years ago. Born and raised in California, I have vivid memories of our family adventures to Montana to visit my grandparents, aunts, uncles, and cousins in Missoula. I remember to this day catching my first trout in the crystal waters of Holland Lake. I remember waking up in Yellowstone as my grandmother chased bears out of our campsite banging on a big metal pot. I remember helping my dad set up our tent in the floor of Yosemite. I remember the ranger hikes. I remember watching the "firefall" during evening interpretative programs. Little did I realize how significant these personal connections would be in creating a lasting imprint on my being.

I began my professional journey in public service over four decades ago in Orleans, California, a small rural mountain community. It was to this remote ranger station on the Klamath River that I brought my bride Pam, who has shared this wonderful journey and is with me here today. Our two children, Lori and Chad, experienced lives growing up on ranger stations as we moved throughout this great country.

I completed my undergraduate education with a Bachelor of Science in Forest Management from Humboldt State University in Arcata, California, and subsequently received a Masters degree in Public Administration from George Mason University in Fairfax, Virginia. In 1997, I was selected to participate in the Executive Leadership Program at Harvard University's John F. Kennedy School of Government.

I have worked across the country as a 35-year career employee with the U.S. Forest Service and most recently as the Director of Colorado State Parks. I have gained a rich understanding of the values of America's natural resources and the importance of being a good steward of these resources. I have had the opportunity to participate in many assignments which have afforded my working with a broad range of stakeholders and government officials on a variety of natural resource management issues. Through a variety of line and leadership assignments, I clearly understand the importance of harmony of sound public resource policy with practical field operations.

In 1999, I was asked to lead a team to respond to the GAO Report which identified the need for an integrated strategy to address the hazardous fuel conditions on National Forest lands. The strategy became the foundation for the National Fire Plan, funded by the Congress after the catastrophic fire season in 2000. I was subse-

quently asked to lead the Agency's implementation of the National Fire Plan and did so through 2001. I mention my experience with the National Fire Plan, because it models the importance and complexity of working with various organization, agencies and jurisdictions to implement natural resource policy issues on a consensus basis. To that end, I am committed to working with each of you and the States to protect and promote our nation's fish and wildlife conservation heritage.

Late in 2001, I accepted the position of Director of Colorado State Parks. The Colorado State Park system is different than most State park systems in America. More than 85 percent of the division's operating budget comes from revenue other than general fund. Sustaining a quality system of parks required the application of sound business principles as well as consistently providing quality guest services.

I have enjoyed a professional journey that has provided broad and extensive resource management challenges in. Through these varied experiences, I have a combination of qualifications, perspectives and insights that I believe will add value to an excellent team of professional resource managers. Over the course of my career, I have worked with individuals, volunteers, organizations, State agencies and numerous Federal agencies. Living and working in both rural and urban communities across this country, I have learned that solutions to challenges facing our natural resources are developed through conversations with all interested parties. The wonderful relationships I have developed over the course the years has resulted in the support of my nomination by a wide variety of organizations across the country.

My career has afforded me the opportunity to work in a variety of communities and ecosystems across the country, in the Douglas fir forests of northern California, the Cascades of Oregon and Washington, the southern portion of California's Coastal Range, the great Rocky Mountains of the intermountain west, as well as our nation's capital. I have found through these experiences that people care deeply about America's resources.

For over three decades, I have been involved in the design, coordination and implementation of natural resource management activities, integrating protection of habitat, and working towards the recovery of species. As Regional Forester, I worked with the U.S. Fish and Wildlife Service and the State Division of Wildlife on the recovery of the lynx in Colorado. Last year, Bruce McCloskey, Director of Colorado's Division of Wildlife, proudly showed pictures of young lynx kittens, successful indicators that agencies working together can make a difference in the recovery of species. Ten years ago I served on the Interagency Grizzly Bear Committee, coordinating agency activities to support the recovery of the grizzly bear in the Greater Yellowstone Ecosystem. Today, that grizzly bear population has been delisted, another indicator that agencies working together, seamlessly, with public support, can make a difference in the successful recovery of a species.

As Forest Supervisor of the Mendocino National Forest, I worked extensively with the U.S. Fish and Wildlife Service staff and the California Department of Fish and Game in managing the complex southern portion of the spotted owl habitat. As Associate Deputy Chief, I coordinated policy implications of hazardous fuel treatment projects with U.S. Fish and Wildlife Service leaders. The results, evidenced on the ground, demonstrate again that working together we can protect and enhance habitat and protect people and resources by reducing the risk of catastrophic wildland fire. Most recently, as the Director of Colorado State Parks, with the U.S. Fish and Wildlife staff and Colorado Division of Wildlife staff, we designed and implemented wildland fire mitigation projects in lynx habitat in the urban interface of Colorado's Front Range, again working together to effectively manage habitats for species recovery, as well as satisfying multiple resource objectives.

Madam Chair, if confirmed, I will commit my energy to achieve the stated purposes of the Endangered Species Act, the mission of the National Wildlife Refuge System, and the laws and regulations under the jurisdiction of the U.S. Fish and Wildlife Service. I will work aggressively with other Federal land management agencies, States, tribes, private land owners and other nongovernmental organizations to further our country's conservation goals. I am aware of the many challenges and unique opportunities associated with this position. I am committed to work closely with each of you to provide the oversight and stewardship of the resources entrusted to me in this position.

Thank you again Madam Chair, Senator Inhofe, and Members of the Committee for considering my qualifications and for the opportunity to appear before you this morning.

I will be happy to answer any questions you may have.

RESPONSES BY LYLE LAVERTY TO ADDITIONAL QUESTIONS
FROM SENATOR LAUTENBERG

Question 1. As Assistant Secretary for the Department of Interior, which oversees the Fish and Wildlife and Parks Service, what would you do to ensure that science is not further suppressed or improperly edited for political reasons?

Response. If confirmed, here are the actions I will take to ensure that science is not suppressed or improperly edited.

Immediately, I will ask the Solicitor's Office and the Designated Agency Ethics Officer to brief the staff on the rules and regulations with regard to the protection of and disclosure of information received by the Office.

I will affirm that discussion with my pledge to staff and employees of both agencies, the National Park Service and the U.S. Fish and Wildlife Service, reiterating my personal commitment to the ethical standards of conduct and behavior articulated by Secretary Kempthorne, including not sharing non-public information with outside parties.

Second, I will ensure that my staff understands the difference between questions of science and questions of policy. I will explain that my policy staff is not to ask for or direct any change or modification in scientific findings by either agency.

I will explain that any contacts they have with field personnel at either the Fish and Wildlife Service or the National Park Service regarding questions of science must and will be through established organizational channels, and only with my prior approval. I will actively monitor agency performance with and through both agency leaders.

Third, I will establish a code of conduct for employees to treat people with dignity and respect. Abusive behavior toward anyone will not be tolerated.

Fourth, I will actively engage in conversations with agency leaders, Directors Bomar and Hall, and agency employees to monitor performance. I will take whatever steps are necessary to ensure that organizational performance is meeting expectations. I will make it clear that:

- Contact between my policy staff and agency personnel on management or regulatory actions will go through established organizational channels;
- I expect bureau directors to personally ensure agency decisions are supported with credible scientific information that, as appropriate, is peer reviewed;
- My policy staff is not to ask any of the agency staff to change scientific findings;
- No staff, policy or career, are to act abusively toward any person, and if there is any indication of inappropriate behavior, it is the Director's responsibility to inform me immediately;
- Bureau directors are to personally advise their management teams of my expectations for each of them regarding these principles; and
- Any violations of these principles are to be reported immediately to me personally by the agency director for appropriate action.

In the event of any violation of these principles, I will not hesitate to ensure that appropriate action is taken.

Question 2. Will you commit to me that you will not participate in any efforts to alter, edit or redact the work of scientists as Assistant Secretary for the Department of the Interior? Will you commit to report to this committee any actions that you see taking place that violates the integrity of government scientists?

Response. In my previous answer, I provided my plan to ensure that scientific integrity in our decisionmaking processes is protected. This includes ensuring that my staff understands the difference between questions of science and questions of policy. I will explain that my policy staff is not to ask for or direct any change or modification in scientific findings by either agency.

I will explain that any contacts they have with field personnel at either the U.S. Fish and Wildlife Service or the National Park Service regarding questions of science must and will be through established organizational channels, and only with my prior approval. I will actively monitor agency performance with and through both agency leaders.

RESPONSES BY LYLE LAVERTY TO ADDITIONAL QUESTIONS FROM SENATOR BOXER

Question 1. The Fish and Wildlife Service recently removed both the bald eagle and the Midwest grey wolf population from the list of threatened and endangered species. This is one of the Endangered Species Act's great success stories.

The Act defines an endangered species as one imperiled "throughout all or a significant portion of its range." But a recent Interior Department opinion limits this test to "the geographical area currently occupied by the species."

If that test had been used 35 years ago, wouldn't it have made it difficult to protect species like the bald eagle and grey wolf, whose "current range" at the time was largely limited to Canada and Alaska?

Do you support that interpretation of the Act?

If you do support the new test, how do you square it with the clear intent of Congress that the Endangered Species Act must protect species like the bald eagle when they became endangered in places like California and Maryland?

Response. I am not familiar with the recent Departmental opinion, so I cannot speak to the characterization of it in your question. However, I will commit to you that, if confirmed, I will review that opinion and discuss its content and conclusions with our attorneys to ensure that it fulfills the intent of Congress in enacting the Endangered Species Act.

Question 2. The 2007 Intergovernmental Panel on Climate Change report concluded that 40 percent or more of all species may become extinct if global warming continues and we reach a 4 to 5 C average global temperature increase.

Do you accept the IPCC's conclusion that there is a 90 percent certainty that most global warming over the past 50 years is human-caused, and that global warming's impacts on wildlife are a major concern? If confirmed, how would you address this issue?

Response. I acknowledge and respect the increasing scientific knowledge regarding global climate change. The IPCC has made significant contributions to the scientific information on global climate change. If confirmed, I pledge to work with all of the bureaus within the Department of the Interior, particularly the U.S. Fish and Wildlife Service, the United States Geological Survey, and the Bureau of Reclamation to increase our understanding of the impacts of global climate change on fish and wildlife and to work to identify ways that we can address those impacts.

Question 3. As part of the restructuring due to funding shortages, the Fish and Wildlife Service is shifting staff and resources to "high priority" refuges. The Wildlife Refuge System prides itself on having at least one wildlife refuge in each of the 50 states, and one within an hour's drive of every major U.S. city.

How should the FWS appropriately determine which State's fishing spot is highest priority, and which local wildlife viewing site is lower priority? Doesn't this mean that some refuges are going to be unmanned? What do you plan to do about this?

Response. While I have not had the opportunity to fully study the staffing situation in the National Wildlife Refuge System, I do understand the importance of the System to the public and to our fish and wildlife resources. If confirmed, I will commit to being an advocate for the system, and to work with the U.S. Fish and Wildlife Service to help ensure that our national wildlife refuges are effectively managed to meet mission obligations and to continue to provide visitors with quality wildlife-dependent recreation opportunities.

Question 4. Records from the State Board of Great Outdoors Colorado (GOCO), which provides State funds to the Department, raised questions about the adequacy of the Department's financial system. News reports in the Denver Post in February and March of this year and internal documents and other information indicate that, for example, "the accounting/finance staff of Parks at all levels was unable to articulate basic accounting principles involving the GOCO bills." I understand that an audit of the department was initiated at least in part in response to these problems. Please describe in detail what the accounting problems were that GOCO identified, what specific actions you took to address those issues both before and after GOCO identified them, your role in recommending or approving the audit, the specific issues to be reviewed in the audit, and what results if any have been reached in that audit.

Response. The following deficiencies were identified and addressed as part of GOCO's concerns for accounting: underperforming staff were identified, GOCO's data needs were clearly identified, and proper quality controls were created to ensure the long term success of this relationship.

A number of events transpired in late 2005 and early in 2006 that significantly impacted the Division's GOCO accounting and reporting activities. Since none of these factors were reflected in the Denver Post article, it is important to provide the context leading to the actions that have addressed the issues.

The Division experienced several significant changes in the Financial Services (FS) unit. Based on very serious performance deficiencies, the CFO began addressing performance accountability. The Controller and a lead accountant both resigned their positions early in 2006. The CFO had to rely on the GOCO accounting tech to perform the necessary GOCO billing and reconciliation tasks until more senior

accounting personnel could be hired. After a lengthy hiring process, the new Division Controller assumed his duties in June of 2006. The CFO immediately assigned him the tasks of evaluating and improving the GOCO billing and reconciliation process.

Under the “Guiding Principles” that the GOCO board enacted to define the Division’s policy in how to prioritize, spend and account for GOCO funding resources, there was a stipulation that “old” GOCO money had to be spent before “new” money could be spent.

This triggered a massive effort on the part of State Parks in December 2005/January 2006 to reallocate expenditures at Cheyenne Mountain from newer GOCO grants to older grants and Lottery funds. It was imperative for the process to be completed to release funding so that construction on Cheyenne Mountain could proceed without delay. Parks staff worked closely with GOCO on this process and brought it to a successful conclusion. This was a complex task with a large number of grant budget lines, contract awards, task orders and payments involved, where the process and the results would ultimately have to meet both GOCO and audit standards.

The Division’s CFO scheduled meetings with GOCO’s CFO and accounting staff to solicit input from GOCO on how to improve the reporting processes, given the Division’s personnel situation. The desired outcome was to define the reporting requirements—different for base and large scale projects—that would meet GOCO’s reporting and audit needs.

A meeting with GOCO staff in August 2006 produced a substantive agreement on this issue and the Division worked diligently to produce these work products, both interim and permanent. The products included a temporary set of “payment adjustment record” forms for the Cheyenne Mountain Golden Triangle contract, which was due and delivered to GOCO in September 2006. The fact that a difference existed between some invoices submitted by contractors and what was ultimately paid to the contractor caused GOCO great frustration. In the summer of 2006, this became a major issue ultimately involving the DNR Controller.

The DNR Controller communicated in a letter to GOCO on June 20, 2006 that it is not uncommon in the construction industry for disagreements to arise regarding project completions. Payments are determined on the basis of the project manager’s assessment of the quality and acceptability of materials furnished, work performed, and the rate of progress of the work, all interpretations of the plans and specifications, and the acceptable fulfillment of the contract. Payments are not made on the basis of the contractor’s subjective assessment of these same issues as reflected in invoices. Thus, payments are made on those items where there is agreement and, where there is no agreement, the balance deferred and subjected to further resolution and/or negotiations.

The DNR Controller concluded, based on the terms of the Memorandum of Understanding (MOU) between the Division and GOCO that the MOU only requires a monthly billing statement to GOCO, identifying the total expenditures to date, along with copies of the Colorado Financial Reporting System (COFRS) accounting reports to support the amount billed to GOCO. She also concluded that, since COFRS is the official financial record of the state, information contained in the accounting reports should be sufficient for GOCO to make the determination that a vendor has been paid by the Division, and that reimbursement from GOCO to the Division is due. In a follow-up e-mail from GOCO’s CFO, she referenced additional documentation requirements contained in the Legacy/Large Scale grant agreements—correctly so—and State Parks has responded to these additional requirements.

State Parks agreed to develop a single format for pay sheets that would include a “payment adjustment record” and be used on all legacy/large scale funded grants such as Cheyenne Mountain, St. Vrain and future projects. Division staff continues to consult with GOCO staff in the development process of format to assure that GOCO accounting data needs are met. The Division Controller met with the GOCO CFO and accounting staff the week of November 13, 2006 to develop even closer communications and cooperation in defining these and other needs.

Another work product requested by GOCO and delivered by the Division was expenditure by fund and year for Cheyenne Mountain since the inception of the project. This was requested by GOCO to review match funding for legacy/large scale projects. This report was generated in short order and delivered in its final form to GOCO on October 5, 2006, with a positive reception by GOCO’s CFO. On September 13, 2006, the Division’s CFO and GOCO’s CFO agreed that GOCO would pay the May and June bills with the understanding that the Division would be providing with the July and subsequent billings, a summary billing statement with a formula error corrected. The Division’s GOCO Accounting Tech and seasonal staff spent considerable time (approximately three weeks) and effort, in an attempt to

isolate and correct the formula error, without success. At that time the Division's CFO decided that it would be better to re-develop the billing summary in an MSAccess format. This would eliminate the error and add additional reporting capabilities to adjust to possible future GOCO requests for changes in reporting detail and formats.

GOCO was informed of this decision and the impact it would have on receiving the July and subsequent GOCO billings completed and submitted. It should be noted that the summary spreadsheet with the formula error was developed by Division GOCO accounting staff no longer with the Division.

Just after this effort began, in the third week of September, the Division's GOCO Accounting tech had to attend to a critical family issue that demanded her full attention. She was out of the office for nearly four weeks. Although she tried to work on the report at home as time would permit, the effort was seriously delayed. Again, GOCO was informed of the situation and the consequential impact on the Division's ability to meet its time commitment on the billing summary report and associated July and subsequent billing submittals. The Division eventually met with GOCO to present the draft MSAccess report on Monday, November 13, 2006 and to discuss the submittal of July, August, September and October billing reports.

The CFO has met with his FS Management team to define and pursue a strategy to cross train available staff and build process redundancy within the organization. He has also expressed his intent to add a much needed quality control and assurance component to the GOCO billing process. The addition of another budget/accounting FTE in fiscal year 2007-8, requested in the Division's fiscal year 2007-8 FTE Decision Item, and recently approved by the legislature, will add much needed staff to implement these changes.

After the review and a subsequent meeting on November 16, 2006, with the Division's Controller, GOCO's CFO agreed to accept the Division's July, August and September billings with the currently available backup and to manually adjust any inconsistencies as done previously. The Division would get the substantial outstanding revenue recorded in COFRS, and GOCO would get the funds transferred and off their books. The Division agreed to have the billings completed and submitted to GOCO by November 30, 2006. The Division's October GOCO billing would be submitted no later than December 14, 2006.

The Controller worked essentially full time to resolve the GOCO impasse and develop a billing and reconciliation process, with supporting documentation and reports to meet GOCO's billing verification, reconciliation and audit requirements. He was assigned the primary lead on all GOCO accounting and financial interface and communications events and activities. The Controller has successfully resolved the GOCO accounting and reconciliation issues, which led to successful approval and release of the fiscal year 2007-2008 spending plan.

In summary, filling critical positions, such as the Division's Controller and Lead Accountant with skilled and highly qualified individuals, combined with defining reporting needs with GOCO has successfully addressed these concerns. In a February meeting with the Executive Director, prior to the GOCO Board meeting, I recommended that we ask the State Auditor to conduct a performance audit to ensure that the Division's internal controls were in order. This recommendation was a proactive effort to review our existing internal control systems and determine if there were other improvements the Division should take, such as training, staffing, and project management.

I understand the audit team has met with Department of Natural Resources and Division personnel to define the scope of the audit. The audit team is currently assessing the Division's established internal controls as well as the financial management systems and processes. Since the team is in the fact finding state, I am not aware of any results, conclusions or recommendations.

Question 5. GOCO has stated that the Department's Controller has "extensive personal relationships with senior management within State Parks that may cloud the situation and provide a perception issue from an audit perspective. To complicate this is that the current CFO also had a personal relationship with the Director. It has been our experience during our annual financial audits that these types of close personal relationships raise red flags and can impede internal control effectiveness." Please respond to this statement and please explain whether you participated in the hiring process for the Department's Chief Financial Officer or Controller, and whether you knew either of the individuals prior to interviewing or selecting them for these positions.

Response. The meaning of "extensive personal relationships" as referenced in the GOCO statement is not clear to me. I do attend the same church as the Division's Controller and CFO. I see them on most Sundays before or after worship services.

From my association with both of these individuals, I believe they both demonstrate the highest standards of professional and personal integrity.

I was the selecting official for the Chief Financial Officer. The State of Colorado has a very rigorous and structured personnel testing process. The Department's Human Resources division manages this entire process. Human Resources issue vacancy announcements and screen the applicants, to determine which candidates meet the minimum qualifications. Following that screen and evaluation, Human Resources administer and score a written test. The test questions are developed by the Human Resources division based on the position description.

Following the scoring and evaluation of the written test, the candidates go through an oral test, with a panel of Human Resources and subject matter experts from other divisions in the Department. From this panel, generally the top three candidates are then submitted to me for selection. Individuals involved in this evaluation panel included the Department's Budget Office and the Department's Controller and the Department's Director of Human Resources. This panel developed the recommendations and submitted three candidates for me to consider. It was at this point, and this point only, that I saw the selection options. I had no knowledge of which candidates successfully passed the written test. I had no knowledge of which candidates the oral testing panel interviewed. After interviewing the three candidates, I selected the Chief Financial Officer. I considered his qualifications, background, and the needs of the Division based on the position description.

The Division's Controller followed the same process described above. After interviewing the top three candidates, the Chief Financial Officer asked the staff of the Financial Services Unit to make the final selection of the Division Controller. They did so.

Question 6. In April 2007, the Denver Post reported that you purchased a horse to participate in activities sponsored by an elite social club, and that after officials questioned this purchase you sold the horse to your son-in-law. Please explain in detail the purpose of the purchase and sale, how the purchase and sale process and amounts paid for these articles is consistent with State purchasing, bidding and sale of asset rules, and what advice you received from state officials and from whom regarding the purchase and sale.

Response. The horse was not purchased to participate in activities sponsored by an elite social club, but by the Division of Parks and Outdoor Recreation to establish an equestrian program for a variety of park operations, including visitor contacts in our urban parks as well as backcountry patrols in our mountain parks. The primary objective of the mounted ranger patrol was to provide officer presence to the busiest areas of our large metro parks. Other park and law enforcement agencies have found that a mounted ranger provides a highly effective tool for positive visitor contacts.

The value of a mounted ranger has been tested throughout the country in metropolitan communities and urban parks. Large park areas, like Chatfield and Cherry Creek, with large open space and extensive trail systems are settings where mounted rangers can patrol more effectively than rangers on foot or with motorized vehicles. Other park units and law enforcement agencies reinforce the effectiveness of visitor contact with a mounted ranger.

In 2004 the Division conducted a series of town meetings throughout the State to receive public input regarding state park facilities and services. Based on input the Division received during the town meetings, the public ranked trails and trailheads for hiking and horseback riding as a very high priority. Having park managers ride with equestrian organizations in the field to discuss State park trails, trailheads and corrals is extremely effective, as we have learned from participation in similar activities with hikers, ATV and snowmobile organizations.

The purchase was consistent with all State procurement regulations. I personally met with the Department Controller and discussed the equestrian program in the Division's park operations. We discussed the program benefits and advantages of a mounted patrol in our metropolitan parks. Subsequent to that discussion the purchase order was reviewed and approved by the Department of Natural Resources Contracting Officer.

Following a budget briefing, a member of the budget committee expressed a comment regarding the horse that I felt could possibly put some of the Division's programs at risk. I discussed the comment with the Division's executive team and determined selling the horse was the appropriate action.

The subsequent sale of the horse was consistent with state property disposal regulations. The sales contract was reviewed and approved by the Department's Contracting Officer and Controller.

Question 7. Earlier this year, we joined other colleagues in a letter to Secretary Kempthorne expressing concern about weakening changes to the rules for the Endangered Species Act which the Department was considering.

It is my expectation that before any regulatory changes, including any changes that would amend the ESA's key protection, such as habitat designations, the listing process, scientific standards, and interagency consultation, are proposed, the subcommittee will be briefed on them and given a chance to review them well in advance of any formal proposed rulemaking. Do I have your commitment to do so?

Response. As I mentioned to your staff during our meeting last week, I am a believer in open dialogue. While I have been generally briefed on past versions of the draft proposal, I look forward to learning more about it. I am also not aware that a decision has been made to finalize or publish anything to date. I am aware that U.S. Fish and Wildlife Service Director Hall has provided general briefings on this issue and I advised that it is the Department's practice to brief committees of jurisdiction in advance of all significant actions, including key points of major rule-making proposals. If confirmed, I will ensure that this is done for the Committee, should the Department decide to issue proposed revisions to these rules.

RESPONSES BY LYLE LAVERTY TO ADDITIONAL QUESTIONS FROM SENATOR LIEBERMAN

Question 1. Earlier this year, we joined other colleagues in a letter to Secretary Kempthorne expressing concern about weakening changes to the rules for the Endangered Species Act which the Department was considering.

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Question 2. The endangered species program is currently experiencing at least a 30 percent vacancy rate and in some areas that rate may be close to 50 percent, undermining its ability to recover species, respond to stakeholders in a timely fashion, and list species in need of protection. How will you address the backlog of candidate species proposed for listing, but still unprotected by the Endangered Species Act? How will you address the delays in the development and implementation of species recovery plans?

Response. I have not had the opportunity to review in detail the staffing situation in the FWS's Endangered Species Program. However, I believe that it is important to be responsive to stakeholders and work with them to undertake conservation measures that prevent the need to list species, as well as to implement conservation measures designed to recover those species that have been listed under the Endangered Species Act. If confirmed, I commit to working with the FWS to better understand and address the challenges facing the Endangered Species Program.

Question 3. The Interior Department has recently been troubled with the interference of professional staff and the undermining of scientifically based decisions. You said science should drive policy and that you would set minimum performance and ethical standards to ensure that these sorts of actions do not continue. Can you specifically outline these standards and the steps you plan to take to make certain that the best available science is used to drive the implementation of the Endangered Species Act?

Response. If confirmed, here are the actions I will take to ensure that science is not suppressed or improperly edited and that the best available science is used in our decision.

Immediately, I will ask the Solicitor's Office and the Designated Agency Ethics Officer to brief the staff on the rules and regulations with regard to the protection of and disclosure of information received by the Office.

I will affirm that discussion with my pledge to staff and employees of both agencies, the National Park Service and the U.S. Fish and Wildlife Service, reiterating

my personal commitment to the ethical standards of conduct and behavior articulated by Secretary Kempthorne, including not sharing non-public information with outside parties.

Second, I will ensure that my staff understands the difference between questions of science and questions of policy. I will explain that my policy staff is not to ask for or direct any change or modification in scientific findings by either agency.

I will explain that any contacts they have with field personnel at either the Fish and Wildlife Service or the National Park Service regarding questions of science must and will be through established organizational channels, and only with my prior approval. I will actively monitor agency performance with and through both agency leaders.

Third, I will establish a code of conduct for employees to treat people with dignity and respect. Abusive behavior toward anyone will not be tolerated.

Fourth, I will actively engage in conversations with agency leaders, Directors Bomar and Hall, and agency employees to monitor performance. I will take whatever steps are necessary to ensure that organizational performance is meeting expectations. I will make it clear that:

- Contact between my policy staff and agency personnel on management or regulatory actions will go through established organizational channels;
- I expect bureau directors to personally ensure agency decisions are supported with credible scientific information that, as appropriate, is peer reviewed;
- My policy staff is not to ask any of the agency staff to change scientific findings;
- No staff, policy or career, are to act abusively toward any person, and if there is any indication of inappropriate behavior, it is the Director's responsibility to inform me immediately;
- Bureau directors are to personally advise their management teams of my expectations for each of them regarding these principles; and
- Any violations of these principles are to be reported immediately to me personally by the agency director for appropriate action.

In the event of any violation of these principles, I will not hesitate to ensure that appropriate action is taken.

RESPONSES BY LYLE LAVERTY TO ADDITIONAL QUESTIONS FROM SENATOR CARDIN

Question 1. During your tenure as the head of the Colorado State Parks system you made a concerted effort to modernize camping and cabin facilities. Many attribute the 7.6 percent percent increase in attendance at Colorado State Parks in part to these modernizations. In Maryland, the Patuxent Wildlife Research Refuge covers 12,900 acres between Baltimore and Washington DC. The site is in serious need of modernization and repair. How would you work with the Department of the Interior and OMB to ensure that Patuxent and sites like it obtain long-term commitments to facilities improvement?

Response. As I mentioned during our meeting prior to my hearing, I am not familiar with the U.S. Fish and Wildlife Service's facilities management plans or its capital/maintenance investment strategy to date. However, if confirmed I will work with the Fish and Wildlife Service to determine this project's priority within the Service's maintenance program. With strong supporting information, I will advocate for a strong investment program to support the mission and goals of the refuge system.

Question 2. Smith Island is Maryland's only inhabited island. The northern section of the island complex includes the Martin National Wildlife Refuge. This refuge is critical for myriad species of waterfowl and wildlife. However, accelerating shoreline erosion is threatening the refuge as well as the island's population. We have secured funding to help ameliorate the immediate problem on Smith Island by constructing an offshore segmented breakwater. However, continued attention is needed to save the Refuge and the inhabited sections of Smith Island. How would you approach the erosion problem in Smith Island and areas suffering similar erosion problems? What do you believe should be done to save wetlands and underwater Bay grasses such as those in the Chesapeake?

Response. As I mentioned to you in our meeting, I have not had the opportunity to review the various concerns that have been raised regarding the erosion issue at Smith Island, so I am not in a position to comment on specific recommendations regarding this situation. However, I do believe that the restoration of wetlands and related habitats is important in many areas, including the Chesapeake Bay. If confirmed, I will work with the U.S. Fish and Wildlife Service to address the conservation and protection of wetlands and other important habitat such as underwater Bay grasses in the Chesapeake Bay.

Question 3. Maryland is working hard to reduce excess nitrogen and phosphorus inputs into the coastal byways. Output from the Assateague Island National Seashore wastewater treatment plant is a significant contributor to the problem. To address this problem, Assateague Island National Seashore has been provided funds to make modifications to its wastewater treatment plant. However, the process has stalled at the Dept. of the Interior. What would you do to make sure that those bureaucratic hurdles that remain are successfully surmounted?

Response. As Assistant Secretary, I understand that ultimate responsibility for ensuring that such facilities in parks or refuges comply with any applicable state requirements will lie with me. I look forward to taking on that responsibility. As I mentioned during our meeting, while I am not familiar with the details of this matter, if confirmed I will work with the National Park Service to determine what has delayed the project and to ensure that it continues to move forward. I will work with the National Park Service to examine all options to identify available funding or to seek new funding through appropriate National Park Service funding programs to complete the project.

RESPONSES BY LYLE LAVERTY TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

Question 1. Implementation of the Endangered Species Act is very important to this Committee. During your career how have you been involved in implementing the ESA? What do you believe the role of the Assistant Secretary in implementing the ESA?

Response. Since the enactment of the Endangered Species Act, I have been involved in the design, coordination and implementation of natural resource management activities that integrate habitat protection with the goal of recovering species.

As a Regional Forester, I worked with the U.S. Fish and Wildlife Service and the State Division of Wildlife on the recovery of the lynx in Colorado. For the past several years, reintroduced lynx have successfully reproduced, an indication that agencies working together can make a difference in the recovery of endangered species.

Ten years ago I served on the Interagency Grizzly Bear Committee, coordinating agency activities to support the recovery of the grizzly bear in the Greater Yellowstone Ecosystem. Today, that grizzly bear population has been delisted, an excellent example that agencies working together, seamlessly, with public support can make a difference in the successful recovery of species.

As Forest Supervisor of the Mendocino National Forest, I worked extensively with the U.S. Fish and Wildlife Service staff and the California Department of Fish and Game successfully managing the complex southern portion of spotted owl habitat.

I believe the role of the Assistant Secretary is to commit personal energy and coordinate agency resources to achieve the stated purposes of the Endangered Species Act. If confirmed, I will work aggressively with other Federal land management agencies, States, tribes, private land owners and other nongovernmental organizations to further our Nation's conservation goals.

Question 2. Last year, the Supreme Court in its *Rapanos* decision correctly limited federal regulatory jurisdiction of waters of the U.S. The Fish and Wildlife Service oversees several programs that partner with landowners, play an important role in the preservation of our environment, and are critical to the President's goal of an annual wetlands gain. Do you agree that programs like Partners for Fish and Wildlife that work collaboratively can be very successful in preserving the environment without a confrontational, regulatory approach that often leaves landowners feeling that their rights have been violated?

Response. I completely agree that programs like the Partners for Fish and Wildlife program can be extremely valuable in protecting habitat. It and other cooperative conservation programs promote partnerships with States, landowners, and other citizen stewards to, among other things, protect and enhance habitat for threatened and endangered species. If confirmed, I will work with U.S. Fish and Wildlife Service Director Hall to continue the success of such partnership programs.

Question 3. During the course of your professional career, how have you reconciled issues of science and policy?

Response. As a professional resource manager, I have found that issues of science and policy can be reconciled through clear and open discussions at the beginning of a project. The leadership role of the line officer or project manager is to, at that point, bring all parties—scientists and resource specialists—together and clearly articulate project objectives and science requirements associated with the project site. I have found that, in my past positions, the most significant aspect of my role as

the deciding officer was ensuring that my team was complete and that questions of science and policy were openly discussed as the foundation of the project design.

Question 4. Mr. Lavery, during the question and answer period, you made some comments about the Fish and Wildlife Service activities regarding a potential penguin listing. Specifically, you said “they are in the process now of gathering public comments on that. That also would be expanded into a 12-month status review.” The FWS announcement that the petition to list penguin was found to be warranted was July 10. You appeared before this committee on July 17. Your response to the question about penguins suggests that the FWS has already made up its mind to propose listing of these species after only one week of official comment and well in advance of gathering any data to assess penguin populations, threats to their existence, regulatory mechanisms, etc. This greatly concerns me. Can you please provide detailed information as to where the FWS is in the process with the penguins and explain what information you received that would suggest that the FWS will indeed take the next step in proposing to list the penguin species.

Response. During the question and answer period, I unintentionally misspoke when commenting about the U.S. Fish and Wildlife Service’s activities with respect to a potential penguin listing. Under the Endangered Species Act, the first step in considering a petition is to evaluate the information presented by a petitioner, after which the Fish and Wildlife Service is required to make a finding on whether the petition provides substantial information to indicate that listing may be warranted.

In fact, with the Fish and Wildlife Service’s July 11, 2007, publication of a 90-day finding that listing may be warranted under the ESA for 10 of the 12 petitioned penguin species, the Fish and Wildlife Service is now only in the earliest stages of conducting a status review. At this time it is my understanding that the Fish and Wildlife Service has not determined whether any or all of these penguin species warrant inclusion on the list. Through a 60-day open comment period, the Fish and Wildlife Service is gathering information to assist in evaluating the status of each penguin species under review and, after reviewing public comments, will make a decision as to whether or not it should propose to list any of the penguin species based on the best available science and commercial data.

It is my understanding that a positive 12-month finding for any of these species, if made, would trigger a second 12-month period for public comment and scientific review of a proposed listing rule before a final decision is made on whether to designate any or all of these species as threatened or endangered.

RESPONSE BY LYLE LAVERTY TO AN ADDITIONAL QUESTION
FROM SENATOR VOINOVICH

Question. The 2006 National Park System Advisory Board report, “Charting a Future for National Heritage Areas” emphasizes how the National Park Service can benefit from welcoming the National Heritage Area approach to conserving nationally important landscapes and cultures. What approach and strategy will you utilize to implement the recommendations in this important report so that National Heritage Areas are included within the family of the National Park Service?

Response. National Heritage Areas support the Department’s mission to work in partnership with local communities to promote, protect, and interpret resources and tell the stories of our national heritage. I am familiar with National Heritage Areas in Colorado, and am generally aware of the Advisory Board’s report and recommendations. I understand that the Administration has previously transmitted a legislative proposal to provide this program with clear criteria and standards for management planning, among other things. If confirmed, I look forward to continuing to work with Congress on this very important issue.

Senator BOXER. Thank you so much, Mr. Lavery.

We are going to start the questioning period, so people can have 5 minutes. I am going to give any Senator that didn’t make an opening statement 7 minutes, so they can have a little extra time.

Mr. Lavery, your comments are music to my ears. I really think the spirit in which you gave them is very important to this committee on both sides.

There was an article July 9, “U.S. Officials Looking to Protect Ten Penguin Species. The Bush administration is considering an endangered species protection for ten penguin species whose polar

habitat is shrinking due to global warming. The Fish and Wildlife Service said that listing 'may be warranted,' and initiated a formal status review which is the first step in the process of listing a species. This would put the penguins on the same path as the polar bear." This is the report that I have.

Are you aware of this? Have you been briefed on this situation yet?

Mr. LAVERTY. Yes, ma'am, I have.

Senator BOXER. What do you see the timeframe for both the polar bear decision and the penguins decision?

Mr. LAVERTY. Madam Chair, there are basically two different time lines right now.

Senator BOXER. OK.

Mr. LAVERTY. For the polar bear, the polar was listed as a proposed listing and they have received public comments on that. The action by the Agency is to come up with a recommendation in December. That is on the polar bear.

Senator BOXER. OK.

Mr. LAVERTY. The listing on the penguin as a result of a petition was in fact the 90-day listing. They are in the process now of gathering public comments on that. That also will probably expand into a 12-month status review by the Agency.

Senator BOXER. I see. Very good. Well, thank you for that.

I want to talk to Kristine. I noticed, and of course all of us did, the earthquake in Japan that involved some type of a leak from the nuclear power plants there. Without getting into whether it is a problem or not, because I certainly don't have the facts to know, I am only reading news reports, one of the things I noticed in California, and it is just mind-boggling, is when these great, big, giant projects come up, for some reason, whether they are great big dams or nuclear power plants, for some reason, they come up, they are right near earthquake faults. I just don't—I think this is something that we ought to be concerned about.

So I guess my question is pretty simple. Would you commit that as you look over these applications, and I know that Senators Carper and Voinovich will be looking very closely, this is their jurisdiction in the subcommittee, and I greatly respect that, I wanted to know from you, is this something that you will carefully look at as these applications come forward, the geological situation, and ask questions from the scientists about the earthquake potentials?

Ms. SVINICKI. Yes, Senator, clearly seismic considerations, as you've mentioned, are an important consideration, not only in your State, but anywhere in the country that we have faults and other seismic conditions. That needs to be analyzed against both a realistic case and a worst case scenario. Those need to be informed decisions.

Senator BOXER. Thank you so much. My other question is, during their investigation, GAO's fake company was unable to obtain sealed radioactive sources from the State of Maryland. They tried first, they went to Maryland as a sting operation. Because the State said a site visit would be necessary before materials could be issued.

Now, the NRC does not require a pre-license inspection for a licensee to receive a Category 3 type of radioactive material. If

Maryland has determined that a pre-license inspection prior to receipt of Category 3 materials is necessary, why hasn't the NRC? Do you know? If you don't know, is this something that you will consider bringing up if you are confirmed?

Ms. SVINICKI. Senator, I was able to watch a certain amount of the hearing that was conducted on the GAO sting investigation. I was exposed to an amount of Commissioner McGaffigan's testimony. He was the NRC witness at that hearing. I know that he has pledged to look at this issue.

So it would appear to me as an outsider that it will be something that the Commission will be evaluating, since Commissioner McGaffigan has made that commitment to do so. If confirmed, I certainly would be a part of that.

Senator, I was reflecting, in your opening comments where you talked about national security aspects of nuclear materials, I certainly, if confirmed would bring a strong focus on our vulnerabilities to my service as Commissioner.

Senator BOXER. Good. I am very pleased. Just think about Senator Warner sitting on your shoulder, because it is just ridiculous to think about our rules being weaker than the State of Maryland. It blows my mind.

Last question. I understand you have worked in the Department of Energy's Civilian Radioactive Waste Management Office. Did you work on transportation and waste disposal issues related to Yucca Mountain?

Ms. SVINICKI. Senator, thank you for that question. I want to be as clear as I can with the committee. When I worked at the Department of Energy I was employed in what is called the Office of Civilian Radioactive Waste Management. That is the office established under law to administer and develop the geologic repository. My work was not in Las Vegas on the Yucca Mountain license application, it was in Washington, DC at the Department of Energy headquarters.

I worked transportation packaging. As you had mentioned in your opening comments, the safe transportation of these materials is so important. Whether a geologic repository opens or not, we have to transport materials this week and every week very, very safely. I also worked on inventories of defense materials that may require deep geologic disposal. Those would be materials currently at Department of Energy sites.

Senator BOXER. So you didn't work directly on Yucca?

Ms. SVINICKI. I did not.

Senator BOXER. OK, very good. Thank you.

Senator Inhofe.

Senator INHOFE. Thank you, Madam Chairman.

Kristine, you and I briefly discussed in my office the highly enriched uranium spill at the Nuclear Fuel Services facility in Tennessee and my disappointment with the NRC's lack of communication about the event. In your current capacity as staff to the Armed Services Committee, you also understand the need to protect sensitive information that could aid our adversaries who might want to use it against us.

If confirmed, will you ensure that the national information security needs are adequately protected and balanced with the NRC's

need to improve public communication? Maybe any other comments you might want to make about the Tennessee event.

Ms. SVINICKI. Thank you, Senator. I do recall that we discussed the Erwin, TN spill of material and I commented to you that it struck me just in reading reports and summaries of the event that it was a very serious matter. I had been taken aback with something of that seriousness, that the notifications were delayed.

I don't know the cause of the delay in notifying on that incident. But I confirmed to you and I would confirm that those are the types of matters that I think, if there is any threat to public health and safety, that people need to know about.

I also do acknowledge, as you have mentioned, that post-9/11, Government-wide, there has been a consideration of what is appropriate to post on Websites and the appropriate balance needs to be struck. These are difficult issues, to find that balance, but I would pledge to do that.

Senator INHOFE. All right, thank you. We also talked about the fact that the NRC is going to be receiving a lot of applications under the new reactor licensing program. My concern is you don't get bogged down. We want to preserve the safety and the security, and we want to have applications reviewed efficiently and expediently. I just hope that you will do that. Any comments as to your intentions in terms of keeping things going?

Ms. SVINICKI. Senator, I recall that we discussed the challenges of this matter. I think any time that something hasn't happened for many, many years such as the NRC has not been confronted with a new license application for so many years that this will be challenging process as we move forward, not only to continue excellence, as they need to do in regulation of current facilities, but to be able to resource in terms of people and human resources that they will apply to the new applications they are getting. This is going to be a tough challenge that I referred to in my statement. The tempo is going to go up and they need to continue to do a good job.

Senator INHOFE. Yes, back some 10 or 12 years ago when I chaired the Clean Air Subcommittee, at that time it had been 12 years since there had been an oversight hearing of the NRC, and things were in need of oversight. We actually put deadlines on dates. This is something you can't do when you are looking at these applications, because no two cases are alike. But I just hope that you keep things moving along, because I think we all agree that we are going to have to get these things approved.

Now, Lyle, it was music to my ears when you said something about the fact that you want to extend courtesies to these people, the stakeholders and other people. This is something that you don't see very often and you don't hear from people. I am glad that you have.

One of the programs that you and I talked about that I just feel very excited about was this Partners for Fish and Wildlife Program. We had hearings out in my State of Oklahoma, Mr. Hall was there, and I introduced legislation after that hearing. The President has signed it. This is the type of thing that Government, in my opinion, should be doing, working with the property owners. All so often, they think that someone, if you are a landowner, that you

are there trying to abuse, you are trying to pollute, you are trying to not take care of the wildlife.

But I think this partnership program, that started out as a pilot program, is tremendously successful. I would like to hear your comments about that partnership in wildlife program.

Mr. LAVERTY. Senator, I believe that working with landowners becomes the essence in how we are going to manage the wildlife resources of this country. A major proportion of wildlife habitat is not on Federal eState, but it requires and demands that kind of a working relationship with private landowners.

I think we need to do all we can, and I think this is what Dale and his group are working on and trying to create that kind of an environment, that can make it a working relationship with the private landowners to further conservation causes in terms of protecting wildlife species and habitats. It becomes critically important to be able to have incentives that can help landowners do that. It should not be perceived as a penalty, if you will, for doing some things to protect wildlife habitat. I think this is some of the goals and objectives that the partnership program is all about.

Senator INHOFE. I agree with that. Since my time is running out, let me just ask you, you commented that you have several actions that you want to take and you named four. Are there others? Is your list longer than four?

Mr. LAVERTY. Yes, sir. I think first of all, is to be able to sit down with the staff and understand kind of the feeling of the staff. It has really been under intense pressure. I think you need to understand, what is the staff feeling about the issues that are facing the staff as it relates to the IG report and then look at recommendations and solutions that can be driven from a staff perspective.

The protection of science is absolutely fundamental. I just can't say it strong enough that that is the foundation of good public policy. You need to have good science. I think Madam Chair talked about the importance of having good science. Then you debate the policy. I want to be able to help facilitate that.

Senator INHOFE. That is good. Thank you very much. Thank you, Madam Chair.

Senator BOXER. Thank you, Senator.

Senator Carper, you get 7 minutes.

Senator CARPER. Thank you, Madam Chairman.

To our witnesses, welcome, congratulations on your nominations. If I could start with you, Ms. Svinicki. Is it true that you once worked for a Member of Congress?

Ms. SVINICKI. I have had the privilege of serving three Senators; I currently serve Senator McCain, before that Senator Warner and Senator Craig, two members of this committee.

Senator CARPER. That is pretty good. So you have a pretty good idea of how we work around here, or don't work, I guess.

Ms. SVINICKI. I do, sir.

Senator CARPER. We don't work well together sometimes. This committee I think maybe being an exception to that.

I want to talk with you a little bit about communications. But before I do, I want to reflect back on something the Chairman just said regarding the ability of GAO in the scam operation to counterfeit a license that would have enabled them to acquire substantial

amounts of low-level radioactive materials that they could cobble together and maybe create enough oomph for a dirty bomb.

I go back to that, I am an advocate of nuclear power, I am also an advocate of reducing our dependence on foreign oil. I don't know how we reduce that dependence without a whole lot of things, more solar, more wind, cellulosic ethanol, biobutanol, more energy efficient appliances, more energy efficient cars, trucks or vans. I also believe it is impossible to move meaningfully toward energy independence without a greater reliance on nuclear energy.

Every now and then, something comes along that gives us a scare. We had one of those just a week or so ago with respect to the GAO's scam operation. I said at the hearing, which I chaired in part, I said that everything I do, I know I can do better. I used to implore my cabinet, when I was Governor of Delaware, and my staff now here in the Senate, with these words, if it isn't perfect, make it better, if it isn't perfect, make it better. None of us are perfect. God knows I am not, and we all make mistakes.

The latitude that the Nuclear Regulatory Commission has for making mistakes is more narrow than that which falls on the rest of us. One mistake, one oversight, one slip in the work that the Commission does cannot just create maybe a difficult situation in a nuclear power plant, maybe an embarrassing situation, what it may do even more is undermine the confidence, which has just now I think resurged to support, within the population, and within the Congress, confidence and support for nuclear energy. So I would just call on you as a soon to be new member of the NRC, that you adopt as your own this adage of, if it isn't perfect, make it better. Hold the folks that you're over, looking over their shoulder, just hold them to the very highest standards every single day. Vigilance is the watch word. To the extent you can do that, and Senator Voinovich, in our role as co-chairs of the Clean Air and Nuclear Safety Subcommittee, we will be there with you.

In fact, we are going to meet tomorrow morning, I believe, with the Chairman of the Commission. One of the things we are going to talk about, and this is my question, and I will ask you just for a brief answer, one of the things we are going to talk with him about is communication. When something goes wrong, we don't want to read about it in the paper, we don't want to hear about it in the news. We want you or the chair to be telling us what is going on. We haven't had the kind of communications, in all instances, that we need. I would just ask for your thoughts in that regard.

Ms. SVINICKI. Senator, thank you for those comments and for that question. I think that public confidence in a regulator is absolutely essential. I think transparency and communication are a keystone in building that confidence. That would be a focus of mine if I were confirmed, to increase public confidence.

In the process of my courtesy calls, a question was posed to me which was, who has the biggest stake in making sure that nuclear power is safe. I think it is proponents of the technology who should have the highest standards for safety and security of these installations. I agree with that point, and I would pledge to you, Senator, if confirmed, to work on continual improvement, as you said, if it is not perfect, make it better, of communications.

Senator CARPER. All right, thank you.

Mr. Laverty, congratulations on your nomination. Thank you for your willingness to serve. I received a letter from a fellow named Charles Saulk, as we call him, Chas, in Delaware, he is the director of the Delaware Division of State Parks and Recreation. He is someone we hired when I was Governor, we hired him to run our parks operation. He wrote to me and really denounced your nomination. I happened to be walking by his home in Delaware, it is a small State, I was walking by his house and he came out on his front porch just to tell me what an awful guy you are, and he said, the last person I would support would be Lyle Laverty.

[Laughter.]

Senator CARPER. So what have you done to make him feel that way about you?

Mr. LAVERTY. Senator, I appreciate the comment. I believe that the conversation is focused on the issues related with Ms. McDonald and the ethics in the Department. That is what I am committed to work on, to do all I can.

Senator CARPER. More seriously, he actually had very positive things to say.

Mr. LAVERTY. Thank you very much.

Senator CARPER. Maybe I have seen in the letter, and even on the front steps of his house, he had good things to say about you, about a week ago.

Mr. LAVERTY. Chas is good.

Senator CARPER. Chas has worked with us, along with a lot of people in our State, to try to make Delaware the 50th State, the 50th and last State, to actually have a national park. We are the only State in America that has no national park. We are not even a unit of a national park. We have been working on a process through gathering public opinion in our State, creating a proposal that has been endorsed by a congressional delegation, submitting it to the Park Service. Mary Bomar was by and met with me from the National Park Service last week.

Lynn Scarlett, Deputy Secretary of the Department, was in one of our wildlife refuges with us this last weekend. So we had a chance to chat with her.

Mary Bomar, who is the head of the National Park Service, does she report to you?

Mr. LAVERTY. Yes, sir.

Senator CARPER. Oh, good. How do you feel about Delaware being the only State in America that doesn't have a national park?

Mr. LAVERTY. I think you ought to have one.

[Laughter.]

Senator CARPER. I move the nomination——

[Laughter.]

Mr. LAVERTY. There was no other answer, was there?

Senator CARPER. We worked long and hard, we appreciate the chance to work with all you guys to finalize and fund the feasibility study and move it on. I think standing right behind you is Rob Horwath. Rob was good to help us as we were moving our feasibility legislation through the House. I acknowledge him and thank him for that. We look forward to working with you, too. Thanks so much.

Senator BOXER. Thank you, Senator.

Senator Voinovich.

Senator VOINOVICH. Thank you, Madam Chairman.

I would like to just followup on comments some of my other colleagues have made with this issue of communications and transparency, we are in a unique position today where because of the Energy Policy Act of 2005, we are ready to launch, well, we have 12 applications, for sure, 28 reactors. We are getting some good vibes back from the environmental community that they are not as opposed to this as they had been in the past, because of the fact that they are so concerned about climate change and nuclear power doesn't emit these greenhouse gases.

On the other hand, I think we have to be very careful about this communication issue. I was after Nils Diaz, and I have talked to Chairman Klein about it, and it just seems they don't get it. One thing I would like you to do is comment on that, and you have done it so far, but I think we need to really have someone hitting this very, very hard. Because I think it does hurt the credibility of the Agency and could be the reason why some people aren't going to be as supportive as they should be.

The second thing, and this is something that Senator Carper and I are going to probably be talking to Chairman Klein about this week, is that we need to make clear to the public that these facilities, the 103 reactors, almost 104, in terms of earthquakes and that are not, that are not subject to earthquakes, in other words, they have been built in areas where we are not going to have a Japanese problem.

So I would like you to just share with us once again your attitude toward this communication. We went through Davis-Besse here, and it took us a long time to recover from that. I would like your thoughts on that, because as I mentioned in my opening statement, it is wonderful that you have had the perspective from Congress.

Ms. SVINICKI. Thank you, Senator. I appreciate returning to this point, because it is such an important one. I would hope that with my background and being such a closer observer of the most recent policy debates on energy, environment, on the resources we will need to meet our future energy needs, I hope that I will bring a unique sensitivity to public awareness, to communication.

I probably should not tell a story about Senator Warner, but as I reflect upon something in my service with him, it is a story related to North Anna, in Virginia, and the consideration of the construction of additional units at that site. The Senator came back from being in that part of the State and he asked me to come over to his office and he said, "Why is it when I go to these communities and I meet with members of the public, they are so unaware of what is potentially planned or the process that the NRC would use to evaluate such an application?" He expressed to me his frustration about that.

So I would like to pledge that I would be uniquely sensitive to that. I appreciate your focus on it, and if confirmed, would work on that very heavily.

Your second point on earthquakes I think is actually tied to the first. I think if the public understood more thoroughly how applica-

tions are evaluated that their confidence would, for better or for worse, at least be an informed decision and position that they might take on having these facilities located nearby to their communities. So I think that the two are linked. The basis would be understanding.

Senator VOINOVICH. Are you also aware of the fact that if we are going to launch this new effort in terms of nuclear power in the country that there is a challenge in regard to the issue of human capital?

Ms. SVINICKI. Yes, Senator. As you had mentioned and referred to earlier, that is one where I had said in my statement it was a daunting challenge and I felt challenged. I think the human resource issue is tough. Anyone who would come and testify to this committee that that is something that is easily dealt with is probably creating a false sense of confidence. That is going to be a tremendous challenge. This country does not produce the numbers of scientists and engineers that we need. NRC would be competing in that same environment for those folks. These are very tough problems, Senator.

Senator VOINOVICH. I would suggest that you again review the flexibilities that you have in terms of hiring these people and make sure that you have everything you need to get the job done. I would be interested in hearing from you, should you be appointed. Thank you.

Ms. SVINICKI. Thank you.

Senator BOXER. Thank you, Senator.

Senator WHITEHOUSE, you have 7 minutes.

Senator WHITEHOUSE. Thank you very much, Chairman.

I wanted to ask a few questions of Mr. Lavery, if I may. In February 2005, as you probably know, the Union of Concerned Scientists surveyed scientists at the Fish and Wildlife Service and found pervasive political interference in science at the Agency. Two-thirds of the scientists who responded to the survey, 303, were aware of cases in which Interior Department political appointees interfered with scientific findings. Eighty-four scientists reported that they were directed to inappropriately exclude or alter technical information from agency scientific documents.

Now, we disagree on a lot of things up in this building, and everybody is entitled to their own opinion. But they are not to their own science and they are not entitled to their own facts. What will you do to guarantee that interior political appointees will keep out of improper meddling in scientific facts and determinations?

Mr. LAVERTY. Senator, thanks for that question. I really believe that that has been one of the fundamental elements that I have wrestled with as I have read through the Inspector General's report and thought about, what would I do in that position. I believe it goes back to what I shared earlier with the committee in my remarks, you have to set the expectations that science is science and that you deal with policy issues as a separate conversation. You have to do everything you can to secure the culture that presents good science.

I think that comes from active involvement in working with staff, with scientists to create that expectation that this is the way science will be developed, and that from the political side, we let

science come together and then you deal with the policy issues as a separate entity. I think you have to articulate that, but then you have to constantly monitor, do you feel that science is coming up forward. I would like then for that Union of Scientists to come back and say, in the Department of Interior, science is good science and it is not being suppressed. I think that comes from leadership and I am willing to jump in to do that. I am committed to doing that.

Senator WHITEHOUSE. OK. One of the reasons I ask is because just a few months ago, the Interior Inspector General wrote a fairly scathing report, chastising former Deputy Assistant Secretary for Fish and Parks Julie McDonald, who I believe would have reported to you had she stayed on, she resigned, as you know, a few weeks after the report was released, for habitually rewriting and distorting scientific documents. Although obviously she has since resigned, that problem of political interference remains a serious concern. I urge you to try to put that behind the Department.

One of the things that is very important to the people of this country is to be able to count on their departments of Government. We are neck deep in a huge disarray over at the Department of Justice. Let us not have the Department of Interior follow that path. We want to be able to count on you.

Mr. LAVERTY. Yes, sir. I am committed to do that.

Senator WHITEHOUSE. Very good.

Thanks, Madam Chair.

Senator BOXER. Thank you so much, Senator. Senator, what I would like to do is, Senator Whitehouse, put into the record the two-page summary of the Union of Concerned Scientists survey, so it appears in the record with the questions. I will mention it in my closing statement.

Senator WHITEHOUSE. Thank you.

Senator BOXER. Thank you very much for bringing this to the committee.

[The referenced material follows:]



U.S. Fish & Wildlife Service Survey Summary February 2005

The Union of Concerned Scientists (UCS) and Public Employees for Environmental Responsibility (PEER) distributed a 42-question survey to more than 1,400 USFWS biologists, ecologists, botanists and other science professionals working in Ecological Services field offices across the country to obtain their perceptions of scientific integrity within the USFWS, as well as political interference, resources and morale. Nearly 30% of the scientists returned completed surveys, despite agency directives not to reply—even on personal time.

I. Political Interference with Scientific Determinations

Large numbers of agency scientists reported political interference in scientific determinations.

- Nearly half of all respondents whose work is related to endangered species scientific findings (44%) reported that they “have been directed, for non-scientific reasons, to refrain from making jeopardy or other findings that are protective of species.” One in five agency scientists revealed they have been instructed to compromise their scientific integrity—reporting that they have been “directed to inappropriately exclude or alter technical information from a USFWS scientific document,” such as a biological opinion;
- More than half of all respondents (56%) knew of cases where “commercial interests have inappropriately induced the reversal or withdrawal of scientific conclusions or decisions through political intervention;” and
- More than two out of three staff scientists (70%) and nearly nine out of 10 scientist managers (89%) knew of cases “where U.S. Department of Interior political appointees have injected themselves into Ecological Services determinations.” A majority of respondents also cited interventions by members of Congress and local officeholders.

II. Negative Effect on Wildlife Protection

While a majority of the scientists indicated that agency “scientific documents generally reflect technically rigorous evaluations of impacts to listed species and associated habitats,” there is evidence that political intrusion has undermined the USFWS’s ability to fulfill its mission of protecting wildlife from extinction.

- Three out of four staff scientists and even higher proportions of scientist managers (78%) felt that the USFWS is not “acting effectively to maintain or enhance species and their habitats, so as to avoid possible listings under the Endangered Species Act;”

- For those species already listed as threatened or endangered under the ESA, more than two out of three scientists (69%) did not regard the USFWS as effective in its efforts toward recovery of those listed species;
- Nearly two out of three scientists (64%) did not feel the agency “is moving in the right direction;” and
- More than two-thirds of staff scientists (71%) and more than half of scientist managers (51%) did not “trust USFWS decision makers to make decisions that will protect species and habitats.”

III. Chilling Effect on Scientific Candor

Agency scientists reported being afraid to speak frankly about issues and felt constrained in their roles as scientists.

- More than a third (42%) said they could not openly express “concerns about the biological needs of species and habitats without fear of retaliation” in public while nearly a third (30%) did not feel they could do so even inside the confines of the agency;
- Almost a third (32%) felt they are not allowed to do their jobs as scientists;
- A significant minority (19%) reported having “been directed by USFWS decision makers to provide incomplete, inaccurate or misleading information to the public, media or elected officials;” however,
- Scientific collaboration among USFWS scientists, academia and other federal agency scientists appears to be relatively untainted by this chilling effect, with a strong majority (83%) reporting they felt free to collaborate with their colleagues on species and habitat issues.

IV. Resources and Morale

There was a broad perception that the agency lacks the resources to accomplish its mission. Not surprisingly, results showed a strain on staff morale.

- Half of all scientific staff reported that morale is poor to extremely poor and only 0.5% rated morale as excellent;
- More than nine out of ten (92%) did not feel that the agency “has sufficient resources to adequately perform its environmental mission;” and
- More than four out of five (85%) said that funding to implement the Endangered Species Act is inadequate.

The survey was sent to 1,410 scientists, of which 414, or 29.4%, responded to the survey.

Senator BOXER. Senator Barrasso.

Senator BARRASSO. Thank you, Madam Chairman.

Ms. Svinicki, congratulations. There is a concern of the folks in Jackson Hole, WY, it has been a continuous concern and it has to do with the issue of potential radiation discharges from the Idaho National Energy and Environmental Laboratory. What role does the NRC play in that, in ensuring that those discharges do not occur, and then there is another role, I guess from the Department of Energy, so what role would you play?

Ms. SVINICKI. Senator, the Idaho National Laboratory is a Department of Energy facility and as such, under the Atomic Energy Act, it is not regulated by the Nuclear Regulatory Commission. I believe that the State of Idaho would have, in terms of air emissions, would have Clean Air Act authority over that facility.

Senator BARRASSO. Thank you. I know that you, from your work in Idaho, you are certainly aware of the concerns in Jackson Hole. I just wanted to express those again today, so that in your, while not specifically in the authoritative position, you know that those concerns continue from the folks in Jackson Hole. Thank you.

Ms. SVINICKI. Thank you.

Senator BARRASSO. Mr. Lavery, if I could, a couple of things. I know this committee doesn't have jurisdiction over the national parks, but you will. The people of Wyoming do have some serious concerns about access to the national parks, specifically Yellowstone National Park, and specifically winter access. Perhaps in another venue, I would appreciate the opportunity to sit and visit with you specifically about winter access to Yellowstone Park.

Mr. LAVERTY. I would be very, very happy to do that, and share with you what the Park Service is doing right now in terms of that analysis.

Senator BARRASSO. Thank you.

A couple of other topics. As you know, brucellosis has been eradicated from the State of Wyoming, except in the wildlife populations. We have it out in livestock, but not in wildlife. It is a problem in Yellowstone and Grand Teton National Park. Last weekend, I spent time at the National Elk Refuge visiting with the biologists there.

I think that eradicating brucellosis should be a top priority for the Park Service. What is the Park Service going to do to help try to eradicate brucellosis and to ensure that the disease doesn't really spread beyond the boundaries of the Park into our livestock?

Mr. LAVERTY. Senator, I know that the Park Service is working closely with the State Division of Wildlife, as well as the U.S. Fish and Wildlife Service, to look at that very issue. My involvement came as my time as a regional forester with the Rocky Mountain Region. I know that they are doing that, I can get you an update on what the status is of that. I can't tell you today what that is.

Senator BARRASSO. Then there are other concerns that if Wyoming happens to lose its brucellosis-free status, there is clearly economic hardships. Who should bear those, the individual, the State or the Federal Government? Because it is from the national parks that that would be lost.

Mr. LAVERTY. It is one of those wicked questions. It becomes one of public policy and how do you deal with that kind of an issue.

I think it comes from conversations on how do we work to correct the issue, rather than trying to patch up what happens after.

I would be happy to get some more information for you on that.

Senator BARRASSO. We can visit about that as well.

Then the last question would have to do with the Endangered Species Act. It seems to me that there appears to be a bias toward listing species and one against delisting. The Canadian gray wolf is a perfect example. The gray wolf flourishing in Canada was still reintroduced by the Federal Government in Wyoming over a decade ago. In my opinion, all the recovery goals have been met a while back, but the species continues to be listed as endangered. This is a process that in my opinion has dragged on too long, and I read that you have significant experience with the grizzly bear. That has successfully been delisted. People in Wyoming are delighted with that, but believe that that process took too long.

So what reforms do you suggest to the Endangered Species Act, specifically what can be done to streamline the delisting process?

Mr. LAVERTY. Senator, I think you captured for me what the essence of the Endangered Species Act is all about, and that is, the recovery of species. We need to do all we can to bring folks together so that we can in fact manage, whether it is habitat or whatever it might be, that can help recover species. That is exactly what happened with the grizzly bear.

I think with the wolf, I think it just is going to take some conversations, again, with the State and Fish and Wildlife Service to look at what do we have to do to get to that point of recovery of delisting of recovered species. We should celebrate those. We just delisted the eagle. I think those are significant milestones. We need to be working aggressively to protect species, protect habitat.

But we also should be working on how do we move toward the recovery of species. It becomes even a greater challenge, as we talked about some of the issues that are in front of the country today, with growth and development and climate, all these factors are coming together to create an extremely complex scenario on how do we manage the species. I am convinced that we can do that, and I am happy to work with the folks in Wyoming on the wolf. I know that is a big issue.

Senator BARRASSO. Well, it is. Thank you very much, Mr. Laverty. I look forward to visiting with you. Congratulations on your nomination.

Thank you, Madam Chairman.

Mr. LAVERTY. Thank you, and congratulations to you, sir.

Senator BOXER. Mr. Laverty, thank you for laying out the real serious issues that we all face together. But one of them we can control very directly, and that is a staffing crisis at the National Wildlife Refuge System. They have lost 230 staff between 2004 and 2006 and project a further reduction of 335 positions, equaling a 20 percent total reduction. The number of refuges able to afford non-staff costs including viewing platform and trail repairs is in decline.

So how will you keep the refuges open to visitors and safe while protecting resident wildlife in their habitats if you don't have the key staff? Will you help us on this? Because I just want you to know that this Congress passed a budget that would give you the

money to restore, but the President has said he is going to veto all these appropriation bills.

So I guess, not to put you in a delicate spot, because that is not the purpose of my question, will you let the facts be known to those in the OMB and so on, so that they understand what happens when we don't have enough staff to run these important programs?

Mr. LAVERTY. Madam Chair, I believe that again, one of the primary responsibilities of this position is to be the advocate for these programs.

Senator BOXER. Good.

Mr. LAVERTY. I am also, I should tell you on the other side, I understand the challenges of dealing with budgets.

Senator BOXER. Right.

Mr. LAVERTY. Even as I dealt with the National Fire Plan, the huge costs of that, and then what that brings to, how do you balance that with other programs. I am willing to commit to being that advocate and I think the answer to your question, again, is one of those very wicked questions, because there is not an easy answer. But I think you have to look hard at, are there ways that you can in fact provide those services and still maintain the quality of what the refuge system is all about. It takes hard work to get down into those questions.

I know that the agencies and the refuge system are looking hard at operation plans on how they can in fact manage within those budget levels and still provide those kinds of services. I would be willing to work with all of you on that issue.

Senator BOXER. I know this is a very tough thing to ask nominees, because you are agreeing to a position and your Administration will decide their budget and the Congress our budget, and then at the end of the day, we have a give and take and you have to deal with what comes out.

But my view has always been, regardless of whether it is a Democratic President or Republican President, it doesn't matter, I like the people who are taking these jobs to be advocates, so that if Kristine feels we really need to pay more attention to the way we give out these permits, as an example, so that we don't get really stung, not just a make-believe sting, but we get stung by some Al Qaeda operative here, and she feels strongly that she will tell the powers that be, look, I know you have other considerations, but if we don't have X number of positions, we can't do it. That is what I really hope to see, because I think that is key here.

We are going to have some very tough debates. You know, nobody likes these arguments. It is very unpleasant. But if you are spending, I think it is now \$10 billion a month in Iraq, and this has nothing to do with your hearing and I don't expect any response, there are pressures now on the rest of the budget that have to be recognized.

So let me say that there are just two matters of business that I have to ask you, two more questions that are required. So first, I will ask you, Kristine, are you willing to appear at the request of any duly constituted committee of Congress as a witness?

Ms. SVINICKI. Yes, Madam Chairman, I am.

Senator BOXER. Do you know of any matters which you may or may not have thus far disclosed that might place you in any conflict of interest if you are confirmed in this position?

Ms. SVINICKI. I know of no such matters.

Senator BOXER. Thank you.

Robert, I would ask you the same. Are you willing to appear at the request of any duly constituted committee of Congress as a witness?

Mr. LAVERTY. Yes, ma'am, I am.

Senator BOXER. Do you know of any matters which you may or may not have thus far disclosed that might place you in any conflict of interest if you are confirmed to this position?

Mr. LAVERTY. No, ma'am.

Senator BOXER. All right, well, that is very good. I would make one last point on the issue that Senator Whitehouse raised. He always raises, I think, gets to the heart of the matter. I don't know if you have seen this Union of Concerned Scientists survey.

Mr. LAVERTY. Yes, I have seen it.

Senator BOXER. You have. I would just point out that they talked to 1,410 scientists, went to 1,410 scientists. But in any case, half of all scientific staff reported morale as poor to extremely poor and only .5 percent, half a percent, half of 1 percent, rated morale as excellent.

Now, getting to know you just a little bit through this hearing, I think you really do have the temperament and the attitude and the love of your work that you can change this. It is not going to be easy for you. There have been some problems. But I sense that you are bringing that spirit to this work and I am pleased to have had a chance to meet both of you.

If there is nothing else to come before the committee, we stand adjourned.

[Whereupon, at 11:30 a.m., the committee was adjourned.]