S. HRG. 105–594

NOMINATIONS OF DONALD J. BARRY AND SALLYANNE HARPER

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

ON

NOMINATIONS OF DONALD J. BARRY, TO BE
ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS,
DEPARTMENT OF THE INTERIOR

AND

SALLYANNE HARPER, TO BE
CHIEF FINANCIAL OFFICER,
ENVIRONMENTAL PROTECTION AGENCY

FEBRUARY 3, 1998

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C O N T E N T S

FEBRUARY 3, 1998

Page

OPENING STATEMENTS

Allard, Hon. Wayne, U.S. Senator from the State of Colorado 18
Baucus, Hon. Max, U.S. Senator from the State of Montana 4
Chafee, Hon. John H., U.S. Senator from the State of Rhode Island 1
Kempthorne, Hon. Dirk, U.S. Senator from the State of Idaho 5
Sessions, Hon. Jeff, U.S. Senator from the State of Alabama 6
Thomas, Hon. Craig, U.S. Senator from the State of Wyoming 4

WITNESSES

Barry, Donald J., nominated to be Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior 7
Biography 30
Committee questionnaire 31
Prepared statement 28
Responses to additional questions from:
Senator Chafee 37
Senator Kempthorne 38
Harper, Sallyanne, nominated to be Chief Financial Officer, Environmental Protection Agency 24
Biography 43
Committee questionnaire 46
Letters:
Grizzle Company 45
EPA, Office of General Counsel 55
Memorandum, Ethics Agreement, from Sallyanne Harper to EPA Ethics official, with attachments 57
Prepared statement 42
Responses to additional questions from Senator Chafee 61

ADDITIONAL MATERIAL

Article, Who Watches the EPA, Denver Post, February 2, 1998 20
Letters:
Grizzle, Charles L., The Grizzle Company 45
Herman, Steven A., Assistant Administrator, Office of Enforcement and Compliance Assurance and William P. Yellowtail, Regional Administrator, EPA Region 18
Hight, Robert C., Executive Officer, California State Land Commission 41
Peterson, R. Max, International Association of Fish and Wildlife Agencies 2
Powell, Ray, M.S., D.V.M., Commissioner of Public Lands, Western States Land Commissioners Association 42
Relative to the nomination of Donald J. Barry, several former Assistant Secretaries for Fish and Wildlife 2
Memorandum, Ethics Agreement, from Sallyanne Harper to EPA Ethics official, with attachments 57
Statement, Humane Society of the United States 42

NOMINATIONS OF DONALD J. BARRY AND SALLYANNE HARPER

TUESDAY, FEBRUARY 3, 1998

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

The committee met, pursuant to notice, at 2 p.m. in room 406, Senate Dirksen Building, Hon. John H. Chafee (chairman of the committee) presiding.

Present: Senators Chafee, Baucus, Thomas, Kempthorne, Allard, Wyden, and Sessions.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Good afternoon. I want to welcome everyone here. This is a hearing on the nominations of Donald J. Barry and Sallyanne Harper. This is before the full committee and members will be coming in. As many people know, there are luncheon caucuses of each of the respective parties held on Tuesdays. The Republican one was running very late today. As for the Democratic one, I can only assume likewise. So we look forward to additional Senators coming in.

What we will first do is take up the Presidential nomination of Donald J. Barry to be Assistant Secretary for Fish and Wildlife and Parks in the Department of the Interior.

The President nominated Don Barry on November 7, just before Congress adjourned. The paperwork of both candidates is in; it is my intention that the committee, hopefully, will be able to act on these nominations before the end of the week.

Why don't you come up, Mr. Barry, and take a seat at the table.

I would like to give a special welcome to Mr. Barry, and at the same time if he might perhaps introduce the members of his family. I understand your wife is here, and your parents?

Mr. BARRY. Yes, that's correct. Teiko Saito is my wife, and my parents, George and Kathryn Barry.

Senator CHAFEE. Good. We are delighted that you are here.

Don Barry is an excellent candidate for the position before him. He has a long record in public service in natural resource policy and management. If confirmed, the laws and programs within this committee's jurisdiction that he will oversee include the Endangered Species Act, the National Wildlife Refuge System, the Coastal Barrier Resource System, the Wallop-Breaux Act, the North American Wetlands Conservation Act, and the Duck Stamp Act, and there are others in addition.

Don Barry has been in natural resource policy and has seen it through congressional eyes and administrative eyes. The committee first had reason to take note of Don Barry when he worked as Majority General Counsel for the House Merchant Marine and Fisheries Committee in the late 1980's. For 14 years of his 23-year career he served in a number of capacities within the Department of the Interior. In a remarkable display of unanimous support, all eight of his predecessors, both Republicans and Democrats, have written a glowing letter of recommendation on his behalf. Without objection, the letter will be printed in the hearing record.

[The referenced letters follow:]

INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES,
Washington, DC, January 27, 1998.

Hon. JOHN CHAFEE, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I write to share with you the strong support of the International Association of Fish and Wildlife Agencies for Donald J. Barry's nomination for Assistant Secretary of Interior for Fish, Wildlife and Parks. Mr. Barry has longstanding, close and cooperative relationship with the State fish and wildlife agencies, which, as you are aware, are all members of the International Association of Fish and Wildlife Agencies. I urge your quick and favorable recommendation that the Senate confirm Mr. Barry and ask that you facilitate expeditious floor action to fill this position which has been open for many months.

As you are aware, Mr. Chairman, the State fish and wildlife agencies have principal authority for fish and wildlife within their borders. Even where Congress has given the Federal agencies certain conservation responsibilities (for migratory birds, listed threatened and endangered species, and anadromous fish), the States' jurisdiction remains concurrent. This thus requires close collaboration between Federal and State agencies if conservation objectives are to be met. Mr. Barry has demonstrated keen knowledge of fish and wildlife law, understanding and respect for the States' authority for fish and wildlife, and an openness and willingness to work cooperatively with us in advancing conservation objectives. We have worked closely with Mr. Barry in his deputy and then acting capacity on several important activities including successful enactment of the National Wildlife Refuge System Improvement Act of 1997, Sikes Act Improvements of 1997, and ratification of Migratory Bird Treaty amendments. We have and continue to work closely with Mr. Barry also on administrative and legislative improvements to the Endangered Species Act, and implementation of the Convention on International Trade in Endangered Species of Fauna and Flora. In all of these efforts, Mr. Barry has been cooperative and responsive to the States' interests and concerns.

Mr. Chairman, the fish and wildlife resources and the citizens of the United States will be well served by Mr. Barry, and in recommending expeditious confirmation, I bring to you the full support of the Association for Mr. Barry.

Thank you for your attention to the Association's perspectives.

Sincerely,

R. MAX PETERSON,
Executive Vice President.

Hon. JOHN H. CHAFEE, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Each one of us has had the privilege and the honor of serving at the Department of the Interior as the Assistant Secretary for Fish and Wildlife and Parks. Spanning 26 years and six Administrations, we know first-hand what the position of Assistant Secretary requires in terms of skills and experience. While our personal views on the National Park Service and U.S. Fish and Wildlife Service cover the political spectrum and may at times differ, there is one matter that unites us all in common agreement: that Don Barry should be confirmed as the next Assistant Secretary for Fish and Wildlife and Parks.

We have all worked directly with Don for many, many years and believe that he is a person with exceptional integrity, knowledge and skill. He is straight-forward,

honest and direct and is a superb consensus seeker and coalition builder. He has always approached conservation issues in a constructive bipartisan manner and is a person who follows through on his commitments and gets things done.

In addition to being a nationally recognized expert in wildlife conservation and natural resource law, he has over 23 years of experience in working in, or with, the Office of the Assistant Secretary for Fish and Wildlife and Parks, having served as Counselor to the Assistant Secretary, Deputy Assistant Secretary, and Acting Assistant Secretary. In short, few people considered for Presidential appointment have had as much direct experience with the office for which they have been nominated as Don Barry has had with the Office of Assistant Secretary for Fish and Wildlife and Parks.

For all of the above reasons, we urge your Committee to pass favorably upon Don's nomination for Assistant Secretary and to move it promptly to the Senate floor.

Sincerely,

ROBERT HERBST,
Assistant Secretary.

NATHANIEL REED,
Assistant Secretary.

G. RAY ARNETT,
Assistant Secretary.

CONSTANCE HARRIMAN,
Assistant Secretary.

GEORGE T. FRAMPTON,
Assistant Secretary.

WILLIAM HORN,
Assistant Secretary.

HONORABLE MIKE HAYDEN,
Assistant Secretary.

Senator CHAFEE. In recent years Mr. Barry has worked extensively with members and staff of this committee on the reauthorization of the Endangered Species Act and other tough issues. Without his tireless efforts I do not know whether we would have succeeded in forging the consensus on the Endangered Species Act reauthorization and reporting the bill out of this committee.

Throughout his career, and particularly in his work with the Senate, Mr. Barry has demonstrated two qualities that have proven to be constants: a commitment to conservation of natural resources, and an ability to find solutions to difficult problems. I must say that in this job he will need both of those capabilities.

Personally, let me just say that in any reincarnation that I might have to come back to this world again, I'd like to be Assistant Secretary for Fish, Wildlife and Parks.

[Laughter.]

Senator CHAFEE. A close friend of mine, Nat Reid, had that job and told me a lot about it. So if you see somebody that looks like me lined up at that table for this job in the year 2040, you can say, "I knew that fellow before."

[Laughter.]

Senator CHAFEE. As the steward of the National Wildlife Refuge System and the National Park System, your decisions are of great interest and import. I know that you will be a strong advocate for these national treasures.

Senator CHAFEE. And now, the ranking member of the committee, Senator Baucus.

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. Thank you, Mr. Chairman. I think I will be lined up there, too.

[Laughter.]

Senator BAUCUS. I agree with you.

I, too, want to welcome Mr. Barry. We are very honored, frankly, to have you here, Donald, and we know that you're going to do very, very well.

It is also good that your family is here—Teiko—would you stand, please, or have all your family stand so that we can all recognize them, Teiko and George and Kathryn?

[Applause.]

Senator BAUCUS. Mr. Chairman, you have outlined much of Mr. Barry's past, which is all very good.

I particularly want to commend you, Mr. Barry, for your help in working to reform the Endangered Species Act. Right here in this room, along with many other locations, you were most helpful along with many others in the Fish and Wildlife Service and the Department. We thank you for your efforts.

We're not yet through. As you know, we have yet to reauthorize that act. It passed the full Senate and it passed the House, and I am very hopeful that with the combined efforts of both parties, Republicans and Democrats, along with this committee and the Administration, we will continue forward. It is an example of how teamwork and working together is so important in accomplishing anything that is truly worthwhile.

On the other hand, partisanship and headline-grabbing and so forth is very counterproductive. Not only does it not get the job done, but it tends to cause people, correctly, to be disillusioned with the whole process.

So I commend all of us, frankly, working together to get that bill out of the committee, which as you know was reported out at 15 to 3 in a bipartisan bill, so we can get that enacted. And we will continue to work with you on other issues—refuges, for example, wetlands, international wildlife agreements, which are also very important to our country. I just want to thank you for stepping up and taking this assignment, and I thank the President for nominating you, and I look forward to working with you.

Thank you.

Senator CHAFEE. Senator Thomas.

OPENING STATEMENT OF HON. CRAIG THOMAS, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator THOMAS. Thank you, Mr. Chairman.

Mr. Secretary, it looks like this is going to be kind of a love-in today. That's fine. I won't be able to stay long, but I did want to come also to welcome you. I intend to be at your hearing tomorrow; I am the subcommittee chairman of the Parks Subcommittee, so that also, of course, is there.

I'm not quite as anxious to serve in that position as you are—wolves, for example, are a troublesome thing that is hard to find an answer to. I'm very much interested in the delisting process of the grizzly bears, which seems to go on endlessly, as well as some

of the fish in the Colorado River. So there are some things that are difficult, but I'm very impressed with your background and where you've been, and I'm delighted that you're here.

By the way, Mr. Chairman, the Secretary was good enough to come to Yellowstone during this recess. We had a snowmobile trip to look at the buffalo and all the problems that are there, and we were pleased to have that.

So I do need to leave, but I will be back tomorrow, and I, too, wanted to welcome you here and wish you well.

Thank you.

Mr. BARRY. Thank you very much.

Senator CHAFEE. Well, thank you, Senator. I appreciate your taking the time to be here because that's helpful.

Senator Kempthorne.

OPENING STATEMENT OF HON. DIRK KEMPTHORNE, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator KEMPTHORNE. Mr. Chairman, thank you very much.

Mr. Barry, I want to congratulate you on your nomination and acknowledge your wife and family; I believe your parents are here with you, as well.

I am pleased to be here to offer some comments on the nomination of Don Barry to be Assistant Secretary for Fish, Wildlife, and Parks. I have gotten to know Don over the years and believe that he will be an effective and a successful Assistant Secretary.

Don has had a lifetime of experience with the Endangered Species Act, both as a House staffer and during his long tenure at the Department of the Interior. To his credit, he has learned over that time that the ESA doesn't work as well as it should, or as it was intended to work. So I support Don Barry to be Assistant Secretary for two very important reasons.

As you all know, I spent the last 3 years working on the Endangered Species Act reauthorization. Negotiations at times have been tense, but throughout the negotiations we have found Don Barry to be a problem-solver. That is a commodity that is rare here in Washington, DC.

The second reason that I support Don Barry is that he agrees with Secretary Babbitt that the ESA needs changes to make it work better for species and for property owners. And I will tell you that Don has helped the negotiations to make those changes.

Don has a daunting task ahead of him in his new position if he is confirmed, as I suspect he will be, and I strongly support that. The challenges that he will face in protecting fish and wildlife are profound. How will we, as a country, continue to protect all of our native fish, wildlife, and plants without jeopardizing families and communities? How will we protect fundamental property rights? And how will we bring species back from the brink of extinction? Cost overruns and Park Service projects are an embarrassment and demonstrate that a lack of sound management oversight will always result in inefficiencies.

But I welcome Don Barry and hope that he will continue the good working relationship that I've certainly enjoyed with his help on the Endangered Species Act. I listened to Senator Baucus and his comments, and I appreciate the partnership that we've estab-

lished on this committee. What we need to do is bring the ESA to the floor. We need to deal with that issue, then send it from the Senate to the House, where I think they will take it up, and I think that we can finally do something meaningful for species and for people.

Don, I want to give you credit as someone who has helped get us to this point.

Thank you.

Mr. BARRY. Thank you very much.

Senator CHAFEE. Well, thank you, Senator. Your testimony is particularly telling because you have worked so closely with Mr. Barry over the years—I didn't know it was 3 years. That makes us all weary, doesn't it? But you've certainly worked a long time on the Endangered Species Act. It is my hope, as I know it is your hope, that we can get to it this calendar year, and before long.

Senator KEMPTHORNE. Mr. Chairman.

Senator CHAFEE. Yes?

Senator KEMPTHORNE. May I, too, just excuse myself? I have to return to an Armed Services hearing, but I wanted to be here to show my support.

Senator CHAFEE. Thank you.

Senator Sessions.

OPENING STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman.

Mr. Barry, I enjoyed an opportunity to talk with you yesterday. You come highly recommended. Our mutual friends whom we admire respect you, and I think that means a lot to me.

I noticed in your remarks you said there were three influences important to you: your parents, the small-town environment, and Boy Scouts. I can identify with that and I think those are good factors that influenced you. If you allow those characteristics and values that you learned in those institutions to guide you, I think you'll do very, very well.

You also mentioned that you wanted to use common sense and avoid confrontation and avoid too much certitude and too many loud voices. I think those are probably good, too.

Sometimes we have problems. I mentioned to you, as we chatted previously, about the red cockaded woodpecker and the forest industry that is so important to my State. This morning I see in my clips an article out of a Sunday paper, "Bird Taking Bite out of Escambia Funds." It's an article about substantial reduction in timber cutting in the Escambia-Conecuh Forest, because they have a growing red cockaded woodpecker population, which we want to nourish. But apparently they are changing—and I would like to just ask you if you would talk to me about this as time goes by—apparently the Forest Service is moving from a timber cutting rotation of 80 years, which in Alabama 50 to 60 is normal, to 120 years because the very older trees are more habitable for the woodpeckers. That is a very uneconomical plan. School systems in that multicounty area benefit from the cutting, which apparently will be reduced even further.

I have no doubt, and I've talked to a number of people this morning, that we could take the steps necessary to maintain the habitat for the woodpecker without having this kind of problem.

Now, I think the question would be this. I think the Forest Service tends to want to blame it on the Fish and Wildlife Service, and you may conclude it's the Forest Service, but I do think the people there, the school boards and superintendents, are raising questions about that.

Would you be willing to talk to me about that? And if we could determine that a better plan for handling that timber could be identified, that you would support that?

Mr. BARRY. Senator, I am completely clueless and unfamiliar with the particulars for that situation that you just described. I would be more than willing to work with your staff to get more information about this particular case, talk to the Director of the Fish and Wildlife Service, and then suggest that the Director of the Fish and Wildlife Service, Jamie Clark, and I circle back to you with more information once we've had a chance to learn more about this problem.

Senator SESSIONS. Well, I understand that and I respect that. Apparently there are 14 clusters of two to six woodpeckers in this 89,000 acre forest, and the goal was to have 200. The goal was to go up to 200. I think the species is growing and rebounding rather nicely around the country.

So this is the kind of thing where I believe if we use our good judgment, we can maintain proper harvesting, because it's not healthy for a pine forest to get too old. Beetles get into it; trees start dying from other causes; it can cause fire and other dangers.

So, Mr. Chairman, I appreciate that. I enjoyed my conversation with Mr. Barry. I think he has the background and the integrity to do a good job, and I look forward to working with him.

Senator CHAFEE. Thank you, Senator.

Mr. Barry, there are a couple of obligatory questions that I would like to ask you now.

Are you willing, at the request of any duly constituted committee of the Congress, to appear in front of it as a witness?

Mr. BARRY. I will.

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

Mr. BARRY. I do not.

Senator CHAFEE. All right, fine.

Now why don't you proceed with your statement, Mr. Barry.

STATEMENT OF DONALD J. BARRY, NOMINATED BY THE PRESIDENT TO BE ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, U.S. DEPARTMENT OF THE INTERIOR

Mr. BARRY. Thank you, Mr. Chairman, members of the committee.

Many people who go through the nomination process before this committee State how honored and humble they feel to be nominated for a higher office by the President of the United States. No matter how frequently you may have heard this statement from other nominees, it nevertheless is true. To be nominated as the As-

sistant Secretary for Fish, Wildlife, and Parks is the greatest honor I have been accorded in a long career of public service. It is also the greatest challenge and responsibility that I have been asked to carry since arriving in Washington, DC 23 years ago.

I would like to express my deepest thanks to President Clinton and Secretary Babbitt for placing their confidence and trust in me and my ability to fulfill the responsibilities of Assistant Secretary.

When I reflect back upon the major forces or influences of my life that have helped bring me before you today, three things stand out in importance.

First and foremost has been the influence of my parents, highly educated and completely devoted to each other and the four children that they raised. My parents taught me the importance of many things in life, including the need for honesty and ethics in dealing with people, the virtue of hard work and doing your best, and the value of public service.

My parents also instilled in me at a very early age a deep appreciation for the outdoors and the beauty of nature. Whether it was camping in Colorado, rock collecting in the Dakotas, bird watching in Wisconsin, or canoeing in Minnesota's boundary waters, our family outdoor summer vacations stimulated my earliest thinking about a career in conservation.

I admire my parents for many, many things, but most of all I admire and thank them for instilling in me a life-long love of the natural areas of this country, of wild things and wild places.

The second major influence in my life was growing up in a small town in rural America. A former Congressman once lamented that the biggest problem with Washington, DC was that people stayed here too long and ended up confusing themselves with the rest of the monuments.

Although I have lived in Washington, DC for almost a quarter of a century, I believe that I have never lost touch with where I came from or where my roots began. I grew up in a small agricultural community in southern Wisconsin, where hard work was a way of life; honesty was considered a mandatory virtue; and public service was considered your civic duty and not the 13-letter equivalent of a 4-letter word.

In a small rural community you learn very quickly the importance of being straight with people, of keeping your word.

The third major influence in my life was the Boy Scouts of America. Beginning at age 13, I spent nine of the best summers of my life working on the staff of a Boy Scout camp in northern Illinois. Advancing from the position of nature director to ultimately the program director for the entire camp, my days in scouting enhanced my love of the outdoors and taught me early lessons of leadership and the importance of a life of public service.

These three influences—my parents, growing up in a small, rural town in the Midwest, and the Boy Scouts of America—have contributed significantly to what I stand for and believe in today.

It is my view that the position of Assistant Secretary for Fish, Wildlife, and Parks is one of the most important positions in the Federal Government today. While other positions may make greater contributions in important areas such as public health or education, no other governmental portfolio carries a greater trust

responsibility for the American people than one involving the conservation and enhancement of this Nation's wildlife, cultural, historic, and park resources.

At times this daunting task seems to be beyond the capabilities of any one person. As obvious as my own shortcomings may be, I nonetheless believe there are four reasons why you should favorably consider my nomination to be considered for Assistant Secretary.

To begin with, I offer you my experience. I believe that my years in Washington, DC have provided me with a clear understanding of the varying roles and responsibilities of the office of Assistant Secretary for Fish, Wildlife and Parks. I have either worked in or worked with this particular office for almost a quarter of a century. From 1975 to 1986, I provided legal advice to the Assistant Secretary for Fish, Wildlife and Parks through a variety of positions in the Solicitor's Office at the Department of the Interior. Since my return to the Department in 1993 as a political appointee, I have alternately served as the counselor to the Assistant Secretary, the Deputy Assistant Secretary, and the Acting Assistant Secretary.

Moreover, during the 6 years that I worked for the House of Representatives I was responsible for the Merchant Marine and Fisheries Committee's congressional oversight of the Assistant Secretary's office. It thus could be said that I have interacted with past Assistant Secretaries for Fish, Wildlife and Parks from a variety of angles.

I believe, therefore, that I have the practical experience and insight that one would want in an Assistant Secretary.

In addition with my familiarity with the office of Assistant Secretary, I have also worked for over 20 years with the two agencies that this office oversees, the U.S. Fish and Wildlife Service and the National Park Service. I served for 12 years as an attorney for the Fish and Wildlife Service, including 6 years as that agency's Chief Counsel. As a result of this prior professional relationship, I have longstanding personal ties with virtually every regional director in the Service and most of the agency's field supervisors.

Moreover, I have worked directly with the Director of the Fish and Wildlife Service, Jamie Clark, for many years and believe that we have established a solid record of solving problems together.

While my past involvement with the National Park Service may not be as extensive as with the Fish and Wildlife Service, I nevertheless am familiar with key programs of the National Park Service and have established an excellent working relationship with its Director, Bob Stanton.

I also have longstanding personal relationships with many of the senior leaders in the National Park Service. For example, I met two of the current regional directors for the Park Service while working on park issues for the Department during the passage of the Alaska Lands Act in the late 1970's. I thus am no stranger to the policies and programs of the National Park Service.

The second reason I would offer you to consider supporting my nomination is my long record of bipartisan collaboration in preserving America's natural resources. Mr. Chairman, I have never seen a Democratic flock of geese or a Republican sunset over Yosemite Valley. Labels of exclusive political ownership may be the bread

and butter for Washington pundits, but they are contrary to the history of conservation in this country. Our greatest gains in preserving our natural, cultural, and historical legacy have occurred when men and women of both political parties have set aside their differences and forged a common ground on behalf of the American people.

There are plenty of partisan political issues to be divided over. The preservation of our parks and our wildlife resources should not be among them.

The third reason for which I would hope you would favorably consider my nomination is that I appreciate the special role reserved for the Congress by the Constitution in the development and implementation of this country's natural resource policies. Having spent 6 years as General Counsel for a committee chairman in the House of Representatives, I understand firsthand the importance of balanced congressional oversight of the administrative implementation of our laws. So long as inquiries are fair, I will always welcome the input from Congress in assessing how well we are doing; for, in the end, we are all accountable to the American people, and only by working together can Congress and the executive branch enhance the natural and cultural heritage of this country.

The final reason you should consider supporting my nomination is my personal approach to solving problems. Quite frankly, easy problems rarely work their way up the food chain to the desk of an Assistant Secretary. All too often the problems are complex and messy, involving large doses of conflicting facts and inflexible, dug-in opponents, each convinced that the other side is horribly, horribly wrong.

Unfortunately, we seem to be losing our ability in this country to respectfully disagree with one another without being disagreeable. Our society seems to be shouting more and listening less. I believe that the reverse approach is necessary to be an effective Assistant Secretary. In order to fairly sort out conflicting facts and points of view, an Assistant Secretary should be accessible to all parties and be a particularly good listener.

Judge Learned Hand once noted, "The spirit of liberty is a spirit that is not too sure it is right." That spirit is jeopardized by too much certitude, by too much righteousness, and by an unwillingness or an incapacity to stand in another's shoes.

I pride myself on being a good listener and on being open and accessible to different points of view. The fact that my candidacy has been endorsed by the leadership of such polar opposites as the Wilderness Society and the American Farm Bureau, the Safari Club and the Humane Society, and the California League of Conservation Voters and the Southern California Building Industry, will hopefully tell you more about my approach to solving problems than my ultimate decisions themselves.

While many of these organizations will tell you that they disagree with some of my positions, they will also tell you that I am fair, I am balanced, and I listen carefully to what they say; for in the end, I am neither an ideologue from the right nor from the left. I am simply from Wisconsin.

Winston Churchill once stated, "We make a living by what we get. We make a life by what we give." As I come before you today

I am asking you to give me another opportunity to serve the American people.

I am proud to be associated with two of the finest agencies in the Federal Government, the National Park Service, and the U.S. Fish and Wildlife Service. I am honored to work on a daily basis with their dedicated employees, and I intend to be an advocate for our National Parks and this country's fish and wildlife resources. Anything less, in my mind, would disqualify me from this post.

President John F. Kennedy, in his inaugural address, distilled the essence of public service in its purest form. He said, ''I am certain after the dust of centuries has passed over our cities, we, too, will be remembered not for victories or defeats in battle or in politics, but for our contribution to the human spirit.''

With your confidence and support, I pledge to work diligently to enhance the park and wildlife resources of this country. In this small way I, too, may enhance the human spirit of this Nation.

Thank you.

Senator CHAFEE. Well, thank you very much, Mr. Barry, for a fine statement.

I look on the National Parks as one of the great trusts given to all of us in the Federal service, elected and appointed, and the Fish and Wildlife Refuges and all of that are so important to our future generations. So we think you are going to be a good caretaker for that.

I would ask that you not be hesitant when you have difficulties—I'm not asking you to jump the traces from your boss—but I want to stress that this committee is out here to help you. We're not in an adversarial position; we're here to help you solve problems. You're going to have a lot of problems. Some we will not be able to solve. Some we may not agree with you on. But you're going to have a sympathetic ear in this committee and we want you to feel free to use it.

Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. Barry, as you know, some of the environmental groups have raised concerns about the Endangered Species Act, and particularly the concern that it might not be fully funded. And I'm talking about the reauthorized bill that passed out of this committee, that it might not be fully funded through the normal appropriations process.

Could you tell us, first, how much the President's budget includes for the program, and second, what actions are you planning to take to deal with that?

Mr. BARRY. Thank you. First of all, the President's budget, which was just released yesterday, contains the largest single increase in endangered species funding, I think, in the history of the program. The President is requesting an additional $36 million, which would bring the overall budget for the program to about $113 million.

Now, in particular for Senator Sessions, this is an important figure because one of the amendments that you offered during the committee markup was to readjust the authorization levels over the 5 years covered by the bill that was working through this committee.

The authorization level in S. 1180, if I recall correctly, is $120 million for fiscal year 1999. The President's budget is coming in at $113 million. So even with the additional workload and responsibilities that we would have under your proposed legislation, I think the President's budget puts us in a good position, even without the bill signed into law at present—I think we're in a very good position to be able to implement it and to respond in a manner that will get us off to an excellent start.

So I would—of course, not surprisingly—urge the members to give favorable consideration to the budget proposal which has just come out. We tried to the best of our ability to anticipate the requirements and responsibilities under the new act. We think we have put together a budget which will allow us to begin to respond accordingly.

Senator BAUCUS. I appreciate that. I think many would say—that is, those who favor the Act—that the Administration's budget request, although more than in the past, is probably not sufficient to implement the reforms fully. I would urge you in your capacity as Assistant Secretary to work with OMB and others to remedy that.

I was struck by your comment that you like to listen. That's obviously a very good quality. The question I have, though, is what you plan to do to encourage others to listen, those out in the field. What plans do you have? I mention this in part because I believe that often we around here tend—no disrespect to your history and background—tend to automatically fill positions with "experts" in that area. For example, as IRS Commissioner, an accountant or a tax lawyer, an Assistant Secretary who is a professional in the area. And all that is important, but so much of the effectiveness of agencies has to do with how well they are managed and the people skills that are either there or not there.

We in our country now are changing the nature of the person that we are naming to be, for example, the IRS Commissioner. This fellow is a management expert. He's not an accountant; that is Mr. Bob Rosotti. He's a management expert. In fact, he was very much part of a national effort to help turn IBM around back in the 1980's when IBM was king of the roost, could do no wrong, Big Blue, all of that. They just sat on their laurels a little too much; and upstart companies, Compaq and others, came along and lo and behold, IBM wasn't where IBM once was. And there was a huge problem of denial within the company. Once they had dealt with that, then they finally started to peel away layers and started to get up, go out, and just do a 180 degree change. Instead of waiting for the customers to come in and order computers, they went out and talked to potential customers to see if they needed them.

So it's very good that you listen, but you're only one of many people who are probably not going to be directly talking to all of our employers, who are the public.

If for a moment or two you could just reflect on some of your ideas and what you institutionally plan to do in terms of the culture of the people you're with to listen more and serve more. That's not to cast any disrespect or aspersions on the various agencies. It's just that we always have to go the extra mile and work even a little harder. I'm just curious as to what your thoughts might be.

Mr. BARRY. Well, I think there are two things that I would do. First of all, I would set the example. You would be amazed at how quickly people start to follow your lead, and they see the leadership of their organization undertaking a particular task.

When I have to deal with a particularly tough issue, I hate having to make the decisions based just on pieces of paper that I get fed to me while I'm sitting in Washington. I really believe that Government needs to be accountable for the people and the resources that are being affected on the ground. So the way that I try to demonstrate leadership in this area is to be willing to actually go out and sit down in the affected area with the people who are most upset about the particular issue, on all sides of the issue, and give them a chance to try to change my mind.

I think when you do that in a position at my level, people in the agency start to watch you and they start to begin to follow your lead and follow your patterns. So that would be the first thing that would come to mind; it's up to me to set the example.

I guess the second thing is that having worked in this area for so many years, I know people on virtually all sides of these key issues. I have worked with them all. I think one of the things that I would bring to the table is my ability to pull people together and to suggest that we sit down with the Farm Bureau and the Environmental Defense Fund and the Wilderness Society to begin a dialog or a discussion to see if we can't find common ground together.

That would be the second thing that I would do. I would not only try to set the example myself, but I would urge others in the agencies to sit down and work among themselves.

Senator BAUCUS. I appreciate that, and I see my time is up. Just one final question.

How do you want to be remembered? When all is said and done and you are no longer Assistant Secretary, how do you want to be remembered? Or remembered for what?

Mr. BARRY. You know, actually, I've thought about that a bit. I think there are probably four things that quickly come to mind.

First, I would like to leave this office with a stronger, more effective—emphasis on effective—Endangered Species Act. Not an act with bigger teeth, because I don't believe that that ultimately accomplishes what we need to accomplish, but an act that actually produces conservation benefits on the ground. I think that a lot of the administrative reforms that we have developed are designed as incentives with private landowners to increase their willingness to work with us in partnership. So I think the No. 1 thing I would like to be remembered for is having left the Endangered Species Act intact, with a stronger footing and an enhanced amount of support and participation by private landowners. I don't think we can accomplish what we need to accomplish under that act unless we get this support.

The second thing that I would like to do is to follow through on some of the major environmental initiatives that were started in the first term of this Administration. The effort to restore the Everglades is a once-in-a-lifetime major challenge for this country. It's easy to start initiatives, but it's hard to keep them going. I think one of my responsibilities is to build on the excellent record that was started in the first term with the Everglades, with the Califor-

nia Desert, and so on, and to try to keep those on track, keep them on target, and to enhance their effectiveness.

I think probably most importantly, though, I would like to be remembered as somebody who helped strengthen the two agencies that I oversee. One of the major reasons I decided to come back to the Interior Department in 1993 was to help get the next generation of leaders in place within the Park Service and the Fish and Wildlife Service. I'm seeing that happening right now. I think Jamie Clark will be a superb Director of the Fish and Wildlife Service, and some of the regional directors that are being chosen now are people who are quick-witted, that think outside the box, and are interested in solving problems. So if I could look back in another 2 years and see people like Jamie Clark scattered throughout the agencies, I will feel that this has really been time well served.

The last thing, quite frankly, that I want to be remembered for is somebody who had fun.

Senator BAUCUS. What are you going to do to have fun?

Mr. BARRY. Well, it sounds like a strange observation, but I think we have all gotten way too serious and too burdened in this city and have forgotten that governance should be a privilege and something that you really find enjoyment in. I think even the worst day in my office is still better than the best day in most other people's offices, and I would like people who work with me to feel the same way. Those of us that have the privilege of working on natural resource issues are incredibly fortunate. I go home every night just being incredibly thankful, and I want to feel that same way 2 years from now and I would like people to think, ''There's a person who really had a lot of fun.''

Senator BAUCUS. Well, I want to echo the Chairman's thoughts, that you work with us, because we want to help you, too. I do think that if we do all that, we'll both have fun.

Thank you.

Senator CHAFEE. Thank you.

Senator Sessions.

Senator SESSIONS. Thank you, Mr. Chairman.

I agree with Senator Baucus. You and I talked about this yesterday. You've got a significant agency with what looks like a good increase in your budgetary authority, and the tendency may be not to face the tough managerial decisions that you need to make early on in your tenure. Every dollar that you receive is taken from citizens of America, and they want it to work to preserve species and not to preserve turf or jobs or bureaucracies or that kind of thing.

Mr. BARRY. Senator Sessions, if I could just mention one thing, prior to coming here I had written down a couple of things regarding what I'd like to accomplish. I skipped over one point, if you will allow me to read it.

I would like to enhance the quality of services to the American people. I want people to feel they got their money's worth. So I completely concur in what you're saying. Giving us more financial resources, if we don't use them wisely and effectively, really doesn't accomplish much, and I want people to feel at the end of the day that they got good governance out of us.

Senator SESSION. The maximum protection for species and parks that we could possibly get for the dollar has been entrusted to you. I think that's a good goal.

Looking at my schedule for the afternoon, I'm going to be meeting with some individuals from the Alabama Health Department, the Alabama Association of School Boards, the University of Alabama, and some armed services issues, all of which would like more money. So if you don't get everything you would prefer to have, it would be because we do have a lot of interested people who really and sincerely believe that theirs is the most important issue facing America, and it is sometimes difficult for us.

Two things, and then I would conclude.

The Habitat Reserve Program—you and I talked briefly about it. We did add some money to that program. Do you believe that, with leadership from your department, we could enhance the number of private landowners who act as quasi-stewards of properties, with some modest compensation from the Government to assist them?

Mr. BARRY. Senator, Jamie Clark is very interested in this idea, and in the President's budget, although it is a small amount, there is $5 million proposed to use for small grants for small landowners to encourage them to do proactive conservation things for endangered or threatened species. So this is parallel to the Habitat Reserve Program idea which is in the Senate bill, and it was our attempt to begin to line ourselves up in that general direction in support of that concept.

Senator SESSIONS. I just think that in terms of certain animal species and plants, the size of the tracts may not need to be large; 10 acres or 15 acres may well help preserve a species. It would be difficult for the agency to manage that, and private landowners may be willing to join with you.

Finally, with regard—I apologize, Mr. Chairman, for asking a question before you had had your remarks; coming in late, I assumed you'd made your remarks—but with regard to the situation with the red cockaded woodpecker, that is not a light thing. It's pretty significant. I am open-minded about it. But to follow up, would you be willing to listen if we have a problem there, and maybe consider helping us solve that problem?

Mr. BARRY. Senator, the first thing I would need to do is learn more about the scientific facts of the whole situation. The red cockaded woodpecker is probably the one endangered species in the south that has had more time and energy put into the development of its recovery plan. There have been a lot of people who have spent a lot of time working on it. I think they've revised the recovery plan at least once.

What I would want to do is to sit down with the Fish and Wildlife experts to learn more about it, and then sit down with your staff—and you, if you are willing—to learn more about the specific problems in that one forest that you described.

Senator SESSIONS. Well, that's all I'm asking, that at some point we be able to discuss it and you be open to discussion about it. If it's justified as apparently it is presently contemplated, so be it; if not, if you would be willing to consider changes, we'd appreciate that.

Thank you, Mr. Chairman.

Senator CHAFEE. Thank you, Senator.

I just wanted to say in connection with the red cockaded woodpecker, like others on this committee I've spent time on it, been up and down in North Carolina, seen some of the situations there. Some of the policies that have been developed—not statutory policies, but administrative policies by Interior and Fish and Wildlife—have helped the private landowners a great deal, the so-called "safe harbor" and "no surprise" policies. And in the Endangered Species Act we put those into statute so that they can't be attacked and removed. I think that when you have an opportunity in your discussions to become more familiar with "no surprises" and "safe harbor"—I think they are both big steps forward for this particular species, as a matter of fact.

Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman.

Mr. Barry, I very much appreciate your interest in looking at innovative approaches in terms of involving private landowners and how we're going to meet the Endangered Species Act requirements. I think the way we're going to protect species in the 21st century is to come up with creative new models for involving those private landowners. As you and I have talked about, we are convinced in Oregon that with our plan with the coho salmon, the first waiver from an Endangered Species Act listing in the country, that we are on our way to developing the kind of model that will make sense for the future. I offered an amendment in the Kempthorne-Baucus legislation to encourage more of these kinds of approaches.

My question to you is, with respect to the bill in two areas, the habitat conservation plan and the "no surprises" policy, since the passage of the committee bill there have been various ideas and suggestions brought to us. Senator Baucus referenced some of the comments with respect to the funding. As you know, I organized a letter from a large group of Senators on that point specifically. But the question I wanted to ask you was, with respect to the habitat conservation plan standard, the bill looks to a provision that will not appreciably reduce the likelihood of the survival of a species, and it has been brought to our attention that the standard ought to try to recover a species rather than just simply do no harm.

In the case of the "no surprises" policy, the suggestion has been largely to try to figure out a way to be able to use new information, information that comes to light since the original agreement was entered into, so as to be able to take advantage of additional scientific knowledge.

On these two points, how you would look to recover a species rather than just do no harm, and second, how you would update an HCP under a "no surprises" plan, do you have any ideas on how you might use those standards and still keep this attractive to private landowners? In other words, you factor in new information as part of an HCP plan; you would look to recover species rather than just do no harm. But on both of those counts, both of them, do it in a way that would still be attractive to private landowners so that we can keep the centerpiece philosophy of the legislation?

Mr. BARRY. Senator, that's quite a plateful. Let me try to start off with the standard for HCPs.

I think first of all, Congress has to decide what the real goal is here. In 1982, when Congress amended the Endangered Species Act and authorized HCPs, the goal was fairly simple. It was to provide a mechanism under the act to authorize incidental take, up to a certain level, in order to allow otherwise lawfully designed activities to take place.

I don't believe at that time it was Congress' intention to make habitat conservation planning a mandatory recovery tool; it was to authorize incidental take. Now, Congress did require that there be conservation provisions and mitigation provisions, added in the course of the negotiations on an HCP to ensure that an HCP would not adversely affect a species in a significant way. I think since the HCP program has started, a number of people have increased their concerns that for some species it may have too significant an impact over the range of the species.

I think we need also to keep in mind that a number of the recovery plans that are in existence today were developed without habitat conservation planning in mind as a conservation tool. They weren't even considering that as an option, and I think that may have influenced some of the terms and provisions of some of the recovery plans that we have today. One example that I will use, is in your back yard. When they were working on the final recovery plan for the northern spotted owl in the Pacific Northwest, they used a scientifically valid and credible template for the establishment of spotted owl reserves. When it was applied to the area of southwest Washington, which is very heavily private land, they estimated that the cost of implementation of that recovery plan could range anywhere from $200 million to $2 billion.

Now, under the Kempthorne-Chafee-Baucus-Reid bill, one of the signature features of the recovery planning process is the inclusion of stakeholders in the recovery planning process. I think in the future, if that bill becomes law, habitat conservation plans will be one of the valid tools for conservation that will be factored in right from the get-go. I think it will be much easier to use recovery plans as a measure, a yardstick, for assessing the appropriateness of an HCP.

I am somewhat concerned that a lot of the older plans which never took habitat conservation planning into account as a tool will not work as effectively if recovery is the standard, because I think the recovery plans never anticipated something like this.

Senator WYDEN. So on the first one you're saying that as we learn more about HCPs and you have newer plans, the standard may in fact evolve from "do no harm" to actual recovery?

Mr. BARRY. I think that's the case. I think also, though, we just have learned that habitat conservation planning can be a much more powerful tool, a much broader-scaled tool than we originally anticipated. And I think the effect of an HCP on a species' status rangewide makes the question of recovery more valid.

I think the new bill would put us in a better position for using HCPs as a recovery tool. I think it's heading in that general direction.

With regards to "no surprises"——

Senator CHAFEE. I'll tell you what, we've got one more questioner here plus another witness.

Do you have another question, Senator?

Senator WYDEN. I'd even take that one for the record, Mr. Chairman.

All I was asking on the second one is, I think we want to figure out a way to be able to update an HCP with new information and new science, while still keeping the private landowner with a sense of certainty of what's expected of him. And if you'd even answer that for the record, I'd be interested.

Mr. BARRY. I think the way to do that is to build adaptive management provisions into your HCP.

Senator WYDEN. Thank you, Mr. Chairman.

Senator CHAFEE. OK, fine. Thank you very much, Senator.

Senator Allard.

OPENING STATEMENT OF HON. WAYNE ALLARD, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator ALLARD. Thank you, Mr. Chairman.

I had prepared a letter and article and I would ask that they be made a part of the record.

Senator CHAFEE. Definitely.

[The referenced material follows:]

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, January 28, 1998.

Hon. ROY ROMER, *Governor,*
Denver CO.

RE: S.B. 94–139; Colorado's Audit Privilege and Penalty Immunity Law

DEAR GOVERNOR ROMER: In January 1997, the Environmental Protection Agency (EPA) received a petition asking it to initiate proceedings to withdraw the State of Colorado's authority to administer the National Pollutant Discharge Elimination System (NPDES) program under the Clean Water Act. The petition is from Earthlaw, representing the Sierra Club, the Oil, Chemical & Atomic Workers International Union, Western Colorado Congress, and the High Country Citizen's Alliance.

The basis of the petition is S.B. 94–139, enacted June 1, 1994, which creates an evidentiary privilege and provides penalty immunities relating to environmental audit reports and disclosures of violations of environmental laws. The petition alleges that because of these privileges and immunities, Colorado does not have the minimum authority required to administer the NPDES program.

To assist EPA in evaluating the petition, EPA sent Colorado two letters asking detailed questions about the impact of S.B. 94–139 on Colorado's ability to administer federally-approved environmental programs. The first letter, dated July 3, 1997, focused on Colorado's NPDES program. Colorado answered this letter on November 18, 1997. A second EPA letter, dated August 19, 1997, dealt with other State environmental programs. To date, Colorado has not responded to the August 19 letter.

EPA's analysis of Colorado's November 18 response indicates that in order for Colorado to maintain the minimum required authorities to administer and enforce the NPDES program, the State must amend S.B. 94–139. We are writing to you today to lay out the changes that are needed. Listed below are the most critical issues that require amendment, but EPA also has legal concerns relating to the burden of proof in penalty proceedings, the in camera review process, and time periods for completing audits and coming into compliance, which may be addressed through statutory amendment or an Attorney General's opinion. EPA believes that each of these issues is significant from an environment and public health as well as from a law enforcement perspective.

Privilege in Criminal Proceedings. State law privileges for environmental audit reports and related testimony in criminal proceedings impair the ability of prosecutors to investigate and obtain sufficient evidence to prove criminal conduct. To preserve Colorado's ability to bring appropriate action against the most egregious violators

and to assess criminal penalties, as required by 40 CFR Section 123.27(a)(3)(ii) and (iii), these privileges must be eliminated in criminal proceedings.

Information Gathering Authority. States administering NPDES programs must have adequate authority to investigate compliance with any NPDES program requirement and to verify the accuracy of self-reported data or other information concerning possible violations, whether this is through copying records, inspecting facilities, or monitoring effluents. (See 40 CFR Sections 123.26(b) and (c).) The ability to investigate compliance and obtain data rapidly is especially critical for situations that may pose an imminent and substantial endangerment to human health and the environment. To assure that Colorado has such authority, S.B. 94–139 must be amended to clarify that its privileges do not apply to underlying facts in an audit report, especially regarding effluent data (whether from permitted or unpermitted discharges), and that information needed to support an order for emergency relief must be accessible without resort to the in camera process.

Public Participation and Access to Information. Federal law applicable to the authorization of state NPDES programs requires that the public have access to information and be able to report violations. (See 33 U.S.C. Section 1318(b) and 40 CFR Sections 123.26(b)(3) and (b)(4).) This is consistent with Congressional intent that citizen plaintiffs play a role in enforcing environmental laws. Colorado must amend its audit law to make it clear that it does not impair public access to information that would otherwise be available under State or Federal law. Colorado must also eliminate the sanctions against disclosure and the prohibition on testimony contained in the audit law so as not to impair or chill public reporting of violations.

Penalty Immunities. Colorado's November 18, 1997 letter states that Colorado has authority to assess penalties for all violations of NPDES permits and for violations or orders issued by the Colorado Water Quality Control Division. However, States administering NPDES programs must have the authority to assess civil and criminal penalties not only for these two classes of violation, but for all violations described in 40 CFR Section 123.27(a)(3). Colorado's law must be amended to comply with this regulation. It is especially critical that Colorado be able to obtain penalties for violations that are due to criminal negligence, that result in economic benefit to the violator, that cause serious harm, or that pose an imminent and substantial endangerment to the public health or the environment.

Other states, including Utah, Michigan, and Texas, were faced with similar legal issues with respect to their state audit laws and, with technical assistance from EPA staff, enacted statutory amendments to resolve those issues. EPA staff are also available to provide technical assistance to State of Colorado staff to ensure that Colorado's environmental programs meet pertinent legal requirements.

As noted above, EPA has received a response only to its letter pertaining to Colorado's NPDES program. Although today's letter focuses on the NPDES program requirements, similar legal requirements apply to other environmental programs. Depending on Colorado's future response(s) regarding the effect of S.B. 94–139 on other EPA-approved environmental programs, there may be a need for additional statutory changes and/or Attorney General's opinions.

We hope that we can work constructively to address these issues. If you have any questions or comments, please do not hesitate to call Steve Herman at 202–564–2440 or Bill Yellowtail at 303–312–6308. We would also encourage your staff to contact Kerrigan G. Clough, Assistant Regional Administrator (312–6241) or, for legal matters, Thomas A. Speicher, Regional Counsel, Region VIII (312–7100). Thank you for your attention to this matter.

Sincerely,

STEVEN A. HERMAN,
Assistant Administrator,
Office of Enforcement and
Compliance Assurance.

WILLIAM P. YELLOWTAIL,
Regional Administrator,
EPA Region VIII.

[From The Denver Post, Monday, February 2, 1998]

WHO WATCHES THE EPA?

The Environmental Protection Agency, spurred on by employee groups and the Sierra Club and other environmental groups, has picked a fight with the State of Colorado that we hope it eventually loses.

The EPA, in a Jan. 28 letter to Gov. Roy Romer, says the agency wants several major modifications in the State law that allows firms to perform voluntary environmental audits and institute appropriate cleanup steps, all the while protecting themselves from penalties that otherwise might be incurred.

The 1994 law contains a legislative declaration that the "environment is enhanced by the public's voluntary compliance with environmental laws and that the public will benefit from incentives to identify and remedy environmental compliance issues."

Since then, according to State officials, there have been 28 such audits, 19 of them involving air pollution laws. Immunity has been granted in just 18 of the cases, with five still pending.

While this record was being compiled, the EPA has mounted what can only be called a nationwide campaign to rewrite or repeal all voluntary audit laws in the 21 states that have them and to prevent their passage in the remaining states.

The agency has so far managed to get modest modifications in three states: Michigan, Utah and Texas.

Meanwhile, Congress in its most recent budget bill instructed the EPA to work with States to allow implementation of self-audit laws. House Republicans say they will offer federal environmental self-audit legislation again this year, a measure the Clinton administration opposes.

Thus the stage is set for a three-way fight between the federal agency, Congress and the various States. A number of legal experts believe the issue of State authority will eventually reach the U.S. Supreme Court.

So what should be done in the interim? In our view, nothing. The EPA doesn't have a good argument for changing the Colorado law. It wants revisions that would ultimately undermine—not to say eliminate—the law's usefulness. The Colorado Department of Public Health and Environment is therefore right to resist.

As for the Sierra Club and similar groups, it should be noted that they are not disinterested scholars on theses issues. Under federal law these groups currently enjoy the right to file third-party lawsuits and have the Government pay their legal fees, even where the regulators and the affected firms have reached enforcement agreements. Naturally, this power is threatened by laws, such as Colorado's, that encourage a level of privacy and voluntary compliance.

Senator ALLARD. I would just say, first of all, in regard to Don Barry's appointment and everything, I do plan to support him on the floor and support him out of committee. We have had a discussion about some issues that were in Colorado, and I was pleased by the fact that he seems to be sensitive to a lot of these local issues and to property rights, and as mentioned by Senator Wyden, sensitive to trying to bring some definite closure so that when people deal with the agency, they have some sense that things will be carried forward and their efforts will not be a waste of time.

So I just would like to say briefly that we did discuss the Lakewood Pipeline; we talked about the South Platte agreement, and the fact that we would hope that neither one of the processes run out of control, and that some common sense be brought to it. And the Colorado Fish Recovery Program, which again is a program that has been out there for some time—as a State legislator in Colorado, I know we appropriated millions of dollars to it, and I know the Federal Government has spent a lot of money on this. I think there comes a point in time when we need to ask the question: after all the money that we've put in on the species recovery of that program, what is going to be the end result? Can the people who have been cooperating with the agency to try to assure that we have a favorable conclusion, are we actually going to have a favorable conclusion, as everybody has anticipated?

And maybe you have a comment or two in regard to that.

Mr. BARRY. First of all just let me mention, on the Lakewood Pipeline, I think—from what I have heard preliminarily—and this is still subject to a final briefing—that you may have put your fin-

ger once again on a problem that needs to be corrected. We are still pursuing that issue further, but preliminary reports suggest that you may have once again discovered an implementation problem that we need to correct.

With regards to the amount of money that has been put into the Colorado Fish Recovery Program and what people can expect from it, I think one thing that it has helped provide is some certainty for the States and the water users that are participating in that program. The Fish and Wildlife Service is basically using the mutually agreed-upon recovery measures as the yardstick to use in section 7 consultations. The water users themselves have helped define the end results of the consultation process, and I think that helps them a lot.

Senator ALLARD. OK. And I've gotten your assurance that you will continue to work with local governments, particularly in relation to things like the Rimrock Run. I know that one probably went over the top of some other people; it went directly to the Secretary of the Interior on that issue.

But what I would ask is, keep a real interest and kind of an ear toward local issues and local concerns.

And then finally, just a brief question. Would you care to comment on the Endangered Species Act that we have reported out of committee?

Mr. BARRY. Well, I think Jamie Clark, the Director of the Fish and Wildlife Service, probably said it best when she testified on behalf of the Administration and indicated that we support the bill as it was in front of the committee, going into the markup. It is still the position of the Administration at this point that we will continue to support that bill. Of course, that's always subject to any amendments that would ultimately come up on the floor. We think that an awful lot of hard work has gone into this bill. There are people on all sides of the debate who see things that they wish were in the bill that are not in the bill. But I think it is a very solid, serious piece of work that will ultimately enhance the conservation of endangered and threatened species, and I think it's the best bill that we can get that will clear both Houses and be signed by the President.

Senator ALLARD. Thank you.

I yield back the balance of my time, Mr. Chairman.

Senator CHAFEE. Thank you very much, Senator.

We thank you very much, Mr. Barry. We appreciate your being here.

Senator CHAFEE. Now, will Sallyanne Harper please come forward? She is nominated by the President to be the Chief Financial Officer of the Environmental Protection Agency.

We welcome you, Ms. Harper.

Ms. Harper and I had an opportunity to meet beforehand, and I find that she's an excellent candidate. Regrettably, I have to be at the Majority Leader's office on another matter of some import, so I would ask if Senator Allard would be kind enough to preside.

They will conduct this hearing, and obviously I will review the record on it. What I hope to do is to move both of these nominations along as fast as we can.

So I thank you very much. I will ask you just two obligatory questions, Ms. Harper, before I turn it over.

Are you willing, at the request of any duly constituted committee of the Congress, to appear in front of it as a witness?

Ms. HARPER. I am.

Senator CHAFEE. Boy, you would really throw this thing into chaos if you said no.

[Laughter.]

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

Ms. HARPER. I do not.

Senator CHAFEE. All right, fine.

Now, I apologize that I cannot stay, and I want to thank Senator Allard very much for taking over. Thank you.

Senator Allard [assuming the chair]. Thank you again, Ms. Harper. I would like to welcome you to the committee. It's good to have you here this afternoon.

I did have some issues that I wanted to bring up with you while you are here, and I want you to understand that these issues probably have more to do with EPA in general than you specifically. But I do feel it's very important, because the issue that I'm going to bring up is impacting the whole State of Colorado; in fact, potentially, it may impact some 21 States. It has sort of become a rallying cry for the people of Colorado and the legislature, and at least one of the major papers has written an article, and this is the issue of self-audits. I don't know how familiar you are with self-audits, but I hope that perhaps maybe my staff can get together with some representatives of EPA, and maybe yourself, and talk about this.

Personally, I am not going to object to your going out of the committee; I'm going to support you getting out of the committee. But until the State of Colorado gets a better response from the Environmental Protection Agency than what we've gotten now because of the self-audit issue, I feel compelled that I'm going to have to put your nomination on hold when it comes to the floor of the Senate. The only reason we're putting it on there is so that we can get a response from the Environmental Protection Agency and the various parties involved to the self-audit issue in the State of Colorado. They did give us a response back, but it was rather dictatorial. And in the last budget that we had, we had a provision in there that instructed the Environmental Protection Agency to cooperate with the States in implementing a self-audit program. The tone of this letter was not one of cooperation; it was one of mandates.

So our office is reviewing the rule and regulatory process. We are reviewing what it actually states in law; if there are provisions in the law, obviously, we want EPA to enforce them. If there are regulations that have been implemented without the support of the law, passed through the Congress, then we would like to address those issues.

Senator BAUCUS. Mr. Chairman, may I ask you how long you're going to take here? This is a confirmation hearing.

Senator ALLARD. I recognize the Senator from Montana.

It is, but it's important. I just would point out that it's important to her nomination, because when she goes to the floor there's going to be a hold put on it, and I want her to understand what is behind it, and that it is something that can probably be resolved easily. I wouldn't be overly concerned about it, but the representatives from the Environmental Protection Agency need to get in touch with our office.

And it may very well affect your State, Senator. Colorado is one of the first States, and we're actually talking about the implementation of the law.

So I would just say in conclusion that we just want to get this resolved as soon as possible, and with a little bit of communication between our office and your boss, I think we can get it resolved.

Now I would recognize the Senator from Montana.

Senator BAUCUS. Mr. Chairman, I was asking you what you intend to do here, if you intend to continue to pursue this matter here with the nominee, or whether you plan to take it up at some other time.

I asked the question because I don't think that the nominee is prepared to deal with this issue.

Senator ALLARD. That's why I didn't ask her the question.

Senator BAUCUS. So if I might finish, Mr. Chairman, I just wondered what your intentions are. I think we shouldn't put a hold—nor should anybody, frankly—on her nomination on the Senate floor because this position needs to be filled. She needs to do her job. There are various ways to communicate, and I know you just communicated with EPA; I'm sure they're going to get the message, and I was just asking again whether you intend to pursue this matter here or not. I asked the question because she's not prepared to deal with the subject.

Senator ALLARD. Well, I didn't expect her to be prepared to deal with the subject, but I wanted her to understand the process and some of the dynamics. I wanted to be up front and honest with her so that she would know exactly what was happening as far as our office is concerned. I don't think it's an insurmountable problem. It may be a slight delay; it depends on how quickly the Environmental Protection Agency responds. If they respond in a timely manner, then we can quickly move on. I understand the problem with these kinds of vacancies, and for that reason I would hope that the Environmental Protection Agency would respond quickly.

Now I would go ahead and yield back to the Senator from Montana. I think we can go ahead with the hearing process, and if you would have any questions or comments, I would recognize you for them.

Senator BAUCUS. Well, Mr. Chairman, I don't want to make a big deal out of this. I'm just asking a simple question for which I don't think I've received an answer yet.

Do you intend to pursue this here, or not?

Senator ALLARD. No.

Senator BAUCUS. Thank you.

Senator ALLARD. The Senator from Montana is recognized.

Senator BAUCUS. I have no statement, except, let's get her confirmed.

Senator ALLARD. OK.

Do you have a statement for the committee?

Ms. HARPER. I do, Mr. Chairman.

Senator ALLARD. OK. I recognize you.

STATEMENT OF SALLYANNE HARPER, NOMINATED BY THE PRESIDENT TO BE CHIEF FINANCIAL OFFICER, ENVIRONMENTAL PROTECTION AGENCY

Ms. HARPER. Thank you, Mr. Chairman. Thank you, Senator Baucus. Good afternoon, Mr. Chairman and members of the committee.

It is a great honor to be here today as the President's and Administrator Browner's nominee as the EPA's Chief Financial Officer. If confirmed, I would welcome this opportunity to serve the Administration and the American people to the best of my ability.

As a member of the Senior Executive Service, I have been privileged to serve in senior career Civil Service positions relating to financial management under three EPA Administrators. Nevertheless, I can say that the position for which I have been nominated presents a unique and exciting challenge in this time of fundamental change at the Environmental Protection Agency.

With your support, our environmental mission has been reaffirmed and reinvigorated, and there is a strong focus on results-oriented resource and financial management.

The American people expect the highest quality and integrity in the use and management of their tax dollars. I share these expectations, and if confirmed, I will use all of my skill and energy to meet them. I would like to present you with a brief summary of the principles that will guide me if the Senate chooses to confirm me as the Chief Financial Officer.

I and my colleagues at EPA are driven by a strong personal commitment to a clean and healthy environment. At the same time, having dedicated my professional career to fiscal resource management, I firmly believe that the mission of the agency can only be accomplished in an atmosphere of fiscal responsibility and good management. My goal since being appointed the Acting Chief Financial Officer in March 1996, and a goal implicit in such statutes as the Government Performance and Results Act and the Chief Financial Officers Act, has been and will continue to be to enhance EPA's ability to reach its environmental objectives through the most effective planning and resource management.

I will also work to ensure that the American public and Congress have access to clear and comprehensive information on EPA's financial stewardship and on the effectiveness of the agency's programs, and I recognize that the most effective way for us to accomplish our environmental mission is through joint action with our State partners.

The management challenge at EPA extends well beyond resource management. The agency must evaluate every aspect of its work to measure efforts against results. Are we spending scarce dollars to our best advantage and achieving meaningful and measurable improvements in environmental quality? Can we show the American public that we are meeting our environmental challenges and public health threats efficiently and effectively? In short, we are being

challenged to manage smartly against our bottom line, which is the environmental quality for the people of this country.

To this end, I am deeply committed to the challenge of continuing the development of a comprehensive strategic planning, budgeting, analysis, and accountability program at the Environmental Protection Agency. I believe we are on track and would like to present some of the highlights of our work to date in these areas.

In September of last year we delivered to you the Environmental Protection Agency's Strategic Plan, as required under the Government Performance and Results Act. Through the process of developing this Plan, the agency, aided by the view of its partners and stakeholders, engaged in an intensive evaluation of what we would like our work to have achieved 5 years from now.

We have also made significant strides in the process of aligning our budget structure with the strategic planning elements. This will aid all participants in the budget process, both in the Administration and in the Congress, in future years as we approach the Results Act vision of clear linkages between environmental results and our annual budget decisions.

We have begun to address the internal challenge of developing an accountability system that moves us away from counting program outputs toward the measurements of environmental outcomes. This is a daunting challenge, but the cooperation of agency managers and the support we are receiving from State representatives allows me to be confident of the success.

All of these activities, guided by the Chief Financial Officer, must continue if we are to effect the major redirection for performance-based management envisioned by the Results Act. I pledge to continue these efforts.

Should I be confirmed, I look forward to working with the Administrator, with this committee, and other Members of Congress, the broad constituency served by EPA, to ensure the financial resources entrusted to us are managed wisely.

I thank you.

Senator ALLARD. I thank you, Ms. Harper, for your statement. We will now proceed to the members of the committee to see if we have any questions.

Senator BAUCUS. Thank you, Mr. Chairman.

Ms. Harper, I understand your family is with you.

Ms. HARPER. Yes, Senator, they are.

Senator BAUCUS. Could you introduce all of them, please? I understand there are quite a few.

Ms. HARPER. I have stacked the hearing room, sir.

Senator BAUCUS. Well, we would like to see them. If you could just introduce them and have them stand. This is a big day for you and for them.

Ms. HARPER. Thank you, Senator.

This is my husband, Francis Nathans.

Senator BAUCUS. Francis.

Ms. HARPER. My sister, Dr. Harper-Petrozza.

My father, Thomas Harper.

My mother, Frances McCarron-Harper.

My sister, Mary.

And in the back row, my brother-in-law, Paul Kelly; my sister, Kate Harper; and Kate's father-in-law, Paul Kelly.

Senator BAUCUS. And on the other side of the room?

[Laughter.]

Ms. HARPER. I think that's my family, sir.

Senator BAUCUS. Ms. Harper, there is just one question that I have, and it's on the minds—the general question—of a lot of Americans, and that's this new term that I learned the other day, Y2K, otherwise known as converging through the Year 2000 a la computers.

Can you tell us a little bit about what you're doing at EPA and what EPA is doing and how EPA is going to solve that problem, so that at least we don't have that headache on our hands when the clock ticks?

Ms. HARPER. Thank you, Senator.

EPA has been very aggressive in trying to make sure that we have our Y2K, our Year 2000 conversion problems, taken care of long before we hit the Year 2000. We have 61 mission-critical systems that are currently under very aggressive review, including the financial systems and all of the major programmatic systems. There are second tier systems, including such things as LANs, that will follow behind the mission-critical systems, but we are currently on track to meet OMB's revised government-wide milestones so that our systems will be in compliance.

Senator BAUCUS. So you think you will have things all snapped in place by the bewitching hour?

Ms. HARPER. It is a gamble, Senator. At this time we are on track to do that. There are some systems that we are worried about, but we are monitoring them very, very closely.

Senator BAUCUS. OK. I would just advise, if you have any problems, you will go to the people within the EPA administration, and also work with this committee, because we want to help you make sure you get that solved. It's a huge problem. Can you give us a rough estimate of how much EPA is going to have to spend to update?

Ms. HARPER. Senator, I would be happy to provide that for the record. I don't have it off the top of my head.

[Information to be supplied follows:]

EPA's funding is as follows to address the problems associated with ensuring that its critical computer systems are in full compliance with the Year 2000 initiative:

Fiscal year	[In millions of dollars]
1997	$5.3
1998	13.0
1999	6.1
2000	1.0
2001	1.0
Total	$26.4

Senator BAUCUS. I might tell you, and for those who are interested, the IRS is going to have to spend about $900 million on that problem alone, in addition to all the other computer problems that that agency has. It's a tremendous problem, and I just urge you to do what you have to do. We have lots of problems, and that's one we just don't want to have to deal with also.

Thank you, Mr. Chairman.

Senator ALLARD. Thank you.

I just have a couple questions, along the same lines as the computer question from Senator Baucus.

Is the Environmental Protection Agency—do you share computers with other agencies? Or is your system a stand-alone system just within the agency itself?

Ms. HARPER. Mr. Chairman, we have a number of different systems within the agency. We share our supercomputer, for instance, with other agencies and departments that have an interest and a need in using that. We also receive data from the States, the local governments, and other Federal agencies, and exchange data with them. So I think it is less an issue that we share systems than that we share data that is moving in and through those systems.

Senator ALLARD. I guess that was my question, whether you had a compatible system with the States, if you are working with them, or the various Regional Offices.

Do you have a compatible system? Do you share data with the Department of the Interior? Do you share data with the Agriculture Department? Or maybe some health agencies? Do you share data, and do you have a compatible computer system, or is it all pretty much on their own system and you have to use e-mail through—this is not a good example, but some universal e-mail carrier like America Online or something like that?

Ms. HARPER. Mr. Chairman, the expert in this area is our Chief Information Officer. To my knowledge, we do share data, and we have systems that are capable of transmitting data back and forth to other systems. Our Office of Reinvention just last month met with the States to try to work out better ways to use information, to share data, to not duplicate, and to reduce the burden that we sometimes put on our State partners in trying to get information. They have, I believe, worked out an agreement on the best way to proceed, so we are always looking for better ways to share information and data.

Senator ALLARD. The final question. How do you plan on keeping yourself informed as to new legislative requirements that may be placed upon you in your duties?

Ms. HARPER. There are a number of ways, Mr. Chairman, that I will be keeping informed of new legislation and new legislative requirements.

Our Office of Congressional and Intergovernmental Relations is an excellent source of information, and we work quite closely together, in addition to which the Chief Financial Officers' Council has a legislative committee, of which I am a member, and we track very carefully those pieces of legislation that would, for instance, affect the chief financial officers, the financial or budgetary or planning legislation.

Senator ALLARD. Thank you.

Do we have any other questions from any other members of the committee?

Senator BAUCUS. Mr. Chairman, I just wanted to ask Ms. Harper——

Senator ALLARD. The Senator from Montana is recognized.

Senator BAUCUS [continuing]. The same question I asked the previous witness.

How do you want to be remembered? What is your legacy?

Ms. HARPER. Senator, I would like my legacy to be that when I have left the Environmental Protection Agency, we have finally established a planning, budgeting, analysis, and accountability system where we know where we're going; we budget our resources to that plan; our resource allocation decisions are based on prioritization along known and effective guidelines, and that we hold ourselves accountable for achieving the environmental results that the American public expects from us.

Senator BAUCUS. Well, I can tell you, you are approaching it with great enthusiasm.

Thank you, Mr. Chairman.

Senator ALLARD. Thank you for appearing here today, Ms. Harper.

If there are no further questions, the committee is adjourned.

[Whereupon, at 3:30 p.m., the committee was adjourned, to reconvene at the call of the chair.]

[Additional material submitted for the record follows:]

STATEMENT OF DONALD J. BARRY, NOMINATED TO BE ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, U.S. DEPARTMENT OF THE INTERIOR

Mr. Chairman, members of the committee: Many people who go through the nomination process before this committee state how honored and humbled they feel to be nominated for higher office by the President. No matter how frequently you may have heard this statement from other nominees, it nevertheless is true.

To be nominated as the Assistant Secretary for Fish and Wildlife and Parks is the greatest honor I have been accorded in a long career of public service. It is also the greatest challenge and responsibility I have been asked to carry since arriving in Washington 23 years ago. I would like to express my deepest thanks to President Clinton and Secretary Babbitt for placing their confidence and trust in my ability to fulfill the responsibilities of Assistant Secretary.

When I reflect back upon the major forces or influences in my life that have helped bring me before you today, three things stand out in importance.

First and foremost, has been the influence of my parents. Highly educated and completely devoted to each other and the four children that they raised, my parents taught me the importance of many things in life, including the need for honesty and ethics in dealing with people, the virtue of hard work and doing your best, and the value of public service. My parents also instilled in me at an early age a deep appreciation for the outdoors and the beauty of nature. Whether it was camping in Colorado, rock collecting in the Dakotas, bird watching in Wisconsin, or canoeing in Minnesota's Boundary Waters, our family outdoor summer vacations stimulated my earliest thinking about a career in conservation. I admire my parents for many, many things, but most of all, I admire—and thank them—for instilling in me a life-long love of the natural areas of this country, of wild things and wild places.

The second major influence in my life was growing up in a small town in rural America. A former Congressman once lamented that the biggest problem with Washington, DC was that people stayed here too long, and ended up confusing themselves with the rest of the monuments. Although I have lived in Washington, DC for almost a quarter of a century, I believe that I have never lost touch with where I came from, or where my roots began. I grew up in a small agricultural community in southern Wisconsin where hard work was a way of life, honesty was considered a mandatory virtue, and "public service" was considered your civic duty and not the 13 letter equivalent of a four letter word. In a small rural community, you quickly learn the importance of being straight with people—of keeping your word.

The third major influence in my life was the Boy Scouts of America. ginning at age 13, I spent nine of the best summers of my life working on the staff of a Boy Scout camp in northern Illinois. Advancing from the position of nature director to ultimately the program director for the entire camp, my days in scouting enhanced my love of the outdoors and taught me early lessons of leadership and the importance of a life of public service.

These three influences—my parents, growing up in a small town in the Midwest, and the Boy Scouts of America, have all contributed significantly to what I stand for and believe in today.

It is my view that the position of Assistant Secretary for Fish and Wildlife and Parks is one of the most important positions in the Federal Government today. While other positions may make greater contributions in important areas such as public health or education, no other governmental portfolio carries a greater trust responsibility for the American people than one involving the conservation and enhancement of this Nation's wildlife, cultural, historic and park resources.

At times this daunting task seems beyond the capabilities of any one person. As obvious as my own shortcomings may be, I nonetheless believe there are four reasons why you should favorably consider my nomination for the position of Assistant Secretary.

To begin with, I offer you my experience. I believe that my years in Washington, DC have provided me with a clear understanding of the varying roles and responsibilities of the office of Assistant Secretary for Fish and Wildlife and Parks. I have either worked in, or worked with, this particular office for almost a quarter of a century. From 1975 to 1986, I provided legal advice to the Assistant Secretary for Fish and Wildlife and Parks through various positions in the Office of the Solicitor at the Department of the Interior. Since my return to the Department as a political appointee in May 1993, I have alternately served as the Counselor to the Assistant Secretary, the Deputy Assistant Secretary, and the Acting Assistant Secretary. Moreover, during the 6 years that I worked for the House of Representatives, I was responsible for the Merchant Marine and Fisheries Committee's Congressional oversight of the Assistant Secretary's office. It, thus, could be said that I have interacted with past Assistant Secretaries for Fish and Wildlife and Parks from a variety of angles. I, believe therefore, that I have the practical experience and insight that one would want in an Assistant Secretary.

In addition to my familiarity with the office of Assistant Secretary, I have also worked for over 20 years with the two agencies that this office oversees: the U.S. Fish and Wildlife Service and the National Park Service. I served for 12 years as an attorney for the Fish and Wildlife Service, including 6 years as that agency's Chief Counsel. As a result of this prior professional relationship, I have long-standing personal ties with every Regional Director in the Service, and most of the agency's Field Supervisors as well. Moreover, I have worked closely with the Director of the Fish and Wildlife Service, Jamie Clark, for many years, and believe that we have established a solid record of solving problems together.

While my past involvement with the National Park Service may not be as extensive as with the Fish and Wildlife Service, I nevertheless am familiar with the key programs of the Park Service and have established an excellent working relationship with the Director of that agency, Bob Stanton. I also have long-standing working relationships with many of the senior leaders in the Park Service. For example, I first met two of the Park Service's current regional directors while working on park issues for the Department during the passage of the Alaska National Interest Lands Conservation Act (ANILCA) in the late 1970's. Thus, I am no stranger to the policies and programs of the National Park Service.

The second reason I would offer for you to consider supporting my nomination is my long record of bipartisan collaboration in preserving America's natural resources. Mr. Chairman, I have never seen a Democratic flock of geese or a Republican sunset over Yosemite Valley. Labels of exclusive political ownership may be the bread and butter for Washington pundits, but they are contrary to the history of conservation in this country. Our greatest gains in preserving our natural, cultural, and historical legacy have occurred when men and women of both political parties have set aside their differences and forged a common ground on behalf of the American people. There are plenty of partisan political issues to be divided over—the preservation of our parks and wildlife resources should not be among them.

The third reason I hope that you would favorably consider my nomination is that I appreciate the special role reserved for Congress by the Constitution in the development and implementation of this country's natural resource policies. Having spent 6 years as a general counsel for a Committee Chairman in the House of Representatives, I understand first-hand the importance of balanced congressional oversight of the administrative implementation of our laws. So long as the inquiries are fair, I will always welcome the input from Congress in assessing how well we are doing. For in the end, we are all accountable to the American people, and only by working together, can Congress and the executive branch enhance the natural and cultural heritage of this country.

The final reason you should consider supporting my nomination is my personal approach to solving problems. Quite frankly, easy problems rarely work their way

up the food chain to the desk of an Assistant Secretary. All too often the problems are complex and messy, involving large doses of conflicting facts and inflexible, dug-in opponents, each convinced that the other side is horribly, horribly wrong.

Unfortunately, we seem to be losing our ability in this country to respectfully disagree with one another without being disagreeable. Our society seems to be shouting more and listening less. I believe that the reverse approach is necessary to be an effective Assistant Secretary. In order to fairly sort out conflicting facts and points of view, an Assistant Secretary should be accessible to all parties, and be a particularly good listener. Judge Learned Hand once noted that "The spirit of liberty is the spirit that is not too sure it is right." That spirit is jeopardized by too much certitude, by too much righteousness, and by an unwillingness or incapacity to stand in another's shoes.

I pride myself on being a good listener and of being open and accessible to different points of view. The fact that my candidacy has been endorsed by the leadership of such polar opposites as the Wilderness Society and the American Farm Bureau, the Safari Club and the Humane Society, and the California League of Conservation Voters and the Southern California building industry, will hopefully tell you more about my approach to solving problems than my ultimate decisions themselves. While many of these organizations will tell you that they disagree with some of my positions, they will also tell you that I am fair, I am balanced, and I listen carefully to what they say. For in the end, I am neither an ideologue from the right nor from the left—I am simply from Wisconsin.

Winston Churchill once stated that "we make a living by what we get, we make a life by what we give." As I come before you today, I am asking you to give me another opportunity to serve the American people. I am proud to be associated with two of the finest agencies in the Federal Government, the National Park Service and the U.S. Fish and Wildlife Service. I am honored to work on a daily basis with their dedicated employees and I intend to be an advocate for our national parks and this country's fish and wildlife resources. Anything less, in my mind, would disqualify me from this post.

President John F. Kennedy in his inaugural address distilled the essence of public service to its purest form. He said "I am certain after the dust of centuries has passed over our cities, we, too, will be remembered not for victories or defeats in battle or in politics, but for our contribution to the human spirit." With your confidence and support, I pledge to work diligently to enhance the park and wildlife resources of this country. In this small way, I too, may enhance the human spirit of this nation. Thank you.

BIOGRAPHICAL STATEMENT FOR DONALD J. BARRY

Over the past 23 years, Don Barry has served under or worked with eight different Secretaries of the Interior, Members of Congress and non-governmental organizations on matters that directly affect the Office for the Assistant Secretary for Fish and Wildlife and Parks. Through various positions, he has worked with a wide range of public and private entities to solve natural resource problems. For the reasons that follow, he has the experience to serve as the Assistant Secretary for Fish and Wildlife and Parks.

Executive Branch Experience—Don has worked for over 15 years within the Department of the Interior in a variety of positions that directly relate to the position of Assistant Secretary, including serving as the Acting Assistant Secretary, Deputy Assistant Secretary, Counselor to the Assistant Secretary and the Assistant Solicitor (Chief Counsel) to the U.S. Fish and Wildlife Service.

Legislative Branch Experience—Don worked for over 6 years for the Chairman of the House Merchant Marine and Fisheries Committee as the General Counsel for Fisheries and Wildlife. In this capacity, he worked routinely with the Assistant Secretary for Fish and Wildlife and Parks and the Director of the U.S. Fish and Wildlife Service. He was responsible for all legislative matters involving endangered species, marine mammals, the National Wildlife Refuge System, wetlands, migratory birds, water and energy development, and international wildlife agreements. He also worked collaboratively with the House and Senate Natural Resource Committees on numerous land and water management initiatives, including those affecting the National Park System.

Managerial Competency—Don has over 18 years of managerial experience in both the government and as a Vice President with the World Wildlife Fund. As Assistant Solicitor, he received six straight "Outstanding" management performance ratings and received five Special Achievement Awards for superior legal services.

Natural Resource Expertise—Don has experience in all aspects of natural resource law and policy, including fish and wildlife conservation, national parks and wildlife refuges, public lands, energy resources, Native American rights, Alaskan lands, coastal and marine resources and wetlands. For example, he has worked on Endangered Species Act matters for 22 of the 23 years that the Act has been in existence, having helped draft or develop every major ESA regulation and policy to date. He has also participated in every ESA Reauthorization since passage of the original Act. In addition, he has played a significant role in the drafting and implementation of the Alaska Lands Act and the negotiation of various international conservation agreements.

UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Barry (LAST) Donald (FIRST) James (MIDDLE)

Position to which nominated: Assistant Secretary for Fish and Wildlife and Parks

Date of Nomination: _____

Date of birth: 19 (DAY) 10 (MONTH) 49 (YEAR)

Place of birth: Monroe, Wisconsin

Marital status: Married

Full name of spouse: Irene Teiko Saito

Name and ages of children: (No children)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Monroe High School	1964 - 1967	High School Diploma	June 1967
University of Wisconsin	Sept. 1967 - June 1971	B.A. in American Institutions	June 1971
University of Wisconsin Law School	Sept. 1971 - May 1974	Juris Doctor	May 1974

Employment record: List below all positions held since college, including the title and description of job, name of employer, location, and dates

Solicitor's Office Honors Program
U.S. Department of the Interior
Washington, D.C. 20240
September, 1974 - May, 1975
(Participated in a rotational training program for new Honors Program attorneys in the Solicitor's Office)

Attorney-Advisor
Branch of Fish and Wildlife
Solicitor's Office
U.S. Department of the Interior
Washington, D.C. 20240
May, 1975 - February, 1980
(Worked as a staff attorney for the U.S. Fish and Wildlife Service and the Assistant Secretary for Fish and Wildlife and Parks)

Employment record cont.:

Assistant Solicitor for Fish and Wildlife
Branch of Fish and Wildlife
Solicitor's Office
U.S. Department of the Interior
Washington, D.C. 20240
February, 1980 - December, 1985
(Served as Chief Counsel to the U.S. Fish and Wildlife Service and senior legal advisor to the Assistant Secretary for Fish and Wildlife and Parks)

Majority General Counsel for Fisheries and Wildlife
Merchant Marine and Fisheries Committee
U.S. House of Representatives
December, 1985 - June, 1991
(Worked for the Chairman of the House Merchant Marine and Fisheries Committee as the Majority General Counsel for fish and wildlife matters)

Vice President for U.S. Land and Wildlife
World Wildlife Fund
Washington, D.C.
June, 1991 - May, 1993
(Responsible for WWF's land use and wildlife conservation programs for the United States)

Counselor to the Assistant Secretary for Fish and Wildlife and Parks
Office of the Secretary
U.S. Department of the Interior
Washington, D.C. 20240
May, 1993 - July, 1996
(Served as the Senior Counselor to the Assistant Secretary for Fish and Wildlife and Parks on a wide array of legal, legislative and administrative policy matters involving the U.S. Fish and Wildlife Service and the National Park Service)

Deputy Assistant Secretary for Fish and Wildlife and Parks
Office of the Secretary
U.S. Department of the Interior
Washington, D.C. 20240
July, 1996 - Present
(Serve as the Deputy to the Assistant Secretary for all legal, legislative and administrative policy matters involving the U.S. Fish and Wildlife Service and the National Park Service.)

Acting Assistant Secretary for Fish and Wildlife and Parks
Office of the Secretary
U.S. Department of the Interior
Washington, D.C. 20240
February, 1997 - Present
(Oversee the development and implementation of all policy and legislative matters involving the U.S. Fish and Wildlife Service and the National Park Service)

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service

* University of Wisconsin (1971) - Graduated with Distinction (Upper 1%)

* University of Wisconsin Law School (1974) - Cum Laude Graduate

* University of Wisconsin - Phi Beta Kappa (Junior Year - 1970)

* University of Wisconsin - Phi Kappa Phi (Junior Year - 1970)

* University of Wisconsin - Phi Eta Sigma (Freshman Year - 1968)

* 5 Special Achievement Awards for outstanding legal service in the Solicitors office (1977, 1979, 1981, 1983, 1985) including 1985 Departmental Superior Service Award

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Dates	Office held (if any)
Wisconsin Bar Association (Active Member)	June 1971 - Present	None
D.C. Bar Association (Inactive Member)	1989 - Present	None
Wildlife Habitat Enhancement Council (Non-profit)	Aug. 1991 - June 1993	Board of Directors
The Nature Conservancy (Member)	??? - Present	None
World Wildlife Fund (Member)	??? - Present	None
Resident Associate, Smithsonian (Member)	??? - Present	None
Habitat for Humanity (Member)	??? - Present	None
WETA Public Television (Member)	??? - Present	None
WAMU Public Radio (Member)	??? - Present	None

Qualifications: State fully your qualifications to serve in the position to which you have been named.

I have either worked in or worked with the Office of the Assistant Secretary for Fish and Wildlife and Parks for over 23 years, having served as the Counselor to the Assistant Secretary, the Deputy Assistant Secretary, the Acting Assistant Secretary, and the Assistant Solicitor for Fish and Wildlife. Moreover, I have worked at the Department of the Interior for over 15 years in a variety of career employee and political appointee positions involving the United States Fish and Wildlife Service and the National Park Service. I am, therefore, very familiar with roles and responsibilities that accompany the position of Assistant Secretary for Fish and Wildlife and Parks.

Future employment relations:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Not applicable, currently employed by the U.S. Department of the Interior.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

No

3. Has anybody made a commitment to you for a job after you leave government?

No

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

Not applicable

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

I served as the Counselor to the Assistant Secretary for Fish and Wildlife and Parks (a non-career SES position) from May, 1993 through July, 1996. At that time, I was promoted to the position of Deputy Assistant Secretary for Fish and Wildlife and Parks (also a non-career SES position). At present, I remain the Deputy Assistant Secretary while also serving as the Acting Assistant Secretary since February of 1997.

Financial statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should indicated by the categories established for reporting income on Form SF 278, Schedule A.

   None

3. Are any assets pledged? (Add schedule).

   Private residence
   (First and second mortgages)
   1st Mortgage: CitFed Bancorp ($202,000 Bal.)
   2nd Mortgage: Chevy Chase Bank ($9,500 Bal.)

4. Are you currently a party to any legal action?

   No

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain.

   Yes

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

   No

Potential continuing conflicts of interest:

1. Describe any financial or deferred compensation agreements or other dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

   None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

   None

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) that you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, which might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

I will contact my servicing ethics counselor for advice and guidance in connection with any ethics situation or issue before me.

5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

If I am confronted by a situation that may create an actual or apparent conflict of interest, I will seek the advice and guidance of my servicing ethics counselor before proceeding. Attached is a copy of the ethics opinion letter issued by the Department of the Interior's Designated Agency Ethics Official to the Director, U.S. Office of Government Ethics with regard to my reported financial interests. This letter also mentions the ethics provisions that will cover me as Assistant Secretary for Fish and Wildlife and Parks.

Political affiliation and activities

List all memberships and offices held in, or financial contributions (in excess of $1,000), and services rendered to any political party or election committee during the last 10 years.

National Democratic Party (general membership)
Virginia Democratic Party (general membership)

Assisted on a volunteer basis in the review and preparation of environmental issue papers for the 1992 Clinton-Gore campaign.

Published writings:

List the title, publishers and dates of any books, articles, or reports you have written.

Managing National Park System Resources - A Handbook on Legal Duties, Opportunities and tools (Chapter 6 - The Endangered Species Act) - The Conservation Foundation (1990)

Amending the Endangered Species Act, the Ransom of Red Chief and other Related Topics, 21 Envtl. L. 587 (1991)
Northwestern School of Law of Lewis and Clark College

Additional Matters:

1. If there is any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

   My nomination has been endorsed by every prior confirmed Assistant Secretary for Fish and Wildlife and Parks for the past 26 years spanning six Administrations.

2. Do you agree to appear before all Congressional Committees which seek your testimony?

   Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

   No

AFFIDAVIT

) ss

I,_____, being duly sworn, hereby state that I have read the foregoing State for Completion by Presidential Nominees, including all attachments thereto, and that the information provided therein is, to the best of my knowledge and belief, current, accurate, and complete.

Donald J. Barry
(Signature of Nominee)

Subscribed and sworn to before me this 12 day of Nov 19 97

Mason Tsai
Notary Public

Mason Tsai
Notary Public District of Columbia
My Commission Expires April 30, 2000

RESPONSES BY DONALD J. BARRY TO ADDITIONAL QUESTIONS FROM SENATOR CHAFEE

Question 1. If you are confirmed as Assistant Secretary, what are your top priorities for the Fish and Wildlife Service and the National park Service? What legacy do you hope to leave with the Department?

Answer. If confirmed as Assistant Secretary, the following would be among my top priorities for the National Park Service and the U.S. Fish and Wildfire Service: focusing on the budget priorities and needs for both agencies in order to maximize the fiscal resources available for each agency; completing the ESA reauthorization process and finalizing all ESA administrative reforms designed to enhance private land owner and State and local government support for species conservation; assisting in the timely implementation of the National Wildlife Refuge System Improvement Act of 1997; resolving bison management and winter use controversies in Yellowstone National Park; supporting on-going restoration efforts for the Florida Everglades; and resolving past controversies surrounding the National Park Service's construction program.

As for the legacy I would care to leave behind upon my departure from the position of Assistant Secretary, four items stand out in particular:

(1) I would like to leave in place a more effective endangered species conservation program that significantly accelerates species recovery efforts on the ground through enhanced support and cooperation from private landowners and State and local governments.

(2) I would like to leave the Fish and Wildlife Service and the National Park Service with enhanced fiscal resources to accomplish their important missions and with a new generation of leaders in place who are open to new approaches and ideas for enhancing the effectiveness of their agencies' programs.

(3) I would like to see strong continued progress in the implementation of the Administration's major ecosystem restoration projects involving places like the Florida Everglades and the desert landscapes of Southern California; and

(4) I would like to expand within the agencies I oversee the sense of enjoyment and pride that used to be associated with government employment and public service.

Question 2. You have extensive experience in implementing the Endangered Species Act and in efforts to reauthorize the ESA. Many of the recent reforms that you have helped to initiate, including the "no surprises" policy and the safe harbor agreement, have formed the foundation for the bill that we reported out of Committee. How do you plan to draw on this experience in your new position?

Answer. I would work to promote within the Fish and Wildlife Service the new emphasis on cooperation and collaboration with private landowners which is inherent in both this Administration's ESA administrative reforms and the various policy provisions in S. 1180, as reported out of the Senate Environment and Public Works Committee. Working closely with the Director of the Fish and Wildlife Service, Jamie Clark, I would try to ensure that all of these new approaches are embraced not only by the Washington and Regional leadership of the Service, but by the rank-and-file field biologists as well.

In addition, the Administration is pleased with the success of the ESA administrative reforms we have crafted and implemented. The Department of the Interior, working closely with the Department of Commerce, will continue to initiate administrative reforms to make the Act more effective in conserving vulnerable species and to improve the delivery of the Act in a manner that provides flexibility and certainty to private landowners. In the next couple of months, we will be releasing a new Section 7 Handbook that improves, streamlines, and expedites the manner in which we conduct interagency consultations. We will be finalizing our No Surprises Rule this month and then completing the final Safe Harbor and Candidate Conservation Agreement with Assurances Policies in the spring. In addition to making the development of new administrative reforms a priority, I look forward to continuing to work with the Senate Environment and Public Works Committee and the House Resources Committee to reauthorize the ESA.

RESPONSES BY DONALD J. BARRY TO ADDITIONAL QUESTIONS FROM SENATOR KEMPTHORNE

Question 1. One of the most important aspects of the Endangered Species Recovery Act of 1997 is Section 10 Habitat Conservation Planning. Lately, some private property owners who would be otherwise interested in HCPs have expressed reservations based upon the standards which have been applied by the Administration representatives. They fear that the use of a recovery standard in HCPs will effectively shift the burden of recovery to private property owners. Do you agree with me that imposing a recovery standard burden on HCPs will provide a disincentive to private property owners and discourage them from conserving important habitat for species?

Answer. The section 10 process is an important opportunity to provide species protection and habitat conservation within the context of non-Federal development and land and water use activities. It does not explicitly require that every HCP recover listed species, or contribute to the recovery objectives outlined in a recovery plan. The issuance criteria under section 10 of the Endangered Species Act require that the HCP applicant " will, to the maximum extent practicable, minimize and mitigate" the impacts of any incidental taking authorized by a section 10 permit, and that issuance of the permit "will not appreciably reduce the likelihood of the survival and recovery of the species in the wild". Neither the ESA nor its implementing regulations demands that every HCP must result in a net benefit to or recovery of the affected species.

Clearly, HCPs may, however, contribute to recovery of covered species because of the conservation programs established and the long-term assurances provided. This is especially true of regional and other large-scale HCPs that address all or much of a species' range. The Service encourages all HCP applicants to craft their HCP so as to contribute to the conservation and recovery of federally listed, proposed, and candidate species as well as overall biological diversity. Many HCPs do just that.

Based upon the particular biological facts in a given case, some HCPs may have to support a species' recovery. If an HCP covers most or the entire range of a species or if it covers a severely depleted species, measures that are necessary for the long-term survival of the species as well as the eventual recovery must be embraced in the plan. In such situations, the biological dividing line between survival and recovery may be meaningless.

Question 2. During our negotiations on the Endangered Species Act, we considered the value of using the best science to both list and delist species. In the last Interior appropriations bill I inserted enough money to provide for a Habitat-based

Population Viability Analysis for the Grizzly Bear in the Yellowstone Area. It is my sincere hope that the results of this study will result in a prompt recommendation from the Fish and Wildlife Service to delist the Grizzly Bear. Will you please describe progress on the habitat-based PVA and give me an idea of how soon we can see delisting of this species?

Answer. The money made available for a habitat-based population viability analysis (PVA) was targeted for the Bitterroot ecosystem per language in the Senate Appropriations Committee report. Presently, Region 6 is negotiating a contract with a recognized expert in population viability analysis. We expect to complete the PVA this fiscal year, prior to completion of the final Environmental Impact Statement and Record of Decision for grizzly bear recovery in the Bitterroot ecosystem.

The Service believes that it has made significant progress on implementing the recovery plan and that the grizzly bear population in the Yellowstone Ecosystem is well on its way to recovery; however, not all of the biological recovery criteria have been met. In order to delist this population, the following recovery items must be completed:

Completion of habitat-based recovery criteria. This is required by both the grizzly bear recovery plan and litigation settlement provisions. The process is ongoing and expected to be completed by the summer of 1998.

Completion of Conservation Strategy which will indicate how bears and their habitat will be managed after delisting. The process is ongoing and expected to be completed by December 1998.

Revision of the chapter on the Yellowstone population in the Grizzly Bear Recovery Plan to incorporate a more accurate methodology for estimating the female grizzly population in the Yellowstone ecosystem. The current methodology is very conservative and does not account for unobserved females. This process is ongoing and expected to be completed by December 1998.

Wyoming and Montana need to be able to control human-caused mortality following delisting. U.S. Fish and Wildlife Service representatives have discussed this need with representatives from both States. This is now in the hands of each State.

Once the above items are accomplished and the Yellowstone population of grizzly bears meets all of the biological recovery criteria, the U.S. Fish and Wildlife Service will propose delisting as promptly as possible.

The other population of grizzly bears in the lower 48 states are not as close to recovery as the Yellowstone population. It is not possible to predict when these populations might be ready for delisting.

Question 3. As a result of information obtained at a hearing in 1995, I included a "general scientific permit" in the bill to reauthorize the Endangered Species Act. The purpose of the proposed changes is to streamline the Service's permitting process by providing a qualified organization with a blanket permit for a set period of time. The exact language has been dropped from the bill as passed by the Environment and Public Works Committee because of a promise from the Administration that something can be worked out administratively.

Can you bring me up to date on progress on the subject of a general permit to qualified organizations. Does it appear that an administrative solution will be sufficient, and a legislative solution will not be required to implement a "general scientific permit"?

Answer. S. 1180 includes a provision specifically authorizing the issuance of scientific permits which may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time. In issuing or modifying such a permit, the Secretary shall take into consideration the expertise and facilities of the permit applicant and, consistent with the conservation of the affected species, maximize the efficiency of the permitting process. The Fish and Wildlife Service is in full support of this new language and is already considering ways to implement these provisions. Senior managers of all of the Service's permitting processes have already begun their involvement in this effort, since there are issues which extend beyond the Endangered Species Act to other U.S. laws which regulate taking and trade in wildlife. The Service intends to focus on the scientific permitting needs of the Peregrine Fund as a test model for this effort. This will result in a comprehensive plan for this new approach to permits for scientific purposes or to enhance the propagation or survival of listed species. I believe this will significantly increase the efficiency of our permitting process and lower the burden on permit applicants in ways which will foster the conservation of the species, making additional consideration of any other legislative changes unnecessary.

Question 4. I understand that there is an extinction crisis on many island habitats around the world, including United States islands. By virtue of their geographic iso-

lation, the Hawaiian Islands provide homes to many unique forms of plant and animal life. Due to the decline of many native species the Hawaiian Islands are now recognized as the endangered species capital of the nation. I believe immediate, focused recovery efforts like those proposed in S. 1180 are needed to halt the imminent extinction of the remaining native Hawaiian flora and fauna. In February 1997, Hawaii's Congressional delegation joined a call for the formation of a Hawaiian Bird Secretarial Conservation Commission to address the problem. What is your response to the request for a Secretarial Commission on Hawaiian flora and fauna? Do you think the problem is critical in Hawaii? Are there other island habitats under the jurisdiction of the United States that would benefit from such a Secretarial Commission?

Answer. There is clearly a need to enhance our efforts to address the serious decline of native species on the Hawaiian Islands, and the Fish and Wildlife Service is actively considering the Hawaiian delegation's proposal to establish a Secretarial Commission or similar organization that could function as an umbrella organization capable of taking a broad look at the enormous task of setting priorities and restoring parts of Hawaii's natural environments, where possible. This commission could be established under the auspices of the Endangered Species Act and function as a recovery team for Hawaiian ecosystems, consisting of both resource professionals and other individuals who live in the Hawaiian Islands. The Commission could become a successful partnership of public and private entities who share a common concern for the welfare of Hawaii's unique flora and fauna.

It is possible that other islands, such as the Mariana archipelago, could also benefit from the establishment of a Secretarial-level team or commission. However, we would prefer to focus our efforts first on the Hawaiian Islands and explore the concept's viability before broadening its application to other Pacific islands.

Question 5. I understand that you headed the U.S. delegation to the tenth Conference of the Parties (COP) to the Convention on International Trade in Endangered Species (CITES) in Harare, Zimbabwe. I also understand that the U.S. position on several issues were very much at odds with other parties to the Convention.

Would you please describe to us the process that the United States went through in preparation of policy options for the 10th COP. I would especially like to know what steps you have taken to look into the selection of issues, the development of positions, and the manner in which issues were negotiated during the COP.

As a result of your experience at the 10th COP, do you have any issues or policies that require the attention of the 105th Congress during the reauthorization of the Endangered Species Act?

Answer. The process of preparing for COP10 began with a Federal Register notice in March, 1996, requesting comments and suggestions for possible U.S. proposals. Over the next 15 months, the Fish and Wildlife Service published six additional Federal Register notices and conducted two public meetings in order to get public comments and explain U.S. positions for COP10. Final U.S. positions were developed as a result of an interagency consultation process involving a number of Federal departments and agencies.

As a result of this process, the United States submitted or co-sponsored 11 proposals for listing or delisting species. Of these, six proposals were approved, and one additional proposal was eventually replaced by an alternative to listing proposed by the U.S. and two other countries which was then accepted by consensus of the parties. Thus, 7 out of the 11 U.S. species proposals were approved by the COP. In addition, the U.S. also was involved in a number of successful efforts for the adoption of interpretive resolutions, and worked for the withdrawal of one resolution which was clearly in contravention of the terms of the CITES treaty.

However, there was one situation at COP10 which was of significant concern to me. Two U.S. proposals for listing domestic species were opposed by U.S. States and were eventually defeated or withdrawn. A third U.S. proposal which came up immediately after the other two also eventually had to be withdrawn, even though it was actually supported by the States. In each case, the actual or perceived opposition from the States was a major factor in the other countries' decisions not to support the proposals. This situation was clearly not acceptable, and even before COP10 ended I made a commitment to the States present that we would take assertive action to give them a much greater role in the development of U.S. proposals prior to the next COP. In September 1997, I arranged a meeting with the President of the International Association of Fish and Wildlife Agencies and other key State leaders during the IAFWA Annual Meeting in Scottsdale, AZ. During that meeting, we developed an outline of an entirely new relationship with the States to make them full partners in our entire CITES process.

The Fish and Wildlife Service has implemented this concept through an agreement with the IAFWA which now allows designated representatives of the States

to participate in each of the monthly interagency meetings where CITES issues are reviewed and where U.S. proposed positions will eventually be developed for COP11. Any unresolved issues will be brought to the attention of the FWS Director, and if necessary to me, well before final decisions are made, so that there will be the greatest possible opportunity for development of a consensus position with the States on all proposals involving U.S. species.

In addition, the Fish and Wildlife Service also identified a parallel need to give all interested parties a greater voice in the development of U.S. positions for COP11. As a result, on January 29, 1998, the first Federal Register notice requesting initial suggestions for U.S. proposals for COP11 was published, 22 months prior to the November 1999 anticipated date for COP11. This is 7 months earlier than the start of the public process for COP10. This early start will allow much more time for public review and comment on all potential proposals, and for analysis of these comments to ensure that there is a full understanding of the likely consequences of all proposals before final decisions are made. The January Federal Register notice also identified three early candidates for potential downlisting or delisting and one species for listing. All of these contemplated actions were reviewed in advance and were strongly supported by the States. I believe that these actions to involve the States and all other interested parties earlier and much more closely in our CITES decisionmaking process will ensure that the United States develops well-justified positions for COP11 which will be supported by other CITES parties.

One other major issue at COP10 where the United States did not side the majority was the downlisting of African elephants proposed by Zimbabwe, Botswana, and Namibia to allow resumption of trade in ivory. The United States opposed these proposals, not because of any concerns about these countries themselves—all of which have done a good job with elephant management—but rather because of our concerns about weaknesses in the trade control system after the ivory leaves their borders. There is a very real possibility that under current conditions any reopening of legal trade could lead to increased poaching and illegal trade in other countries lacking the capacity to defend themselves against well-armed, well-organized poaching gangs. Other CITES parties shared the U.S. concerns to some extent, and the final decision to downlist elephants included a number of stringent conditions which the CITES Standing Committee must determine have been satisfied by March before any trade can take place.

During the COP, I took great care to express the U.S. position in a manner which was fully respectful of the conservation achievements of Zimbabwe and the other proponent countries. I also developed a strong personal relationship with my counterpart from Zimbabwe, the Deputy Minister of Mines, Environment, and Tourism. As a result, we are developing a plan for increased cooperation between our two departments in the areas of national parks and wildlife management. The Deputy Minister has accepted my invitation to come to the United States with his key staff some time within the next few months for specific discussions about what would be included in this new cooperative program and a tour of the training facilities of the Fish and Wildlife Service and the National Park Service. This new relationship with Zimbabwe would complement assistance which we have provided to all three countries from our African Elephant Conservation Fund and an ongoing dialog on CITES issues.

Thus, I do not see any issues pertaining to our CITES process which are relevant to the discussion of reauthorization of the Endangered Species Act. S. 1180, the Endangered Species Reform Act, reported out of the Senate Environment Committee, does not change the CITES process and the Administration agrees with this approach.

CALIFORNIA STATE LANDS COMMISSION,
Sacramento, CA, February 3, 1998.

Hon. JOHN H. CHAFEE, *Chairman,*
Committee on Environment and Public Works,
Washington, DC.

DEAR SENATOR CHAFEE: It is our pleasure to endorse Donald J. Barry for the position of Assistant Secretary for Fish and Wildlife and Parks.

Mr. Barry has shown great depth in his understanding of the Endangered Species Act gained through his 22 years of work in the Executive and Legislative branches of government. He gained additional expertise in wildlife conservation and private and public land use while he was Vice President for U.S. Land and Wildlife with the World Wildlife Fund.

As an example of his ability to turn concept into action, he has continued the momentum on a complex intergovernmental, public-private project in California to acquire and restore over 1,100 acres of wetlands at Bolsa Chica. He has provided the policy direction and has committed the Fish and Wildlife staff necessary for the wetland restoration.

It is important to point out that he has been open and frank in his communications about Federal policy with State government agencies. This is a very refreshing attribute!

Sincerely,

ROBERT C. HIGHT,
Executive Officer.

THE WESTERN STATES LAND COMMISSIONERS ASSOCIATION,
February 3, 1998.

Hon. JOHN H. CHAFEE, *Chairman,*
Committee on Environment and Public Works Committee,
Washington, DC.

DEAR SENATOR CHAFEE: I am pleased to endorse the appointment of Donald J. Barry for the position of Assistant Secretary for Fish, Wildlife, and Parks of the Department of the Interior.

As President of the Western States Land Commissioners' Association, I have had the opportunity to work with Mr. Barry. We have found him to be dedicated and knowledgeable about the issues he has addressed during his years of public service, particularly fish and wildlife matters. He has dealt with us in a straightforward manner regarding Federal policy as it relates to our State agency operations.

Our member states have extensive interaction with the agencies under Mr. Barry's authority. His experience in natural resource matters in the executive, legislative and non-profit sectors are an asset. We look forward to continuing this positive and successful relationship.

Please call me if I can be of further assistance.

Sincerely,

RAY POWELL, M.S., D.V.M.,
Commissioner of Public Lands.

STATEMENT OF THE HUMANE SOCIETY OF THE UNITED STATES

On behalf of the 5.8 million members and constituents of The Humane Society of the United States (HSUS), I endorse the nomination of Mr. Donald J. Barry to be Assistant Secretary of the Interior for Fish and Wildlife and Parks and commend his confirmation by the U.S. Senate.

The HSUS is committed to the creation of policy that both protects wildlife and secures their future in the natural world. With his vast experience in both national and international wildlife and habitat issues, Mr. Barry has the ability to take strong action to help wildlife at home and abroad. The officers and staff of The HSUS look forward to working with Mr. Barry and offer our best wishes for success as Assistant Secretary for Fish and Wildlife and Parks.

STATEMENT OF SALLYANNE HARPER, NOMINATED TO BE CHIEF FINANCIAL OFFICER, U.S. ENVIRONMENTAL PROTECTION AGENCY

Good afternoon, Mr. Chairman and members of the committee. It is a great honor to be here today as the President's and Administrator Browner's nominee as the EPA's Chief Financial Officer. If confirmed, I would welcome this opportunity to serve the Administration and the American people to the best of my ability.

As a member of the Senior Executive Service, I have been privileged to serve in senior career civil service positions relating to financial management under three Administrators. Nevertheless, I can say that the position for which I have been nominated presents a unique and exciting challenge in this time of fundamental change at EPA. With your support, our environmental mission has been reaffirmed and reinvigorated, and there is a strong focus on results-oriented resource and financial management.

The American people expect the highest quality and integrity in the use and management of their tax dollars. I share these expectations and, if confirmed, will use all of my skill and energy to meet them. I would like to present to you a brief sum-

mary of the principles that will guide me, if the Senate chooses to confirm me as the Chief Financial Officer.

I, and my colleagues at all levels at EPA, are driven by a strong personal commitment to a clean and healthy environment. At the same time, having dedicated my professional career to fiscal resource management, I firmly believe that the mission of the Agency can only be accomplished in an atmosphere of fiscal responsibility and good management.

My goal since being appointed Acting Chief Financial Officer in March 1996—and a goal implicit in such statutes as the Government Performance and Results Act (GPRA) and the Chief Financial Officers Act—has been, and would continue to be, to enhance EPA's ability to reach its environmental objectives through more effective planning and resource management. I will also work to ensure that the American public and Congress have access to clear and comprehensive information on EPA's financial stewardship and on the effectiveness of the Agency's programs. And I recognize that the most effective way for us to accomplish our environmental mission is through joint action with our State partners.

The management challenge at EPA extends well beyond resource management. The Agency must evaluate every aspect of its work to measure efforts against results. Are we spending scarce dollars to our best advantage in achieving meaningful and measurable improvements in environmental quality? Can we show the American public that we are meeting our environmental challenges and public health threats efficiently and effectively? In short, we are being challenged to manage smartly against our bottom line, which is environmental quality for the people of this country.

To this end, I am deeply committed to the challenge of continuing the development of a comprehensive strategic planning, budgeting, analysis and accountability program at EPA. I believe we are on track and would like to present some of the highlights of our work to date in these areas.

In September of last year, we delivered to you the Environmental Protection Agency's Strategic Plan, as required under GPRA. Through the process of developing this Plan, the Agency, aided by the views of its partners and stakeholders, engaged in an intensive evaluation of what we would like our work to have achieved 5 years from now.

We have also made significant strides in the process of aligning our budget structure with the Strategic Plan elements. This will aid all participants in the budget process—both in the Administration and in Congress—in future years as we approach the GPRA vision of clear linkages between environmental results and budget decisions.

We have begun to address the internal challenge of developing an accountability system that moves us away from counting "program outputs" and toward the measurement of environmental outcomes. This is a daunting challenge, but the cooperation of Agency managers and the support we are receiving from State representatives, allows me to be confident of success.

All of these activities, guided by the Chief Financial Officer, must continue if we are to effect the major redirection toward performance-based management envisioned by GPRA. I pledge to continue these efforts.

Should I be confirmed, I look forward to working with the Administrator, this Committee and other Members of Congress, and the broad constituencies served by EPA, to ensure the financial resources entrusted to us are managed wisely. Thank you for this opportunity to address you.

BIOGRAPHICAL SKETCH OF SALLYANNE HARPER

Sallyanne Harper, currently the Environmental Protection Agency's (EPA) Acting Chief Financial Officer (CFO), has dedicated her professional career to fiscal resource management. Ms. Harper's public service experience is notable for her leadership of effective, productive and motivated organizations. She makes her personal commitment to excellence a part of the organizational culture, resulting in a climate that fosters respect within the organization and with business partners, constituents and stakeholders.

In her capacity as Acting CFO, Ms. Harper has responsibility for developing and managing EPA's new Planning, Budgeting, Analysis and Accountability (PBAA) System. This system will integrate strategic and annual planning, budgeting, scientific analysis, and fiscal and program accountability, enabling EPA to focus its efforts on the highest priority environmental issues and also assure efficient use of taxpayer dollars in fulfilling the many environmental and public health demands placed on the Agency.

Ms. Harper came to EPA in 1987, following 10 years of increasingly responsible positions in Procurement and Contracting with the Navy. She served as the Associate Director for Superfund and RCRA Procurement Operations until 1989, when she became Director of EPA's Financial Management Division. Named Deputy CFO in 1992, Ms. Harper served as Acting Assistant Administrator for Administration and Resources Management and CFO from May to November 1993, and again from July 1995 to March 1996.

Ms. Harper has also served the Federal financial management community in a number of leadership capacities. She is a former chair of the Federal Financial Manager's Council and the CFO Council's Government Performance and Results Act Implementation Committee. She currently serves as Secretary/Treasurer of CFO Council as well as chair or co-chair of several of the CFO council's committees.

Ms. Harper graduated Magna Cum Laude from LaSalle University and received her MBA in Finance and Investments from George Washington University in 1987. She is a graduate of the Executive Excellence Program of the Federal Executive Institute and the Harvard University John F. Kennedy School of Government's Senior Managers in Government Program. Her recent awards include two Meritorious Presidential Rank Awards, the Washington Chapter AGA Distinguished Leadership Award, and EPA's Bronze, Silver and Gold Medals for Exceptional Service.

THE GRIZZLE COMPANY

202 234 2101

February 2, 1998

The Honorable John Chafee
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

It is my understanding that Ms. Sallyanne Harper will appear before the Committee on Tuesday, February 3, for consideration of her nomination as Chief Financial Officer (CFO) of the Environmental Protection Agency. I had the distinct honor of serving as the Agency's first CFO in my capacity as Assistant Administrator for Administration and Resources Management in the Bush Administration. During that time, Ms. Harper worked for me, first as Deputy Director of the Procurement and Contracts Management Division, and later as Director of the Financial Management Division. She is a superbly talented and dedicated public servant. The President has made a wise choice in selecting her for this important position. It is an honor for me to commend her to you and to recommend wholeheartedly her confirmation by your Committee and the full Senate.

Respectfully,

Charlie Grizzle

Charles L. Grizzle
Chairman

Suite 400 1400 Sixteenth Street, N.W. Washington, D.C. 20036 Fax: 202 234 1614

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS

ROOM 410 DIRKSEN BUILDING WASHINGTON, DC 20510

INFORMATION
REQUESTED OF PRESIDENTIAL NOMINEES

In order to assist the Committee in its consideration of nomination, each nominee is requested to complete the attached Statement for Completion by Presidential Nominees. The Statement is intended to be publicly available. In the event the nominee asks that a specific answer be kept confidential, he or she should notify the Chairman and Ranking Member.

The original and forty (40) copies of the requested information should be made available to Honorable John H. Chafee, Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, D.C. (Attn. : Staff Director) as soon as possible.

Name of Nominee: Sallyanne Harper

Business Address: EPA, 401 M Street, (SW) (2710)
Washington, DC 20460

Business Phone: (202) 260 -1151

Home Address: 4610 Backlick Road, Annandale, VA 22003

Home Phone: (703) 750-3429

UNITED STATES SENATE
COMMITTEE ON ENVIRONMENTAL AND PUBLIC WORKS
STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Sallyanne Harper (NMI)

Position to be nominated: Chief Financial Officer **Date of Nomination:** 10/28/97

Date of birth: September 30, 1954 **Place of birth:** Philadelphia, PA

Marital status: Married **Full name of spouse:** Francis Joseph Nathens III

Name and ages of children: None

Education:	**Institution**	**Dates Attended Attended**	**Degrees received**	**Dates of Degrees**
	George Washington University	9/83 - 6/87	MBA/Finance	6/87
	North VA Community College	9/80 - 6/83		
	LaSalle University	9/78 - 6/79		
	Drexell University	9/77 - 6/78		
	PA State University	9/76 - 6/77		
	La Salle University	9/72 - 6/76	BA Psychology	6/76
	Gwynedd Mercy Academy	9/69 - 6/72	HS Diploma	6/72

Employment Record: *List all positions held since college, including title and description of jobs, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.*

Acting Chief Financial Officer EPA Washington, DC 3/96 - Present

Report to the Administrator for this $6.8 Billion, 17,800 employee, natural resources and human health protection Federal Agency. Direct staff of 460 professionals nationwide in all aspects of strategic planning, budgeting, finance, program performance measurement, and fiscal resources management.

Acting Assistant Administrator for Administration and Resources Mgmt and Chief Financial Officer EPA Washington, DC 5/93 - 11/93 & 6/95 - 3/96

Reported to the Administrator with responsibility for all fiscal and administrative components of EPA. Functions directed included: Budget & Finance, Information Resources Management, Human Resources, Procurements & Contracts, Grants, Facilities, and Security.

Employment Record Continued:

Deputy Assistant Administrator for Administration and Resources Management, Deputy CFO	EPA	Washington, DC	8/92 - 6/95

Responsible for operational aspects of administration, finance, procurement, contracting, grants, human resources, facilities and information management.

Director, Financial Management Division	EPA	Washington, DC	10/89 -8/92

Reported to the Comptroller with responsibility for all Finance Operations overseeing a national staff of over 200 employees and an annual budget of $25 million. Guided implementation of a new finance system and developed EPA's first five-year financial management plan.

Director, Superfund/RCRA Procurement Operations	EPA	Washington, DC	- 6/87 - 10/89

Reported to the Director for Procurement & Contracts. Responsible for $1 billion of contracting associated with EPA's largest environmental program.

Supervisory Contracting Officer/ Contract Specialist for Naval Air Systems Command	DOD	Washington, DC	2/80 - 6/87
Contract Specialist for Naval Regional Contracting Office	DOD	Philadelphia, PA	7/77 - 2/80

Held a series of increasingly responsible positions in procurement and contracting including responsibility for cost estimating and analysis, contract negotiation, and development of contract terms and conditions. Held unlimited procurement authority.

Honors and Awards: *List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognition for outstanding service of achievement.*

Meritorious Presidential Rank Award in 1992 and 1997
1994 Washington Chapter AGA Distinguished Leadership Award
1994 EPA Gold Medal for Exceptional Service
EPA Silver and (2) Bronze Medals for Exceptional Service
Federal Technology Leadership Award
EPA's Federal Woman's Program Leadership Award
Certified Government Financial Manager

Memberships: *List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other Organizations.*

Organization	Office held (if any)	Dates
LaSalle University	Council of Presidents Associates	June 92 -Present
Worldwide Assurance for Public Agencies, Inc (WAEPA)	Member of Board of Directors	April 96 - Present
Federal Financial Mgr.'s Council	Chairperson	1993-1994
Chief Financial Officer's Council	(1997-98 Secretary/Treasury) (GPRA Cmt Chair 1994-96)	1992 - Present
CFOC/PCIE Committee on Audit	Co-Chair	1997-98
Assoc. Of Gov't Accountants (AGA)		1989 - Present
AGA Ethics Committee	Chairperson	1994-1995
USDA Graduate School of Financial Mgmt and Accounting Advisory Board	Member	1995 - Present
Little River United Church of Christ		1996 - Present
Immanuel United Methodist Church	Multi- Positions	1986 - 1996
Executive Women in the Government		1988 - Present
Senior Executives Association		1988 - Present
The Nature Conservancy		1985 - Present
The National Museum of Women in the Arts		1987 - Present
Fairfax County Pets on Wheels Program		1997
Flat-Coated Retriever Society of America		1995 - Present
Capital Region Flat-Coated Retriever Society		1995- Present
WETA		1982- Present
Friends of Green Spring Farm		1995-Present

Qualifications: *State fully your qualifications to serve in the position to which you have been named*:

My entire career has been devoted to public service in the area of fiscal resources' management, first in government contracting and procurement and subsequently as the Director of Finance for EPA, Deputy Assistant Administrator for Administration and Resources Management, Deputy Chief Financial Officer, and, currently Acting Chief Financial Officer. In addition to my work experience over the last twenty years, I also have an MBA in Finance and Investments from George Washington University and am an Association of Government Accountants' Certified Government Financial Manager (CFGM). During my tenure with EPA, my performance has merited two EPA Bronze Medals, the EPA Silver Medal and the EPA Gold Medal for Excellence. I have twice received the Meritorious Service Presidential Rank Award for noteworthy achievement of quality and efficiency in the public service.

Future Employment Relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

This question is not applicable since I currently work for the EPA.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business Firm, association or organization.

This question is not applicable (see answer to number 1).

3. Has anybody made a commitment to you for a job after you leave the government?

No they have not.

4. (a) If you have been appointed a fixed term, do you expect to serve the full term?

Not applicable, this is not a fixed term position.

4. (b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No, I am not aware of any limitations.

4. (c) If you have previously held any Schedule C or other appointive positions in the Executive Branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and it's timing.

I have not held any other Schedule C or other appointive positions in the Executive Branch.

Financial Statement:

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Forms SF 278, Schedule A.

None

3. Are any assets pledged (Add schedule).

None

4. Are you currently a party to any legal action?

No

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

Yes

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

I have never been audited.

Potential Conflicts of Interest

1. Describe any financial or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you are nominated.

Not applicable.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

None

3. Describe any business relationship, dealing, or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a

Conflict of Interest Con't:

client, or acting as an agent, that might in any way constitute or result in a probable conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

None

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

Not applicable.

5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicated what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Official.

See attachment.

Political Affiliation & activities: *List all memberships and offices held in, or financial contributions (in excess of $1000), and services rendered to any political party or election committee during the last 10 years.*

None

Published writings: *List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters).*

"Study of Implementing Performance Measures," (JFMIP News, Volume 4, Number 3)

Implementation of the Government Performance and Results Act: A Report on the Chief Financial Officer's Role and Other Issues Critical to the Government wide Success of GPRA

"GPRA: Partnerships & Accountability" (The Environmental Communique of the States (ECOS) v.4, no6: July/August 1997)

Published Writings Con't:

I have made numerous speeches/presentations within and outside the federal financial community on the implementation of GPRA at EPA. The following is a sample of some of the organizations I have made presentations to: Association of Government Accountants; JFMIP, Federal Financial Manager's Council; Federal Executive Institute; American Society for Public Administration (ASPA); Business Round table; American Public Health Association Virginia Society of Certified Public Accountants; Chief Financial Officer's Council; The International Institute of Business; and International Quality and Productivity Center (IQPC), and NAPA. I can provide a sample of this speech if requested. The following lists some of my 1997 presentations:

Title of Speech	Organization	Date
CFO's Unusual Approaches to Work	*AGA Federal Leadership Conference*	*January 1997*
CFO Perspective on GPRA Implementation	*IQPC 6th Nat'l Conference on GPRA*	*February 1997*
CFO Perspective on GPRA Implementation	*IQPC 7th Nat'l Conference on GPRA*	*March 1997*
Implementing GPRA at the EPA	*Federal Financial Mgr's Council*	*August 1997*
GPRA at EPA	*Western/Pacific AGA*	*September 1997*
Managing for Results - Putting the Pieces Together	*IQPC Performance Planning Seminar*	*Oct & Nov 1997*
Mgmt Process Alignment At EPA	*NAPA*	*December 1997*
NON GPRA Related 1997 Speeches:		
Executive Information Systems	*AGA*	*June 1997*
Privatization of Publicly-Owned Treatment Plants	*ASPA*	*July 1997*

Additional Matters:

1. If there is any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include here.

None.

2. Do you agree to appear before all Congressional Committees which seek your testimony?

I do.

3. Having completed this form, are there any additional questions which you believe the Committee should ask of the future nominees?

No.

AFFIDAVIT

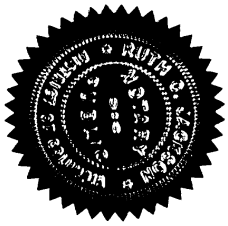
I, Sallyanne Harper, being duly sworn, hereby states that she has read and signed the foregoing Statement of Completion by the Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of her knowledge and belief, current, accurate, and complete.

Sallyanne Harper

Subscribed and sworn before me this ninth day of December 1997.

Ruth C. Jackson

Ruth C. Jackson, Notary Public
My commission expires on September 14, 2002 in the District of Columbia.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 29 1997

OFFICE OF
GENERAL COUNSEL

Stephen D. Potts, Director
Office of Government Ethics
Suite 500, 1201 New York Avenue, N.W.
Washington, D.C. 20005-3919

Dear Mr. Potts:

As required by 5 C.F.R. §2634.605(c), I have reviewed the Public Financial Disclosure Report (SF 278) submitted by Sallyanne Harper in connection with her nomination as Chief Financial Officer (CFO) of the Environmental Protection Agency.

Schedule D of Ms. Harper's SF 278 indicates that she serves as a member of the Board of Directors of the World-Wide Assurance for Employees of Public Agencies, Inc. (WAEPA), a non-profit employees' benefits association which is tax-exempt under 26 U.S.C. §501(c)(9). She receives no pay for this position, and it is an outside activity and not part of Ms. Harper's EPA duties. However, the provision of the Ethics in Government Act of 1978 described in 5 C.F.R. §2636.305(a)(2) bars "a covered noncareer employee" such as a confirmed Presidential appointee from

> permitting his name to be used by any * * * corporation, or other entity which provides professional services involving a fiduciary relationship.

Based on the definition at 5 C.F.R. §2635.305(b)(2), we understand that providing insurance involves "a fiduciary relationship."

In her ethics agreement (copy enclosed) Ms. Harper states that, if confirmed and appointed as CFO,

> I will not permit my name to be "used" by WAEPA. To help me carry out this undertaking, WAEPA has agreed that my name will not appear on any new brochures, flyers, letters, or other communications directed either to members or to non-members. It is understood that WEAPA's filings with the Internal Revenue Service, and perhaps materials which must be submitted to other governmental entities, are required by law to list the

directors and that my name and other required information will continue to be submitted on such filings. Although these documents are available to the public, they are not routinely distributed.

* * *

I have determined that Ms. Harper's report is complete and that, subject to the ethics agreement described above, it discloses no likely conflict of interest under applicable statutes and regulations. Accordingly, I have signed and dated the enclosed report.

A statement of the organizations and functions of the Chief Financial Officer is enclosed. Please call me at 260-8040 if you have any questions.

Sincerely,

Scott C. Fulton
Principal Deputy General Counsel
Designated Agency Ethics Official

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 28 1997

OFFICE OF THE
CHIEF FINANCIAL OFFICER

MEMORANDUM

SUBJECT: Ethics Agreement

FROM: Sallyanne Harper
Acting Chief Financial Officer

TO: Scott C. Fulton
Principal Deputy General Counsel
Designated Agency Ethics Official

Since April 1996, I have served as a member of the Board of Directors of the World-Wide Assurance for Employees of Public Agencies, Inc. (WAEPA), a non-profit employees' benefits association which is tax-exempt under 26 U.S.C. §501(c)(9). This is an outside activity and not part of my EPA duties.

I receive no pay for this position. However, I understand that I am subject to the provision of the Ethics in Government Act of 1978 described in 5 C.F.R. §2636.305(a)(2) which bars "a covered noncareer employee" such as myself from

> permitting his name to be used by any * * * corporation, or other entity which provides professional services involving a fiduciary relationship.

Based on the definition at 5 C.F.R. §2635.305(b)(2), I understand that providing insurance involves "a fiduciary relationship."

If I am confirmed as Chief Financial Officer of the Environmental Protection Agency, I will not permit my name to be "used" by WAEPA. To help me carry out this undertaking, WAEPA has agreed that my name will not appear on any new brochures, flyers, letters, or other communications directed either to members or to non-members. It is understood that WEAPA's filings with the Internal Revenue Service, and perhaps materials which must be submitted to other governmental entities, are required by law to list the directors and that my name and other required information will continue to be submitted on such filings. Although these documents are available to the public, they are not routinely distributed.

I trust that this undertaking will effect compliance with the provision described in 5 C.F.R. §2636.305.

GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS

1-16. Agency Chief Financial Officer/Accounting, Budgeting and Other Financial Management Activities

1. AUTHORITY. To serve as the EPA's Chief Financial Officer (CFO) in accordance with the Chief Financial Officers Act of 1990 and oversee all financial management activities relating to the programs and operations of the Agency, and to manage the Agency's Financial System in accordance with the Budget and Accounting Act of 1950 and other applicable laws and regulations. The authorities of the position include:

a. To establish and maintain an Agencywide integrated accounting and financial management system;

b. To provide general accounting and fiscal services, and to establish and enforce, throughout the Agency, internal controls policies standards and compliance guidelines involving financial management, including authority to require and ensure timely corrective actions regarding material weaknesses disclosed through audit findings and reports under the Federal Managers' Financial Integrity Act (FIFIA);

c. To establish, in coordination with program managers, Agencywide internal control processes and to advise the Administrator on the accuracy and completeness of the annual FMFIA report;

d. To issue Agencywide financial policies and procedures through the Agency's directives system, or other appropriate instructions;

e. To maintain liaison with GAO, OMB and the Treasury Department on issues related to financial management, accounting policy and operating accounting systems;

f. To assure effective fiscal control over the accountability for all funds, property and other assets for which the Agency is responsible;

g. To receive and deposit funds;

h. To have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material which relate to programs and operations with respect to CFO responsibilities (except Inspector General materials not otherwise accessible under law);

GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS

1-16. Agency Chief Financial Officer/Accounting, Budgeting and Other Financial Management Activities (Cont'd)

s. To produce reliable accounting results and information needed to support Agency budget requests and to provide financial information required by the Congress, OMB and the Treasury Department; this authority specifically includes certification of year-end accounting report;

t. With respect to Agency financial reporting:

(1) To mandate Agencywide data and reporting format requirements;

(2) To review and approve Agency financial reports and statements prepared by Agency components for transmittal to the Administrator, OMB, the President, the Congress or external groups;

(3) To prepare Agency financial statements and work with the Inspector General and other auditors to improve the statements' independent review and auditability;

(4) To develop, in coordination with program managers, financial and programmatic performance indicators for inclusion in the financial system and financial reports and statements;

(5) To ensure that data included in financial reporting (including program performance measures) are auditable; and

(6) To advise and provide direction to Agency program managers of financial management matters;

u. To exercise human resource authorities identified in the Chief Financial Officers Act of 1990 and OMB implementing guidance. Specifically:

(1) To approve job descriptions and skill requirements for Assistant Regional Administrators and Senior Budget Officers as they relate to specific CFO functions;

(2) To make recommendations to the Administrator on the selection of the Agency Deputy Chief Financial Officer and to concur on recommendations forwarded to the Deputy Administrator by Regional Administrators and senior Agency managers

GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS

1-16. Agency Chief Financial Officer/Accounting, Budgeting and Other Financial Management Activities (Cont'd)

z. To designate imprest fund cashiers;

(aa) To approve permanent exceptions or waiver requests to exceed the routine per-transaction spending limitation of $500 for payments made from the imprest fund;

(bb) To approve emergency, one-time exceptions for a single transaction payment made from the imprest fund, not to exceed $750;

(cc) To authorize waivers to permit imprest funds to be placed in depository accounts for demand case withdrawal purposes only;

(dd) To authorize partial/emergency salary payments; and

(ee) To receive requests and arrange for hearings related to debts owed by employees to the United States.

2. TO WHOM DELEGATED. The Assistant Administrator for Administration and Resources Management. (The Agency's Chief Financial Officer).

3. LIMITATIONS.

a. The EPA Claims Officer in the Office of General Counsel must be consulted on determinations to recover debts through involuntary installment deductions from the employee's salary which arise from erroneous payments (subparagraph 1.w), if the employee disputes either the entire determination or the amount owed to EPA.

b. None of these authorities should be interpreted to infringe on the Inspector General's independence or authority to conduct, supervise and coordinate audits and investigations relating to EPA programs.

4. REDELEGATION AUTHORITY.

a. The authorities in subparagraphs 1.a, 1.d, and 1.ee are redelegated through the Deputy CFO to the Comptroller and may be redelegated to the Director, Financial Management Division, and may not be redelegated further.

DELEGATIONS MANUAL

1200 TN 302
10/23/92

GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS

1-16. Agency Chief Financial Officer/Accounting, Budgeting and Other Financial Management Activities (Cont'd)

e. The authorities in subparagraphs 1.j, 1.t(3), 1.t(5), 1.x, 1.y are redelegated through the Deputy CFO to the Comptroller and may be redelegated to the Director, FMD, but may not be redelegated further.

f. The authorities in subparagraph 1.m, 1.p, 1.q, 1.r, and 1.t(4) are redelegated through the Deputy CFO to the Comptroller and may be redelegated to the Director, Budget Division, and may be redelegated to the Branch Chief level.

g. The authority in subparagraph 1.z is redelegated through the Deputy CFO:

(1) through the Comptroller and through the Director, FMD, to the FMD Branch Chief level;

(2) through the Director, Office of Administration and Resources Management, RTP, to the Director, National Contract Payment Division, and may not be redelegated further; and

(3) through the Regional Administrators and the Assistant Regional Administrators to the Regional Comptrollers or FMO's and may not be redelegated further.

h. The authority in subparagraph 1.cc is redelegated through the Deputy CFO to the Comptroller and may be redelegated to the Director, FMD, and may also be redelegated through the Regional Administrators and the Assistant Regional Administrators to the Regional Comptrollers or FMO's and may also be redelegated through the Director, Office of Administration and Resources Management, RTP, to the Director, National Contracts Payment Division, and may not be redelegated further.

i. Authorities in subparagraphs 1.h, 1.i, 1.k, 1.n, 1.t(1), 1.t(2), 1.u(1), 1.u(2), and 1.u(3) may not be redelegated.

5. ADDITIONAL REFERENCES. The Chief Financial Officer Act of 1990 (P.L. 101-576) created the position of Chief Financial Officer (CFO) in 23 major departments and agencies, including EPA. The CFO is the Agency's chief financial management policy officer and serves as the chief financial management advisor to the Agency Head. EPA's CFO is appointed by the President with the advise and consent of the Senate. The designated Agency CFO is the Assistant Administrator for Administration and Resources Management. The Agency Head selects the Deputy CFO. EPA's designated Deputy CFO is the Deputy Assistant Administrator for Finance and Acquisition. In the absence of the CFO, the Deputy CFO serves as the CFO on all matters addressed in this delegation.

RESPONSES BY SALLYANNE HARPER TO QUESTIONS BY CHAIRMAN CHAFEE

Question 1a. What specific recommendations do you have to help the agency make its programs and operations more efficient?

Answer. EPA has used the Government Performance and Results Act (GPRA) as an opportunity to make our programs and operations more efficient. For example, our FY 1999 Annual Plan to Congress is the first budget that reflects EPA's new approach of goal-based budgeting. In particular, we have developed key performance goals which assist us in measuring environmental progress. Future resource decisions will be based on the achievement of these goals. We have also created the Office of the Chief Financial Officer, with a new Planning, Accountability and Analysis office, which works directly with our budget and finance divisions to ensure that budgeting, planning, and accountability are part of the same operational process. In

addition, there are other initiatives underway to help the Agency better manage its programs and improve customer support by reducing the administrative burden. For example, we are working to implement the new managerial cost accounting standard so that managers will have the cost information they need to help in their priority setting and evaluation processes. We are also continually upgrading our financial systems to meet changing requirements and better serve our customers.

Question 1b. What can Congress do to be helpful to that end?

Answer. We intend to work closely with Congress as we strive to develop the systems and processes necessary to improve resource management in the Agency. We would also welcome feedback from Congress on how we have restructured our budget in compliance with the Government Performance and Results Act as well as on the development of the Agency's goals and measurements. We will also seek the advice of the Senate Environment and Public Works Committee as we identify areas that have potential to increase the Agency's efficiency.

Question 2. If confirmed as Chief Financial Officer, what contributions do you hope to leave with the Agency?

I would hope to leave the Agency a fully-implemented, comprehensive strategic planning, budgeting, analysis, and accountability program. Such a program, as envisioned in the Government Performance and Results Act of 1993 (GPRA), would provide the very clear linkages that we need between environmental results and budget decisions. Such a legacy would ensure that we could reach our environmental and public health objectives effectively and efficiently for many years to come.

Question 3. Page four of your testimony mentions the Agency's moving away from "program outputs" toward the measurement of environmental outcomes. Would you give us a specific example of this change?

Program outputs are the direct results of day-to-day work performed by EPA employees, and they are generally easy to identify and measure. An example from the Agency's water program is the issuance of wastewater discharge permits. These permits are developed by EPA staff and by State staff in those states delegated to run this Clean Water Act program. The programmatic result of these outputs is generally measured by estimating the pounds of pollutants that are no longer discharged to the water bodies receiving the wastewater effluent. EPA and the states can readily track and measure these two types of results.

But what really matters in the long run is whether the quality of the water in the receiving stream, lake or estuary is improving in a measurable way. This is what we mean by the term "environmental outcome." While EPA and the states currently measure water quality, we need to make improvements in the quality, consistency, and scope of these assessments (for example, only 17 percent of the Nation's rivers and streams are regularly assessed). While it is important to know that all dischargers subject to the statute are permitted and meeting their discharge requirements (and, in fact, this output information helps us determine how best to achieve the environmental outcome), we believe the success of our surface water program is best judged by whether the waters support their intended uses—such as serving as a source of drinking water; for commercial or recreational fishing; and for boating and other recreational uses.

○