

**STATEMENT OF
HILARY TOMPKINS
SOLICITOR, U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
HOUSE COMMITTEE ON NATURAL RESOURCES**

Good morning Chairman Hastings, Ranking Member DeFazio, and members of the Committee. My name is Hilary Tompkins, and I am the Solicitor of the United States Department of the Interior, an agency charged with protecting America's landscapes and heritage, honoring our unique responsibilities to tribal communities, and overseeing the responsible development and use of our country's natural resources. Thank you for the opportunity to discuss with you the role of the Solicitor's Office relating to Congressional Oversight activities.

At the outset, I would like to thank you, Mr. Chairman, for accommodating my schedule with regard to your invitation to testify. I would also like to thank you for speaking with me regarding the Committee's oversight interests and concerns. As I hope that I made clear during our recent conversation, I personally, and the Solicitor's Office generally, recognize the important role of the Committee in ensuring that the Department accomplishes its varied and significant natural resource missions, as established in Federal law. We also appreciate and respect the Committee's oversight role with respect to the activities of the Department of the Interior. I believe that conversations such as our recent call, which allow for a better mutual understanding of the respective interests of the Committee and the Department, can allow the Department to meet the legitimate oversight needs of the Committee while minimizing the impact on the Department's ability to carry out its missions and day-to-day work.

Overview of the Office of the Solicitor

I am the principal legal adviser to the Secretary of the Interior and the Chief Law Officer of the Department. I am responsible for providing legal services for all programs, operations, and activities of the Department. I meet these obligations through the work performed by the attorneys in the Office of the Solicitor (SOL), who provide advice, counsel, and legal representation to the Immediate Office of the Secretary, the Assistant Secretaries, and the bureaus and offices overseen by the Secretary.

The scope of the legal work for which I am responsible is broad by design and encompasses the interpretation and application of all legal authority affecting actions proposed or taken under the Department's programs and operations, including statutes, judicial decisions, and executive orders. The actions on which the Solicitor's Office advises are accordingly broad as well, encompassing not only matters in litigation but also other bureau activities, such as responses to requests for information under the Freedom of Information Act or other authorities and decisions regarding interaction with third parties.

The Solicitor's Office is organized into the Immediate Office of the Solicitor, the Ethics Office, four legal divisions that focus on supporting one or more of Interior's bureaus in the areas of public lands and water, minerals, Indian affairs, and national parks and wildlife, a general law

division, an administrative division, and sixteen regional and field offices located throughout the United States. As Solicitor, my staff consists of 401 employees, 324 of whom are lawyers, and it includes a Principal Deputy Solicitor, six Deputy Solicitors with subject matter expertise, Senior Counselors, an Ethics Director, six Associate Solicitors who manage the Divisions, and eight Regional Solicitors who oversee our field operations. The overarching mission of SOL is to provide top quality legal counsel and advice to the Department and fulfill our professional responsibilities to the Department.

Role of the Solicitor's Office in Congressional Oversight

As noted above, the legal work of the Solicitor's Office encompasses advising on actions taken under the Department's programs and operations. This includes providing legal advice as part of the process for determining the proper scope and manner of the bureau or office's response to oversight requests from Congressional committees. Accordingly, Solicitor's Office attorneys are routinely involved in assisting with the legal review and preparation of materials to satisfy Congressional requests for information.

The work of the Solicitor's Office on Congressional oversight requests consists primarily of advising on the proper steps to follow in searching for and gathering responsive documents, reviewing documents for responsiveness to the request, and identifying possible executive interests in the responsive material, including matters that are confidential or privileged. The legal review process is managed by a senior, career attorney manager with the assistance of staff attorneys. Typically, given the highly specialized legal areas that are often intertwined with issues that are the focus of an oversight request, staff attorneys that possess the necessary unique expertise will assist in the legal review process. The attorneys that are assigned to this work perform this work in addition to their regular legal work obligations. To date, SOL attorneys have carried out almost 700 hours of review of documents for 16 discrete topics in the current Congress for this Committee.

Through this work, the Solicitor's Office has significantly contributed to an on-going effort on behalf of the Department to accommodate the Congress's legitimate oversight interests. The Department has received requests for information from multiple Congressional committees. In each instance, the Department has sought to work with committee staff in order to fully understand the oversight interests related to the particular request, the priorities of the various committees overseeing the Department, and the specific issues of concern, so that the Department can attempt to allocate resources to best meet Congressional needs in priority order.

This is important but labor-intensive work. It is labor-intensive work because, as the courts have recognized for decades, there are legitimate differences between the Executive and Legislative Branches regarding their respective roles and interests. Pursuant to the separation of powers doctrine, Congress engages in oversight of the Executive branch's implementation of law. Likewise, the Executive branch's role is to implement and execute the laws and engage in administrative decisionmaking. Congress' oversight role relative to the Executive's authority is among the checks and balances established under the Constitution.

The accommodation process is a key tool to ensuring that these checks and balances function properly. The Department's approach to accommodation consistently has been to work in a way that respects our mutual Constitutional interests, and the Solicitor's Office supports the Department in this process. This undertaking is time consuming and requires careful consideration of any executive interests, general legal considerations, including any pending litigation or settlements, counseling the affected offices and bureaus of the Department, and legal review of responsive documents, which can be a substantial and complex undertaking.

The Role of the Ethics Office

The Departmental Ethics Office implements the statutory and regulatory ethics requirements of the Federal Government and DOI. The Departmental Ethics Office is headed by a career Designated Agency Ethics Official (DAEO) who coordinates and manages the Department's Ethics Process. The duties of the DAEO are to develop and interpret ethics related-regulations and policies, administer and monitor the financial disclosure systems, design and implement the training programs, and provide employees with ethics counseling services, including conflict of interest analysis, and conducting internal compliance reviews. Deputy Ethics Counselors within each bureau oversee the day-to-day implementation of their bureau ethics program by administering the financial disclosure system, conducting ethics training, and providing ethics counseling and advice to bureau employees. Presently, the Ethics Office consists of the DAEO, five staff attorneys, four ethics specialists, and two contractors.

Some of the current activities of the Ethics Office include compliance reviews of bureau ethics programs, developing and delivering extensive training including new entrant, annual, and post-government employment training, and day-to-day ethics counselling. The Ethics Office publishes a newsletter entitled "Ethics Express," conducts town hall meetings and webinars around the country, and provides education and training to the Department's bureau ethics counsellors. The Ethics Office also serves as the Department's Hatch Act compliance unit.

In recognition of these innovative activities, Department's Ethics Office, under the current DAEO's leadership, has received multiple awards from the Office of Government Ethics. These awards include Recognition of Outstanding Achievement in Developing Education and Communication Products that Foster an Ethical Culture (2008); Recognition of Outstanding Achievement in Managing the Ethics Program (2010); the Excellence and Innovation Award (2011); Program Excellence and Innovation for an Ethics Event (2011); and recognition for Program Excellence and Innovation for a Product to Raise Awareness (2011).

Conclusion

I come before you today in the spirit of deep respect for the Constitutional process in which we are engaged. While there may be points of disagreement during the course of this process, it serves an important purpose in our Constitutional democracy. I look forward to continuing to work with you to accommodate your legitimate oversight interests while also protecting the legitimate interests of the Executive Branch.

Thank you again for this opportunity. I will be pleased to answer any questions that you may have.