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Committee on Environment
and Public Works Washington, D.C.

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NOMINATION HEARING

Thursday, June 11, 2015

United States Senate

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m. in room 406, Dirksen Senate Office Building, the Honorable James M. Inhofe [chairman of the committee] presiding.

Present: Senators Inhofe, Boxer, Capito, Boozman, Fischer, Sullivan and Cardin.

STATEMENT OF THE HONORABLE JAMES M. INHOFE, A UNITED STATES
SENATOR FROM THE STATE OF OKLAHOMA

Senator Inhofe. Our meeting will come to order and we will start with opening statements.

Today we are receiving the nominations of three EPA nominees: Ann Dunkin, to be Assistant Administrator of the Office of Environmental Information; Jane Nishida, to be Assistant Administrator of the Office of International and Tribal Affairs; and Thomas Burke, to be Assistant Administrator of the Office of Research and Development.

This committee intends to be fair and thorough in reviewing EPA nominees. The President has the right to nominate people who support his agenda, but the Senate has the right and responsibility to review his nominees to make sure that they are qualified and responsible professionals.

The President has nominated five officials for various positions in the EPA. We received completed paperwork for three, that is the three of you, on May 27 and promptly scheduled this hearing. We are still waiting for paperwork on the other two nominees, including Stan Meiburg, the nominee for EPA Deputy Administrator, even though he was nominated in January, and Karl Brooks, the nominee for Assistant Administrator for the Office of Administration and Resources Management.

This is the second nomination for Ms. Dunkin and Ms. Nishida, and the third for Mr. Burke.

Even though Senator Reid chose not to bring these nominees to the full Senate for a vote, these individuals became EPA employees after they were first nominated and are working in an acting capacity in the positions for which they have been nominated. As a result, I would remind my colleagues who aren't here yet that, unlike many nominees, these individuals are answerable for the current policies and actions of the offices to which they are nominated.

This is a rare occasion because most of the time when this happens they haven't been in an acting capacity, and you folks have, so that gives you and us an opportunity to have higher expectations.

Now, I do have questions about the quality and transparency of EPA science, GAO's recommendations to improve EPA's Science Advisory Board, progress in fixing the human health risk assessment program, and the fracking study; about the transparency of the information provided on the grants it awards. That is something I have been concerned about since the time 10 years ago when I had the same capacity. And about the quality of information that the EPA puts out and their social media campaigns; and about the money we are spending overseas.

So I appreciate the witnesses being here today and I look

forward to asking these questions.

Senator Boxer.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF THE HONORABLE BARBARA BOXER, A UNITED STATES
SENATOR FROM THE STATE OF CALIFORNIA

Senator Boxer. Thank you so much.

Today our committee is considering three nominations and, Mr. Chairman, I am grateful that you are having this hearing and I am hopeful that we can move forward on them because it is so critical to move forward with these particular people. We want our agencies to fulfill their missions to serve the American people.

I also want to note that all of our nominees today were reported favorably out of this committee in the last Congress and they have been re-nominated by the President. So, as you have pointed out, they have been out here for a while.

We will hear from Ann Dunkin, who hails from my home State of California. She has been nominated to be the Assistant Administrator for Environmental Information at the EPA. She has over two decades of technology management in the private sector and the public sector, and she had 20 years at Hewlett Packard, Mr. Chairman. So for my colleagues that say it is important to have that kind of private business experience, she has had that.

For the past four months she has been serving as the Chief Information Officer at EPA. And prior to that she was Chief Technology Officer for the Palo Alto Unified School District, where she managed all aspects of the district's technology

strategy, infrastructure, and operations. Her experience spans the disciplines of manufacturing engineering, software quality, research and development, operations and information.

If confirmed, she will be responsible for managing EPA's information technology investments, providing technology services in OEI, which collects, manages, provides, and safeguards environmental information. She would be charged with leading the Agency's security program, which ensures that EPA has a protected IT infrastructure.

Mr. Chairman, this is not an ideological position. This is an issue of having the support within the Agency we, I think, all agree is necessary.

We will also hear from Jane Nishida. I know she is going to be introduced by Senator Cardin, so I won't say much about her personally; I will defer to him. But she has been nominated to be the Assistant Administrator for the International and Tribal Affairs for the EPA. And the mission of that office is to protect human health and the environment while advancing U.S. national interests through international environmental collaboration.

I will skip over all of her amazing qualifications and hope that we move her forward expeditiously.

The committee is also considering the nomination of Dr. Thomas Burke to be Assistant Administrator for EPA's Office of

Research and Development, which conducts research, provides expertise on science and technology issues to many EPA programs.

We know that strong science is the foundation of EPA safeguards to protect public health and the environment, and I know, although, Mr. Chairman, you and I agree most all the time on the environmental issues, I know we want good people who are working on the science so that we have confidence that, whatever side of the issue we are on, we get the honest opinions.

So, currently, Mr. Burke is serving as the Deputy Assistant Administrator of the Office of Research and Development and is Science Advisor for EPA.

Before joining EPA, Dr. Burke was a Professor and Associate Dean of the Johns Hopkins Bloomberg School of Public Health in Baltimore, Maryland. He has over 35 years of experience in State and Federal leadership positions in health and environmental issues, including as an official at the State of New Jersey's Department of Health and Department of Environmental Protection.

Dr. Burke has also chaired several studies by the National Academy of Sciences and he has served on multiple EPA science advisory councils.

Mr. Chairman, if confirmed, Dr. Burke would play a pivotal role in ensuring that EPA's Office of Research and Development conducts critical science research to help safeguard the health

of our constituents.

Today's hearing is such an important part of the confirmation process. I hope that these nominees will move forward expeditiously.

Sometimes, when we have controversial nominees, we have a lot of people here. I am hopeful that the three of us are here and that it is calm and that that is perhaps a good sign that we can move you all forward.

I thank you, Mr. Chairman.

[The prepared statement of Senator Boxer follows:]

Senator Inhofe. Thank you, Senator Boxer.

I would like to recognize Senator Cardin for your purpose of making a statement or introduction.

STATEMENT OF THE HONORABLE BENJAMIN L. CARDIN, A UNITED STATES
SENATOR FROM THE STATE OF MARYLAND

Senator Cardin. Well, Mr. Chairman, thank you. I join Senator Boxer in thanking you for convening this hearing on three very well qualified individuals: Dr. Burke, who has some ties to Maryland; Ann Dunkin from California; and Jane Nishida, who we are particularly proud of in our State as the former Secretary of the Department of the Environment.

I want to thank all three of you and I want to thank your families for your willingness to serve the public. These are tough times and difficult to step forward, and we thank you. We know it is a personal sacrifice and sacrifice of your families.

Mr. Chairman, I particularly want to welcome our nominee, Jane Nishida, before the committee. I have known and worked with Ms. Nishida for many, many years. From 1995 to 2002 she worked as the Secretary of Maryland's Department of the Environment. Additionally, she served as the Maryland Executive Director of the Chesapeake Bay Foundation.

I know you all have heard me talk enough about the Chesapeake Bay, so I won't reiterate my love for our Bay. But I want you to know that Ms. Nishida is well known for her professionalism and supported by all of the stakeholders in her work that she did with the Bay and with the State of Maryland. She has great respect from the governments, great respect from

the NGOs, from the business community, including the agricultural sector. She knew how to bring people together not only, I would say, in a non-partisan environment, not necessarily even bipartisan, to get results.

She also held positions as a legislative officer in the Maryland Governor's Office and Committee Counsel of Maryland General Assembly, and she reminded me that we first started getting to know each other when I was Speaker of the House of the Maryland General Assembly.

Prior to joining the EPA in 2011, she was the Senior Environmental Specialist for The World Bank. She currently holds the position of Principal Deputy Assistant Administrator for EPA's Office of International and Tribal Affairs.

Mr. Chairman, we have a person who brings to this position that she is seeking our confirmation experience at the State level and at the national level. She has worked in the executive branch, in the legislative branch. She understands the sensitivities of how this position needs to be responsive to all of the stakeholders under the responsibility of the position.

I have been very impressed with her knowledge and dedication to environmental issues and very much respect her ability to work along with Democrats and Republicans in a way to get things done. I have every confidence that she will do a

fantastic job as the Assistant Administrator for the Office of International and Tribal Affairs. I thank her for her willingness to step forward and I am proud to introduce her today.

[The prepared statement of Senator Cardin follows:]

Senator Inhofe. Thank you, Senator Cardin.

We have three procedural questions to ask each one of you. I will read the questions and I would like to have each of you answer individually, starting with you, Ann, and working across. Okay?

Do you agree, if confirmed, to appear before this committee or designated members of this committee, or other appropriate committees, and provide information subject to appropriate and necessary security protection with respect to your responsibilities?

Ms. Dunkin. Yes, I do.

Ms. Nishida. Yes, I do.

Mr. Burke. Yes, I do.

Senator Inhofe. Thank you.

Do you agree to ensure that testimony, briefings, documents, and electronic and other forms of communication of information are provided to this committee and its staff and other appropriate committees in a timely fashion?

Ms. Dunkin. Yes, I do.

Ms. Nishida. Yes, I do.

Mr. Burke. Yes, Senator.

Senator Inhofe. And do you know of any matters which you may or may not have disclosed that might place you in a conflict of interest if you are confirmed?

Ms. Dunkin. No, I do not.

Ms. Nishida. No, I do not.

Mr. Burke. No, I do not.

Senator Inhofe. Thank you very much.

You are recognized for your opening statement, Ms. Dunkin.

STATEMENT OF ANN DUNKIN, NOMINATED BY PRESIDENT OBAMA TO BE ASSISTANT ADMINISTRATOR, EPA OFFICE OF ENVIRONMENTAL INFORMATION

Ms. Dunkin. Thank you. Good morning, Chairman Inhofe, Ranking Member Boxer, and other members of the committee.

It is my honor to appear before you as President Obama's nominee to be the Assistant Administrator for Environmental Information for the Environmental Protection Agency.

Before I begin, I want to thank my partner, Kathleen, for her support throughout this process and for joining me here today.

While they are no longer with us, I also want to acknowledge my parents for making it possible for me to be here. My mother started programming in the 1950s at the University of Pennsylvania, one of two women in her class at Wharton. She has been a lifelong role model for me.

My father, who believed that all of his children, including his daughters, could do anything they set out to do, inspired me to pursue my dreams, even in the male-dominated fields of engineering and technology.

My father's family is full of engineers and I have always loved technology, so it was no surprise that I studied engineering in college. I chose industrial engineering because I cared about people and systems, as well as things.

After graduating from the Georgia Institute of Technology,

I joined Hewlett Packard, where I worked for nearly 20 years. I started as a manufacturing engineer and quickly moved into manufacturing management, where I learned the core values that were embodied in the HP way and that even today guide my work as a leader, values such as treating people with trust and respect, always acting with integrity, and accomplishing results through teamwork.

Over time, I moved from manufacturing management to software quality, to research and development, to operations, and then to information technology, earning progressively more responsibility along the way. I worked on many exciting projects and programs, ranging from running operations for HP's entrepreneurial internet startup businesses during the dot com boom, to managing the IT organization for Indigo, an Israeli digital press manufacturer that HP acquired.

My final position at HP was back in R&D as the program manager for a major new printer development program.

Throughout my time in HP's technology-intensive environment, I learned how to manage, lead, and optimize technology functions. And since people are any organization's greatest asset, I learned how to work with and lead people at the same time. From managing a small development team to leading a group of 500 as a program manager, I developed my professional expertise in designing and running technical

organizations in one of the best technology companies in history.

After I left HP, I joined the Palo Alto Unified School District as the Director of Technology and later as the Chief Technology Officer, where I was responsible for envisioning, procuring, and supporting technology solutions to enable the work of 12,500 high-achieving K-12 students, along with nearly 2,000 faculty and staff.

While I loved to build new exciting technology at HP, I found that working for the Palo Alto Unified School District and helping every student and staff member achieve their potential was more meaningful. Working in the public sector has allowed me to contribute more profoundly to my community than working in the private sector.

Joining the Environmental Protection Agency, where I have been able to contribute not just to my local community, but to impact the entire Country and help improve the quality of life for every American, has been a logical next step for me both professionally and personally.

It has been a privilege to serve the EPA and Administrator McCarthy for the past ten months and to serve as the EPA's CIO for the past four months. I am excited about the opportunities before us to build on EPA's successes and improve the delivery of information technology services throughout the agency, to

improve the delivery of mission services to support the States, Tribes, and regulated community and general public, and to deliver better tools that will allow EPA staff to be more effective and efficient in the performance of their duties.

I am excited by the opportunity that the Federal Information Technology Acquisition Reform Act provides to improve oversight and accountability of IT projects and programs throughout the agency, and I am pleased to have the opportunity to bring digital services expertise into the Agency to transform the way the Agency performs IT work to allow us to become more agile and deliver customer-centric, not stakeholder-centric, services.

While I am able to lead many of EPA's IT functions as CIO, there are important duties reserved for the Assistant Administrator. Should I be confirmed, I look forward to the opportunity to bring my experience and expertise to the performance and the responsibilities of the Assistant Administrator for Environmental Information.

Thank you, Chairman Inhofe, Ranking Member Boxer, and members of the committee for the opportunity to meet with you today. I am happy to answer your questions.

[The prepared statement of Ms. Dunkin follows:]

Senator Inhofe. Thank you, Ms. Dunkin.

Ms. Nishida.

STATEMENT OF JANE NISHIDA, NOMINATED BY PRESIDENT OBAMA TO BE
ASSISTANT ADMINISTRATOR, EPA OFFICE OF INTERNATIONAL AND TRIBAL
AFFAIRS

Ms. Nishida. Thank you.

Good morning, Chairman Inhofe, Ranking Member Boxer, and I would also like to give a special thanks to Senator Cardin for his kind introductory remarks.

I am humbled to appear before you today as President Obama's nominee to be the Assistant Administrator for International and Tribal Affairs at the U.S. Environmental Protection Agency.

For the past 30 years I have worked in the field of the environment at both the State and Federal level, and with international and non-governmental organizations. It has been my privilege to spend the last four years working at EPA, where every day I have strived to further the Agency's role in protecting human health and the environment.

Sitting here before you in these chambers, I think about my parents and wish they could be with me here today. They are no longer with us, but I know that, if they were, they would be beaming with pride.

My father served in the U.S. Foreign Service for over 30 years, so from a very young age the importance of public service was ever-present in my life. I saw first-hand the power the

United States has to improve people's lives both at home and abroad.

I got my first start in public service working as committee counsel in the Maryland General Assembly, where I worked with Senator Cardin, as he noted in the introductory remarks. My experience in the Maryland General Assembly was invaluable. I learned about the importance of the legislative process and the important roles of the legislative and executive branches of government.

My next position was in the Maryland executive branch, where I served under three different governors. As a governor's legislative liaison, I worked on legislative issues relating to agriculture, environment, natural resources, health, and human resources. This enabled me to see clearly the connections between human health and the environment, and how they are inextricably linked.

In 1995 I was appointed Secretary of the Maryland Department of the Environment. It was a privilege to serve in this position for over seven years, ensuring the quality of Maryland's air and water, managing the safe disposal of hazardous and solid waste, and restoring and protecting our precious Chesapeake Bay. The position taught me how vital it is for environmental managers to involve stakeholders in the decision-making process, local governments, business, farmers,

fishermen, and NGOs; to listen and to learn from them. It also personalized things for me, to see firsthand how environmental protection affects citizens' drinking water, the infrastructure of cities, and the vitality of all the places where our families live, work, and play.

When I left Maryland, I took a position as Senior Environmental Specialist at The World Bank, sharing the lessons that I had worked on for 20 years at the State level with developing countries struggling with air, water, and other environmental problems. It was an eye-opening experience and one that reaffirmed how sharing lessons learned in the United States can improve the global environment.

In 2011 I began my work at EPA, first serving as the Director of Regional and Bilateral Affairs within the Office of International and Tribal Affairs, and then, in 2013, I became the Office's Principal Deputy Assistant Administrator. Taking on this second role enabled me to work on the full breadth of this Office's portfolio, including managing the American Indian Environmental Office, which is responsible for our important work with Tribal Nations.

Should I be confirmed, I commit to working steadfastly to uphold the mission of this Agency and to continue the legacy that I learned from a young age from my father, a tireless dedication to public service.

Thank you again, Mr. Chairman, Ranking Member Boxer, and members of the committee, for the opportunity to meet with you today, and I am happy to answer any questions you might have.

[The prepared statement of Ms. Nishida follows:]

Senator Inhofe. Well, thank you, Ms. Nishida.

Mr. Burke.

STATEMENT OF THOMAS BURKE, NOMINATED BY PRESIDENT OBAMA TO BE
ASSISTANT ADMINISTRATOR, EPA OFFICE OF RESEARCH AND DEVELOPMENT

Mr. Burke. Good morning, Chairman Inhofe, Ranking Member Boxer, and members of the committee.

It is an honor to appear before you today as President Obama's nominee to be Assistant Administrator for Research and Development at the U.S. EPA.

I have devoted my career to public health and environmental protection. For more than 37 of EPA's 45 years, I have worked closely with the Agency, first as a State scientist, as a public health official, as an academic researcher, a member of the Science Advisory Board, and have also served on the Board of Environmental Studies and Toxicology at the National Academy of Sciences and chaired a number of major National Academy studies on EPA science.

Since January I have been serving as the Deputy Assistant Administrator for ORD, as well as EPA Science Advisor.

As with most people, my interests were shaped by my early experiences. Growing up in Jersey City, in the shadow of the Statue of Liberty, I have vivid memories of my early environment, before there was an EPA: the musty smell of low tide in New York Harbor, the summer spraying for mosquitoes with DDT, the apartment house incinerators, the plumes of smoke from the Jersey Central locomotives, and probably, most vividly, the

chemical mountains, these giant slag heaps from the chromium factories just one block from my childhood home.

I also had a very early interest in health and disease. I was born with a congenital heart defect and blessed to have life-saving open heart surgery at Johns Hopkins. But three of my close childhood friends were not so fortunate; they died from leukemia and brain cancer at very young ages.

My interest in the connection between environment and health were galvanized during my graduate studies at the University of Texas, when the National Cancer Institute released the first maps, the Atlas of Cancer Mortality, that showed that my home State and my home county led the Nation in cancer deaths; and the media dubbed it Cancer Alley.

After graduate school, I was named Director of the New Jersey Office of Cancer and Toxic Substances, and I led a lot of the early research that shaped State and some national approaches in looking at pollutants in the environment, ensuring safe drinking water, reducing toxic releases, and cleaning up hazardous waste. I also investigated childhood cancer clusters from Rutherford to Toms River.

As a State scientist, I served three governors, both Republicans and Democrats, and I stood at their sides during environmental emergencies like the dioxin contamination in the iron-bound section of Newark, the chromium pollution in Jersey

City, and the closure of our beaches from sewage spills and medical waste.

Now, these experiences have given me a very practical experience and perspective on the importance of strong science to guide our difficult environmental decisions. They have also shown me that protecting the environment and having a healthy economy go hand-in-hand. I think former Governor Tom Caine said it best when he said that environmental problems are one of the main barriers to economic growth, and these problems directly undermine the State's ability to attract and keep jobs.

So I am proud that New Jersey is now a leader in environmental protection and a national example of that important link between healthy environment and healthy economic growth.

At Johns Hopkins I devoted myself to improving the application of science to decision-making. As Director of the Risk Sciences and Public Policy Institute, I worked to advance the science of evaluating risks, and I am proud to have trained many of the emerging leaders in public health and environmental science. Hopefully, some of them are watching here today.

Along with my colleagues, I worked very closely with State and local officials and our Federal agencies on a number of critical national issues, including terrorism response and emergency preparedness, chemical exposures to our troops, the

toxic flood waters of Katrina, nuclear waste cleanup, and keeping our food supply safe.

Through the National Academy of Sciences, I also work with science leaders from all sectors to provide guidance to EPA on risk assessment. And I was not shy about pushing the EPA to do better science. I have deep respect for the work of the Agency, and my respect has grown even deeper since joining the Agency.

Science is indeed the backbone of EPA decision-making and has been the foundation of our national progress. I believe that those tasked with making these decisions about environmental protection need to be informed with the best science, science that is credible, transparent, and inclusive.

If confirmed, I look forward to working with members of the committee and the stakeholders to make sure we are asking the right questions and getting the best scientific answers.

So, Chairman Inhofe and members of the committee, I want to thank you for this opportunity to meet with you today. I also want to express my thanks to my wife, Marguerite, who is here with me today, who typed my PhD dissertation and has been with me all the way.

Senator Inhofe. Have her hold her hand up. I need to see this. There you are. All right.

Mr. Burke. And I am happy to answer any questions. Thank you again.

[The prepared statement of Mr. Burke follows:]

Senator Inhofe. Thank you very much, Mr. Burke.

Let me first ask two questions of Ms. Dunkin. The first one, I don't want a verbal answer, I just want to have it for the record, and then I will expect a written answer, because if it is a verbal answer, it is going to take up all the time, I am afraid.

When I was last the chair, I mentioned this in my opening statement, it was 10 years ago or 8 years ago, one of the concerns I had was to reform grants management, one being the creation of an online grants database.

Now, we have done that; however, from all indications I get from everyone who has tried to use this, it is not user-friendly, it is difficult and time-consuming to find information on a specific grant or grantee, and it is hindering the public's access to a lot of this important information.

I guess what I am going to ask you to answer for the record is, as the chief information officer managing the EPA's capabilities, what steps have you taken to make the grants database more user-friendly and what will you do, since I don't believe we have accomplished that so far, to accomplish that. Okay?

And then, secondly, in March of 2015 there is a court opinion. Federal District Court Judge Royce Lamberth found that "The EPA continues to demonstrate a lack of respect for the FOIA

process" and that EPA perceived the FOIA requester, the person under the Information Act in that case, and that was the Landmark Legal Foundation, the EPA perceived that as an enemy because of its conservative political affiliation. Now, this seems similar to some of the things the IRS scrutiny to conservative groups.

What do you think about that? Is the judge right, Ms. Dunkin?

Ms. Dunkin. First of all, Chairman, we will get you a written answer for your first question.

The second question, so the actions in that particular case happened primarily before I joined the Agency, so I can't speak to that particular case.

Senator Inhofe. No, that is not quite true, because I am talking about, wasn't it March 2015?

Ms. Dunkin. Mr. Chairman, I can only speak for my position, which is that from my standpoint of running the tools that we provide for FOIA and running a small number of FOIAs out of our office, we provide the best possible responses we can to FOIAs to the offices that respond to them and we, as an Agency, expect that people will provide timely and correct responses to FOIA requests.

Senator Inhofe. Okay, now, you were in the position on March 15th, is that correct?

Ms. Dunkin. Yes, sir.

Senator Inhofe. Well, why did you just initially say that that was before my time, or whatever it was you said?

Ms. Dunkin. So, Senator, the decision happened in March; however, what I was referring to was the activities that proceeded the decision happened primarily before I joined the Agency.

Senator Inhofe. Okay, then I would ask you one more time: is the judge right?

Ms. Dunkin. Senator, I could not speak to the history of that case. Certainly, that is not the attitude that we have to FOIAs in the Agency.

Senator Inhofe. Ms. Dunkin, what steps has the EPA taken to ensure that requesters are treated in a professional manner, without regard to the requester's identity or political affiliation? Because you must have, after a statement like that, I am hoping you would try to put something in place to preclude that from happening again. Have you?

Ms. Dunkin. Senator, first of all, we have centralized much of the search capability, and OEI helps provide search responses to the offices that actually respond to the FOIAs. In addition, all FOIAs have two levels of review to ensure that the documents being released and any redactions to those documents are completely fair.

Senator Inhofe. Okay.

Ms. Nishida, for the record, I want you to get your same response to the questions that I had of Ms. Dunkin, okay?

I want to get some information as to how much money the EPA as a whole spends annually on efforts, now, we are talking about grants, technical assistance, technology transfers, development of standards, or programs, regulations, to improve the quality of the environment outside of the United States or in grants to foreign countries.

Can you give me that now? Have you looked into that?

Ms. Nishida. Yes, Senator, I can give you the answer. Actually, there is a very small proportion of EPA's grants actually go to international grants, it is less than one-half of a percent. And of that less than one-half of a percent, a large portion of those grants actually go to U.S. institutions who help countries overseas in terms of addressing their environmental pollution problems.

Senator Inhofe. All right. Now, what I would like to have you do is, you are saying this, I believe you, but I would like to see the documentation as to the amount, how you come up with that percentage, and then I would like to be able to visit with you about that issue, if that is all right, okay?

Ms. Nishida. Certainly.

Senator Inhofe. Then, Mr. Burke, if you don't mind, I will

take just a few more seconds here and I will sit out for a second round.

The National Academy of Sciences have previously reported that if an assistant administrator of the Office of Research and Development, ORD, is also a science advisory to the full Agency, it creates a conflict of interest. Do you think it does?

Mr. Burke. No, sir. I was part of the discussions with the National Academy even before becoming science advisor, and I think we have the support of the Board on Environmental Studies.

Senator Inhofe. No, they said it creates a conflict of interest. Are you saying that that is not what they said?

Mr. Burke. No, I am not, Senator. I am just not familiar with that particular statement.

Senator Inhofe. Did you say you were on that at the time?

Mr. Burke. I served two full terms on the Board on Environmental Studies. And I know that there have been different perspectives on science advisor being separate from the assistant administrator. I think the most important message, though, is that there be clear and consistent leadership for science at the Agency.

Senator Inhofe. Well, I think in light of the fact that NAS made a recommendation and you disagree with that recommendation, and my time has expired, but I would like to have you, for the record, give me the detail, as much as you

can, on that as to why you would disagree with the NAS. Would you do that?

Mr. Burke. I would be happy to provide that.

Senator Inhofe. Thank you very much.

Senator Boxer?

Senator Boxer. Well, good for you for being an independent person.

Let me just say this. We have voted the three of these people out by voice vote. I want to make a point. I have not seen, in my lifetime, three people who were overly qualified for the jobs for which they have been nominated. If we can't get you people moving toward the floor, I don't know who would be better. And I just want to thank you from the bottom of my heart for putting up with all this stuff, for sitting around for months.

Mrs. Burke, Dr. Burke should now type his own papers.

[Laughter.]

Mr. Burke. I do.

Senator Boxer. All right. Because my husband still asks me to type things for him, and it really gets me, since he was a clerk typist when he was in the Army. But he said he never really did learn to type over 30 words of a minute or so.

Senator Inhofe. You know, I was a clerk typist, too.

Senator Boxer. Well, that explains a lot.

Senator Inhofe. No, I am older than he is.

[Laughter.]

Senator Boxer. Okay, so here is the thing.

Ms. Dunkin, I am not going to ask any questions of Jane and Thomas. We voted you out before. I want you to get to where you want to be to help this Agency, which is the subject of a tremendous amount of criticism here. So why not have the best people? By the way, independent voices and thinkers are important.

But I just wanted to ask you, Ms. Dunkin, just because of our tie to California, because you worked for a very innovative company. You worked for a great school district. For that I am grateful to you, because you pointed out you had a moment in your life where you decided you wanted to go help children and the public. It is a wonderful transformation.

So I wanted you to say for the committee how your background and experiences working for the Unified School District, how did it help shape you and get you ready to do this job at the Office of Environmental Information.

Ms. Dunkin. Thank you, Senator Boxer. Working for the school district was a tremendous privilege, helping out the children in Palo Alto. The opportunity to work for the district gave me two things that helped prepare me for this job. Number one was public service experience. A lot of people come into an

agency like the EPA from the private sector and they make a lot of mistakes because they don't know how the public sector works.

So while the Federal Government and the State of California don't work exactly the same, there are enough similarities that I knew where the land mines were when I arrived and I knew what to expect in terms of how things would operate and what questions to ask. So number one is that public sector experience did that.

The second is that it was the first time in my career where I had run IT for an entire organization. I ran some big chunks of IT for HP, but it is a very different experience to run one end of the organization to another and be fully responsible for everything from making sure that you have internet connectivity to making sure that you have applications for the students to use. So that was a really great experience that prepared me to step into another job with that same type of responsibility.

Senator Boxer. Well, thank you.

Well, Mr. Chairman, I am hopeful that we can move these three people forward. Sometimes we all attack agencies and kind of amorphous organizations. Here are three people; each of them has a family that is proud of them, each of them has worked hard in their life to get where they are, and they are at a point where they really want to give back. So I am hopeful.

You are a good man and I hope that you will help me get

these people to the floor and get them confirmed. Thank you so much.

I need to run off; I have a meeting in my office now. If there is anything that comes up where you want me to come back, I will.

Senator Inhofe. Sounds good. All right.

Senator Boxer. Okay. Thank you. Thank you so much.

Senator Inhofe. Thank you, Senator Boxer.

Next we will hear questions from Senator Boozman, but let me just ask, do any of the three of you think it is unreasonable to respond to the questions that I asked during my time? Are they unreasonable questions? No? Thank you very much.

Senator Boozman?

Senator Boozman. Thank you, Mr. Chairman.

And thank all of you all for being here. We do appreciate your willingness to serve.

Dr. Burke, I have worked to encourage collaboration and work between the EPA and the National Center for Toxicological Research. As you know, NCTR is an FDA laboratory based in Arkansas. Regulatory science research organizations from around the globe come to investigate, learn, and train at NCTR, and we are very proud of that facility.

I know that you are very familiar with the work that has gone on through your previous history at Johns Hopkins and other

areas. Can you tell us a little bit about your view of interagency collaboration? These are tight budget times. Talk here a little bit about working together. Specifically, will you look for ways that EPA can support and work with NCTR to perform collaborative work and research?

Mr. Burke. Thank you, Senator. Thank you for the question. It is good to see you again.

Absolutely, these are tough times and these are times when collaboration is more important than ever in the scientific community. And as you state, the National Center, NCTR, has been a leader in particular in chemical safety assessments and nanotechnology. And there is a partnership that we have, along with FDA, NCTR, the National Institute of Environmental Health Sciences, but we can build more on that.

We all have a common goal of understanding more about chemical safety, understanding how to better protect our food and environment. The Center has been a leader and I look forward to, if confirmed, and even as science advisor in my current position, of promoting that not just for those agencies, but because our States and other partners are really dependent upon that.

Senator Boozman. Good. Thank you very much.

I appreciate that you have taken the time to review the bipartisan EPA Science Advisory Board Reform Act. As a former

member of the SAB, your expertise is certainly valuable to us and we appreciate your input.

I know that our bill is not perfect, and we are certainly willing to make changes. You mentioned about credibility, transparency, and how important that is. Will you commit to work with us and members on both sides of the aisle so that we can identify some common sense reforms that will strengthen the SAB and ensure that the EPA's scientific process is strong and credible?

Mr. Burke. Absolutely, Senator. Our goal is credibility and transparency. We have to have the highest level of review and the highest credibility in our science. These are important decisions and we are providing the basis for very tough choices, so I am very happy to work with you on that.

Senator Boozman. Good.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Boozman.

Senator Capito?

Senator Capito. Thank you, Mr. Chairman.

I want to thank all of you for your service and for the long process that you have had to go through.

I wanted to ask Ms. Dunkin, there was a report and The New York Times ran a story about how EPA may have violated Federal law in its use of social media in connection with the Waters of

the USA rulemaking. I read it at the time, but I have been curious to know, was that something that was organically grown in the Agency or something that was promoted from the top? I would just like to hear your perspective on this and if you have put guidelines in place to either stop that or had legal advice given in terms of how that issue might be impacting in the future.

Ms. Dunkin. Senator, the social media outreach program is run through the Office of Public Affairs, so I can't speak to the details of any program they run. We do have a social media use policy in place in the Agency.

Senator Capito. Was that in place when this was occurring, or are you not familiar?

Ms. Dunkin. The policy was in place. The IT policy was in place at that time, yes.

Senator Capito. Okay. So I am asking the wrong person, I guess, is my answer.

Ms. Dunkin. I am sorry, Senator.

Senator Capito. Okay.

Let me ask you this, too. We are considering a cybersecurity bill on top of our RNDAA bill today. We know this is just a rampant problem everywhere internationally and we saw where OPM's records were corrupted just recently. I am sure this has great concern for you. What are you doing at EPA to

try to protect against cyber crime and making sure? Because I think the inspector general maybe has questioned some of your security policies in this area.

Ms. Dunkin. Yes, Senator. We could probably talk about security all day. We are working hard to ensure the security of the information assets at the EPA. Just a few of the important points that we consider. We need to know what is most important to secure, because if we don't set priorities nothing will be secured.

Senator Capito. Right.

Ms. Dunkin. We are implementing appropriate controls and hygiene activities, things like patching systems, things like ensuring that systems have authority to operate before they are in place and that we know what the risks are with those systems. We focus on controlling access, educating users, and then we want to make sure that we monitor our network so that we know if something happens and that we can respond to that.

Senator Capito. So has OPM shared what actually happened with them with other agencies as a preventive measure for you?

Ms. Dunkin. We know some of what happened at OPM at this point. We don't have all the details.

Senator Capito. Because I would think that would be a useful exercise.

Ms. Dunkin. Yes. And we share throughout the security

community and through the CIO community. There is a lot of information sharing that goes on. And there is public information, there is less public information, and there is classified information.

Senator Capito. Okay. All right, thank you.

Dr. Burke, I am from the State of West Virginia and we have had some issues with your agencies I am sure you are well aware. I understand that you are the head science guy here. So the argument a lot of times that I try to make is that science is great and welcomed, and we want it. That is great. But there are always economic aspects of every decision that is made, particularly in my State by your Agency.

And I think I know the answer to this, but I just wanted to get it out there. Within the realm of your responsibilities, do you ever look at the economic impacts of what the science would have in terms of a decision that is made based on your science? Does everybody ever get in the room and discuss that?

Mr. Burke. Well, certainly the Agency does. The role of the science, though, is to really provide one very important cornerstone of that decision-making process, and we generally focus upon the scientific evidence, say, for instance, of an environmental impact. But, really, the Agency decision-making, and my colleagues in other branches of the Agency, the economists and others, very much consider the big picture in the

decisions within the guidance provided by the statutes.

And in the analysis of risks, it is also important that we, the scientists, get the right question so that those making those tough social decisions can understand the impacts across the board.

Senator Capito. And over time, you have been in this business a long time, have you seen a lot of change in terms of the intensity of the risk of certain things that maybe in the 1960s were thought to be very, very hazardous that now, as time has gone on and more research and development has gone forward, may be not as hazardous, and vice versa? Does that change over time much, or is the first blush pretty much the last blush?

Mr. Burke. That is a good question. In science, the first blush is rarely the last blush; there is always an evolution of the science. And sometimes we understand how things work together to transition risks, so sometimes we will actually, perhaps may be less concerned. Oftentimes we learn of new emerging hazards, too.

So that is why it is important, I think, to have state-of-the-art science and be able to respond to not just emerging threats, but continually update our knowledge of those longstanding things so that we can make the best decisions, work with the social scientists and others to really make the best societal decisions.

Senator Capito. Okay. Thank you so much.

Senator Inhofe. Thank you, Senator Capito.

Senator Fischer?

Senator Fischer. Thank you, Mr. Chairman.

And thank you all for being here today.

Mr. Burke, could you comment on the advantages and the disadvantages that you see in the process that the SAB uses when you provide advice to the Agency?

Mr. Burke. Sure. First, let me talk about the great things that the SAB does.

I have been privileged to be a two-term member of the SAB as an academic researcher before joining the Agency, and I have also been very active at the National Academy. And I think they are really the gold standards in peer review, the most prestigious and influential bodies to really make sure we get our science right. So I am very supportive of the SAB.

That said, it is important the SAB be credible, be inclusive, and really represent the best expertise that we have in this Nation, and sometimes internationally, to help us make sure we have peer-reviewed our science, but also that we frame the questions right and we use the best science available.

So I think I have a lot of respect for the SAB. It is a tough process. I can tell you that as an academic scientist it is tough to get people to commit to that. We wouldn't want to

add to the burden of scientists, say, from academia who have really tough, challenging jobs. I think we should do everything in our power to encourage people to volunteer and be part of that process, and it is really an honor to be there.

But there are some impediments to the process. It is tough to make that time commitment. It is an incredibly rigorous process to be involved in a review of a major national report.

Senator Fischer. I agree with you that it is very, very important to use the best science possible, and I thank you and other scientists who work toward that goal and make that your priority. I am curious on how you balance in social impacts. That is more subjective. It is almost in opposition to many of those hard sciences out there, don't you think?

Mr. Burke. Well, it is a very good question. Science, traditionally, we have had lanes. I am an epidemiologist. We look at the association between risk factors and disease. A sociologist might look at those social factors that contribute to disease. And I think in the evolution of our science of decision-making, we are really looking at integrating all of those things.

So many of my colleagues on the Science Advisory Board, particularly the social scientists, would be very happy to hear your question because I do think science is not just analytical chemistry; science is understanding the social contributors to

the quality of life and the environment. And I think that is an important direction for not just the SAB, but for the National Academy we are recognizing that.

Senator Fischer. And since you have been at the EPA, can you tell me how the Agency has used the SAB and how frequently they use it?

Mr. Burke. Sure. Well, I have a limited time window, but let me give you an example of a very, very important role the SAB has.

Senator Fischer. Is it used often?

Mr. Burke. Yes. It is constantly used. You may have seen that we released a major report, a draft report on the impact of hydrofracking on our drinking water resources. We turned that over to the SAB, a committee of almost 30 representatives from the broad sectors of science, who are reviewing that to make that we have used the best science, presented it clearly, and that our conclusions are justified.

Senator Fischer. And that was a four-year report, wasn't it?

Mr. Burke. Yes. It was a long-term, very tough effort. Very comprehensive look.

Senator Fischer. And we appreciate the work that is put forward in that.

How do you expect ORD's use of the SAB to change if you

would be confirmed? Do you see a change happening?

Mr. Burke. I think there is constant evolution. First of all, the nature of the Board is that there are changes in membership. But, for instance, one of my areas of concentration has been risk analysis and risk assessment. The Board has changed dramatically in the past two years to have a separate subcommittee that really looks at how the Agency and really the Nation does risk assessment. So it is constantly evolving to address, I think, the Nation's toughest challenges, so we need to constantly recruit the highest level of talent to serve on that Board.

Senator Fischer. Well, I thank all three of you for your willingness to serve. Thank you very much.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Fischer.

And thank all of you for the time that you have taken.

I say to you, Ms. Dunkin, this idea of creating the database was good, but I have been waiting eight years now and listening to complaints about how difficult it is to come up with the results. And I know with your background and your capabilities you will be able to come up with something.

I say this to all of you working jointly. That is something that I think the public is entitled to and we are entitled to. So if you will do that as thoroughly as you can so

that hopefully we will be able to come up with something that we started some nine or ten years ago.

We appreciate all of you.

Senator Sullivan has come and we are still in the middle of the hearing, Senator Sullivan. We will recognize you for questions you have.

Let me just fill you in. One of the concerns I had was the database. I have been concerned about that ever since we were a majority some eight, nine years ago; and they are going to be working on that.

Also, I questioned the possibility of a conflict of interest to Dr. Burke, and he is going to be filling us in on some of those details. We also mentioned the Federal district judge and some of the comments that he made or observations that he made in terms of responses that some of the people under FOIA are trying to get.

So that fills you in on what we were talking about.

Senator Sullivan. Thank you, Mr. Chairman.

I want to thank each of the nominees for your service to the Country and willingness to serve. You probably have family members here, and I know that sometimes that can be an arduous process. I so appreciate your wanting to serve.

I know many of you are already in an acting capacity, but maybe if I can just, for each of you, Mr. Burke, Ms. Dunkin, Ms.

Nishida, can you just real quickly, I always like to ask nominees why they want to serve. What motivates you? You are going to have to come in front of this committee, get asked some tough questions. Why do you want this position?

Each of you, please.

Ms. Dunkin. Thank you, Senator. I chose to take this opportunity to serve my Country because I felt like I had entered public service in my previous job, but that the opportunity was very localized, as I worked at a school district, and it was an opportunity to have a broader impact. The Federal Government certainly has opportunities for improvement in IT, and I felt I could contribute to that.

Senator Sullivan. Thank you.

Ms. Nishida. And, Senator, from the number of years that I worked in the State of Maryland and also at The World Bank, I saw firsthand how environmental problems affect both Tribal Nations, as well as foreign governments, and I want to be able to address those concerns working in the Office for International and Tribal Affairs.

Senator Sullivan. Great. Thanks.

Mr. Burke. Senator, I know this is going to sound a little corny, but I think being the head scientist for ORD and working with that team is the best job in my field; it is the best job in the world. I walked away from a full professorship and a

deanship at a pretty good university.

Senator Sullivan. Which one was that?

Mr. Burke. Johns Hopkins.

Senator Sullivan. All right.

Mr. Burke. And I did that because of the incredible opportunity to serve this Nation and to really be a part of the leadership team of what I think is the leading research organization in not just this Country, the entire world.

Senator Sullivan. Great.

I am going to raise a couple issues that I think are important, but you are not necessarily in charge of them. But I think if you saw this debate yesterday, when we marked up the Waters of the U.S., there is a certain frustration, certainly in my State, where we have the cleanest water, cleanest air probably in the Country. Yet I don't think a lot of Alaskans think it is because of the EPA. I think a lot of Alaskans think it is because of our own State and local government. We really care about these issues.

Sometimes you hear on this committee, oh, this side cares more about the environment than that side. That is not true; we all care about the environment. But we also care about the Constitution, oversight, the rule of law.

One of my frustrations, and I raised it the first time we had a oversight committee hearing with the Administrator was, do

you believe, she actually believed it, so I am sure you do, that every regulatory action, any action that you take as the EPA has to be based in the statutes, in the congressional direction. Do you agree with that? Your boss did, so you probably should just say yes. Do you?

Mr. Burke. Again, as a scientist, it is a little out of my range of responsibility.

Senator Sullivan. I know.

Mr. Burke. But I support the Administrator.

Senator Sullivan. You know what, you don't have to answer that question, because I know it isn't in your realm. But the answer is yes, right? Every regulatory action, executive action that the EPA takes has to have a basis in the statute, has to have a basis in the law. The United States Supreme Court made that clear again last year in a case that was brought where they found that the EPA did not act according to the law.

So there is a lot of concern on this committee, and I would say in the Congress in general, that the EPA is not always doing that, so I asked the Administrator if she could make sure that every action that they have taken is based in the law, and she can assure me of that.

So I have asked for, for example, the legal opinion on the Waters of the United States. Big deal, what provided that. She hasn't provided that to me yet.

The chairman and I, Senator Rounds, we asked in a letter to her to respond to this issue on the front page of The New York Times a couple weeks ago. She hasn't responded to that.

Even yesterday, a pretty big deal that the EPA has decided now, to regulate emissions from aircraft. Again, I asked the Administrator at the outset, hey, if you are going to take action, you need to show us where your authority is in the law. Certainly got nothing from them on that.

So my question is, in terms of an oversight capacity that we have here, in terms of the advice and consent constitutional role that we have to confirm you and your positions, do you think it is a legitimate exercise of our authority, as the Congress, as the oversight committee, to put a hold on your nominations and confirmation until we actually get legitimate answers from the Administrator on, for example, the Waters of the U.S. legal opinion? She won't give that to me. It is crazy.

This letter that the chairman and I wrote a couple weeks ago, stonewall. Legal opinion. I would really like to see the legal opinion on the EPA's authority to regulate emissions from airplanes. I know they are basing that on some kind of international agreement. Last time I checked, the EPA's authority does not derive from international organizations, it derives from the Congress and the Constitution.

So I know this is a bit of a tough question. I know that you are not involved in these issues, but do you think that is a legitimate exercise of our authority in the Congress, in this committee, to say, you know, these candidates might be qualified, they are certainly motivated to serve their Country, but until we actually get answers from the head of the EPA, who stonewalls this committee and this Congress, we are not going to move forward on any nominations. Do you think that is a legitimate exercise of our constitutional and oversight role?

Senator Inhofe. From the chair, I would like all three of you to respond to that question, if you would.

Ms. Dunkin. Senator, I don't feel qualified to speak to the procedural issues of this body.

Ms. Nishida. Like my colleague, I am also not qualified to speak to the procedural issues. But I can tell you with regards to the actions that my office takes, it is consistent with the laws of the United States.

Senator Sullivan. Look, I don't doubt what you are saying, but when you are just saying it and you are not showing it to us. Several years ago the EPA said that the actions that they were taking under the Clean Air Act were consistent with the laws of the United States. At the time I was the attorney general of the State of Alaska. I was one of a group that sued and said, actually, we don't think you are right. That went all

the way to the U.S. Supreme Court. Last year, the Supreme Court said the EPA didn't have that authority; the EPA was violating the Constitution. The EPA was trying to take powers away from this body.

So, as you can imagine, it is not just us talking in terms of hypotheticals; there are real instances of the EPA usurping the power of the Congress. And when we ask the Administrator for legal opinions on additional actions like the Waters of the U.S., 35 States oppose that, a lot of questions about whether that is legal and the EPA's legal authority. I have been asking the Administrator for months, for months, for the detailed legal analysis that provides the EPA the legal authority to issue the Waters of the U.S. rule, and she won't provide it to this Congress.

So now the EPA wants the Congress to confirm you. But my question is should we say, now, wait a minute, you are not getting back to us on anything. Our oversight role, our role in the U.S. Constitution, pretty important, advice and consent for senior officials of the United States, which you would be, and yet we get blown off by the EPA on this letter.

The chairman of this committee sent the EPA Administration a letter two weeks ago on a real big issue, front page of The New York Times saying the EPA might be violating the law. As far as I know, haven't heard back from her. My question is on

the legal opinions, nothing else.

So I am just wondering if you think it is a fair function of this committee to say, hold off, we are not going to move on any nominations until we start getting answers from the EPA. Do you think that that is legitimate?

I know you are not lawyers. I know you are scientists, but you are also smart in the ways of Washington.

Mr. Burke, do you think so?

Mr. Burke. Senator, I am sorry, I do not have the expertise or experience. It is an important question, but I do not have the knowledge to really answer that. As a scientist, I really cannot answer that.

Senator Sullivan. Okay.

Well, Mr. Chairman, sorry I went over, but I think it is an important issue. And I will just tell you, we all want clean water, we all want clean air. Like I said at the outset, my State, we live in the most pristine State in the world, beautiful place, cleanest water, cleanest air. We all want that.

But I will tell you this, and this is not a partisan thing, this is the vast majority of the people who live in my State are very concerned about the actions of the EPA in large measure because Alaskans don't think that the EPA is abiding by the law or the Constitution. And I committed to my constituents to ask

harder questions about this, and I have.

And guess what? We get stonewalled. And we are the oversight committee. We are the committee of jurisdiction and we write the laws, not the EPA. And I don't think that is clear to the Administration. So this is an opportunity for her to maybe come up with some answers as we move forward to look at important dedicated public servants like yourselves.

I know these are hard questions that are not necessarily in your realm. I don't want to at all kind of impinge your very strong credentials and your commitment to your Country and service. I really appreciate that. That is why I asked the question at the outset. But in some ways you are a bit in the crossfire of what I think is actually a really, really important issue that your boss seems to ignore, and that is not acceptable.

Thank you, Mr. Chairman.

Senator Inhofe. I would expand on that a little bit in just saying, looking at it, recognizing your area of expertise, what other leverage do we have?

You know, at the beginning of this committee hearing I asked you do you agree, if confirmed, to appear before this committee or designated members of this committee or other appropriate committees to provide information subject to the appropriate and necessary security, and all of this. You all

responded positively. So did she. This is the same oath of office that we got from her.

And I think that when someone does not do what they have said that they would do, so help me God, what else is there for us to carry out the oversight provisions? I don't know of any other leverage that we have.

So I think it is very appropriate that you bring this up.

I was asked to, one of the members who was not able to be here, you might remember, Dr. Burke, that when Senator Barrasso was questioning you back in December of 2013, that was a nomination hearing, he asked some questions. Let me just read it, I don't want to get this wrong. The National Academy of Sciences cautioned against relying on decades-old data for developing new national ambient air quality standards. That is the NAAQS that we are talking about.

Following your December 17th, 2013 nomination hearing, you committed to "reviewing this issue and working to ensure the integrated science assessments that provide the foundation for NAAQS decision reflect the best possible science."

I would say this, I don't think that he has actually heard a response. I would like to have you bring that up and also say what steps you have taken since becoming the EPA's science advisor to ensure that these science assessments no longer use outdated material. This is 30 years old, this scientific basis.

What can I share with Senator Barrasso, your response to me?

Mr. Burke. Thank you for the question, Senator. Since I have been there, there continues to be tremendous progress in our National Center for Environmental Assessment in those integrated science assessments. In fact, in a sense, the major report on fracking is an integrated assessment. The NAAQS are integrated assessments. And it is our commitment, and there has been tremendous progress in doing that, to revisit and constantly upgrade the science.

So to my knowledge, we are making very good progress on that in support of the decision-making being inclusive and being up to date.

Senator Inhofe. Well, he goes on to ask the question. He said during that same nomination hearing you committed to making underlying data used to justify EPA rulemaking public. So I would ask you, now, that has been two years ago, roughly. What have you done since that time in terms of fulfilling that commitment?

Mr. Burke. Okay, first, I was still a dean two years ago and I have been with the Agency five months. But we have really worked on that, and I have been directly involved with the group working not just in the Agency, but throughout the Administration, with the guidance from the President's science

advisor, to improve data access.

We are systematically looking at ways that we can make sure our research and the research results of the folks who receive grants from us can be made more accessible; that all of the published reports, the metadata is out there for people to look at, to feel confident in, because we feel that transparency is really the only way to be credible in science. There has been tremendous progress and I would be happy to provide more details on that.

Senator Inhofe. Okay, I would like to ask that you provide those details directly to Senator Barrasso, because he is wanting that information.

Mr. Burke. Be happy to, Senator.

Senator Inhofe. Now, when Senator Capito was talking and asking questions, it sounded like you told Senator Capito that science is never settled.

Mr. Burke. Science continues to evolve constantly.

Senator Inhofe. Would you agree that climate science is not settled, then?

Mr. Burke. That is an excellent question, Senator. We continue to learn more every day. I think that there is great consensus in the scientific community that our climate is changing, but I think we continue to learn more about the mechanisms and, most importantly, about resilience to climate.

Senator Inhofe. Well, I would suggest to you no one disagrees climate is changing. That is not the issue. Is it manmade gasses that are providing a major reason for that change to take place?

You have answered the question, that is, that science is never settled. That is good.

Well, I want to thank you again.

Senator Sullivan. Mr. Chairman?

Senator Inhofe. Yes?

Senator Sullivan. Is it all right, just a few more questions?

Senator Inhofe. As many as you want.

And that is for anyone else who comes down, too. That is our policy.

Senator Sullivan. So I do want to kind of, again, emphasize. You may have seen this Utility Air Regulator Group v. EPA. It was a Supreme Court decision from last year. If you haven't read it, I would highly recommend it, even though that is not in your area of expertise. I would highly recommend you read it because it is important. A lot of important quotes here.

Justice Scalia, who wrote the controlling opinion, stated, "It is patently unreasonable, not to say outrageous, for the EPA to insist on seizing expansive power that it admits the statute

is not designed to grant." This was just a year ago that that happened.

So, again, sometimes people say, oh, this is hypothetical. This is not hypothetical at all. The highest court in the land said to your Agency, you are usurping the power of the Congress. And a lot of us believe that is what is going on in the Waters of the United States rule, which is why we are taking appropriate action. This committee, yesterday, marked up a bill that would make sure that the EPA doesn't commit that kind of act.

Again, this is the May 22nd letter. I would like to submit this for the record, Mr. Chairman.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Sullivan. This is from the chairman, myself, Senator Rounds asking the Administrator a number of questions with regard to a front page New York Times article indicating the EPA may have broken the law. No response.

Waters of the U.S., the legal opinion, been asking that for months. They issued the rule anyways. Just kind of ignored us. No response.

And then I do think one of you actually has had some kind of role in the public records issue, but you may have seen a Federal judge in the U.S. District Court was quoted as saying, with regard to a recent lawsuit, "The court is left wondering whether the EPA has learned from its mistakes or if it will merely continue to address FOIA requests in the clumsy manner that has become its custom. Given the offensively unapologetic nature of the EPA's recent withdrawal notice, the court is not optimistic that the Agency has learned anything."

So have you learned anything? That is a pretty severe rebuke from a Federal judge, actually, a very well respected Federal judge, Royce Lamberth, who has been a Federal judge in Washington in the Federal court here for many, many years. That is pretty strong language.

Were any of you in charge of that or had anything to do with that lawsuit? And have you learned anything from what the judge was clearly troubled by?

Mr. Burke. I am sorry, Senator, I was not involved in any way.

Senator Sullivan. Okay.

Ms. Dunkin. I was also not involved with that lawsuit.

Ms. Nishida. Senator, I was not involved with the lawsuit either.

Senator Sullivan. Okay. So that does relate to FOIA requests, where I know, and it looks like there has been some lost emails now and all the kind of things that, to be honest, makes the Congress and the citizens of our great Nation skeptical of what is happening.

I just want to ask, finally, for the record here, if you are asked in your capacity, if you are confirmed, to be responsive to the committee that has oversight here, but also to the Congress, which, of course, has oversight, will you commit to do that? Unlike your boss, who I believe just stonewalls the Congress and this committee, and that is very, very troubling to me, will you commit to be responsive in a substantive and timely manner to the requests of this committee? Can you commit to that to us? Each one?

Mr. Burke. Yes, Senator.

Ms. Dunkin. I also commit to that, yes.

Ms. Nishida. Yes, Senator, we will.

Senator Sullivan. Great. It would be helpful, when you go

back to the EPA, to pass on that message to the Administrator, that it would be helpful if she were responsive, thorough and timely in the requests from this committee and from the Congress, because right now she hasn't been.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Sullivan.

Sometimes when someone who is a level down from the Administrator gets a request, they will feel it is necessary to feed that response through the Administrator. Now, what the Senator is asking you is, are you going to respond to our requests directly to us, not filtering it through the Administration? That would be the question I would ask. Would you do that?

Ms. Dunkin. Senator, I will follow the procedures the EPA uses to respond working through our Office of Congressional Affairs.

Senator Inhofe. I don't know what that procedure is. Does that procedure preclude you from having a direct response to our questions as an oversight?

Ms. Dunkin. We will work through Office of Congressional Affairs and then we respond directly.

Senator Inhofe. So is your answer the same, that you don't have a direct responsibility to respond to questions from an oversight committee?

Ms. Dunkin. No, sir. We will respond.

Senator Inhofe. Directly to us?

Ms. Dunkin. Yes.

Senator Inhofe. All right.

Do you agree with that, Ms. Nishida?

Ms. Nishida. As indicated, we have an Office of Congressional Affairs, and we work through the Congressional Affairs Office.

Senator Inhofe. Well, I know that. I know that. But Ms. Dunkin qualified that and said, yes, she would do that directly with us. I am not very comfortable when we ask you a question and you respond to your office instead of responding to us. Do you have a problem with responding directly to us and will you do that?

Ms. Nishida. Again, Senator, we will work very closely with our Office of Congressional Affairs.

Senator Inhofe. Is your answer no, then?

Ms. Nishida. Again, Senator, we will be responsive through our procedures with the Office of Congressional Affairs.

Senator Inhofe. That is a pretty serious answer.

How about you, Dr. Burke? Will you respond directly to us if we directly ask you a question in your capacity as oversight?

Mr. Burke. Senator, I would be happy to be responsive to any requests from the committee.

Senator Inhofe. Direct responses. So your answer is yes.

Mr. Burke. I will coordinate, obviously, as part of the Environmental Protection Agency, I will coordinate with the Agency.

Senator Inhofe. Well, you can coordinate all you want with the Agency, but if we ask you a direct question, I just can't imagine that anyone would say, as Ms. Nishida did, that, no, the answer is no, I won't give a direct response. So you are saying you will give a direct response. We are asking. I think that is our constitutional duty and it is in the oath you just took. So your answer is yes?

Mr. Burke. Yes.

Senator Inhofe. Thank you very much.

I want to thank all of you. This is a serious thing that we are looking at.

And when I was following Senator Sullivan's questions and trying to think of what leverage do we have to force someone to do what they have sworn they would do in their oath of office, I don't know what else we have.

But I appreciate very much your time, and that extends to your family. Thank you very much for being here.

We look forward to getting the written responses that we requested. We are adjourned.

[Whereupon, at 10:50 a.m. the committee was adjourned.]