Table of Contents

U.S. Senate Date: Wednesday, April 9, 2025

Committee on Environment
and Public Works

Washington, D.C.

STATEMENT OF: PAGE:

THE HONORABLE SHELLEY MOORE CAPITO, A UNITED STATES SENATOR FROM THE STATE OF WEST VIRGINIA 3

THE HONORABLE SHELDON WHITEHOUSE, A UNITED STATES SENATOR FROM THE STATE OF RHODE ISLAND 7

BUSINESS MEETING

Wednesday, April 09, 2025

United States Senate

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 9:46 a.m. in room 406, Dirksen Senate Office Building, the Honorable Shelley Moore Capito [chairman of the committee] presiding.

Present: Senators Capito, Whitehouse, Cramer, Lummis, Curtis, Graham, Sullivan, Ricketts, Wicker, Boozman, Husted, Kelly, Padilla, Schiff, Blunt Rochester.

STATEMENT OF THE HONORABLE SHELLEY MOORE CAPITO, A UNITED STATES SENATOR FROM THE STATE OF WEST VIRGINIA

Senator Capito. Good morning, everybody. We need to have all our Republican members here before we vote, but we do have chance that we have a quorum, that we can start. So will give our opening statements.

If Senator Whitehouse doesn't mind, as soon as we get to the point where we can vote, we will go ahead and suspend and vote, and then we can move forward.

I know a lot of people have a lot of different committee meetings today.

So, after the vote, we will be talking about, we will have a hearing on the Superfund, which we are looking forward to.

So I want to thank my colleagues for attending the business meeting here to vote on the nominations of Brigadier General Brian Nesvik to be Director of Fish and Wildlife, and Jess Kramer and Sean Donahue to be Assistant Administrators at the EPA.

General Nesvik has served for more than 29 years with the Wyoming Game and Fish Department, retiring from the agency after serving his last five years as the director. Simultaneously with his service at Wyoming Game and Fish, General Nesvik had 35 years of decorated military service in the Wyoming Army Guard. His final three and a half years was as commander of the Wyoming

Army National Guard. I would note he did both of these jobs at the same time.

With almost three decades of relevant experience and extensive leadership, he will make a great Fish and Wildlife Director.

Jess Kramer began working in environmental enforcement roles at the Wisconsin Department of Natural Resources and the Wisconsin Department of Justice. From there, she joined the first Trump administration at EPA's Office of Water, rising to the senior policy counsel.

She then joined my staff to help us negotiate the Water Division of the Infrastructure and Jobs Act. And she did a great job.

She then went into private practice, advocating on behalf of water systems to ensure continued infrastructure investments in smart and achievable regulation. Before joining the Trump administration in January as a senior advisor, she most recently was the Deputy Secretary for Regulatory Programs at the Florida Department of Environmental protection.

With 13 years of experience advocating for clean water at both the State and Federal level as well as the private sector, Jess is exceptionally qualified to now lead the EPA's Office of Water.

Sean Donahue began his career in the field of finance, but

pivoted to environmental issues in 2018, when he joined the EPA. In two and a half years at the EPA, he worked in both the Executive Secretariat and the Office of Land Emergency Management, gaining insights into the broad range of issues before the agency.

After leaving the EPA in 2021, he practiced law in New York, working first at a private firm and then at a solar firm. He rejoined EPA in January, first serving in the Office of General Counsel and then now as a Senior Advisor to the administrator. Through both his prior service at the EPA and his private sector legal experience, his qualifications lead him to the Office of General Counsel.

At their recent nomination hearing, we heard the passion that each nominee had for pursuing these positions and the experiences that have shaped their unique qualifications for these roles. Importantly, each nominee pledged to faithfully follow the laws that Congress has enacted to carry out their duties.

Based on their testimonies, I am confident that these nominees will focus their efforts to bringing their respective agencies back to achieving their core missions and away from pushing extreme regulations that threaten the reliability of our grid and American competitiveness.

I urge my colleagues to support these nominations. With

that, I will turn to the Ranking Member. It appears as though we are all here.

The Ranking Member is going to give his opening statement.

[The prepared statement of Senator Capito follows:]

STATEMENT OF THE HONORABLE SHELDON WHITEHOUSE, A UNITED STATES SENATOR FROM THE STATE OF RHODE ISLAND

Senator Whitehouse. Then we will go to the vote.

Senator Capito. Then we will go to the vote.

Senator Whitehouse. The Chairman told me this morning that she is determined to be in a good mood today. So I will start off with some good news, which is that I intend to vote in favor of Ms. Kramer. On paper and in her hearing, she demonstrated that she is qualified for the role to which she has been nominated, and has a clear understanding of the Clean Water Act and other relevant laws and regulations.

She seems willing to faithfully execute the duties required of the head of EPA's Office of Water, therefore, I plan to vote in favor of her nomination.

Concerning Mr. Nesvik, I will vote not. I liked him, and I am impressed by his military service. But his clear prioritization of agriculture and fossil fuel interests over fish and wildlife protection is, in my view, contrary to the very purpose of the Fish and Wildlife Service.

As to Sean Donohue as General Counsel of EPA, he may be the most unfit nominee ever for the role of any Federal agency's general counsel. He would have trouble getting an entry level legal position in any of our offices.

Article II, Section 2, Clause 2 of the Constitution

provides the Senate with advice and consent power. This Constitutional power should carry some meaning. Advice and consent should not be empty words. There is no colorable argument that Mr. Donahue should survive any advice and consent process based on his qualifications.

The EPA general counsel is the chief legal advisor and provides legal advice on environmental laws, including the Clean Air Act, Clean Water Act, Safe Drinking Water Act, and Superfund Act, among others. Mr. Donahue has no apparent experience with any of them.

He has never tried a case to verdict, never taken a deposition, never signed a pleading, and never argued a motion. At best, maybe, he has supervised two to three attorneys. He practiced law for a year and a half as a junior associate at a law firm before being fired.

By comparison, here are the previous seven Senate-confirmed EPA general counsels across Republican and Democratic administrations. Jeffrey Prieto, two decades in Federal service including as a general counsel before joining EPA. Matthew Leopold, from President Trump's first term, 14 years as an environmental lawyer and State agency general counsel. Avi Garbow, 21 years practicing environmental law in the public and private sector.

Scott Fulton, various leadership roles over 22 years at EPA

which followed eight years at DOJ's Environment and Natural Resources Division. Roger Martella, law clerk for a court of appeals, seven years with the Natural Resources section of DOJ and time spent as EPA Acting General Counsel. And Klee law firm for nine years, chief counsel for this committee, for five years Senior Counselor to the Secretary of the Interior.

Robert Fabricant, two years in private practice, five years as counsel and chief counsel to then-New Jersey Governor Christie Todd Whitman. Mr. Donahue, 1.5 years in general law in upstate New York, then fired, now expected to oversee 200 lawyers and 300 total staff in the Office of General Counsel.

He can't even keep track. In response to QFRs, Mr. Donahue stated that he would faithfully implement the law, but in the same breath stated explicitly that the administration's current grant freeze was legal despite two Federal court orders to the contrary. So what law does he think he will be implementing?

Why is he here? Mr. Donahue's significant other is the Deputy Director of Presidential Personnel for the White House, a role that Mr. Donahue confirmed had purview over his appointment.

So I will vote no, despite the fact that his manifest incompetence will probably work to our advantage.

[The prepared statement of Senator Whitehouse follows:]

Senator Capito. Well, thank you, Ranking Member Whitehouse. How do you really feel?

[Laughter.]

Senator Whitehouse. I think this is an astonishing low point for us. I just have to say that.

Senator Capito. All right. At this time I will ask Senators to hold their remarks on the nominees until after the roll call votes.

I will now call up Presidential Nomination 25-11, Sean Donahue of Florida to be Assistant Administrator of the Environmental Protection Agency. I move to approve and report the nomination favorably. Is there a second?

Senator Cramer. Second.

Senator Capito. Thank you very much.

The Clerk will call the roll.

The Clerk. Ms. Alsobrooks?

Senator Whitehouse. No, by proxy.

The Clerk. Ms. Blunt Rochester?

Senator Blunt Rochester. No.

The Clerk. Mr. Boozman?

Senator Boozman. Yes.

The Clerk. Mr. Cramer?

Senator Cramer. Yes.

The Clerk. Mr. Curtis?

Senator Curtis. Yes.

The Clerk. Mr. Graham?

Senator Graham. Yes.

The Clerk. Mr. Husted?

Senator Husted. Yes.

The Clerk. Mr. Kelly?

Senator Kelly. No.

The Clerk. Ms. Lummis?

Senator Lummis. Aye.

The Clerk. Mr. Markey?

Senator Whitehouse. No, by proxy.

The Clerk. Mr. Merkley?

Senator Whitehouse. Also no, by proxy.

The Clerk. Mr. Padilla?

Senator Padilla. No.

The Clerk. Mr. Ricketts?

Senator Ricketts. Aye.

The Clerk. Mr. Sanders?

Senator Whitehouse. No, by proxy.

The Clerk. Mr. Schiff?

Senator Schiff. No.

The Clerk. Mr. Sullivan?

Senator Sullivan. Aye.

The Clerk. Mr. Whitehouse?

Senator Whitehouse. No.

The Clerk. Mr. Wicker?

Senator Wicker. Aye.

The Clerk. Madam Chairman?

Senator Capito. Aye.

The Clerk. Madam Chairman, the yeas are 10, the nays are 9.

Senator Capito. The Clerk reports the yeas and nays; with that, the nominee is favorably reported.

I will now call up Presidential Nomination 25-28, Jessica Kramer of Wisconsin to be an Assistant Administrator of the Environmental Protection Agency. I move to approve and report the nomination favorably. Is there a second?

Senator Cramer. Second.

Senator Capito. The Clerk will call the roll.

The Clerk. Ms. Alsobrooks?

Senator Whitehouse. Aye, by proxy.

The Clerk. Ms. Blunt Rochester?

Senator Blunt Rochester. No.

The Clerk. Mr. Boozman?

Senator Boozman. Yes.

The Clerk. Mr. Cramer?

Senator Cramer. Aye.

The Clerk. Mr. Curtis?

Senator Curtis. Aye.

The Clerk. Mr. Graham?

Senator Graham. Aye.

The Clerk. Mr. Husted?

Senator Husted. Aye.

The Clerk. Mr. Kelly?

Senator Kelly. Aye.

The Clerk. Ms. Lummis?

Senator Lummis. Aye.

The Clerk. Mr. Markey?

Senator Whitehouse. No, by proxy.

The Clerk. Mr. Merkley?

Senator Whitehouse. Also no, by proxy.

The Clerk. Mr. Padilla?

Senator Padilla. Aye.

The Clerk. Mr. Ricketts?

Senator Ricketts. Aye.

The Clerk. Mr. Sanders?

Senator Whitehouse. No, by proxy.

The Clerk. Mr. Schiff?

Senator Schiff. Aye.

The Clerk. Mr. Sullivan?

Senator Sullivan. Aye.

The Clerk. Mr. Whitehouse?

Senator Whitehouse. Aye.

The Clerk. Mr. Wicker?

Senator Wicker. Aye.

The Clerk. Madam Chairman?

Senator Capito. Aye.

The Clerk will report the yeas and nays.

The Clerk. Madam Chairman, the yeas are 15, the nays are 4.

Senator Capito. With that, the nominee is favorably reported.

I will now call up Presidential Nomination 25-35, Brian Nesvik of Wyoming to be Director of the United States Fish and Wildlife Service. I move to approve and report the nomination favorably. Is there a second?

Senator Cramer. Second.

Senator Capito. The Clerk will call the roll.

The Clerk. Ms. Alsobrooks?

Senator Whitehouse. No, by proxy.

The Clerk. Ms. Blunt Rochester?

Senator Blunt Rochester. No.

The Clerk. Mr. Boozman?

Senator Boozman. Yes.

The Clerk. Mr. Cramer?

Senator Cramer. Aye.

The Clerk. Mr. Curtis?

Senator Curtis. Aye.

The Clerk. Mr. Graham?

Senator Graham. Aye.

The Clerk. Mr. Husted?

Senator Husted. Aye.

The Clerk. Mr. Kelly?

Senator Kelly. No.

The Clerk. Ms. Lummis?

Senator Lummis. Aye.

The Clerk. Mr. Markey?

Senator Whitehouse. No, by proxy.

The Clerk. Mr. Merkley?

Senator Whitehouse. No, by proxy.

The Clerk. Mr. Padilla?

Senator Padilla. No.

The Clerk. Mr. Ricketts?

Senator Ricketts. Aye.

The Clerk. Mr. Sanders?

Senator Whitehouse. No, by proxy.

The Clerk. Mr. Schiff?

Senator Schiff. No.

The Clerk. Mr. Sullivan?

Senator Sullivan. Aye.

The Clerk. Mr. Whitehouse?

Senator Whitehouse. No.

The Clerk. Mr. Wicker?

Senator Wicker. Aye.

The Clerk. Madam Chairman?

Senator Capito. Aye.

The Clerk will report the yeas and nays.

The Clerk. Madam Chairman, the yeas are 10, the nays are 9.

Senator Capito. Thank you. With that, the nominee is favorably reported. I will note the presence of a quorum.

I want to thank all the members for being here this morning. I don't know if any members would like to speak on the nominees before we go into our hearing.

Senator Lummis. Madam Chairman?

Senator Capito. Yes, the Senator from Wyoming.

Senator Lummis. Thank you, Madam Chairman.

The U.S. Fish and Wildlife Service has by all standards known, and this meets the letter of the law and the intent of the Endangered Species Act, known that the grizzly bear in the Greater Yellowstone area has been fully recovered and then some for 20 years. The grizzly bear numbers have met objective; the grizzly bear numbers for ratios between males and females have met numbers; the expansion of the area has occurred; the number

of, the diverse population necessary to sustain a population has been met.

And for 20 years, we have been trying to get the grizzly bear delisted pursuant to the letter of the law of the Endangered Species Act and the intent of the Endangered Species Act. And yet the agency itself has fought it because groups, non-government groups that view the grizzly bear as charismatic mega fauna that they can use to raise money for their groups, is good contribution bait for them, and they won't let them off the list.

It is important that when we have a win in recovering a species the way that the grizzly bear has recovered in the Greater Yellowstone area that we take the win and celebrate it.

I am hopeful that Brian Nesvik will pursue this course of action, and I am hopeful that as he takes the reins of the U.S. fish and Wildlife Service, when there are other species that we know have met, they have met objectives, they have met the rules and regs, they have met the intent of the law, they have met the letter of the law, that they too can be delisted and celebrated, and we can move our attention to species that actually need it and deserve to be nurtured under the provisions of the ESA.

Thanks, Madam Chairman. I yield back.

Senator Capito. Thank you.

Senator Padilla?

Senator Padilla. Thank you, Madam Chair. I appreciate the opportunity to take just a moment to discuss my no votes on the confirmation of Mr. Nesvik to serve as Director of the Fish and Wildlife Service.

While I generally appreciated his candor during his confirmation hearing, and in particularly his willingness to roll up his sleeves, work with me on the gritty, complex details that is California water management, and certainly to recognize his willingness to engage with a variety of stakeholders in California, I just need to cite that the approaches and the actions that the administration has taken and continues to take demonstrates their hostility to the State of California. Until that changes, it is going to be hard to support nominees for these key positions.

So again, I appreciate the nominee's willingness to work with us, to work with stakeholders, visit California and look at opportunities for bipartisan agreement like wildlife corridors that we have been laying the foundation on. But one individual who is not at the top of the organizational chart is going to be limited by hostility coming from the top. Thank you.

Senator Capito. Thank you.

Does anybody else wish to make comments?

Then I would invite our witnesses to come to the stand, please.

[Whereupon, at 10:03, the committee proceeded to other business.]