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

DEC 19 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Specific Party Matters Involving the State of Alaska

FROM: Kevin S. Minoli KSM
Designated Agency Ethics Official and
Acting General Counsel

TO: Chris Hladick
Regional Administrator
Region 10

As the Regional Administrator for the United States Environmental Protection Agency (EPA) Region 10, you seek permission to participate in specific party matters involving the State of Alaska. Within the last year, prior to being selected for this position, you served as Commissioner of the Department of Commerce, Community and Economic Development for the State of Alaska.

Under President Trump's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of "former employer."[1] Therefore, the Ethics Pledge does not apply to your State of Alaska employment. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your employment with the State of Alaska.

I understand that you have a defined benefit plan with the State of Alaska. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. In the Agency's experience, it is unlikely that you as the Regional Administrator will be in any position to affect the State's ability or willingness to pay these benefits to its retirees. I do not expect, then, that 18 U.S.C. § 208 will prohibit you from carrying out your official EPA

[1] *See* Exec. Order 13770, Section 2(j), which provides that "'former employer' does not include … State or local government."

duties.

However, what remains is an impartiality concern. The applicable ethics rules are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Upon assuming the position of Regional Administrator, you will have a "covered relationship" with the State of Alaska pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the time you resign from the State of Alaska, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of Alaska is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

(1) the nature of the relationship involved;
(2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
(3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
(4) the sensitivity of the matter;
(5) the difficulty of reassigning the matter to another employee; and
(6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

As Regional Administrator, you are the leader of Region 10 and part of the Agency's political team. Your area of responsibility includes Alaska, as well as Washington, Oregon, Idaho, Alaska, and 271 federally-recognized tribes. In your role as Regional Administrator, you are expected to communicate freely with the states in your region, including Alaska. You will therefore be expected to participate in discussions and meetings related to particular matters that affect Alaska. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Regional Administrator in particular matters that involve the State of Alaska. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Your prior employment was with the Department of Commerce, Community and Economic Development, which is separate from the state environmental agency, the Department of Environmental Conservation. I note that, in your

official capacity, you also served in fiduciary roles on two state boards.[2] States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with states on a continuing and frequent basis.

Effect of the matter upon your financial interest – I have concluded that there is only a remote possibility that any of EPA's actions will affect the State's ability or willingness to honor its contractual obligations to pay benefits to its retirees. Your actions as the Regional Administrator will not affect any pay-outs you may receive from your retirement plan.

Nature and importance of the employee's role – As the leader of Region 10, Alaska is a substantial area of responsibility for you since the Region covers Washington, Oregon, Idaho, Alaska, and 271 federally-recognized tribes in the Pacific Northwest and Alaska. In your role as Regional Administrator, you are expected to communicate freely with states, including Alaska.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you may be asked to participate, including ones that merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation in nationally significant issues will be of importance to the Administrator.

While we have issued you this determination to interact with the State of Alaska, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves Alaska. Nothing in this impartiality determination should preclude you from choosing to recuse yourself, although you are advised to confer with your Regional Counsel should such a circumstance arise.

This authorization will remain in effect for the remainder of your cooling off period. After one year from the date of your resignation from the State of Alaska, you will no longer have a covered relationship with Alaska under the impartiality standards and will no longer require this determination.

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[2] Alaska Marine Pilots Board and the Alaska Mariculture Task Force. Any other board service was either non-fiduciary or delegated to a subordinate. EPA believes it unlikely that you participated personally and substantially in those matters and that there is little likelihood of any nexus with your EPA duties.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786.

cc: Michelle Pirzadeh, Deputy Regional Administrator, Region 10
Allyn Stern, Regional Counsel, Region 10
Socorro Rodriguez, Regional Ethics Counsel, Region 10
Garth Wright, Regional Ethics Counsel, Region 10
Justina Fugh, Senior Counsel for Ethics