Appendix

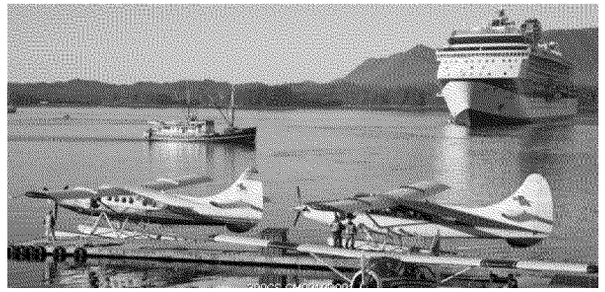
Additional Details on the CWR

Subject	Old Rule	Proposed Rule	Final Rule
Navigable Waters	Jurisdictional	Same	Same
Interstate Waters	Jurisdictional	Same	Same
Territorial Seas	Jurisdictional	Same	Same
Impoundments	Jurisdictional	Same	Same
Tributaries to the Traditionally Navigable Waters	Jurisdictional; did not define tributary	Defined tributary for the first time as water features with bed, banks and ordinary high water mark, and flow downstream.	Same as proposal except wetlands and open waters without beds, banks and high water marks will be evaluated for adjacency.
Adjacent Wetlands/Waters	Jurisdiction included wetlands adjacent to traditional navigable waters, interstate waters, the territorial seas, impoundments or tributaries.	Included all waters adjacent to jurisdictional waters, including waters in riparian area or floodplain, or with surface or shallow subsurface connection to jurisdictional waters.	Includes waters adjacent to jurisdictional waters within a minimum of 100 feet and within the 100-year floodplain to a maximum of 1,500 feet of the ordinary high water mark.
Isolated or "Other" Waters	Jurisdiction included all other waters the use, degradation or destruction of which could affect interstate or foreign commerce.	Included "other waters" where there was a significant nexus to traditionally navigable water, interstate water or territorial sea.	Includes specific waters that are similarly situated: Prairie potholes, Carolina & Delmarva bays, pocosins, western vernal pools in California, & Texas coastal prairie wetlands when they have a significant nexus. Includes waters with a significant nexus within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas, as well as waters with a significant nexus within 4,000 feet of jurisdictional waters.
Exclusions to the definition of "Waters of the U.S."	Excluded waste treatment systems and prior converted cropland.	Categorically excluded those in old rule and added two types of ditches, groundwater, gullies, rills and non-wetland swales.	Includes proposed rule exclusions, expands exclusion for ditches, and also excludes constructed components for MS4s and water delivery/reuse and erosional features.

These slides come from Regional presentations of the rule – at one point I believe they were OGC vetted

Unchanged Categories

- Traditional Navigable Waters (TNWs)
  - Tidally influenced or
  - Currently, historically, or potentially used in commerce

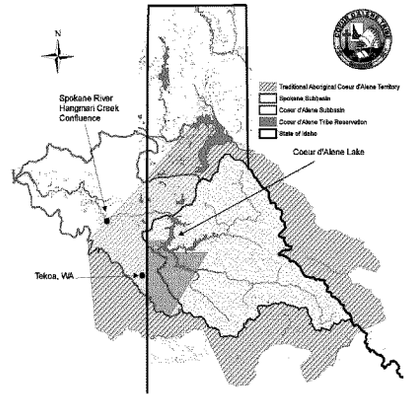


Ketchikan

- Territorial Seas
  - Open ocean out to 3 miles

Near Cape Flattery, WA

- Interstate Waters
  - Flow across, or form part of, state boundaries



Spokane River Watershed

- Impoundments
  - Of other Waters of the U.S.

Lake Simtustus, OR

NEW! Eliminated: "Isolated" Waters

- Waters with existing or potential link to interstate or foreign commerce (e.g., recreation, fishing, industrial use)

- Supreme Court (*SWANCC* & *Rapanos*)
  - Can't base jurisdiction solely on migratory bird use
  - Must have significant nexus to chemical, physical, & biological integrity of TNW, interstate water, or territorial sea

- Significant Nexus (SigNex)
  - More than insubstantial or speculative effect
  - Either alone or in combination with other similarly situated waters in the region
    - In the region = watershed that drains to TNW, interstate water, or territorial sea
    - Similarly situated = Perform similar functions & are sufficiently close together or to the other WOTUS to function together

ED_001271_00097676-00025

FOIA 2020-001799-0001453

Revised Categories:

Science Confirms SigNex

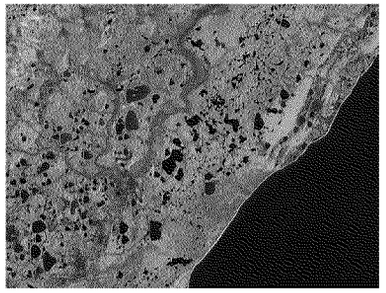
- *All* Tributaries that….
  - Meet the definition (new):
    - Contribute flow to TNW or interstate water
    - NEW Have bed, banks, & OHWM (spatial discontinuity okay)
    - Natural, man-altered, or man-made
- Includes some ditches

Blue Creek, Shoshone-Paiute Tribes

Skagit County, WA

- *All* Adjacent Waters
  - NEW No longer just wetlands
    - Bordering, contiguous, neighboring
  - NEW Neighboring (new definition) = starting within:
    - 1,500' of high tide line or
    - First 1,500' of 100-year floodplain or, otherwise,
    - 100'….

  of another water of U.S.
- NEW Not if in established farming, ranching, or silviculture use



Arctic Coastal Plain, AK

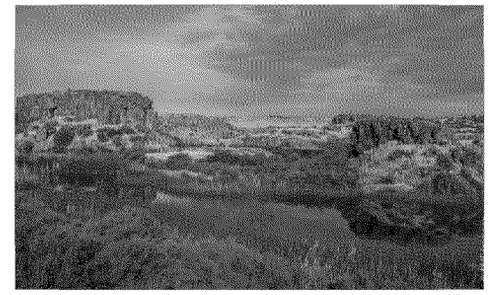
Umatilla River Floodplain Wetlands

NEW Case-specific SigNex Evaluation: (a)(7) AND (a)(8)

- Waters confirmed to be similarly situated
  - Carolina & Delmarva Bays
  - Pocosins
  - Texas Coastal Prairie Wetlands
  - Prairie Potholes
  - Western Vernal Pools *in California*

- Other Waters within…
  - 100-year floodplain of a TNW or interstate water or
  - 4,000' of a TNW, interstate water, or tributary, or impoundment thereof

Table Rock Vernal Pool, Oregon



Channeled Scablands, Washington

- Functions Considered
  - Sediment trapping
  - Nutrient recycling
  - Pollutant trapping, filtering, transformation, or transport
  - Flood water retention/attenuation
  - Runoff storage
  - Flow contribution
  - Export of organic matter or food resources
  - Feeding, nesting, spawning, or rearing habitat for species from TNW, interstate water, or territorial sea

ED_001271_00097676-00027

FOIA 2020-001799-0001455

Exclusions: What *Aren't* WOTUS

- **Waste Treatment Systems**
- **Prior Converted Cropland**
- Revised **Ditches** that….
  - Have ephemeral flow & are not a relocated tributary
  - Have intermittent flow & neither are a relocated tributary nor drain wetlands
  - Do not flow to a TNW, interstate water, or territorial sea
- **Irrigated Areas** that would otherwise be dry land
- Revised **Stock Watering, Irrigation, Settling, Rice Growing, Log Cleaning, Cooling,** & similarly used lakes & ponds built in dry land
- **Reflecting Pools** built in dry land
- **Swimming Pools** built in dry land
- Small **Ornamental Waters** created in dry land
- **Construction & Mining Site Depressions** created in dry land
- Revised **Sand, Gravel, & Borrow Pits** excavated from land
- NEW! **Gullies & Rills** that don't meet the definition "tributary"

- NEW! **Non-wetland Swales**
- NEW! Lawfully constructed **Grassed Waterways**
- NEW! **Puddles**
- NEW! **Groundwater**
- NEW! **Stormwater conveyance, treatment, or storage features** constructed in dry land
- NEW! **Wastewater recycling features** (detention & retention basins, groundwater recharge basins, percolation ponds, distributary systems) constructed in dry land

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Evans, David[Evans.David@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]
From: Able, Tony
Sent: Fri 1/27/2017 3:17:32 PM
Subject: RE: FYI -- Comparison of key bills amending the CWA's definition of "waters of the US"

I got feedback from Mindy. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Tony Able, Acting Chief

Wetlands and Aquatic Resources Regulatory Branch

Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

202 566 0375 (Phone)

404 821 9066 (Cell)

From: Downing, Donna
Sent: Tuesday, January 24, 2017 12:35 PM
To: Able, Tony <Able.Tony@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Evans, David <Evans.David@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>
Subject: FYI -- Comparison of key bills amending the CWA's definition of "waters of the US"

Hi Tony, John, and Mindy –

During his confirmation hearing, I understand Administrator-Designee Pruitt indicated support for amending the Clean Water Act to define "navigable waters" or "waters of the US." Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Attached please find a draft table summarizing two bills introduced in the last Congress:

- S.980, "Defense of Environment and Private Property Act" introduced by Senator Paul, and

- S. 1140 as amended, "Federal Water Quality Protection Act," introduced by Senator Barrasso.

Neither bill has been reintroduced in the 115th Congress yet.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please let me know if you have any suggested edits or questions. Thanks!

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Bowers, Kathleen[bowers.kathleen@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; FertikEdgerton, Rachel[FertikEdgerton.Rachel@epa.gov]; Harrington, Rachel[harrington.rachel@epa.gov]; Hough, Palmer[Hough.Palmer@epa.gov]; Hunter, Christopher[Hunter.Christopher@epa.gov]; Irby, Virginia[Irby.Virginia@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Landers, Timothy[Landers.Timothy@epa.gov]; Linn, Jennifer[Linn.Jennifer@epa.gov]; Moulta-Ali, Abu[Moulta-Ali.Abu@epa.gov]; Topping, Brian[Topping.Brian@epa.gov]
From: Able, Tony
Sent: Wed 1/25/2017 7:57:11 PM
Subject: Check-in with Mindy - WARRB communications

[redacted]

WARRB_TransitionBriefingDeck.pptx

WARRB_TransitionCheatsheet.xlsx

I just had my weekly WARRB meeting with Mindy. We are on the right track but here is some clarification.

Work on our key messages (section 2) first. Examples:

- Deliberative Process / Ex. 5
- Deliberative Process / Ex. 5
- Deliberative Process / Ex. 5
- Deliberative Process / Ex. 5
- Deliberative Process / Ex. 5
- Deliberative Process / Ex. 5
- Deliberative Process / Ex. 5
- Deliberative Process / Ex. 5
- Others?

As I said, it appears that we are on the right track already. She would like these key messages to be where we focus our attention first.

Timeline.

- Is it possible to have these key messages ready for Mindy's review by COB 1/10/17. She will review them on our SharePoint site and give us feedback

- Make adjustments to her comments ???

- John's review ???

- Share with the Regions ??

- Continue work on the other 2 areas of our communications packages (update existing briefings and discuss furthering program/process improvements)

Tony Able, Acting Chief

Wetlands and Aquatic Resources Regulatory Branch

Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

202 566 0375 (Phone)

Personal Phone / Ex. 6 (Cell)

From: Able, Tony
Sent: Tuesday, January 24, 2017 5:29 PM
To: Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany

<bennett.brittany@epa.gov>; Bowers, Kathleen <bowers.kathleen@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Harrington, Rachel <harrington.rachel@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; Irby, Virginia <Irby.Virginia@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>; Linn, Jennifer <Linn.Jennifer@epa.gov>; Moulta-Ali, Abu <Moulta-Ali.Abu@epa.gov>; Topping, Brian <Topping.Brian@epa.gov>
Cc: Brown, Sineta <Brown.Sineta@epa.gov>
Subject: FW: Updating fact sheets and PPTs

Yes, please look these over. This will be the topic of our WARRB meeting Thursday morning at 9:30.

Note also that I have scheduled WARRB meetings for every Thursday going forward. The reason being that there is a lot going on and I want to keep you informed of updates and engaged on activities for the transition. If we determine that we don't need a particular meeting then we can cancel for that week.

Tony Able, Acting Chief

Wetlands and Aquatic Resources Regulatory Branch

Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

202 566 0375 (Phone)

Personal Phone / Ex. 6 Cell)

From: Auerbach, Daniel
Sent: Tuesday, January 24, 2017 5:02 PM

To: Kwok, Rose <Kwok.Rose@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Topping, Brian <Topping.Brian@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Moulta-Ali, Abu <Moulta-Ali.Abu@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>; Irby, Virginia <Irby.Virginia@epa.gov>; Harrington, Rachel <harrington.rachel@epa.gov>; Bowers, Kathleen <bowers.kathleen@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Subject: RE: Updating fact sheets and PPTs

If you're able, please take a moment to scan the attached files (also in the Transition folder) in anticipation of a progress check during Thursday morning's staff meeting.

The "cheatsheet" is pretty self-explanatory. The slide deck is conceived as a starting point to a "best foot forward" presentation of WARRB to those less familiar with the group's valuable and obligatory work. The internal structure (Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 offers one possible subdivision, with the potential to extract alternative subsets of slides. The slides are formatted to facilitate notes on printed versions.

At this point the primary question is whether to:

a) make modest further revisions to the "best foot forward" as determined during the meeting, then shift focus to an updated library of separate, more detailed issue briefings (following a comparable format)

or

b) keep the focus here for more substantial revisions/additions to structure, content and/or style

Thanks

From: Auerbach, Daniel
Sent: Tuesday, January 17, 2017 1:17 PM

To: Kwok, Rose <Kwok.Rose@epa.gov>; Miller, Clay <Miller.Clay@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Topping, Brian <Topping.Brian@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Moulta-Ali, Abu <Moulta-Ali.Abu@epa.gov>; Linn, Jennifer <Linn.Jennifer@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>; Irby, Virginia <Irby.Virginia@epa.gov>; Harrington, Rachel <harrington.rachel@epa.gov>; Bowers, Kathleen <bowers.kathleen@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Subject: RE: Updating fact sheets and PPTs

Hope everyone had a great MLK! We managed a pretty good haul of trash and plastic bottles out of our local Anacostia trib (Paint Branch)…

Great to see the set of materials growing in the Transition folder, and/but this is another **reminder to give your folders and files a look** if you haven't yet had a chance.

I started an overview index doc to which I expect to add links etc. as things progress. Please feel free to comment/edit (should support simul-editing). Brittany and I expect to decide on Thursday whether or not to adopt a consistent format/template and migrate content.

From: Auerbach, Daniel
Sent: Thursday, January 12, 2017 5:51 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Miller, Clay <Miller.Clay@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Topping, Brian <Topping.Brian@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Moulta-Ali, Abu <Moulta-Ali.Abu@epa.gov>; Linn, Jennifer <Linn.Jennifer@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>; Irby, Virginia <Irby.Virginia@epa.gov>; Harrington, Rachel <harrington.rachel@epa.gov>; Bowers, Kathleen

<bowers.kathleen@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Subject: RE: Updating fact sheets and PPTs

Thanks Rose! And thanks Tim for getting this underway…if anyone's wondering, Tim gets the prize for first factsheet AND first powerpoint. Keeping Tony's timeline in mind, I'll appreciate seeing what others can put into the hopper tomorrow.

From: Kwok, Rose
Sent: Thursday, January 12, 2017 1:45 PM
To: Miller, Clay <Miller.Clay@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Topping, Brian <Topping.Brian@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Moulta-Ali, Abu <Moulta-Ali.Abu@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Linn, Jennifer <Linn.Jennifer@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>; Irby, Virginia <Irby.Virginia@epa.gov>; Harrington, Rachel <harrington.rachel@epa.gov>; Bowers, Kathleen <bowers.kathleen@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Subject: FW: Updating fact sheets and PPTs

Hi Folks, here is the folder that I created on the Sharepoint site for the documents we discussed today. I'll make sure that everyone has access:

Go to Transition

Senate Environment and Public Works Committee
Hearing entitled, "Nomination of Attorney General Scott Pruitt to be Administrator of the U.S. Environmental Protection Agency"
January 18, 2017
Questions for the Record for the Honorable E. Scott Pruitt

Senator Booker:

1.For many years I have worked with the EPA on the Passaic River superfund clean-up project in my home city of Newark. In 2016, the EPA announced an historic plan to remediate the Passaic River from toxic chemicals, PCBs, and other contaminants that resulted from the production of Agent Orange. The project will remove 3.5 million cubic yards of toxic sediment from the lower eight miles of the Passaic River in New Jersey—the largest environmental dredging project in the history of the federal Superfund program.
a.If confirmed do you commit to make implementation of the Passaic River cleanup project a priority?
b.If confirmed do you commit to carrying out the EPA Region II March 3, 2016 "Record of Decision" for the Lower 8.3 miles of the Lower Passaic River in a timely and efficient manner?

I am not familiar with the details of the remedy that has been selected for the Passaic River Superfund site, but if confirmed, I expect to make clean up of contaminated sites one of my priorities and will seek input from Congress and relevant stakeholders before taking action in this matter.

2.As the former Mayor of Newark, I have seen how low-income and minority communities living in close proximity to the port of Newark are exposed to high levels of air pollution resulting in serious health problems. Across the nation 13 million people—3.5 million of whom are children—live near major marine ports or rail yards. What is your plan to address the pressing environmental justice concerns regarding poor air quality near major seaports and other congested nodes in our nation's freight network? I have been a champion of the bipartisan Diesel Emissions Reduction Act (DERA) Program that helps replace diesel engines and helps make major sea ports and inland transportation hubs cleaner and more efficient. If confirmed can you commit to supporting the DERA program?

As I committed to you during the meeting in your office, I understand there are wide ranging variety of environmental justice issues affecting urban and rural America. In fact, as you will recall, I've committed to work with your office and visit impacted areas with you. I am also aware that the Diesel Emissions Reduction Act Program has received bipartisan support from

members of the Environment and Public Works Committee. If confirmed, I would like to work with members of Congress to best direct resources to bipartisan initiatives.

3.Climate change is one of the most pressing issues currently facing the planet. Rising sea levels and extreme weather are currently threatening the safety and security of my constituents in New Jersey. Lower income and vulnerable communities are disproportionately impacted by the extreme heat and flooding events that are becoming more common and more severe. Given the immediate and increasing threat to my constituents and to people everywhere, what is your plan to address climate change?

If confirmed, I will work to achieve the objectives of EPA-administered laws consistent with the process and framework established by Congress. I will work closely with the states in establishing and implementing regulatory standards to ensure a meaningful and effective advancement of these objectives.

4. In 2016, troubling reports of lead contamination in school drinking water in New Jersey and other areas of the country made clear the urgent need to test school drinking water and remediate school drinking water infrastructure that is contaminating the water our children drink.
a. What is your plan to prioritize and expedite the EPA's efforts to eliminate lead contamination in school drinking water?

If confirmed, I will fully carry out EPA's authorities, including its authorities under the Safe Drinking Water Act. I note that in the WIIN Act, Congress amended the Safe Drinking Water Act to authorize funding for voluntary school lead testing. If confirmed and if funding is provided, I will carry out that program.

5.If you are confirmed, how would EPA respond when a state permits pollution to be discharged into a smaller waterway that leads to contamination of drinking water supplies in a downstream state?

If confirmed, I would follow the processes set forth in the Clean Water Act and its implementing regulations.

6. How do you define "environmental justice"? Do you think it's a serious issue?

I am familiar with the concept of environmental justice. As I testified, the Administrator plays an important role regarding environmental justice. I agree that it is important that all Americans be treated equally under the law, including the environmental laws.

7. Decades of peer-reviewed academic and government research demonstrate that low-income communities and communities of color disproportionately experience environmental burdens compared to other populations in the United States. Do you agree with this conclusion? If not, why?

As I testified at the hearing, I am familiar with the concept of environmental justice and believe the Administrator plays an important role in this regard. I agree that it is important that all Americans be treated equally under the law, including the environmental laws.

8. What do you believe are the legal obligations of EPA to ensure that recipients of EPA funds comply with Title VI of the Civil Rights Act of 1964?

The obligations of recipients of federal funds are defined by the statutes and regulations to which you refer. Those statutes and regulations speak for themselves.

9. There are currently hundreds of unresolved Title VI civil rights complaints before EPA. Recent reports from EPA's OIG and independent organizations have documented EPA's long-standing failure to enforce Title VI. If confirmed, what will you do as EPA Administrator to address this?

If confirmed, I would expect to be briefed by staff and review any recommendations by the Office of Inspector General before taking action on this issue.

10. Indigenous communities are consistently targeted for energy extraction, nuclear waste, uranium mining and/or oil and natural gas pipelines. How will you address this moving forward?

If confirmed, I will faithfully execute all laws enacted by Congress relating to protection of indigenous communities.

11. Children living in communities of color and low-income communities have the highest blood lead levels of all children in the United States, and even some developing countries. As Administrator, what steps would you take to address this?

I am concerned about high-blood levels in children and children's health generally. As I testified, the Administrator has a significant role regarding environmental issues. If confirmed, I would expect to be briefed to learn about EPA's legal authorities and ongoing programs and outstanding recommendations from the Inspector General, if any, concerning this issue before taking action.

12. As Administrator will you continue to convene and implement the advice and recommendations of the National Environmental Justice Advisory Council, a federal advisory committee to EPA since 1993?

As I testified, the Administrator plays an important role regarding environmental justice. I am not personally familiar with the legal authorities or activities concerning this advisory committee but I would expect, if confirmed, to be briefed by staff about ongoing programs and activities before taking any action. If confirmed, I would work to faithfully execute the laws EPA is responsible for administering, in order to protect human health and the environment for all Americans. If confirmed, I would expect EPA to operate in an open and transparent manner, consider the views of stakeholders as appropriate, act based on sound science, and follow the laws as established by Congress.

13. As Administrator, will you work to have of EPA's EJ 2020 Plan fully implemented?

As I testified, the Administrator plays an important role regarding environmental justice. I am personally unfamiliar with the details of current initiatives regarding environmental justice referenced in the question, but I would expect, if confirmed, to be briefed by staff about ongoing programs and activities before taking any action.

14. Do you intend to meet minority community members and leaders who have concerns about an environmental or health issue within your EPA jurisdiction?

Yes, if confirmed.

15. Public participation is the cornerstone of a healthy democracy and a basic component of good US policy development and enforcement. What are your plans to maximize inclusion and participation in decision-making processes by historically marginalized communities of color?

As I testified, the Administrator plays an important role regarding environmental justice. If confirmed, I would expect EPA to operate in an open and transparent manner, consider the views of stakeholders as appropriate, act based on sound science, and follow the laws as established by Congress, including the Civil Rights Act. If confirmed, I would work to faithfully execute the laws EPA is responsible for administering, in order to protect human health and the environment for all Americans.

16.Illegal solid waste dumping sites where hundreds of thousands of pounds of trash and waste tires harbor disease-carrying vectors and pests such as mosquitoes, which transmit life threatening diseases like dengue, west Nile and zika viruses can be found all over the United States. These dumping sites

disproportionally affect low income and minority communities. What will you do to address this health threat to these communities?

I understand the Resource Conservation and Recovery Act prohibits open dumping, and under this law states have primary responsibility to regulate solid waste disposal. If confirmed, I would expect to be briefed by staff and to hear the views of states and other stakeholders before taking any action consistent with EPA's legal authorities.

17.Monitoring of our coastal waters is critical to ensure the health and safety of its swimmers and bathers. Many coastal communities, especially low-income and minority communities have limited free recreational opportunities other than spending the day at the beach. As EPA administrator will you commit to continuing EPA's BEACHES program, which provides funding for state water quality monitoring programs that ensure healthy and safe recreation?

I am not personally familiar with the BEACHES program, but I would expect, if confirmed, to be briefed by staff about the program. If confirmed, I would work to faithfully execute the laws EPA is responsible for administering, including those authorizing the BEACHES program, in order to protect human health and the environment for all Americans. If confirmed, I would expect EPA to operate in an open and transparent manner, consider the views of stakeholders as appropriate, act based on sound science, and follow the laws as established by Congress.

18.A 2014 study by scientists at Lawrence National Laboratory at Berkeley reported that an estimated 10 % of chemicals used in fracking fluid are known to be toxic to humans and aquatic life. Fracking practices commonly are conducted in fringe low-income and working class communities. Since these toxics are known to leach into waterways how will you ensure this is prevented?

As was affirmed by Congress in drafting the Lautenberg Act, hazard is only one characteristic of risk and simply stating a chemical substance has toxicity does not mean there is exposure. EPA is tasked with carrying out laws as directed by Congress and if I am confirmed, I will use the authorities vested in me to protect drinking water under the Safe Drinking Water Act.

19. Nationally, 13 percent of the population lives within three miles of a Superfund site while in New Jersey, 50 percent of the population lives within three miles—the highest percentage in any state. New Jersey has 113 Superfund sites on the National Priority List—more than any other state. These sites are the most heavily contaminated properties in the country, and are the areas that pose the greatest potential risk to public health and the environment. What is your plan to strengthen the EPA’s superfund program?

If confirmed, I would expect to prioritize the cleanup of contaminated land. I would also expect to be briefed by staff and to receive the views of relevant stakeholders on ways to improve the operation of the Superfund program, if confirmed. I also understand the Government Accountability Office and the EPA Inspector General regularly review the operation and activities of the Superfund program and, if confirmed, I would expect to look to their recommendations for additional areas for improvement, if confirmed.

20. If confirmed do you commit to working to include substantial funding for Superfund cleanups in the new administration's request for a large national infrastructure package?

If confirmed, I expect to make cleanup of contaminated sites one of my priorities.

21. In 2003, Arkansas and Oklahoma signed an agreement, the Statement on Joint Principles to take several measures to reduce phosphorus pollution in the Illinois River Watershed. One requirement was for Oklahoma to revise its 0.037 mg/L phosphorus criterion by 2012, which it did. Why, instead of supporting the conclusion of your own state Water Resources Board, did you delay implementation an additional three years by negotiating another agreement to conduct yet another study?

The "Statement of Joint Principles and Actions" did not require Oklahoma to "revise" its criterion, but rather stated that "Oklahoma will reevaluate Oklahoma's .037 mg/l criterion for total phosphorus in Oklahoma's Scenic Rivers by 2012, based on the best scientific information available at that time, and with the full, timely inclusion of officials from the State of Arkansas representing both point and non point source dischargers." As of 2012, which was the final date for the reevaluation to occur, Arkansas maintained its objection that Oklahoma's .037 mg/l criterion was inappropriate, and not based on the best scientific information available at that time. Rather than protract a now decades long dispute that appeared to again be headed towards litigation once again, I instead negotiated an agreement whereby Arkansas agreed to be finally bound to the results of a new study that would use the best scientific information available at the time to determine the appropriate criterion. This agreement avoided the prospect of more litigation, and ultimately resolved the dispute (with Oklahoma getting the stringent standard that it wanted).

22. In your testimony before the Senate Environment and Public Works Committee, you said that the 2003 agreement expired during your term? Where exactly in the agreement do you see any expiration to the agreement?

The "Statement of Joint Principles and Actions" stated that "Oklahoma will reevaluate Oklahoma's .037 mg/l criterion for total phosphorus in Oklahoma's Scenic Rivers by 2012, based on the best scientific information available at that time, and with the full, timely inclusion of officials from the State of Arkansas representing both point and non point source dischargers." As of 2012, which was the final date for the reevaluation to occur, Arkansas maintained its objection that the .037 mg/l criterion was inappropriate, and not based on the best scientific information available at that time. Therefore, the 2013 Agreement was reached with Arkansas whereby it agreed to be bound by the results of a new study that would use the best scientific information available at the time to determine the appropriate criterion.

23.The 2003 agreement says that, "The state of AR and OK, acting through their environmental agencies, will reissue the above-specified cities' NPDES permits on a normal five (5) year resistance cycle, with the understanding that NPDES permits for these point source dischargers to the shared Oklahoma Scenic Rivers Watershed issued in the year 2012 or beyond must include phosphorus limits stringent enough to meet applicable water quality standards."
a.Do you agree that the 2003 agreement places obligations on NPDES permitted facilities in Arkansas beyond 2012?
b.Because Oklahoma reevaluated its criterion in 2012, does this section require that NPDES permits issued in Arkansas have to be stringent enough to meet Oklahoma's .037 mg/L phosphorus water quality standard by 2012 and then beyond 2012?
c.In your testimony before the Environment and Public Works committee, you testified that the agreement was "historic" and OK's phosphorus limit would be implemented for the first time in history on both sides of the river. Do you agree that the .037 mg/L phosphorus criterion was enforceable on both sides of the border under the terms of the 2003 agreement?

Yes. No. No.

24.In the 2013 agreement between Arkansas and Oklahoma, you agreed "not to institute or maintain administrative enforcement actions, judicial proceedings or take regulatory actions contrary to this second statement."
a. Why did you agree to suspend your enforcement authority?
b. How many enforcement actions did you suspend?
c. Do you interpret "judicial proceedings" to include any judgment in the pending case your predecessor brought against 14 poultry polluters? Was this agreement intended to suspend enforcement of any judicial resolution of that case?

I did not agree to suspend enforcement authority. The Agreement simply acknowledged that neither state would take actions that would violate the terms of the agreement. I do not know if any enforcement proceedings were suspended, as my office is not the entity that would be involved in such

actions. I do not interpret "judicial proceedings" in that manner, and the agreement was not so intended.

25. In 2013, you negotiated an agreement with Arkansas that allowed those municipal dischargers to continue discharging at 1 mg/l phosphorus, agreed to remove the 2012 deadline for complying with Oklahoma's phosphorus standard, and agreed to reopen Oklahoma's phosphorus water quality standard. Since Arkansas had already agreed, in 2003, to ensure that its large municipal dischargers would fully comply with Oklahoma's phosphorus standard starting in 2012, why did you let them out of that agreement in 2013? Please identify any provision of your 2013 agreement that requires these dischargers to meet Oklahoma's phosphorus standards after February 20, 2016.
a. Since the U.S. EPA approved Oklahoma's Phosphorus Standard in 2003, what legal basis do you think Arkansas had to file a lawsuit challenging since the time for filing a legal challenge had expired? If you do not believe the time for filing a legal challenge had expired, please explain the basis for your belief.
b. Do you agree that Arkansas is required to ensure that its point source discharge permits comply with all Oklahoma water quality standards that have been approved by the U.S. EPA under the case of Arkansas v. Oklahoma, including the phosphorus standard approved in 2003? Please state the basis for your belief.
c. The Joint Study Committee authorized by your 2013 agreement recommended a standard different from Oklahoma's existing phosphorus water quality standard. Please explain whether this recommended standard will supplant Oklahoma's current water quality standard, and why you have state that the study confirmed Oklahoma's existing 30-day geometric mean 0.037 mg/l phosphorus standard. What is your understanding of the impact of excluding samples taken during conditions where surface runoff is the dominant influence of total flow and stream ecosystem processes?

The 2013 Agreement did not "let anyone out" of the 2003 Agreement. Arkansas believed that it had legal recourse to resist a criterion to which it objected. Without that additional context as to the claims to which you refer, I am unable to answer your question relating to time bar of Arkansas' hypothetical claims. With regard to Arkansas's obligations, pursuant to the 2013 Agreement, Arkansas is now obligated to adopt and implement a stringent phosphorus standard. The study "used a weight of evidence approach to recommend a six-month average total phosphorus level of not to exceed 0.035 milligrams per liter based on water samples collected during critical conditions was necessary[.]" As I've stated, this confirmed that Oklahoma's 0.037mg/l standard was--despite Arkansas's arguments that it was unnecessarily stringent--necessary to protect the watershed. I am not familiar with the "the impact of excluding samples taken during conditions where surface runoff is the dominant influence of total flow and stream ecosystem processes," to which you refer, and thus cannot offer an opinion on that statement.

26. You stated in your EPW Questionnaire that you negotiated an agreement with Arkansas to reduce phosphorus pollution in the Illinois River watershed that was occurring as a result of poultry growers. Please explain how the agreement reduces pollution from poultry growers.

Runoff from poultry farms contribute to increased phosphorous levels in the Illinois River. The agreement imposed on Arkansas the requirement that it adopt a stringent phosphorous standard, which will necessarily require Arkansas to stringently regulate sources of phosphorous, such as poultry farms, in order to meet that standard.

27. You stated that Oklahoma's phosphorus standard was not being enforced on the Arkansas side of the border prior to your 2013 Agreement. Are you aware that, in April of 2009, the EPA required the Arkansas Department of Environmental Quality to ensure that the discharge permit for the Northwest Arkansas Conservation Authority include an enforceable final effluent limitation for phosphorus stringent enough to meet Oklahoma's phosphorus water standard by June 30, 2012, and that the final NPDES permit for Northwest Arkansas Conservation Authority issued by Arkansas included that requirement? Given the fact that Oklahoma's phosphorus standard was being enforced in Arkansas prior to your 2013 agreement, please explain the benefit to Oklahoma from entering into the agreement.

However, upon reviewing it, I note that Arkansas reserved the right to revise the 0.1 mg/l phosphorus permit limit ("The Department reserves the right to revise the permit limit of 0.1 mg/l for Total Phosphorus upon submission of data which indicates that a Total Phosphorus limit other than 0.1 mg/l is appropriate"). Further, I am aware that Arkansas continued to dispute the validity of Oklahoma's t0.037 mg/ limit, a dispute that is now resolved with Arkansas agreeing that 0.037 mg/l phosphorus standard is appropriate. That agreement greatly benefits Oklahoma.

28. It appears that the last call or meeting that EPA has on the long delayed TMDL for the Illinois River and Lake Tenkiller watersheds occurred on November 14, 2013. Please explain how your 2013 Agreement is related to the TMDL or cleanup of Lake Tenkiller. What steps have you taken with the U.S. EPA to encourage completion of the Illinois River and Lake Tenkiller TMDLs and oppose further delay?

I would certainly encourage the EPA to fulfill any obligations it might have to complete those TMDLs, but I have not taken any legal actions to force the EPA to do so.

29. What steps have you taken to implement and enforce the 0.037 mg/L criterion for phosphorus pollution just approved by the Scenic Rivers Joint Commission in Oklahoma? What measures has Arkansas agreed to in light of the study results?

I have not personally taken any steps to implement or enforce that water quality standard, because the authority to do so is vested in Oklahoma's environmental regulators, such as the Oklahoma Department of Environmental Quality, and Oklahoma Water Resources Board.

30. In 1992 the US Supreme Court in Arkansas v Oklahoma, 503 U.S. 91 (1992), resolved a lawsuit between Oklahoma and Arkansas related to water pollution in the Illinois River and held that upriver states must comply with water quality standards that are adopted by downriver states and approved by EPA. After that Supreme Court decision, effective July 1, 2002, Oklahoma adopted a nutrient criterion for total phosphorous of .037 mg/l for all Oklahoma water bodies designated as Scenic Rivers, codified at Oklahoma Administrative Code 785:45-5-19(c)(2). This new water quality standard had a ten year phase in period before full compliance was required on June 30, 2012. EPA approved Oklahoma's .037 mg/l phosphorous standard, as codified at Oklahoma Administrative Code 785:45-5-19(c)(2), on December 29, 2003.
a. Given this history, do you agree that as of July 1, 2012 Oklahoma's .037 mg/l phosphorous standard was in effect and was binding on upriver states such as Arkansas?
b. More specifically, do you agree that as of July 1, 2012 compliance with Oklahoma's .037 mg/l phosphorous standard was required for the portion of the Illinois River in Arkansas?
c. If you do not agree that as of July 1, 2012 compliance with Oklahoma's .037 mg/l phosphorous standard was required for the portion of the Illinois River in Arkansas, please explain the legal basis for your disagreement.

Oklahoma water quality standards do not automatically apply to upstream dischargers in other states. In 1992, in Arkansas v. Oklahoma, a case that pre-dated Arkansas' authorization to carry out its own Clean Water Act permitting program, the Supreme Court held that it was in EPA's discretion to issue a permit for a publicly owned treatment plant in Fayetteville, Arkansas that required compliance with downstream (Oklahoma) water quality standards. The Court took no position regarding when the Clean Water Act compelled such compliance, only that it was reasonable for EPA to assume that a section 401 water quality certification applied to federally issued NPDES permits. Please note that section 401 applies only to federal permits and as such would not apply to an Arkansas permit now that Arkansas is an authorized state. Under 40 CFR 131.10 state water quality standards are supposed to ensure "attainment and maintenance" of standards applicable to downstream states, but EPA is the arbiter of that when it approves state standards. Under section 402(b) of the Clean Water Act a state that is downstream of an authorized state gets notice of permits

and the opportunity to file recommendations, but has no veto authority. Under section 402(d) of the CWA, EPA has the authority to review state issued permits and impose additional conditions. Interpreting this section, in International Paper Co. v. Ouellette, 479 U.S. 481, 493, 490-91 (1987) , the Supreme Court found that the only law applicable to a point source in an authorized state is the law of the source state. A downstream state is subordinate to a source state and its only recourse it to ask EPA to veto or condition a permit.

31. Please identify any investigations and/or lawsuits the Office of Attorney General initiated after January 17, 2011 to address groundwater contamination associated with swine animal feeding operations and any publicly available data in your possession regarding levels of groundwater contamination at any swine animal feeding operations, as well as any communications that the Office of Attorney General has had with the owners or operators of swine animal feeding operations after January 17, 2011.

The Oklahoma Department of Agriculture regulates Concentrated Animal Feeding Operations (CAFOs) and swine operations generally under the Oklahoma Agriculture and Environmental codes. The Oklahoma Department of Agriculture and the Oklahoma Office of the Attorney General already had several large swine feeding operations under Consent Decree or Settlement Agreement by the time I took office in 2011. (Hanor Roberts & Seaboard Foods, for example) The terms of those Consent Decrees and Settlement Agreements required the swine operations to make regular reports to the Department of Agriculture and the Office of the Attorney General. These reports included monitoring well data, lagoon data and other terms to be carried out by the operators pursuant to the agreements. My office has continued to monitor these operations to confirm compliance with the Consent Decree and Settlement Agreements.

Senator Cardin:

1. Please provide your definition of EPA's "activist agenda" as stated on your professional biography on the State of Oklahoma's official website. Please provide a list of all environmental laws and regulations that you consider to comprise the federal agency's "activist agenda" and how each environmental law or regulation listed in response to this question meets this definition.

I firmly believe that the EPA has a vital role, but it must do so within the bounds of its legal authority. The actions undertaken by the Office of Attorney General have been out of concern that EPA had exceeded its legal authority in those specific actions, not out of animosity toward the mission of the Agency or any specific regulation or statute. Regulations that are not on solid legal foundation and that cannot survive judicial review will not result in environmental protections.

2. For what purpose other than to handle the State of Oklahoma's legal challenges against the EPA did you create the Federalism Unit and defund the Environmental Protection Unit?

The Federalism Unit within the Attorney General's Office serves to protect the State of Oklahoma's sovereign interests in our republican form of government, with a particular focus on issues related to the vertical and horizontal separation of powers demanded by our Constitution. It is headed by the Solicitor General. With regard to the environmental protection unit, it is misleading to say that it was "defunded." Consistent with the practice of every Attorney General save one, I determined that a standalone unit was operationally inefficient. I opted to combine the Environmental Protection Unit and the Consumer Protection Unit into a single unit called the "Public Protection Unit." The Public Protection Unit continued the work of the Environmental Protection Unit, and that work continues to this day, headed by the very same attorney who worked in the Environmental Protection Unit under the prior Attorney General.

3.Do you intend to create a Federalism Unit within the EPA similar to Oklahoma's? Explain why or why not.

My understanding is that the Department of Justice, working in coordination with the EPA Office of General Counsel, represents EPA in litigation, and would thus serve to protect such federalism related interests.

4.Would you support budget cuts to the EPA in similar scope (10% or higher) to those made to Oklahoma Department of Environmental Quality appropriations since FY2009[1]?

I am not familiar with Oklahoma Department of Environmental Quality's budget. I have no first-hand knowledge of EPA's development of its FY 2018 budget request. If confirmed, I look forward to working with EPA's budget staff and program offices and officials with the Office of Management and Budget on EPA's request. I will work to ensure that the limited resources appropriated to EPA by Congress are managed wisely in pursuit of that important mission and in accordance with all applicable legal authorities.

5.Of the lawsuits filed against the EPA in which you participated personally and substantially as Attorney General for Oklahoma, do you intend to recuse yourself from decision making regarding litigation in which you represented the State of Oklahoma as an adversarial party? Do you intend to recuse yourself for the entirety of each case?

As a lawyer, I am bound by the rules of professional conduct not to "switch sides" in any litigation in which I represented the State of Oklahoma, unless my former client gives its informed consent.

6.Do you believe the State of Oklahoma and the EPA should be regarded as the same or different "clients" for conflicts of interest purposes? Explain why or why not.

The State of Oklahoma and the federal government are separate sovereign authorities; representing one does not entail representing the other. In addition, while the State of Oklahoma has been my client as a lawyer during my service as Attorney General, if confirmed as EPA Administrator I will not be acting as a lawyer with clients.

7.The American Bar Association (ABA) Model Rules of Professional Conduct, Rule 1.1, Special Conflicts Of Interest for Former and Current Government Officers and Employees, Comment 5 discusses the balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. In the spirit of Rule 1.11, what previous lawsuits

[1] http://okpolicy.org/wp-content/uploads/2016_Budget_Highlights.pdf?997616#page=7&x42044

might affect your performance of the Administrator's professional functions on behalf of the EPA?

Because I will follow the guidance of ethics officials and my own professional responsibilities in determining whether and how to participate in a particular matter, I do not expect any previous lawsuits to adversely affect my performance as EPA Administrator if confirmed.

8. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in paragraph (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in paragraphs (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function. Please provide a list of federal lawsuits filed against the EPA in which you participated personally and substantially as Attorney General for Oklahoma.

As Attorney General of Oklahoma, I have participated personally and substantially in the following suits against the EPA:

- **EME Homer City Generation v. EPA, No. 12-1182 (U.S.S.C.)**
- **Michigan v. EPA, No. 14-46 (U.S.S.C.)**
- **Murray Energy Corp. v. EPA, Nos. 14-1112, 14-1151 (D.C. Cir.)**
- **Murray Energy Corp. v. EPA, Nos. 15-1385, 15-1392, 15-1490, 15-1491 & 15-1494 (D.C. Cir.)**
- **Oklahoma v. EPA, Nos.12–9526, 12–9527 (10th Cir.)**
- **Oklahoma ex rel. Pruitt v. EPA, No. 16-5038 (10th Cir.).**
- **Oklahoma ex rel. Pruitt v. McCarthy, No. 15-cv-369 (N.D. Okla.).**
- **Oklahoma v EPA, No, 13-cv-00726 (W.D. Okla.)**
- **West Virginia v. EPA, No. 14-1146 (D.C. Cir.)**
- **West Virginia v. EPA, No. 16-1264 (D.C. Cir.)**

9. Do you accept a screen is appropriate for EPA strategic decisions specific to those lawsuits in which you represented an adversarial party? Explain why or why not.

I will consult with relevant ethics officials and review relevant rules of professional conduct to determine whether a screen is appropriate in a particular matter.

10. Comment 5 discusses a lawyer who moves between different government entities. When a lawyer has been employed by one government agency and then

moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by paragraph (d), the latter agency is not required to screen the lawyer as paragraph (b) requires a law firm to do. The question of whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. Do you believe two government agencies—the State of Oklahoma and the EPA—should be regarded as the same or different "clients" for conflicts of interest purposes? Explain why or why not.

As explained above, the State of Oklahoma and the federal government are separate sovereign authorities. While the State of Oklahoma was my client as a lawyer, if confirmed as EPA Administrator I will not be acting as a lawyer with clients.

11.How might the spirit of Rule 1.11's conflicts of interest provisions apply if those government entities were adversarial parties to a lawsuit?

If two government entities are adversarial parties to a lawsuit, then under ABA Model Rule 1.11 a lawyer's previous representation of one entity in the litigation will preclude his later representation of the other entity in the same litigation, unless the former client gives its informed consent. As explained above, if confirmed as EPA Administrator I will not be acting as a lawyer with clients.

12.ABA Rule 1.7 Conflict Of Interest: Current Clients provides that a "lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if the representation of one client will be directly adverse to another client; or there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer." In the spirit of Rule 1.7, do you reasonably believe that you will be able to provide competent and diligent leadership to the EPA, an agency you "don't like" and have sued several times? Explain why or why not.

I will provide diligent and competent leadership to the EPA if confirmed as Administrator. As I explained in my testimony to the Committee, I am a firm believer in the EPA's mission to protect the environment and look forward to the opportunity to lead the agency to help provide our future generations with a better and healthier environment.

13.Please explain how your litigation position in each case is or is not at odds with the mission of the EPA, to protect human health protect human health and the environment—air, water, and land.

The EPA's mission is defined by the laws passed by Congress granting it the authority to act. Any action by the EPA that exceeds the authority granted to it by Congress, by definition, cannot be consistent with the Agency's mission. In each case filed against the EPA, in the view of the State of Oklahoma, the EPA had acted in excess of the authority granted to it by Congress.

14.Do you accept that EPA, state, local and tribal agencies work together to ensure compliance with environmental laws passed by Congress, state legislatures and tribal governments?

I agree it is essential for the federal government, state governments, and tribal governments to work together to provide the environmental protection that our laws demand and that the American people deserve. As I explained in my testimony to the Committee, I strongly support cooperative federalism. If confirmed, I will make every effort to partner with the EPA's counterparts in state, local, and tribal governments to further these goals.

15.In 2005, former Attorney General Drew Edmondson filed a federal lawsuit in 2005 seeking to prohibit the spreading of chicken waste over land in the Illinois River Basin in northeastern Oklahoma. Companies named in *State of Oklahoma v. Tyson Foods Inc.* (No. 4:05-cv-00329) include Tyson Foods Inc., Tyson Poultry Inc., Tyson Chicken Inc., Cobb-Vantress Inc., Cal-Maine Foods Inc., Cargill Inc., Cargill Turkey Production L.L.C., George's Inc., George's Farms Inc., Peterson Farms Inc., Simmons Foods Inc., Cal-Maine Farms Inc. and Willow Brook Foods Inc. On December 9, 2015, the State of Oklahoma filed brief amici curiae along with 21 other states in support of the petitioners in *American Farm Bureau Federation v. EPA* (No. 15-599). The *Tyson Foods* defendants did not participate in the Bay TMDL lawsuit, and the American Farm Bureau was not a party to the Oklahoma suit. However, Tyson Foods Inc., headquartered in Springdale, Arkansas—the largest poultry producing company in the world—is a member of the Arkansas Farm Bureau. Do you accept that the American Farm Bureau, a national organization, represents the interests of the Arkansas Farm Bureau and its members, including Tyson Foods? Explain why or why not.

It is my understanding that the American Farm Bureau Federation is a distinct corporate entity from the Arkansas Farm Bureau, which is a distinct corporate entity from Tyson Foods. Accordingly, I do not believe one can ignore corporate form and conflate the American Farm Bureau Federation with either the Arkansas Farm Bureau or Tyson Foods. I observe that the Pennsylvania Farm Bureau filed suit against EPA in the challenge to the Chesapeake Bay TMDL on its own behalf, notwithstanding the fact that American Farm Bureau Federation also was a plaintiff.

16.In 2013, despite the lack of a verdict in the *Tyson Foods* case, you added the State of Oklahoma to the American Farm Bureau/poultry industry backed lawsuit

against the EPA's efforts to enforce a TMDL to restore water quality in the Chesapeake Bay. You sided with the American Farm Bureau, the Fertilizer Institute, the National Chicken Council, the National Pork Producers Council and other farming interests. The lawsuit claimed EPA was exceeding its authority in enforcing "total maximum daily load," or TMDL, standards in Chesapeake Bay, limitations on nitrogen, phosphorus and sediments. In what ways did you balance the interests of your client, the State of Oklahoma, as Counsel for Amicus Curiae in *American Farm Bureau* while *Tyson Foods*, in which you represented the State of Oklahoma as Plaintiff, was ongoing?

These are two different lawsuits regarding different parties and different matters. There also is no issue conflict because the issues raised in the two lawsuits also are distinct.

17.In 2016, more than six years after arguments concluded in *Tyson Foods*, there has been no final ruling from U.S. District Court Judge Gregory K. Frizzell. Do you find the six-year delay in *Tyson Foods* to be acceptable or reasonable, and if so, why?

It would not be appropriate for me as an attorney to comment on the acceptableness or reasonableness of the actions of a judge before whom the Office of the Attorney General has a pending case.

18.Please provide a list of all confidential government documents related to the Chesapeake Bay TMDL to which you would not have access but for your status as counsel to the State of Oklahoma as amicus curiae in *American Farm Bureau*.

I am not aware of any such documents. A request for such documents can be made to the Office of the Attorney General pursuant to the Oklahoma Open Records Act.

19.If the Supreme Court were to grant certiorari in *American Farm Bureau*, or a case like it challenging the Chesapeake Bay TMDL, how would you direct the EPA as Administrator to rigorously defend its own rule?

Any TMDL should be a cooperative effort. If confirmed as EPA Administrator and if the litigation challenging the Chesapeake Bay TMDL reached the Supreme Court during my time in office, I would expect to consult with the States and other interested stakeholders about the issues raised in such litigation.

20.In what ways did you balance the interests of your client, the State of Oklahoma, as Amicus Curiae in *American Farm Bureau* and as Plaintiff in *Tyson Foods*?

These are two different lawsuits regarding different parties and different matters. As Attorney General of Oklahoma, I represent the interests of the State of Oklahoma when I seek to ensure that federal law is followed such that Oklahoma retains its sovereign authority to regulate where federal law allows such state regulation..

21.Do you accept that the Chesapeake Bay TMDL could still fail to significantly reduce pollution flowing to the Chesapeake Bay if the EPA steps back from its role in holding states accountable for their cleanup commitments? Explain why or why not.

It is my understanding that recent quality data shows that the water quality of the Chesapeake Bay is improving. Further, it is my understanding that the United States Geological Survey and other researchers have found that the time lag between measures taken on the ground and water quality response can be years, decades or even longer. Accordingly, today's improvements in water quality are likely the result of measures taken before the effective date of the Bay TMDL. These measures, as well as state plans to require treatment plants upgrades that also pre-date the effective date of the Bay TMDL, will continue to improve water quality. That said, the Bay TMDL represents a cooperative effort of all states in the watershed and EPA has a role in overseeing its implementation.

22.The TMDL approach hinges on numeric water quality standards that set a qualitative number for pollution limits, rather than a qualitative description of how healthy waters should be. As Administrator, how would you promote effective numeric standards?

I agree with the Mach 2011 nutrient framework issued by the Assistant Administrator for the Office of Water entitled "Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions," which prioritizes state action to encourage on the ground activities over establishment of numeric nutrient limits. According to the State of Florida, based on their experience with the imposition of federal numeric nutrient limits, controversy over the validity of a number can actually delay pollutant reduction activities, delaying water quality improvements.

23.In the Mississippi River watershed, the Obama Administration defended a lawsuit against the EPA from environmentalists seeking numeric nutrient criteria. The United States District Court for the Eastern District of Louisiana ruled in favor of the EPA, finding “Presumably, there is a point in time at which the agency will have abused its great discretion by refusing to concede that the current approach […] is simply not going to work.” But for now, “EPA is entitled to judgment as a

matter of law in its favor." As Administrator, would you continue to waste resources on a qualitative, voluntary approach?

I was not involved in the litigation your reference, and am not familiar with the details of the case.

24.As Administrator, do you intend to make enforcement of the Chesapeake Bay cleanup plan a priority? How? Do you acknowledge that it will be even more difficult to make progress without EPA?

The Chesapeake Bay TMDL has been upheld by the Third Circuit Court of Appeals. If confirmed, I will continue to enforce the law and will continue EPA's leadership role as a member of the Chesapeake Bay Executive Council. I agree that progress would be difficult without a collaborative process.

25.Would you deny the political will in the states of the Chesapeake Bay watershed to protect the Bay?

I would listen to the views of all interested stakeholders including the States.

26.In a 2013 speech, you said "There are issues with respect to clean water and air that cross state lines. There is a role, and I think it's important for conservatives, for us to recognize, that though I don't like the EPA […] I think it's not good for us to say that the EPA doesn't have any role." How would you characterize the EPA's role in mediating cross-state air and water pollution disputes?

I certainly agree that EPA plays a leadership role in mediating cross-state air and water pollution disputes.

27.In 1992, the Supreme Court held in *Arkansas v. Oklahoma* (No. 90-1262), a case challenging the EPA's issuance of a National Pollution Discharge Elimination System (NPDES) permit to a publicly owned treatment plant in Fayetteville, Arkansas for a discharge into a river flowing into Oklahoma, that the Clean Water Act authorizes the EPA to require that point sources in upstream states not violate water quality standards in downstream states.[2] Is the EPA interpreting this Supreme Court precedent correctly? If not, how would you change its interpretation through NPDES?

[2] https://www.epa.gov/sites/production/files/2015-01/documents/waterpollution-ludwiszewski-memo.pdf

Arkansas v. Oklahoma involved an EPA-issued permit because at the time of the litigation the Fayetteville wastewater treatment plant began operation Arkansas did not have an approved state permitting program. Oklahoma is authorized to implement its own NPDES permitting program, in lieu of the federal program. As such, I am not familiar with how EPA is applying Arkansas v. Oklahoma when it issues permits in the handful of states without such approved permitting programs.

28.After the *Arkansas* decision, you agreed to a three-year delay in 2012 to allow for an independent study of the science behind the standard. What specific factors motivated your decision to delay enforcement of Oklahoma's standard?

The "Second Statement of Joint Principles and Actions" that Oklahoma entered into with Arkansas in 2012 actually required that "[t]he States, through the appropriate Parties, will continue to require existing point source dischargers to the Illinois River Watershed with a design capacity of greater than 1 MGD to operate under existing National Pollutant Discharge Elimination System ("NPDES") permits reflecting an effluent limit for total phosphorus of not more than I mg/L based upon a 30 day average, assuming the U.S. Environmental Protection Agency does not object" and likewise required that "Parties for both States will continue cooperative efforts to improve and protect water quality in the Scenic Rivers."

29.Please provide all communications you had had with representatives of agricultural and other companies regarding water quality litigation between Arkansas and Oklahoma.

Such communications can be requested from the Oklahoma Office of the Attorney General through a request made to that office pursuant to the Oklahoma Open Records Act.

30.Do you commit to fully apply and enforce the Good Neighbor provision if confirmed as EPA Administrator?

Yes. If I am confirmed as Administrator, I will exercise my authority in this area consistent with Congress's intent in enacting the Act. Specifically with respect to Section 110(a)(2)(D) and the "good neighbor" obligations of Section 110, I intend to engage in a transparent process that will allow states to have a meaningful opportunity to understand their obligations with regard to reducing emissions that cause or contribute to nonattainment or interference with maintenance in other states through the SIP process and to act consistent with my authority under Section 110(c) if states fail to do so.

31.What is your understanding of the role of climate change in algal blooms?

EPA identifies the following as causes of harmful algal blooms: sunlight, slow-moving water, and excess nutrients. For climate change to have a role, it would first have to have an impact on one of these three causes.

32.Please provide a list of water treatment plants under consent order from the Oklahoma Department of Environmental Quality during your tenure as Attorney General. Please identity funding sources other than federal funding that are available to bring these treatment plants into compliance with the Clean Water Act.

This question should be directed to the Oklahoma Department of Environmental Quality, as I have no personal knowledge of such matters.

33.Of the 1,677 public water supplies under the purview of the Oklahoma Department of Environmental Quality, 19 had recent elevated detections of lead in March, 2016. Please describe any action you took to address lead contamination as Attorney General.

As the question indicates, the Oklahoma Department of Environmental Quality as opposed to the Office of Attorney General has primary responsibility for implementing and enforcing environmental laws in Oklahoma.

34.When more than 10 percent of tap water samples in a local system contain lead levels of at least 15 parts per billion, the state steps in to review the water system's treatment for corrosive properties and update the sampling schedule as necessary. How have budget cuts to the Oklahoma Department of Environmental Quality impacted sampling?

I have no personal knowledge of the Oklahoma Department of Environmental Quality's budget, or how any budget cuts may have impacted that office.

35.EPA and the Centers for Disease Control and Prevention (CDC) agree that there is no known safe level of lead in a child's blood. Lead is harmful to health, especially for children. Do you accept that there is no safe level of lead in a child's blood?

I am concerned about the health of children. I have not myself reviewed the scientific studies correlating blood lead levels to impacts in children. However, it is my understanding that neither EPA nor CDC have identified a "safe" level of exposure, but instead have adopted levels appropriate for action under their specific statutory authorities.

36.Please provide any information relating to enforcement actions for Lead and Copper Rule violations undertaken during your tenure as Attorney General for Oklahoma.

Such enforcement actions would have been undertaken by Oklahoma's environmental and water regulators, at agencies like the Oklahoma Department of Environmental Quality or the Oklahoma Water Resources Board. This question should be directed to those agencies so that can describe to you the relevant actions taken by the State of Oklahoma.

37.The Safe Drinking Water Act (SDWA) requires EPA to establish and enforce standards that public drinking water systems must follow. EPA delegates primary enforcement responsibility (also called primacy) for public water systems to states and tribes if they meet certain requirements. In a letter to Oklahoma Secretary of the Environment Gary Sherrer, EPA Regional Administer Ron Curry said the State had until June 1, 2013 to fully implement the Stage 1 and Stage 2 Disinfectants and Disinfection Byproducts Rules. Please provide all information related to Oklahoma's primacy under the Public Water System Supervision Program during your tenure as Attorney General.

As your question indicates, such matters would be within the purview of Oklahoma's environmental regulators, not the Office of Attorney of General.

38.Do you concur that persistent drinking water safety problems indicate the need to strengthen, not weaken, the federal law designed to ensure the safety of Americans' drinking water? Explain why or why not.

I believe that persistent drinking water problems largely stem from a failure to comply with current laws and regulations. If confirmed, I will work to increase compliance with the law, which will require effective enforcement and oversight, technical assistance, and infrastructure improvements. It also may require changes to existing regulations to improve oversight tools and eliminate ambiguities that lead to compliance issues.

39.At the same time, deteriorated lead paint and elevated levels of lead-contaminated house dust are present in an estimated 24 million U.S. houses, according the Centers for Disease Control and Prevention. The long-term effects that lead poisoning can cause include learning disabilities, hyperactivity, impaired hearing and brain damage. Infants and young children are most susceptible to lead poisoning. EPA's Lead Renovation, Repair and Painting Rule (RRP Rule) requires that firms performing renovation, repair, and painting projects that disturb lead-based paint in homes, child care facilities and pre-schools built before 1978 have their firm certified by EPA (or an EPA authorized State), use certified renovators who are trained by EPA-approved training providers and follow lead-safe work practices. Do you believe the RRP Rule should be a voluntary standard? Explain why or why not.

No. Oklahoma is an authorized state. The Oklahoma Lead-Based Paint Management Act designates the Department of Environmental Quality as the official agency for implementing the Lead-Based Paint Management Program.

40.EPA is addressing lead contamination and resulting hazards under these laws in many ways, including by issuing and enforcing regulations. Do you find this regulatory authority appropriate for EPA, and not the States? Why or why not.

It is appropriate for EPA to faithfully enforce federal law. With respect to the RRP rule, it is my understanding that there have been issues with EPA implementation of the RRP rule in states that are not authorized due to a delays in certifying firms.

41.Title IV of the Toxic Substances Control Act (TSCA), as well as other authorities in the Residential Lead-Based Paint Hazard Reduction Act of 1992, directs EPA to regulate lead-based paint hazards. As Administrator, how would you implement Title IV of TSCA?

Congress enacted both TSCA Title IV to create a national program to achieve the national goal of eliminating lead-based paint hazards from housing as expeditiously as possible and TSCA Title V to authorize the establishment of a state grant program to provide technical assistance on EPA environmental programs for schools and to implement school environmental health programs. If confirmed, I will faithfully discharge my responsibility to protect human health and the environment for all Americans with the highest possible dedication and commitment in accordance with the legal authorities established by Congress.

42.The CWA prohibits anyone from discharging pollutants, including lead, through a point source into a water of the United States unless they have a National Pollutant Discharge Elimination System (NPDES) permit. As part of their water quality standards regulations, states and authorized tribes adopt ambient water quality criteria with sufficient coverage of parameters, such as lead, and of adequate stringency to protect the designated uses of their surface waters. What changes, if any, would you make to the NPDES permit?

I have not contemplated any changes to the NPDES permit program, if confirmed.

43.Please provide all confidential government information regarding the 2010 consent order with the Making Money Having Fun (MMHF, LLC), a coal combustion waste mine fill operator in Bokoshe, Oklahoma, that you obtained as Attorney General.

I did not become Attorney General until January 2011. The Oklahoma Department of Environmental Quality has responsibility for administering and enforcing environmental laws in Oklahoma, along with other agencies like the Water Resources Board and the Corporation Commission. Those agencies may be able to provide you information about the 2010 consent order your reference.

44.The EPA finalized the first federal coal ash disposal rules in 2015, but the rules did not include any direct mechanism to implement or enforce the rules. Now, Congress has provided the mechanism in S. 612-114th, the WINN Act, which was passed with bipartisan support. Senate Majority Leader Mitch McConnell also issued a press release stating his approval of several of the bill's provisions, including the coal ash language. As you may know, if states create a coal ash permitting program, or amend their current programs to incorporate federal standards and get EPA approval, they will be able to implement the rules themselves. If they do not, the EPA is directed either put into place a federal permitting system, or have the authority to directly enforce the requirement. Do you intend to enforce the coal ash language in S. 612-114th, the WINN Act, that received bipartisan report?

If confirmed as Administrator, I will faithfully execute all laws enacted by Congress, including the WIIN Act provisions regarding coal ash.

45.Please provide an explanation of any modification you would make to the coal ash provision in S. 612-114th, the WINN Act.

I have not had occasion to review in depth this new statutory. Congress, not the Administrator of EPA, has authority to modify statutory language such as the coal ash provision in the WIIN Act. I do not at this time have any opinion whether Congress should modify the statute in question.

46.Kentucky is already in the process of working on regulations governing coal ash disposal. The state's proposal would modify the concept of "permit-by-rule," and allow utilities to build their own coal ash landfills or ponds without prior permitting or review by regulators. The utilities could be fined by regulators or sued by individuals for violations. Energy and Environment Cabinet spokesman John Mura has said the Cabinet believes this would qualify as a "permitting program" as required by the WINN Act. As Administrator, would you allow the Kentucky Energy and Environment Cabinet's "permit by rule" program to qualify as a permitting program under the bipartisan WIIN Act? Why or why not?

I am not familiar with how Kentucky regulates coal ash disposal. It would be inappropriate for me to prejudge an issue that may come before me for decision if I am confirmed as Administrator. If the issue comes before me, I will ensure that the issue is fully and fairly considered with input from staff and in accordance with applicable legal requirements.

47.What is the goal of your lawsuit asking to strike down EPA's "Waters of the United States" rule under the CWA? What will the states be empowered to do that they can't do with the rule in place? (be specific)

The goal of the lawsuit I brought to advance the State of Oklahoma's interest in protecting its regulatory authority is to have the courts vacate the WOTUS rule. If the WOTUS rule is vacated, we will return the status quo, and the State of Oklahoma's sovereign authority to regulate waters within its border will not be diminished.

48.The brief filed on behalf of states argues that states need to "protect" waters. Are you aware of the legal concept under the Clean Water Act that provides for states to be more protective than the Clean Water Act, not less—that the Act sets a minimum standard of protection and cleanliness?

The state brief filed in the WOTUS case argues that the WOTUS rule fails to recognize the limits on federal authority that Congress adopted when it enacted the CWA over forty years ago. Under the Act, Congress "chose to 'recognize, preserve, and protect the primary responsibilities and rights of States . . . to plan the development and use . . . of land and water resources.'" Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs, 531 U.S. 159, 174 (2001) ("SWANCC") (quoting 33 U.S.C. § 1251(b)). As noted in the state brief: "The Rule likewise reaches and even exceeds the outer bounds of Congress's constitutional authority. The Rule's expansion of federal authority over intrastate waters will "impinge[] o[n] the States' traditional and primary power over land and water use," and "readjust the federal-state balance." SWANCC, 531 U.S. at 174.The Rule's coverage of intermittent waters, ephemeral waters, and isolated sometimes-wet lands "presses the envelope of constitutional validity," Rapanos, 547 U.S. at 738 (Scalia, J., plurality) (citation omitted), far more than the challenged agency actions in Rapanos and SWANCC. That is, states have exclusive, not additional, authority over all land and non-navigable, wholly intrastate waters.

49.Do you believe that states should be free to allow more pollution or fewer waters to be protected from pollution and development than described in the Waters of the United States Rule?

The litigation brought by the states was premised on a concern that EPA had exceeded its statutory authority as established by Congress. Additionally, the WOTUS rule is a jurisdictional rule, not a substantive rule as your question suggests.

50.Are there waters that you believe should not be protected under the Clean Water Act? What specifically are they? Why do you think that the rule covers those waters now? Why do you think they should not be protected?

As I stated in my testimony before the Committee, I believe that the Clean Water Act regulates more than navigable waters. But, it does not regulate all waters. How much more would best be answered by Congress. Absent Congressional action, it is the role of EPA to seek to provide clarity on the scope of federal jurisdiction. What that is has to be determined and assessed through notice and comment rulemaking. The WOTUS rule exceeded the authority granted by Congress by allowing federal regulation of land if rainwater collects on the surface and seeps into the ground or if rainwater runs over the land as ephemeral flows. It also exceeded CWA authority by regulating isolated ponds and wetlands. Such non-navigable, wholly intrastate water should be protected, as appropriate, under state, not federal, law. For example, isolated bodies of water have not been subject to federal regulation since the 2001 Supreme Court decision in SWANCC struck down earlier agency attempts to expand federal jurisdiction beyond the limits of the Act. The WOTUS rule would reverse that decision and regulate the same waters that the Supreme Court has already said are subject to exclusive state regulation.

51.In your lawsuit against the Clean Water Rule you argue against what you perceive as an undue federal intrusion on local control of decisions about water quality. You have also argued that cities in towns in Oklahoma should not be able to control their water quality by issuing local regulations for the activities of oil and gas companies. How is your stance in favor of local control under the Clean Water Act consistent with your position against local control when it comes to the water polluting activities of oil and gas companies? What legal underpinning is there for that difference?

State concerns regarding the WOTUS rule are based on the limitations on federal authority under the Clean Water Act. Oklahoma concerns over the regulation of commercial activities including oil and gas company operations by local governments are based on the limitations of local authority under state law and federal law. Respect for the rule of law underpins both concerns, and both seek to ensure that laws enacted by the relevant legislatures—Congress on one hand, the Oklahoma Legislature on the other—are followed.

52.Wetland ecosystems provide significant environmental and economic benefits to American citizens including water purification, flood and erosion control, and

habitat for wildlife and commercial fish species. In fact, over fifty percent of commercial fish and shellfish stocks in the Southeastern United States rely on coastal wetlands. Section 404 of the Clean Water Act protects wetland ecosystems by regulating the discharge of dredging and fill material. If confirmed, what is your plan to improve the biological condition of wetlands?

If confirmed, I will take care to faithfully execute all environmental laws enacted by Congress, including Section 404 of the Clean Water Act.

53.As of 2014 Oklahoma had nearly 14,000 miles of rivers and nearly 1,000 square miles of lakes that are so polluted they don't meet the state's water quality standards. That's approximately 42% of all the delineated stream miles in Oklahoma, and almost 1,600 of those were added during your time as Attorney General. Only 107 miles of rivers in Oklahoma – about a third of one percent – were classified as meeting Oklahoma's water quality standards. The other 58% are classified as having insufficient data to enable the state to say they're meeting state standards. As Oklahoma's Attorney General, what did your office do to ensure that the companies were complying with the state's clean water laws?

The Oklahoma Department of Environmental Quality and the Oklahoma Water Resources Board have primary responsibility for implementing and enforcing environmental laws in Oklahoma. Such questions should be directed to those environmental regulators.

54.How many water pollution enforcement actions did your office file, and how many of those resulted in orders to halt or reduce pollution discharges? Please provide a comprehensive list.

The Oklahoma Department of Environmental Quality and the Oklahoma Water Resources Board have primary responsibility for implementing and enforcing environmental laws in Oklahoma. Those agencies are thus best situated to provide a comprehensive list of enforcement actions take by the State of Oklahoma. The Office of Attorney General has on occasion assisted those environmental regulators by providing legal representation in cases under the CWA for pollution to groundwater, streams and other waterways. Other cases included pollution that caused fish kills and CERCLA Superfund sites that damaged Oklahoma groundwater and or streams. Those cases are EPA, States of Oklahoma & Texas v Mahard Egg Farm; EPA, State of Oklahoma v. Doe Run Mining et al.; ODWC v. Kent Feeds; ODWC v. Southern Towing; State Of Oklahoma, ODWC v Kelco Manufacturing; and State of Oklahoma & Cherokee Nation v. Sequoyah Fuels Corp.

55.President Reagan's EPA adopted the "Stream Buffer Zone" rule to protect streams, and the Obama administration has replaced that rule with the "Stream Protection Rule." Do you think Reagan's rule was a more straightforward way to

protect streams? Why or why not? What specifically about it was more "straightforward?"

The stream buffer zone rule and stream protection rule are not EPA rules. They were issued by the Office of Surface Mining Reclamation and Enforcement of the Department of the Interior.

56.The American Society of Civil Engineers states that decrepit, decades-old municipal wastewater systems are at fault for the discharge of 900 billion gallons of untreated sewage and wastewater into U.S. waterways each year, enough to cover New York City under a layer 127 feet deep. According to a New York Times report, municipal sewer systems are the nation's biggest violators of the U.S. Clean Water Act, and more than one-third of them have violated pollution laws at least once since 2006. This worn-out, faulty infrastructure requires new investments in order to protect public health and the environment. As the leader of the Agency in charge of protecting human health and US waterways, how will you help states and municipalities modernize their wastewater infrastructure?

If confirmed, I will continue support for the Clean Water State Revolving Loan Funds and the new Water Infrastructure Financing Innovation Act loan program. In addition, I would continue to implement EPA's Integrated Planning Framework to provide municipalities with flexibility to prioritize actions they take to come into compliance.

57.The American Society of Civil Engineers states that decrepit, decades-old municipal wastewater systems are at fault for the discharge of 900 billion gallons of untreated sewage and wastewater into U.S. waterways each year, enough to cover New York City under a layer 127 feet deep. According to a New York Times report, municipal sewer systems are the nation's biggest violators of the U.S. Clean Water Act, and more than one-third of them have violated pollution laws at least once since 2006. This worn-out, faulty infrastructure requires new investments in order to protect public health and the environment. As the leader of the Agency in charge of protecting human health and US waterways, how will you help states and municipalities modernize their wastewater infrastructure?

If confirmed, I will continue support for the Clean Water State Revolving Loan Funds and the new Water Infrastructure Financing Innovation Act loan program. In addition, I would continue to implement EPA's Integrated Planning Framework to provide municipalities with flexibility to prioritize actions they take to come into compliance.

58.Given the President-elect's concerns about EPA's slow and inadequate response to lead in drinking water problems and the lack of adequate testing, what specifically would you do to prevent a Flint-like disaster from happening elsewhere?

If confirmed, I will focus EPA's resources and attention on its core missions, including ensuring safe drinking water.

59.Would you commit to undertaking stronger EPA oversight and enforcement of drinking water rules, such as stronger enforcement of the lead and copper rule that wasn't enforced in Flint, MI?

Yes.

60.What specific lessons did you draw from the Flint, MI tragedy, regarding EPA's proper role in overseeing the States' administration of delegated federal programs?

I believe that EPA staff should be encouraged to notify their managers when they identify issues and managers must take those issues seriously when brought to their attention. I agree with the assessments of others that the Flint tragedy was a failure at every level of government, but I am particularly disturbed that EPA did not take action until long after they became aware of the elevated lead levels in Flint drinking water.

61.What are your views on when EPA should step in to take enforcement or emergency action where a state is authorized to administer a program under one of the federal environmental laws but is failing its duty to protect the public?

If confirmed, I will follow the process outlined in section 1414 of the Safe Drinking Water Act, as recently amended in section 2106 of the WIIN Act, to notify persons of elevated lead levels in their drinking water and will carry out the recommendations of the EPA Inspector General in his October 2016 Management Alert to update the guidance on Safe Drinking Water Act emergency authority and require training on the use of that authority.

62.Did EPA do an adequate job in the instance of the lead crisis in Flint, MI? If not, what specifically would you do differently?

No. If confirmed and faced with a similar situation, I would inform the state that EPA will take action if they fail to do so, and use EPA's emergency authority if the state fails to act.

63.How specifically would you strengthen EPA's lead and copper rule for drinking water to ensure, as Mr. Trump suggested, that water is adequately tested and treated before children are exposed to lead?

It would be inappropriate for me to prejudge the outcome of a matter that may come before me if confirmed as Administrator. If confirmed I would request a full briefing by EPA staff on potential revisions consistent with EPA legal authorities.

64.House Republican leadership said in 2016 that EPA should get new lead-in-water rules proposed as soon as possible, and criticized the agency for being too slow when it promised to get them out by 2017. By what date would you commit to get a new rule issued? How would you ensure that final improvements to this rule are issued and implemented quickly?

If confirmed, I will make issuing revisions to the Safe Drinking Water Act Lead and Copper Rule a priority. As I am not at the Agency, I do not know what is the soonest feasible date.

65.An independent advisory group of experts including state regulators and water industry representatives recommended to EPA that all old lead service lines that pump water into homes from water mains should be replaced. The water utility trade associations support this. Do you support that recommendation? In your view, what would be the best way to pay for these replacements—Congressional Appropriations, issuance of debt by cities and states, a combination, or other? Please explain.

It is my understanding that, if properly implemented, corrosion control treatment of water protects public health from exposure to lead from lead service lines. EPA's highest priority should be to ensure that this treatment is being properly employed. Replacement of lead service lines is a long term goal that municipalities should incorporate into their capital improvement plans, which are generally implemented through state and local funds. Federal assistance through the Drinking Water State Revolving Funds and the new WIFIA program can provide additional assistance.

66.Do you agree that removing lead from gasoline was an important and successful EPA rulemaking? Why or why not?

I have not evaluated this issue.

67.Lead has no safe level of human exposure, particularly for children. What actions will you take to require lead to be removed from children's environment to reduce their exposure to lead in air, water, soil, and paint?

If confirmed, I will faithfully carry out the authorities granted to EPA by Congress to reduce exposure to lead.

68.In March 2016 it was reported that 19 drinking water systems in Oklahoma had elevated lead levels. Of the 100 water systems with the highest self-reported lead levels between 2013 and 2015, seven are located in Oklahoma. One exceeded the federal action level by 1,175 parts per billion - many times greater than the amount of lead needed to cause the death of a fetus or spontaneous abortion, or

permanent severe developmental problems. As Oklahoma A.G., what specific actions did your office take to protect children against lead poisoning?

The Oklahoma Department of Environmental Quality and the Oklahoma Water Resources Board have primary responsibility for implementing and enforcing environmental laws in Oklahoma. Questions relating to actions taken by the State of Oklahoma with regard to lead in water systems should thus be directed to those environmental regulators.

69.How will you ensure that required evaluation of state drinking water primacy programs is conducted and how will you use EPA authority and resources to help states carry out their Safe Drinking Water Act primacy responsibilities?

If confirmed, I will focus on EPA's core missions, including oversight of state implementation of the Safe Drinking Water Act.

70.Will you direct EPA to continue and follow up on findings from 2016 increased oversight of state implementation of the Safe Drinking Water Act Lead and Copper Rule?

Yes.

71.What are your expectations for the 2017 Proposed Revisions to the Safe Drinking Water Act Lead and Copper Rule?

It is my understanding that EPA expects to issue that proposed rule in 2017.

72.In our conversation in my office, I asked for your thoughts on the Paris Agreement and the US commitment to the Paris Agreement. You pointed out that the Paris Agreement commitments are non-binding and when I asked you whether you thought the US should stay in the Paris Agreement you did not want to comment because you felt that the Paris Agreement is a matter handled in full by the State Department. Is that a fair characterization of your comments to me?

I believe I stated that a decision as to whether the U.S. stayed in the Paris Agreement would be a decision for the State Department.

73.Does that mean that you would advise the EPA to refrain from engaging with the State Department on US engagements with the UNFCCC and the execution process around the Paris Agreement?

Interagency cooperation is very important. Should the Administration decide to continue to participate in the Paris Agreement, and if I am confirmed as Administrator, I will collaborate with all involved agencies to ensure that commitments made on behalf of the United States are

achievable and consistent with requisite legal authorities delegated by Congress.

74.How does your position that EPA should ostensibly recuse itself from State Department responsibilities and engagements on the Paris Agreement comport with any plans that you, as the next EPA administrator, may execute to rescind or alter domestic policies that affect the US National Determined Contribution (NDC) to the Paris Agreement?

As I stated in a previous answer, should the State Department decide to continue to participate in the Paris Agreement and if I am confirmed as Administrator, I will work with all involved agencies to ensure that commitments made on behalf of the United States are achievable and consistent with requisite legal authorities delegated by Congress.

75.Recently at the World Economic Forum in Davos, Switzerland, Chinese President Xi Jinping expressed China's great interest in being the world's leader on a number of issues including action to address climate change. Do you believe it is the U.S.'s national interest to cede leadership to the Chinese on global action to address climate change?

It is the mission of the State Department to advance our national interests within the realm of foreign policy. If confirmed, I will work to advance the mission of the EPA, which is to protect human health and the environment, consistent with the State Department's strategy for international engagement on climate change.

76.Do you believe climate change is a real and serious threat to the planet?

The climate is changing and human activity impacts our changing climate in some manner. The ability to measure with precision the degree and extent of that impact, and what to do about it, are subject to continuing debate and dialogue.

77.Do you accept the scientific consensus that should average global temperatures reach or exceed +2 degrees Celsius that many regions of the world will very likely experience catastrophic changes in the environment that may very likely impact the safety and prosperity of many people?

• Do you believe that uncertainty in climate science warrants greater study before the U.S. takes significant action to reduce greenhouse gas pollution?
• If so, are you aware that the portion of the scientific community that claims there is uncertainty in the science is limited to limited to about 5% of climate science communities?
• If you believe that the very small portion of the world's climate science community who hold outlier opinions on the severity of climate change justifies inaction, why wouldn't you give similar credence to other outlying opinions in the

climate science community that hold that global average temperatures may exceed 10 degrees Celsius and that catastrophic events may occur as soon as five or ten years?

The climate is changing and human activity impacts our changing climate in some manner. The ability to measure with precision the degree and extent of that impact, and what to do about it, are subject to continuing debate and dialogue. If confirmed, I will work to ensure that any regulatory actions are based on the most up to date and objective scientific data.

78.Our ability to predict the weather has improved dramatically over the last 20 years with the advent of supercomputers, new satellite monitoring options, and vastly superior atmospheric models. But still floods, droughts, hurricanes and similar phenomena occur and cause damage with sometimes only limited warning. What precision of prediction do you require before you are willing to accept the scientific community's overwhelming consensus that unchecked increases in greenhouse gas emissions will very likely have catastrophic effects, many of which the National Climate Assessment has described in detail every 4 years since 1990?

The ability to measure with precision the degree and extent of human activity on our changing climate, and what to do about it, are subject to continuing debate and dialogue. If confirmed, I will work to ensure that any regulatory actions are based on the most up to date and objective scientific data.

79.Do you believe that science should guide our nation's environmental policy?

Congress has made it very clear in the Clean Air Act, the Clean Water Act and other major environmental laws that the regulatory actions of the EPA should be based on the most up to date and objective scientific data. If confirmed, I will follow the directives of Congress to set science-based standards to protect the environment and human health.

80.What would have to change about our ability to predict the effect of increasing greenhouse gas emissions in Earth's atmosphere for you to consider it adequate?

If confirmed, I will work to ensure that any regulatory actions are based on the most up to date and objective scientific data, including the ever-evolving understanding of the impact increasing greenhouse gases have on our changing climate.

81.Would you support making those changes in sufficient time to ward off any negative effects of increasing those emissions?

The ability to measure with precision the degree and extent of human activity on our changing climate, and what to do about it, are subject to continuing debate and dialogue. If confirmed, I will make sure the agency's regulatory actions are based on the most up to date and objective scientific data.

82.What is your scientific background and what expertise do you have in environmental science?

My degrees are in communications, political science, and law. As with prior EPA Administrators who held bachelor of arts degrees, I completed science courses as a prerequisite to requiring my degree. Also, I understand that six of the 12 people who have been confirmed as EPA Administrator (including the first four individuals) had law degrees.

83.How do you square your opinion that air regulation is a matter for the states and that EPA has limited authority to mandate regulation of air pollution, with the court's overwhelming opinions that EPA has exclusive authority to regulate air pollution including greenhouse gases?

The concept of cooperative federalism is a bedrock principle of the Clean Air Act, the Clean Water Act and other EPA-administered laws. Whether working to improve air quality, water quality or other important environmental objectives, Congress made achieving these a shared responsibility between the EPA and the states. If confirmed, I will respect the intention of Congress and relative statutory framework.

84.Given that you are one of the lead attorneys challenging the clean power plan, a regulation promulgated by EPA in part due to the court's decision in landmark cases that determining EPA authority and responsibility to regulate greenhouse gases for domestic sources, in you rescind the Clean Power Plan:

It is unclear what question is being asked.

85.What policies would you promulgate to replace the Clean Power Plan, which you would have to do to ensure the EPA is in compliance with the court orders to regulate greenhouse gases?

It would be inappropriate for me to prejudge an issue that may come before me for decision if I am confirmed as Administrator. If the issue comes before me, I will ensure that the issue is fully and fairly considered with input from staff, as part of a transparent process that seeks input from stakeholders, and that is consistent with EPA's statutory authorities.

86.What assurances will you give the public that your proposed replacement rules will withstand the tests established in the case law determining EPA's endangerment finding is adequate and legal and sufficiently regulates carbon pollution to protect public health and safety?

It would be inappropriate for me to prejudge an issue that may come before me for decision if I am confirmed as Administrator. If the issue comes before me, I will ensure that the issue is fully and fairly considered with input from staff, as part of a transparent process that seeks input from stakeholders, and that is consistent with EPA's statutory authorities.

87.Do you trust the analysis, concerns and recommendations of security experts at the State Department, Department of Defense, Central Intelligence Agency, The Navy War College, UN Security Council, and the World Bank, who have expressed growing concerns over the threat climate change poses to national and global security?

I have no reason to disagree with the statements from the listed security experts, although I have not made any attempt to independently verify their accuracy.

88.U.S, national security experts that are working to incorporate climate modeling and climate change assessments into our national security planning apparatus rely on sound scientific analysis, modeling data, and technical assistance from the EPA in interpreting the data. Will commit to continuing EPA's engagements with the agencies and departments responsible protecting our national security and advancing our understanding and preparedness for the security risks climate change poses to the United States?

Interagency cooperation is very important. If I am confirmed as Administrator, I will collaborate with any agency or department that may require the EPA's technical expertise to strengthen their own administrative actions.

89.What assurances can you provide the public, particularly vulnerable communities at greatest risk from pollution, that you will represent their interests fairly as administrator when your personal political campaigns, as well as organizations that you have held leadership positions within - like the Republican Attorneys General Association, has received hundreds of thousands of dollars in contributions from the fossil fuel industry because of your working championing their interests by challenging laws regulating these industries?

As I explained in my testimony to the Committee, I am a firm believer in the EPA's mission to protect the environment and look forward to the opportunity lead the agency to help provide our future generations with a better and healthier environment for all Americans.

90.You have lost many of the lawsuits challenging EPA's authorities, including the Chesapeake Bay TMDL and the lawsuit challenging the endangerment finding on greenhouse gases. Given the difficulty you've had winning cases, what

assurances can you provide the committee of your sound judgment when it comes to understanding our nation's environmental statutes?

As Attorney General of Oklahoma, my focus has been on examining federal environmental statutes and relevant case law to evaluate the legality of the EPA's actions and the impact of those actions on Oklahoma. Oklahoma filed a friend of the court brief with the U.S. Court of Appeals for the Third Circuit in part to inform the court how EPA's interpretation of TMDL and other matters involved in the challenge would impact other states, including Oklahoma. If I am confirmed, I will apply those lessons which I have developed in the performance of my duties as Attorney General and would continue to do so if confirmed as Administrator.

91.Will you work with all stakeholders and the State Department on execution of the Kigali Amendment to the Montreal Protocol to phasedown hydrofluorocarbons (HFCs) and will you commit to ensuring that any actions EPA may take to modify or rescind the Safe New Alternatives Program (SNAP) rules on HFCs coincide with the U.S.'s acceptance or ratification of the Kigali Amendment?

Should the State Department decide to advance the Kigali Amendment to the Montreal Protocol and if I am confirmed as Administrator, I will work with all involved agencies and impacted stakeholders to ensure that EPA's actions related to hydrofluorocarbons (HFCs) are coordinated accordingly.

Ranking Member Carper:

1.Please list all public speeches or presentations you have made that included references to any issue related to energy or the environment since 1998, and please provide copies (written, audio, or video) of any such speeches or presentations. Please also indicate whether you received compensation for any such speech or presentation (whether stipend, travel, lodging expenses, or other form of remuneration) along with the name of the entity that provided such compensation and the amount thereof.

Please see attached list of speeches and enclosed copies of speeches in response to this request.

2. Please provide a list of the skills and experiences you bring to the EPA Administrator position and why you believe that you would be a good fit for the position.

I am a licensed attorney with significant experience in constitutional law, the Administrative Procedure Act, and Environmental Protection Agency administered statutes. This body has recognized my expertise in EPA related matters on several occasions, inviting me to testify before this and other committees on matters relating to the EPA. My legal education and profession has trained me to ask probing questions and think critically regardless of the subject.

3. Please define the Environmental Protection Agency (EPA)'s mission and the role you believe that sound science plays in fulfilling that mission.

The mission of EPA is to protect human health and the environment. Where Congress directs the EPA to act based upon scientific findings, the EPA should rely on well-reasoned, and sound, scientific findings.

4. In a 2006 article in The Oklahoman, you were described as someone that "believes in negotiating, but not compromising." Do you feel this continues to be an accurate description of you? If so, why? Do you agree with President Nixon's articulation of the principal roles and functions of the EPA? If you do not agree, please explain the aspects with which you disagree and why.

Based on the limited information provided in the question, I am uncertain about the article to which the question refers. The content and context of

the article and quote are not readily apparent. However, if confirmed as Administrator, I will take my responsibility to protect human health and the environment for all Americans with the highest possible dedication and commitment in accordance with the legal authorities established by Congress. I have a record of working on a bipartisan basis.

5. Do you think it is constitutional for Congress to direct EPA to set national standards that protect public health? Is it constitutional for Congress to do that even if the pollution only harms citizens of a single state?

The constitutionality of laws enacted by Congress depends on the particulars of the particular law, and will typically be decided by a court. Courts have generally recognized that Congress has the authority to create the EPA and vest certain powers in it.

6. Mr. Pruitt, your official biography on the website of the Oklahoma Attorney General's office says that you are "...a leading advocate against the EPA's activist agenda." The EPA, the agency you have been nominated to lead, has the critical mission "to protect human health and the environment" for all Americans. When you sued the EPA over the Good Neighbor Rule (Cross-state Rule), how did that protect human health and the environment for downwind states?

I firmly believe that the EPA plays an important role in addressing interstate water and air quality issues, but it must do so within the bounds of its legal authority. The actions undertaken by the Office of Attorney General challenging the Cross State Air Pollution Rule related to whether EPA had properly accounted for and allocated pollution from upwind states, as mandated by Congress. Regulations that are not on solid legal foundation and that cannot survive judicial review will not result in environmental protections.

7. You've been part of numerous lawsuits against the EPA – against clean air, clean water and climate regulations. However, you also have stated you are for clean air and clean water. Can you name one Clean Air Act regulation – not a voluntary or grant program – that is on the books today that you do support?

I firmly believe that the EPA plays an important role, especially as it relates to cross-state air and water pollution, but EPA must do so within the bounds of its legal authority as provided by Congress. Regulations that are not on solid legal foundation and that cannot survive judicial review will not result in environmental protections.

8. Are there any other EPA regulations that are on the books today that you do support?

I have not conducted a comprehensive review of existing EPA regulations. As Attorney General, I have brought legal challenges involving EPA regulations out of concern that EPA has exceeded its statutory authority based on the record and law in that matter.

9. President-elect Donald Trump has said repeatedly—at least half a dozen times—on the campaign trail that he would starve the EPA of funding or completely eliminate the agency. In March last year, the President-elect stated in reference to the EPA:

"We are going to get rid of it in almost every form. We're going to have little tidbits left but we're going to take a tremendous amount out,"

After the election, the President-elect didn't seem to change his tune. President-elect Trump stated two days after the election again in reference to the EPA:

"Environmental protection, what they do is a disgrace; every week they come out with new regulations,"

You also have a history attacking the agency. Please tell us why we should disregard the President-elect's statement on the EPA, disregard your actions and only believe your words that you will support clean air and clean water laws?

As I testified, I support the EPA's mission to protect human health and the environment. If confirmed, I will faithfully execute the environmental laws enacted by Congress.

10. As Administrator, will you take into account the true costs of air pollution including the adverse health and environmental impacts on states that are adversely affected by upwind pollution sources?

As I stated at the hearing, costs are important in the rulemaking process and the Courts have recognized that important factor. The Clean Air Act prescribes when costs should be considered and to what extent in a

rulemaking. If confirmed, I commit to faithfully executing the law as enacted by Congress.

11. As Administrator, will you take into account the full economic and job benefits that result from clean air protections such as the economic benefits to communities from clean air and American leading businesses that manufacture advanced technologies?

As I stated at the hearing, the EPA should consider the benefits of cleaner air for the public. The Clean Air Act prescribes certain instances where the EPA is obligated to conduct a cost-benefit analysis as part of the rulemaking process. If confirmed, I commit to faithfully execute the law as enacted by Congress.

12. If it is technologically and economically feasible to eliminate the release of a particular pollutant, do you agree that we should do so?

Environmental statutes prescribe certain instances where technological or economic feasibility is a relevant factor to consider in a rulemaking. If confirmed, I commit to faithfully execute the law as enacted by Congress.

13. I have often found that environmental regulations can and often drive innovation. We have seen that with the Acid Rain Program, CAFÉ, Clean Diesel standards, RFS and most recently with the mercury standards. Do you agree environmental regulations often drive innovation? If so, why? If not, why not?

The factors that lead to technological innovation can be complex and varied, and legal requirements may be one such factor.

14. Who serves or has served as your scientific advisor for climate change related issues during your time as attorney general? Please provide their names, their titles, and when they served as your science advisors.

The Office of Attorney General does not have a science advisor to advise on climate change related issues.

15. Mr. Pruitt, my State of Delaware is already seeing the adverse effects of climate change with sea level rise, ocean acidification, and stronger storms. While all states will be harmed by climate change, the adverse effects will vary by

state and region. Can you comment on why it is imperative that we have national standards for the reduction in carbon pollution?

If confirmed, I will fulfill the duties of the Administrator consistent with Massachusetts v. EPA and the agency's Endangerment Finding on Greenhouse Gases respective of the relative statutory framework established by Congress.

16. Pruitt, will you agree that there will be no retaliation against EPA employees who work on climate change issues?

If confirmed, yes.

17. Clean car standards save consumers money at the pump and help reduce oil imports. Automakers are complying with vehicle standards ahead of schedule. As Administrator, will you commit to support, defend and enforce EPA's current programs to address emissions from vehicles?

Congress has enacted numerous statutes directly or indirectly affecting transportation fuels, transportation fuel infrastructure, and the vehicles that consume those fuels. Congress committed many of those statutes to the EPA Administrator's responsibility. If confirmed as Administrator, I would administer each of those statutes in accordance with Congress's statutory objectives, and in light of the administrative record in each given proceeding. And I would work with Congress to ensure that its statutes continue to provide the best possible legal framework for governing American fuels, fuel infrastructure, and vehicles, and for promoting American energy independence, energy security, and environmental protection.

18. What is your definition of sound science?

Sound science is that which complies with applicable laws and federal guidance regarding scientific integrity, peer review, information quality, and transparency.

19. Prior to your nomination, how have you acquired scientific information relevant to the missions of the EPA? And since your nomination?

As Attorney General of Oklahoma, my focus has been on examining federal environmental statutes and relevant case law to evaluate the legality of the EPA's actions. Legal education is rooted in the Socratic method, which trains law students through probing questions and critical thinking and I apply those lessons and skills in the performance of my duties as Attorney General and would continue to do so if confirmed as Administrator.

20. Please list all undergraduate and postgraduate science courses that you have taken. Please describe any other science education that you have completed over the years beyond high school.

My degrees are in communications, political science, and law. As with prior EPA Administrators who held bachelor of arts degrees, I completed science courses as a prerequisite to requiring my degree.

21. President Nixon articulated that an important role for EPA is "The conduct of research on the adverse effects of pollution . . . the gathering of information on pollution, and the use of this information in strengthening environmental protection programs and recommending policy changes." Do you agree with President Nixon that EPA has an important role to play in researching any emerging risks from pollution as well as strengthening protections and recommending policy changes based on the science?

Yes.

22. Do you think the U.S. National Academy of Sciences is a reliable authority on scientific matters?

I have no reason to think otherwise, but I have not had occasion as Attorney General to consider this issue.

23. What degree of scientific certainty should the EPA have about a potential health or environmental threat before acting to protect people from that threat?

EPA actions are governed by statutes such as the Clean Air Act and other legal authorities and relevant case law, which establish applicable legal and scientific standards for the Administrator to act. If confirmed, I will adhere to these authorities to fulfill EPA's mission to protect human health and the environment for all Americans.

24. Do you support legislative efforts to change the independent nature of the EPA' s Science Advisory Board? If so, please explain why.

I am unfamiliar with the legislative efforts being referred to in this question. If confirmed, I expect to be briefed by EPA staff before taking any position on such matters.

25. If confirmed, do you plan to propose or advocate for budget cuts to the EPA's FY 2018 budget? If so, for which programs would you reduce funding? Would you target the EPA's research programs? Are there areas of agency action where you believe additional financial resources are needed?

I have no first-hand knowledge of EPA's development of its FY 2018 budget request. If confirmed, I look forward to working with EPA's budget staff and program offices to develop a budget and will work to ensure that the resources appropriated to EPA by Congress are managed wisely in pursuit of the Agency's important mission and in accordance with all applicable legal authorities.

26. For the most part, patients and their families only participate in scientific trials and studies once they know their privacy - and any resulting health-related information - will remain confidential and secure. If confirmed, do you commit to respecting confidentiality agreements that exist between researchers and their subjects? Will you protect the health information of the thousands of people that have participated in health studies in the past?

If confirmed, it will be my privilege to work with EPA scientists and the thousands of other dedicated public servants at EPA who have chosen to devote their careers to improving public health and our environment. I have no first-hand knowledge of EPA's policies or practice concerning the confidentiality of health information. If confirmed, I would expect to learn more about the existing practice and I commit to follow applicable legal authorities regarding the confidentiality of health information.

27. If confirmed, how will you ensure that EPA maintains independent science, transparent decision-making, and scientific free speech?

If confirmed, it will be my privilege to work with EPA scientists and the thousands of other dedicated public servants at EPA who have chosen to