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

JUL - 3 2019

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of Wisconsin

FROM: Justina Fugh
Alternate Designated Agency Ethics Official

TO: Alexander C. Girard
Senior Congressional and Intergovernmental Relations Liaison
Region 5

As Senior Congressional and Intergovernmental Relations Liaison for Region 5 of the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the State of Wisconsin. Within the last year, prior to being selected for this position, you served as a Legislative and Policy Advisor for the Wisconsin Department of Agriculture, Trade and Consumer Protection.

As an Administratively Determined (AD) appointment, you are not required to sign President Trump's Ethics Pledge because this type of appointment falls outside the definition of "appointee" set forth at Executive Order 13770 at Section 2(b).[1] However, what remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Upon assuming the position of Senior Congressional and Intergovernmental Liaison, you will have a "covered relationship" with the State of Wisconsin pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from the Wisconsin Department of Agriculture, Trade and Consumer Protection, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of Wisconsin is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

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[1] *See* Office of Government Ethics advisories entitled "Guidance on Executive Order 13770," LA-17-03 (3/20/17) and "Executive Order 13770," LA-17-02 (2/6/17), which apply the following OGE advisories from the last administration in full: "Who Must Sign the Ethics Pledge?" DO-09-010 (3/16/10); and "Signing the Ethics Pledge," DO-090-005 (2/10/09).

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

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

In reviewing these factors, I have concluded that the interest of the United States Government in your participation outweighs any concerns about your impartiality, and I am authorizing you to participate as Region 5's Senior Congressional and Intergovernmental Relations Liaison in particular matters that involve the State of Wisconsin with the following limitation: you must recuse yourself from participation in specific party matters in which you participated personally and substantially while employed with the Wisconsin Department of Agriculture, Trade and Consumer Protection. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since July 2017, you have served as a Legislative and Policy Advisor for the Wisconsin Department of Agriculture, Trade and Consumer Protection. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for the Wisconsin Department of Agriculture, Trade and Consumer Protection. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I understand that you have a defined benefit plan with the State of Wisconsin. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. But pursuant to the regulatory exemptions, this personal financial interest is not a disqualifying one that raises concerns about participation in particular matters affecting the holdings of the plan or in particular matters of general applicability affecting the sponsor of the plan under the federal conflict of interest

statute. *See* 5 C.F.R. §§ 2640.201(c)(1)(ii), 2640(c)(1)(iii) and 2640.201(c)(2). In the Agency's experience, it is unlikely that you as Region 5's Senior Congressional and Intergovernmental Relations Liaison will be in any position to affect the State's ability or willingness to pay these benefits to its retirees.

Nature and importance of the employee's role – As the Senior Congressional and Intergovernmental Relations Liaison for Region 5, you serve as a point of contact with Congress, states and local governments, and serve as a liaison with these constituencies on the Agency's major programs as well as on intergovernmental issues. In this role, you are expected to communicate freely with states in Region 5, including Wisconsin.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for the Wisconsin Department of Agriculture, Trade and Consumer Protection that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Senior Congressional and Intergovernmental Relations Liaison in such matters will be of importance to the Regional Administrator, and therefore in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the State of Wisconsin, but not on the very same specific party matters on which you worked on personally and substantially while employed by the Wisconsin Department of Agriculture, Trade and Consumer Protection. With respect to those particular matters involving Wisconsin as a specific party and in which you previously participated personally and substantially, you have agreed not to participate at all for the duration of your EPA tenure. If the Agency determines that we have a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you, your Regional Administrator, or Regional Counsel may ask OGC/Ethics to reconsider the factors on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself from those matters in which you previously participated.

While I have issued you this determination to interact with the State of Wisconsin with the limitation described above, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves Wisconsin. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters, although you are advised to confer with your Regional Counsel should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Ann Coyle at coyle.ann@epa.gov or (312) 886-

2248, or Shannon Griffo at griffo.shannon@epa.gov or (202) 564-7061.

cc: Cathy Stepp, Regional Administrator, Region 5
Cheryl Newton, Acting Deputy Regional Administrator, Region 5
Leverett Nelson, Regional Counsel, Region 5
Ann Coyle, Regional Ethics Counsel, Region 5

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

OFFICE OF
GENERAL COUNSEL

AUG - 5 2019

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of New Mexico

FROM: Justina Fugh
Alternate Designated Agency Ethics Official

TO: Ken McQueen
Regional Administrator
Region 6

As the Regional Administrator for Region 6 of the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the State of New Mexico. Within the last year, prior to being selected for this position, you served as Cabinet Secretary of the New Mexico Energy, Minerals and Natural Resources Department (EMNRD).

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

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Senior Advisor for Water, you have a "covered relationship" with the State of New Mexico pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from EMNRD, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of New Mexico is

[1] *See* Office of Government Ethics advisories entitled "Guidance on Executive Order 13770," LA-17-03 (3/20/17) and "Executive Order 13770," LA-17-02 (2/6/17), which apply the following OGE advisories from the last administration in full: "Who Must Sign the Ethics Pledge?" DO-09-010 (3/16/10); and "Signing the Ethics Pledge," DO-090-005 (2/10/09).

a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

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

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

As Regional Administrator, you are the leader of Region 6 and part of the Agency's political team. Your area of responsibility includes New Mexico, as well as Arkansas, Louisiana, Oklahoma, and Texas. In your role as Regional Administrator, you are expected to communicate freely with the states in your region, including New Mexico, and you will be asked to participate in discussions and meetings related to particular matters that affect the State. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Regional Administrator in particular matters that involve the State of New Mexico with the following limitation: you must recuse yourself from participation in specific party matters in which you participated personally and substantially while employed with EMNRD. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – From 2016 through 2018, you served as Cabinet Secretary for the New Mexico Energy, Minerals and Natural Resources Department. In this significant leadership role, you led the Department responsible for protecting and conserving New Mexico's natural and energy resources, and provided policy direction for EMNRD and its six divisions (Oil Conservation, Energy Conservation and Management, Mining and Minerals, State Forestry, State Parks, and Administrative Services). Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for EMNRD. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and

enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I understand that you are not vested in the defined benefit plan with the State of New Mexico. As such, you do not have a financial conflict of interest pursuant to 18 U.S.C. § 208.

Nature and importance of the employee's role – New Mexico will constitute a significant portion of your portfolio since your area of responsibility covers Arkansas, Louisiana, Oklahoma, Texas, and New Mexico. In your role as Regional Administrator, you are expected to communicate freely with states in Region 6, including New Mexico.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for EMNRD that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Regional Administrator in such matters will be of importance to the Administrator, and therefore in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the State of New Mexico, but not on the very same specific party matters on which you worked on personally and substantially while employed by EMNRD. With respect to those particular matters involving New Mexico as a specific party and in which you previously participated personally and substantially, you have agreed not to participate at all for the duration of your EPA tenure. If the Agency determines that we have a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you, your Deputy Regional Administrator, or Regional Counsel may ask OGC/Ethics to reconsider the factors on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself from those matters in which you previously participated.

While I have issued you this determination to interact with the State of New Mexico with the limitation described above, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves New Mexico. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as

voluntarily recusing from other matters, although you are advised to confer with your Regional Counsel should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Shannon Griffo at griffo.shannon@epa.gov or (202) 564-7061.

cc: David Gray, Deputy Regional Administrator, Region 6
James Payne, Regional Counsel, Region 6
Erin E. Chancellor, Chief of Staff, Region 6
Terry Leddon, Regional Ethics Counsel, Region 6

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

JUN 1 1 2019

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of Wisconsin

FROM: Justina Fugh
Alternate Designated Agency Ethics Official

TO: Russell A. Rasmussen
Senior Advisor for Water, Office of the Regional Administrator
Region 5

As Senior Advisor for Water for Region 5 of the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the State of Wisconsin. Within the last year, prior to being selected for this position, you served as Special Policy Advisor in the Office of Secretary of the Wisconsin Department of Natural Resources (WDNR).

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

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Senior Advisor for Water, you have a "covered relationship" with the State of Wisconsin pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from WDNR, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of Wisconsin is a party

[1] *See* Office of Government Ethics advisories entitled "Guidance on Executive Order 13770," LA-17-03 (3/20/17) and "Executive Order 13770," LA-17-02 (2/6/17), which apply the following OGE advisories from the last administration in full: "Who Must Sign the Ethics Pledge?" DO-09-010 (3/16/10); and "Signing the Ethics Pledge," DO-090-005 (2/10/09).

or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

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

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

In reviewing these factors, I have concluded that the interest of the United States Government in your participation outweighs any concerns about your impartiality, and I am authorizing you to participate as Senior Advisor for Water in particular matters that involve the State of Wisconsin with the following limitation: you must recuse yourself from participation in specific party matters in which you participated personally and substantially while employed with WDNR. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since July 2015, you served as Special Policy Advisor in the Office of Secretary of WDNR. In this role, you oversaw and lead special projects for the Secretary's office, served as the Department's spokesperson for these projects, and provided other communication outreach as needed. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for WDNR. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I understand that you have a defined benefit plan with the State of Wisconsin. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. But pursuant to the regulatory exemptions, this personal financial interest is not a disqualifying one that raises concerns about

participation in particular matters affecting the holdings of the plan or in particular matters of general applicability affecting the sponsor of the plan under the federal conflict of interest statute. *See* 5 C.F.R. §§ 2640.201(c)(1)(ii), 2640(c)(1)(iii) and 2640.201(c)(2). In the Agency's experience, it is unlikely that you as Region 5's Senior Advisor for Water will be in any position to affect the State's ability or willingness to pay these benefits to its retirees.

Because you are still considered an employee of the State of Wisconsin through November 19, 2019, while the State pays out your accrued leave and related benefits, the financial interests of Wisconsin are imputed to you for purposes of 18 U.S.C. § 208(a). Absent a waiver under 18 U.S.C. § 208(b)(1), you would be prohibited from participating in any particular matter that affects Wisconsin's financial interests. However, on June 4, 2019, the Agency's Designated Agency Ethics Official issued you a time-limited waiver from the prohibitions contained in 18 U.S.C. § 208(a). The waiver allows you to participate in your official capacity in particular matters that involve the State of Wisconsin subject to the following limitations: you must recuse yourself from participating in specific party matters if you participated personally and substantially in the same specific party matters while employed with WDNR; and you may not participate in any particular matter that would have a direct and predictable effect on your employment, salary, or other benefits from Wisconsin. The waiver ceases to be effective when your employment terminates with the State of Wisconsin; however, this EPA impartiality determination and related recusal agreements remain in force.

Nature and importance of the employee's role – As the Senior Advisor for Water in Region 5, you serve as a key advisor to the Regional Administrator on water issues. Wisconsin will constitute a significant portion of your portfolio since your area of responsibility covers Indiana, Illinois, Michigan, Minnesota, Ohio, and Wisconsin. In your role as Senior Advisor for Water, you are expected to communicate freely with states in Region 5, including Wisconsin.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for WDNR that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Senior Advisor for Water in such matters will be of importance to the Regional Administrator, and therefore in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the State of Wisconsin, but not on the very same specific party matters on which you worked on personally and substantially while employed by WDNR. With respect to those particular matters involving Wisconsin as a specific party and in which you previously participated personally and substantially, you have agreed not to participate at all for the duration of your EPA tenure. If the Agency determines that we have a compelling reason for your participation as an EPA official on any of those same specific party matters that you

participated in personally and substantially, then you, your Regional Administrator, or Regional Counsel may ask OGC/Ethics to reconsider the factors on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself from those matters in which you previously participated.

While I have issued you this determination to interact with the State of Wisconsin with the limitation described above, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves Wisconsin. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters, although you are advised to confer with your Regional Counsel should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Shannon Griffo at griffo.shannon@epa.gov or (202) 564-7061.

cc: Cathy Stepp, Regional Administrator, Region 5
Cheryl Newton, Acting Deputy Regional Administrator, Region 5
Leverett Nelson, Regional Counsel, Region 5
Ann Coyle, Regional Ethics Counsel, Region 5

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

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Determination Regarding Request for Waiver Pursuant to 18 U.S.C. § 208(b)(1)

FROM: David Cozad 6/4/19
Acting Designated Agency Ethics Official

TO: Russell A. Rasmussen
Senior Advisor for Water, Office of the Regional Administrator, Region 5

This memorandum provides you a time-limited waiver, pursuant to 18 U.S.C. §208(b)(1), that allows you to participate in certain particular matters at the Environmental Protection Agency (EPA) while you are still considered an employee of the State of Wisconsin. Your last day working at the Wisconsin Department of Natural Resources (WDNR) was March 1, 2019; however, you will remain an employee through November 19, 2019, while the State pays out your accrued leave and related benefits. As such, you are prohibited by the criminal law from participating in any particular matter that could have direct and predictable effect on the interests of the State, as well as your own financial interests in these payments, absent a waiver under 18 U.S.C. § 208(b)(1).

The criminal conflict of interest statute, 18 U.S.C. § 208(a), prohibits an executive branch employee from participating personally and substantially in any particular matter in which the employee knows that he has a financial interest directly and predictably affected by the matter, or in which the employee knows that a person whose interests are imputed to the employee has a financial interest directly and predictably affected by the matter, unless the employee has received a waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualifies for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). For purposes of the criminal conflict of interest statute, the financial interests of the following persons are imputed to the employee: any spouse or minor child of the employee; any general partner of a partnership in which the employee is a limited or general partner; any organization in which the employee serves as officer, director, trustee, general partner or employee; and any person or organization with which the employee is negotiating or has an arrangement concerning prospective employment. The term "particular matter" includes only matters that involve deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters that do not involve formal parties and may extend to legislation or policymaking that is narrowly focused on the interests of a discrete and identifiable class of persons.

Under 18 U.S.C. § 208(b)(1), an agency may permit an employee to participate in a matter in which the employee has an otherwise disqualifying financial interest, if it is determined that the disqualifying financial interest is "not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government." Based on the totality of the circumstances, I have determined that the financial interests subject to this waiver are not so substantial as to be deemed likely to affect the integrity of your services to the Government. Therefore, I grant you this waiver under 18 U.S.C. §208(b)(1), which authorizes you to participate in certain particular matters, as discussed below.

Background

You recently retired from the position of Special Policy Advisor at WDNR. In this position, you worked in the Office of the Secretary, leading and overseeing special and controversial water projects for the Secretary. You worked at WDNR for more than 20 years and, prior to the Senior Policy Advisor position, served as the Administrator, Deputy Administrator, Bureau of Watershed Management Director, and Runoff Management Section Chief, all in the Division of Water. You also served as the Program Services Section Chief in the Division of Air and Waste/Bureau of Waste and Materials Management. Prior to WDNR, you worked for the Wisconsin State Departments of Transportation and Administration.

Under Chapters ER 18.02(9)(a) and 21.04(1), Wis. Admin. Code, when specified conditions for resignation are met for an employee who is terminating state service, the employee will be paid for and their termination date will be extended by the amount of leave credits the employee has accrued, until those leave credits are exhausted. *See also* Wisconsin Human Resources Handbook Section 716.080. You resigned from the State, effective March 1, 2019; however, due to application of this statutory provision to your accrued leave with the State, your termination date is extended to November 19, 2019. You do not retain any responsibilities associated with your position of record with Wisconsin.

EPA is responsible for maintaining and enforcing national standards under a variety of environmental laws, in consultation with state, tribal, and local governments. In carrying out its mission, EPA delegates some permitting, monitoring, and enforcement responsibility to the states and federally recognized tribes. Thus, like other states, Wisconsin is directly regulated by EPA, and also serves as a co-regulator in carrying out our environmental mandate.

At EPA, you serve as Senior Advisor to the Regional Administrator on water policy, serve as the Region's nutrient trading liaison with the Office of Water, and help ensure timely water policy decisions. More specifically, you manage policy development and rulemaking efforts on major water policy issues; provide advice and guidance on establishing and organizing Agency strategies to implement and integrate water programs under federal statutes, taking into account cross-cutting Agency priorities and resource allocation; develop Agency policies and programs to assess and control national water problems, through evaluation systems, pollution source standards, program policy guidance, technical support, and evaluation of regional water activities; conduct water program compliance activities; and develop programs for technical assistance, technology transfer, and demonstration projects. You represent the Regional Administrator to: senior level EPA officials; Congress; the Office of Management and Budget;

other federal agencies, State, regional and local governments; public interest organizations; private industry; professional groups; and the general public. As part of the Region's leadership team, Wisconsin will constitute a significant portion of your portfolio since your area of responsibility covers Indiana, Illinois, Michigan, Minnesota, Ohio and Wisconsin.

Since joining EPA, you obtained ethics advice from your Regional Ethics Counsel, including a two-hour briefing and several follow-up conversations. You were advised to recuse yourself from all particular matters involving the State of Wisconsin until this waiver is in place, and you have taken the necessary and appropriate steps to do so.

Otherwise Disqualifying Financial Interest

Because you continue to be an employee of the State of Wisconsin, the financial interests of Wisconsin are imputed to you for the purposes of 18 U.S.C. § 208(a). Absent a waiver from the imputed interest, you would be prohibited from participating in any particular matter that affects Wisconsin's financial interests.

Application of Applicable Law to Your Request for a Waiver and Decision

You seek a waiver under 18 U.S.C. § 208(b)(1) to permit you to participate in particular matters as an employee of the EPA that may have an effect on the financial interests of the State of Wisconsin. As EPA's Acting Designated Agency Ethics Official, I am authorized to waive the criminal prohibition upon a written determination that the financial interest involved is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from you, the employee. *See* 18 U.S.C. §208(b)(1); 5 C.F.R. § 2640.301. As articulated in 18 U.S.C. § 208, and in guidance from the Office of Government Ethics, the key determination for a deciding official is whether the financial interest involved is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from the employee.

In applying the factors articulated by the Office of Government Ethics at 5 C.F.R. § 2640.301(b), I find:

- You substantially separated from the State of Wisconsin on March 1, 2019, and are not performing any services for the State;

- Your remaining employment relationship with the State is limited to its payment of accrued leave and associated benefits (e.g., employment taxes and medical insurance) and will terminate when those obligations have been met;

- As a result of your years of service with the State of Wisconsin, you earned (b) (6) [redacted]

- (b) (6) [redacted]

- The payment and value of your accrued leave and associated benefits have been calculated by the State of Wisconsin pursuant to its state laws and policies, and will be paid out to you irrespective of whether you obtain employment at EPA or anywhere else, and your employment at EPA will not affect the State of Wisconsin's ability or willingness to pay these benefits;

- Your employment status with Wisconsin and the fact you are vested in the state retirement system are of substantial financial interest to you;

- The disqualifying financial interest arises from your employment status with Wisconsin;

- Wisconsin is directly regulated by EPA and serves as a co-regulator in carrying out EPA's environmental mandate;

- As Senior Advisor for Water, you will serve as a key advisor to the Regional Administrator on water policy. In this role, you are expected to communicate freely with states, including Wisconsin;

- As Senior Advisor for Water, there will be specific party matters involving Wisconsin that will rise to your level of attention, merit your participation and raise nationally significant issues;

- Your participation as Senior Advisor for Water in such particular matters that involve Wisconsin will be of importance to the Regional Administrator, and therefore in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee;

- You will not participate in EPA specific party matters if you participated personally and substantially in the same specific party matters while employed with the State; and

- You will not participate personally and substantially in any particular matter that would directly and predictably affect your employment, salary, or other benefits, including retirement benefits, from Wisconsin.

I have considered these factors carefully, weighing both your imputed interest in Wisconsin, as well as your personal financial interests.

I find that your imputed interest in Wisconsin is a financial conflict of interest for you, and that you have a personal financial interest in your continued employment and compensation package. Under the statute, therefore, the only remaining question is whether the interest "is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee." In considering this aspect of the statutory test, the fact that you have effectively separated from the State and receive only a series of payments which are legally obligated to be paid to you is particularly relevant.

With respect to your personal financial interests, when EPA hired you, it expected to assign you to work on environmental issues that may involve Wisconsin. The "integrity of the services" that EPA expects from you is to fulfill duties as described your position description to the best of your ability, without regard to any particular State in Region 5. Your obligation is to the Constitution and the national interest and not to the State of Wisconsin on any particular matter. Additionally, although your work may have an impact upon Wisconsin along with other states, your work will not affect the ability or willingness of your employer to honor its obligations to you with respect to paying out your remaining leave and related benefits or your defined benefit plan, as these are required to be paid to you under state law. I therefore conclude that your imputed and personal financial interests in Wisconsin are not likely to affect the integrity of the services that the United States Government and EPA expect from you, so I am granting this limited waiver.

Scope of Waiver and Limitations

Having applied the applicable law and Office of Government Ethics guidance to the facts of this case, I have concluded that the financial interest involved is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from you and therefore grant you a limited waiver from the prohibitions contained in 18 U.S.C. § 208(a). This waiver allows you to participate in your official capacity in particular matters that involve the State of Wisconsin subject to the following limitations: you must recuse yourself from participating in specific party matters if you participated personally and substantially in the same specific party matters while employed with WDNR; and you may not participate in any particular matter that would have a direct and predictable effect on your employment, salary, or other benefits from Wisconsin.[1] This waiver will cease to be effective when your employment with the State of Wisconsin terminates; however, your EPA impartiality determination and related recusal agreements will remain in force.

[1] You participate in the Wisconsin Retirement System, which is a defined benefit plan. Pursuant to the regulatory exemptions, this personal financial interest is not a disqualifying one that raises concerns about participation in particular matters affecting the holdings of the plan or in particular matters of general applicability affecting the sponsor of the plan under the federal conflict of interest statute. See 5 C.F.R. § 2640.201(c)(1)(ii), 2640.201(c)(1)(iii) and 2640.201(c)(2).

Conclusion

Based on the factual circumstances of this request, including the expectations of the State and EPA that you no longer perform work to benefit the State, and the limited nature of the request, I hereby grant your request for a waiver under 18 U.S.C. § 208(b)(1).

This waiver does not apply to any particular matter other than those discussed above. You are subject to the Standards of Ethical Conduct for Executive Branch Employees, 5 C.F.R. Part 2635, and the criminal conflict of interest statutes, 18 U.S.C. §§ 203, 205, 207, 208, and 209, as well as other applicable laws. If you have questions about whether a certain matter is covered by this waiver, or whether an action you may take implicates the ethics laws, you are directed to promptly seek assistance from your Regional ethics team, Justina Fugh, Director of the Ethics Office, or me.

As required, my staff consulted with the Office of Government Ethics, prior to the issuance of this waiver. *See* 5 C.F.R. § 2640.303. Your appointing official agrees to this waiver. Finally, pursuant to 5 C.F.R. § 2640.304, a copy of this waiver will be made available upon request to the public in accordance with the procedures described in 5 C.F.R. § 2634.603. In making this waiver publicly available, certain information may be withheld in accordance with 5 C.F.R. § 2640.304 and 5 U.S.C. § 552.

cc: Cathy Stepp, Regional Administrator, Region 5
Justina Fugh, Director, Ethics Office
Ann Coyle, Assistant Deputy Ethics Official, Region 5