

# HEARING ON PENDING NOMINATIONS

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HEARING  
BEFORE THE  
COMMITTEE ON AGRICULTURE,  
NUTRITION, AND FORESTRY  
UNITED STATES SENATE  
ONE HUNDRED FIFTEENTH CONGRESS  
SECOND SESSION

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JULY 24, 2018

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## HEARING ON PENDING NOMINATIONS

TUESDAY, JULY 24, 2018

UNITED STATES SENATE,  
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:05 a.m., in room 328A, Russell Senate office building, Hon. Pat Roberts, Chairman of the Committee, presiding.

Present: Senators Roberts, Boozman, Hoeven, Ernst, Thune, Daines, Fischer, Stabenow, Brown, Klobuchar, Bennet, Gillibrand, Donnelly, Heitkamp, Casey, and Smith.

### STATEMENT OF HON. PAT ROBERTS, U.S. SENATOR FROM THE STATE OF KANSAS, CHAIRMAN, U.S. COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Chairman ROBERTS. I call this hearing of the Senate Agriculture, Nutrition, and Forestry Committee to order. I want to thank my colleagues for joining us in reviewing the nominations of the individuals that are before us today: Mr. Dan Berkovitz, of Maryland, for the position of Commissioner, the U.S. Commodity Futures Trading Commission, and Mr. James Hubbard, of Colorado, for the position of Under Secretary of Natural Resources and Environment.

While serving different functions, both the CFTC and the Department of Agriculture play critically important roles in supporting our Nation's farmers, ranchers, growers, and landowners while also ensuring our Federal lands are properly managed.

The Committee has been reviewing and considering nominations as quickly as possible. It is crucial to have these positions filled as both are very important positions at the CFTC as well as the USDA.

The Committee has received multiple expressions of support for nominees from organizations all throughout the agriculture, natural resources, and financial market sectors. I am very grateful to all of these organizations for voicing their support for these fine nominees.

Without objection, I am entering the letters of support into the record.

[The letters can be found on pages 36–50 in the appendix.]

Chairman ROBERTS. Gentlemen, I also note that you have family and friends in the audience today. Allow me to welcome you to the Committee. Would you please stand? Thank you.

[Applause.]

Chairman ROBERTS. Again, I thank the nominees for being here today. I look forward to your testimony.

I now recognize my distinguished colleague, Ranking Member Deborah Stabenow, from the great State of Michigan, for her opening remarks.

**STATEMENT OF HON. DEBBIE STABENOW, U.S. SENATOR  
FROM THE STATE OF MICHIGAN**

Senator STABENOW. Well, thank you, Mr. Chairman, and I am pleased to be back here with yourself and with the Committee, and I just want to note this is the first time we have been together since we passed the farm bill. In case folks have not heard, Mr. Chairman, under your leadership we moved quickly to pass it through the Senate on a historic bipartisan vote of—

Chairman ROBERTS. What was that vote?

Senator STABENOW. 86–11.

Chairman ROBERTS. 86–11.

Senator STABENOW. Two folks were not there that would have also voted yes, so we count it as 88, actually.

[Laughter.]

Senator STABENOW. I just want to thank you and I want to thank all the members of the Committee for showing how the Senate should work. So I appreciate it very much, and I appreciate your leadership, Mr. Chairman.

Chairman ROBERTS. Thank you.

Senator STABENOW. Mr. Hubbard and Mr. Berkovitz, congratulations to both of you, and welcome to your families who are here today. While the two of you will serve in vastly different roles within the Government, both of you will serve in important positions that affect the lives of many people.

Mr. Hubbard, as Under Secretary for Natural Resources and Environment at USDA, you will oversee the U.S. Forest Service. You have had a long and distinguished career working on forestry issues at both the State and the Federal level. As the Forest Service once again faces a challenging wildfire season, we need strong leadership at the Department now more than ever.

We have seen how climate change has exacerbated drought and insect infestations in our forests while more and more people are building homes in forested areas. There is no silver bullet to stopping modern-day mega fires, but the agency must do everything it can to protect lives and property during wildfires.

Our Committee has taken an active role in this topic. In the recently passed omnibus, Congress finally fixed the longstanding issue of the Forest Service's broken budget. The Senate farm bill's forestry provisions build on the omnibus to encourage science-based and collaborative restoration of our national forestlands.

Beyond suppressing wildfires, the Forest Service also manages land for hunting and fishing, timber harvesting, and wilderness preservation, among other important things. Our public forestlands help drive an outdoor recreation industry that contributes nearly \$1 trillion to the economy across the country and certainly a major role in Michigan. It also creates thousands of jobs across the country, and, again, jobs in my home State. Mr. Hubbard, it will be up to you to continue to foster that growing segment of our economy.

Finally, very importantly right now, we need strong leadership to reverse the culture of sexual misconduct that has unfortunately plagued the Forest Service for decades. Harassment and misconduct are not—not—acceptable. The Forest Service must do a better job of establishing a culture where sexual misconduct is not tolerated, where accusations are investigated thoroughly and properly, and where offenders are held accountable.

Mr. Hubbard, if confirmed, you would lead the effort to right the ship at the Forest Service on sexual misconduct matters. I look forward to hearing how you will oversee the agency and demand accountability on these very important issues.

Mr. Berkovitz, you have been nominated as well for a very important position. Farmers, manufacturers, and consumers all rely on our futures and swaps markets to provide stability and certainty, and the CFTC plays a critical role to ensure these markets are free of fraud and abusive practices.

Mr. Berkovitz, you have a tremendous amount of experience and a deep understanding of agricultural concerns. As General Counsel at the CFTC, you helped implement many reforms after the devastating financial crisis. More recently, while in the private sector, you have seen how market participants have applied those rules. It is critical that we never return to the risky behaviors that caused the Great Recession. Millions of hardworking Americans faced job losses and financial ruin through no fault of their own. The CFTC must continue to progress to complete the rulemakings under the Dodd-Frank Act.

For instance, we need movement on the long-delayed position limits rule so that market participants have the clarity they need. The CFTC also must be thoughtful in how it considers changes to its existing rules so that customers remain protected and our markets remain strong.

Thank you again to both of you for being here and for being willing to serve. If confirmed, your work and leadership will have a significant impact on our forests, our markets, and our people.

Thank you, Mr. Chairman.

Chairman ROBERTS. Thank you for your opening remarks, Senator Stabenow.

I now welcome our panel of nominees this morning.

Our first witness today is Mr. Dan Berkovitz, who was nominated by President Trump to serve as a Commissioner on the U.S. Commodity Futures Trading Commission. Mr. Berkovitz most recently was a partner at the law firm Wilmer Cutler Pickering Hale and Dorr, where he was co-chair of the firm's futures and derivatives practice. During this time he served as an adjunct professor of law at Georgetown University. Prior to joining Wilmer Hale, Mr. Berkovitz served as General Counsel for the CFTC from 2009 to 2013. Before joining the CFTC, Mr. Berkovitz served as counsel to the Senate Permanent Subcommittee on Investigations, leading several investigations into what impact speculators have on commodity markets. Mr. Berkovitz received his A.B. in physics from Princeton University in 1978 and his J.D. from the University of California, Hastings College of Law, in 1983.

Mr. Berkovitz, welcome. I look forward to your testimony.

For our next nominee, I will turn to Senator Bennett for the introduction, but before I do, I want to mention Mr. James Hubbard, who grew up in Neodesha, Kansas, and attended Kansas State University before transferring for some reason to Colorado State to study forest management. Senator Bennet may think otherwise, but we just might need to further examine Mr. Hubbard's decision to transfer from Kansas State at some point.

[Laughter.]

Chairman ROBERTS. I now turn to Senator Bennet for introductions.

Senator BENNET. Thank you, Mr. Chairman, and thank you, Ranking Member Stabenow, as well, for holding this hearing. It is my pleasure to introduce a fellow Coloradan, Jim Hubbard, as our nominee to serve as Under Secretary for Natural Resources and Environment at the USDA.

Mr. Hubbard arrives with over 40 years of forestry experience. He served at the U.S. Forest Service for 11 years. As the Deputy Chief for State and Private Forestry there, he promoted a collaborative cross-boundary approach to forest management. Before that, Mr. Hubbard served as Director of the Office of Wildfire Coordination at the Department of Interior where he oversaw the implementation of the National Fire Plan and coordinated across the five land management bureaus. Prior to his Federal service, Mr. Hubbard worked for the Colorado State Forest Service for over 34 years, including 20 years as our State forester from 1984 to 2004. His tenure included the largest wildfire in Colorado history, the Hayman Fire.

Mr. Hubbard is also no stranger to this Committee, Mr. Chairman. In 2013 he testified before our Forestry and Conservation Subcommittee about the growing risk of wildfire and the need to end fire bombing. Now that we have finally ended fire bombing in the 2018 omnibus, I am delighted to welcome Mr. Hubbard back, and I look forward to working with him as new resources become available to safeguard the health of our watersheds. These investments are critical to Colorado. Going forward, we know that the challenges of wildfire will continue to grow in a changing climate, and the conservation of our public lands will be as important as ever with the rapid population growth in Colorado. These trends make it all the more important that we have leaders at USDA like Mr. Hubbard, leaders with decades of experience, with an appreciation for the importance of national forests to our economy, leaders who are focused on solving problems, working collaboratively and thinking creatively. We are fortunate to have such a qualified nominee for that position.

I want to close by thanking Mr. Hubbard for coming out of retirement and offering to serve once more.

Thank you, Mr. Chairman.

Chairman ROBERTS. As is the tradition and custom of the Committee before nominees and witnesses are to provide testimony, we need to administer the oath. If both of you could please stand and raise your right hands. First, do you swear that the testimony you are about to present is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BERKOVITZ. I do.



Mr. HUBBARD. I do.

Chairman ROBERTS. Second, do you agree that, if confirmed, you will appear before any duly constituted committee of Congress if asked to appear?

Mr. BERKOVITZ. I do.

Mr. HUBBARD. I do.

Chairman ROBERTS. Thank you. We look forward to your testimony Mr. Berkovitz.

**STATEMENT OF DAN M. BERKOVITZ, OF MARYLAND, NOMINATED TO BE A COMMISSIONER, COMMODITY FUTURES TRADING COMMISSION**

Mr. BERKOVITZ. Chairman Roberts, Ranking Member Stabenow, and Members of the Committee, thank you for the opportunity to appear before you. It is an honor to be here today.

I would like to thank President Trump for nominating me, Minority Leader Schumer for recommending me, and others who have supported me throughout this process. I also would like to thank the staff for the consideration they have afforded me.

My wife, Michelle, daughter, Zoe, son, Eli, and niece, Elizabeth, are with me here today and I thank them for their steadfast support. My mother is watching this on the webcast back home in Indiana—hi, Mom—and I thank you very much.

The U.S. commodity markets are the strongest—

Chairman ROBERTS. What is your mother's name?

Mr. BERKOVITZ. Anna.

Chairman ROBERTS. Anna, welcome to the all-powerful Senate Agriculture Committee.

[Laughter.]

Chairman ROBERTS. Your son's very lucid and pertinent comments.

Mr. HUBBARD. Thank you. The U.S. commodity markets are the strongest and most liquid commodity markets in the world. These markets are essential to our Nation's economy and to the well-being of millions of Americans. A robust regulatory program is a cornerstone for the strength of these markets.

The basic purpose of these commodity markets is to enable American businesses—including farmers, ranchers, producers, manufacturers, and consumers—to manage the price risks in their business. The regulatory system must prevent and prosecute fraud and manipulation, ensure the safeguarding of customer funds, provide a fair and transparent manner for price discovery, protect customers, and enable innovation. I have had the privilege of working with this Committee on several previous occasions. As Senate staff under the leadership of Senator Carl Levin, I worked with the members and staff of this Committee, on both sides of the aisle, on the legislation in the 2008 farm bill to regulate energy swaps.

At the CFTC, I had the privilege of leading the legislative assistance and drafting team, which provided nonpartisan technical assistance to the Congress—including this Committee—during its consideration of the Dodd-Frank Act. I look forward, if confirmed, to continuing to work with the members of this Committee.

The Dodd-Frank Act, the CFTC's regulatory program to implement the act, and the industry's implementation of those regula-

tions have substantially reduced systemic risks, strengthened market integrity, enhanced transparency, and improved public confidence in these markets.

The CFTC's work to implement the act is not yet complete, however. If confirmed, I will work with my fellow Commissioners to complete the outstanding rulemakings to limit speculative positions, establish capital requirements for swap dealers, and permanently set the *de minimis* threshold for swap dealer registration in a timely manner.

My work in private practice has given me an appreciation of how the CFTC's regulatory program affects end users and market participants. I am aware of the importance to market participants that the CFTC's regulations be clear and applied in a consistent way. I understand the potential impacts of new regulations on businesses. It is critical that the CFTC consider these impacts when enacting new regulations, consistent with the governing statutes.

The CFTC must carefully monitor the commodity markets to evaluate and respond to new information and market conditions. The emerging markets for cryptocurrencies are just the latest example of new market conditions the CFTC must address. The CFTC also must continue to examine its existing regulations to ensure that they serve their intended function and congressional directives in the most efficient and effective manner.

I strongly believe in transparency and openness to public comment. If confirmed, I am committed to close consultation with stakeholders, Members of Congress, and other interested persons.

The CFTC also should continue to consult and coordinate with other Federal regulators to better inform its regulatory decisions and avoid conflicting or duplicative regulations.

Harmonization internationally is important to reduce systemic risk globally, avoid market fragmentation, and prevent regulatory arbitrage. The CFTC should continue to be a global leader in this area.

I am enthusiastic about returning to public service. If confirmed, I pledge to work with each of the members of this Committee to ensure the CFTC's regulatory program serves the public and protects the farmers, ranchers, producers, and customers that rely on the futures and swaps markets.

Thank you for your time and consideration. I look forward to answering any questions you may have.

[The prepared statement of Mr. Berkovitz can be found on page 28 in the appendix.]

Chairman ROBERTS. Thank you, Mr. Berkovitz.

**STATEMENT OF JAMES HUBBARD, OF COLORADO, NOMINATED TO BE UNDER SECRETARY FOR NATURAL RESOURCES AND ENVIRONMENT, U.S. DEPARTMENT OF AGRICULTURE**

Mr. HUBBARD. Chairman Roberts, Ranking Member Stabenow, and members of the Committee, I thank you for your time and consideration today for my nomination as Under Secretary for Natural Resources and the Environment at the U.S. Department of Agriculture. I would like to thank President Trump for the nomination and Secretary Perdue for his support.

I was raised in Kansas, and it was a good upbringing, sir. It was with the working people close to the land. My commitments run deep. I did marry my wife, Cindy, 53 years ago, and she is with me here today. Three daughters and seven grandchildren are not, but they, too, are watching.

My professional career was 48 years of public service in Oregon and mostly in Colorado, with 20 of those years as the State forester. The Hayman Fire, as was mentioned, that became a dominant issue in the State. It showed us that we did not have room for those large fires where we had people and development along the front range of Colorado anymore, and we needed to do something about it. The "something about it" necessarily meant crossing boundaries. It was not one ownership. It was multiple ownerships, and you had to do it at a scale that would make a difference.

Out of that working across those boundaries came the Good Neighbor Agreement. The Good Neighbor Agreement allowed the State and the Federal agencies to coordinate on implementing high-priority projects. That was a pilot in Colorado. It proved useful enough that it became permanent and national.

I continued national policy work with the National Association of State Foresters. I served as their legislative chair for 10 years, and that is the 50 State foresters dealing with a bipartisan agenda, and in 1990 I was president of that association, and in 1990 we were part of passing the first Forestry Title in the farm bill, as were some of you. I thank you for that.

I moved to D.C. full-time to work on fire issues with the Department of Interior and with the Forest Service. I retired a little over a year ago, but for some reason I still feel the need to serve. In that regard, I would like to turn to three priorities that I would deal with, if confirmed.

No. 1 would be provide a safe, inclusive work force, workplace.

No. 2 would be increase sustainable active land management. More work needs to be done. That work needs to be a shared priority with the States. It needs to be across those boundaries and at scale.

Third, I would pay attention still to this issue of fire and fire protection across jurisdictions. We need agreements. We have agreements, but we need further agreement on fire response, on risk mitigation and hazard reduction, and on community protection.

Specifically to the first priority, Secretary Perdue speaks of doing right by everyone. I subscribe to that, and I would personally provide the leadership to ensure everyone is free of harassment. All instances would be quickly identified; and accountable actions would be taken. The Financial Stability Oversight Council has already taken some steps, but it would be my first briefing to find out where they are. It would be to reinforce their actions and strengthen as needed. Harassment has no place anywhere.

To conclude, I would like to thank Congress for addressing the fire financing issue and the forest management provisions provided in the omnibus bill. This is a big step toward improving the health of our Nation's forests. I pledge that these forests and grasslands have a sustainable future. We have a unique asset in our natural resources, and I would want to see that continued.

I am honored to be with you today. I thank you, and I look forward to your questions.

[The prepared statement of Mr. Hubbard can be found on page 31 in the appendix.]

Chairman ROBERTS. We thank you, sir.

Mr. Berkovitz, in your opinion, what is a hedge? That sounds pretty simplistic, but I want to get into what flexibility should be provided regarding what is considered a bona fide hedge. How will you ensure hedging is reflective of the risk management needs of farmers and ranchers and growers and those who purchase from them, especially in these uncertain times with regards to our country's trade policy and so much retaliation that we are experiencing?

Mr. BERKOVITZ. Thank you, Senator. A hedge is really when a farmer, for example, wants to ensure that they have a predictable price for the crop that they anticipate coming to harvest, that they can go on the futures market and purchase or sell a futures contract. If they are growing a crop, they would sell the futures contract to ensure that they would have a definite price for the sale of that crop in the future, and that way there is price stability and predictability and the farmer is protected against future volatility and price swings.

A fundamental purpose of the futures markets is indeed to enable farmers, ranchers, producers, manufacturers, and users to obtain such price protection, to protect them against price risks and ensure that stability.

In the Commodity Exchange Act, Congress has directed the CFTC to protect hedgers and end users in a number of aspects. For example, under the position limits regime, speculative positions are limited, but hedging positions are not limited. So the CFTC needs to be cognizant of those needs in that community in numerous areas that it regulates.

Chairman ROBERTS. I appreciate that. Crop insurance has become an increasingly critical risk management tool for farmers, ranchers, and growers. It is a longstanding priority for me and our distinguished Ranking Member. Given the direct relationship between futures markets and crop insurance, specifically as a pricing benchmark at planting and harvest and a volatility indicator, what is your opinion on the role of speculative investment through managed funds, index funds, and similar instruments? What impact have they had on volatility and convergence in commodity contracts and ultimately impact the effectiveness of the crop insurance program? I might add when the distinguished Ranking Member and I were conducting hearings all across the country, crop insurance was the No. 1 issue, and it is especially important today with some of the extreme weather that we have experienced, not to mention, and I will say it again, a big question mark with our trade policy.

Mr. BERKOVITZ. This is, I think, one of the fundamental purposes and the reasons why, if confirmed at the Commission, I would work with my fellow colleagues to establish a position limits rule on speculative positions to ensure that speculative positions do not have any undue impact or effect on commodity prices. That is one of the purposes of those regulations, and CFTC has some additional work to do to complete the rulemakings that Congress laid out in

the Dodd-Frank Act. I think those rulemakings and those speculative position limits are important to achieve those goals.

Chairman ROBERTS. Mr. Hubbard, how do you view the role of proactive forest management as a tool to prevent, mitigate, and address wildfire? If confirmed, how will you lead the Forest Service to promote more forest management on the national forest system? Senator Daines—we had a wonderful meeting up in his State, Montana, and then Secretary Perdue, one of the best meetings that I have had with regards to sitting down with folks and on the wagon talking, asking them questions. Then we went up to Glacier National Park, and as you go down into Lake McDonald up there, still that forest fire of 2003 is still gray, some green coming up. There is what they advertise as a “senior walk” through the forest. The people who were in charge of that determined that that would be the appropriate walk that my wife and I should take. I insisted that was not the case but agreed. But even in that, just about half a mile up the road on the Going-to-the-Sun Highway, you go in there, and I was stunned with all the old forest growth. All it takes is one lightning strike or some incident.

I think last year Montana had 27 fires. If Senator Bennet were here, he could name the number right off with regards to Colorado. This has become just a top priority for you, and I know you mentioned that in your comment. Please respond.

Mr. HUBBARD. Thank you, Senator. I think that we should recognize that our Western forests are in a condition that are going to continue to be a problem, and it is vast acreages. A lot of that forest was created by disturbance, and it is at the point in its life cycle where it is ready to be regenerated by disturbance—fire, insect, disease. So that will be with us.

More active management does help, and you just have to pick the right places to make your investment. The Forest Service has good analytics to determine those choices, but I do not think it can be just the Forest Service alone. I do believe in cross-boundary work, and I do believe in sharing the priority decisions based with the States. My approach, if confirmed, would be to sit down with the States and determine where we can do the most good and where we should make our investment.

Chairman ROBERTS. I appreciate that.

Senator Stabenow?

Senator STABENOW. Thank you, Mr. Chairman.

Just to follow up on the improvements that we made, the tools that we made available in the omnibus and how we move forward in managing that, the package that we passed Secretary Perdue called “meaningful reforms and forest management tools.” However, Chief Christiansen indicated little work has been done yet on the new tools, and so my question is acceleration. How do you intend to really accelerate the use of the new authorities that we gave earlier in the year, particularly with the threats to the forests?

Mr. HUBBARD. Thank you, Senator. I do strongly believe in sharing that space with the States, so that would be my first step, is to sit down. What are our priorities? Where should we do our work? It is good that we have the range of tools because we are

going to find we need different things in different places. That is helpful in making that happen.

The acceleration is going to come from the leadership of the Forest Service, and it is going to come from meeting with those regional foresters and having those regional foresters be a part of that discussion with the State. Then I would intend to publicly announce what our intentions are and go to work.

Senator STABENOW. We have also added some new budget flexibility, and so looking longer term, do you at this point have thoughts on how you would use that flexibility?

Mr. HUBBARD. I do. The Forest Service is an agency, I believe, that wants to meet expectations. They just need to know what those clear expectations are and what their focus is. I would suggest that we focus on more active management, applying those tools with the State, and then pay attention to where we need to do hazard reduction for fire protection, especially around communities.

Senator STABENOW. Thank you. Then speak a little bit more about what has happened in terms of the culture of the Forest Service. Last week USDA provided the Committee with data showing that over the past 2 years alone—we know this has been going on, unfortunately, for a long time, but during the last 2 years, the Forest Service had 183 reports alleging sexual harassment. Of the 128 cases that they have closed so far, they found 77 confirmed cases of misconduct. These are high numbers, really, for an agency.

How would you personally address this coming in and providing new leadership? Also, I want to make sure that the people bringing these complaints do not face retaliation. So how do you intend to approach that as well?

Mr. HUBBARD. Those are good points, Senator. Thank you. I really would, if confirmed, make my first briefing from the agency what are they doing here and bring me up to speed on what is happening and help me explain it better and especially help me understand what actions they are taking. This idea that it is safe to come forward is essential, and I would stress that, the idea that we quickly followup and that we do take action and that we send that signal to everybody, because I firmly believe, regardless of the number—even if it is just one—harassment has no place.

Senator STABENOW. Thank you. We will be working with you closely. This is an area that really needs your leadership.

Mr. Berkovitz, given the considerable progress that the CFTC has made during the passage of Dodd-Frank and the implementation of the Commission over the last number of years, what is your philosophy on how the agency should proceed in terms of the years to come?

Mr. BERKOVITZ. Thank you, Senator. As I said and as you have noted, I think the agency has made substantial progress in implementing Dodd-Frank. Dodd-Frank has substantially improved the resilience of our financial markets, and reduced systemic risks. That does not mean our work is complete. You cannot just address the last crisis. You have to be vigilant to examine evolving market conditions and try to get ahead of the curve. Financial crises never appear in the exact same way. New risks are continuously emerg-

ing. We are seeing cryptocurrencies and various other things, new products come onto the market.

So one of the things that I would do, if confirmed, is try to get ahead of the curve on these. Use the data that the agency is getting, ensure it is good-quality data, that the agency can use the data, and have our market experts look at the data and inform the Commission of emerging risks. I think it is very important to be proactive in these markets.

Senator STABENOW. I agree with you, and I am wondering what do you think the most important thing is that the CFTC can do to better ensure that we do not return to the excessive risks that caused the Great Recession.

Mr. BERKOVITZ. Well, I think we need to continuously watch these markets and we need to get better data. The agency is getting a lot of data. It has to improve the quality and consistency of that data, and it has to ensure that it is properly interpreting that data to stay ahead of the market conditions. So I would put significant effort in that regard.

Senator STABENOW. Thank you.

Thank you, Mr. Chairman.

Chairman ROBERTS. Senator Boozman.

Senator BOOZMAN. Thank you, Mr. Chairman. Thank you all for being here, and thank you very much for your willingness to serve.

Mr. Hubbard, I am pleased that you talked about forest management. You talked about it, Senator Roberts talked about it. I think it is important to many of us on the Committee. It is important in the sense of for all kinds of reasons: habitat, water quality, erosion, and the list goes on and on. I do not want to go further than that, just to say that we do appreciate your efforts in that regard.

You have been around for a long time in the public and private sector, and you have lots of experience. You have seen all kinds of different projects through the years. Some have worked well, some have not worked so well in the Forest Service and others.

Can you talk about some projects that you feel like that maybe we need to invest more in? Then also maybe talk about some projects that are not working as well.

Mr. HUBBARD. Certainly. Thank you, Senator. The projects that work well that I have found is where we are working together, and that is what brought me from the Good Neighbor Agreement in Colorado following fires to try to reduce the wildfire risk across those boundaries. The Hayman Fire essentially missed the edge of Denver mostly because of a prescribed burn that the Forest Service had done, a controversial prescribed burn because it occurred over a 2-week period and it put a lot of smoke in the air. People did not like that. In the end it is what saved southwest Denver from that fire. It was not just on national forest. I crossed that boundary.

So this idea of working together to decide what our priorities are and the idea of implementing those priorities across that boundary at a large enough scale to make a difference becomes very important in trying to deal with those issues.

Further than that, the kind of assistance that you have seen provided for landowners is critical. Landowners are good stewards. They want to make the right kind of decision. When they have the help in making that kind of decision and they have the kind of col-

laboration and coordination across the boundary, they will produce a healthy forest.

Senator BOOZMAN. Very good.

Mr. Berkovitz, we had a good meeting yesterday—I enjoyed that—and had a good discussion. We talked about the importance of and understanding of agriculture. The CFTC really initially was for that, for hedging for our farmers and things like that. Now it is much more than that. It has gotten very, very complicated.

Can you talk a little bit about, if you are confirmed, how you are going to engage in those involved in agriculture to better understand and then also for them to better understand, you know, exactly what goes on with the Commission?

Mr. BERKOVITZ. Thank you, Senator. I very much look forward to continuing to work with the agricultural community and groups. When I was on the Senate staff on the Senate Permanent Subcommittee on Investigations, we were examining various commodity markets. That is when I first became acquainted with the agricultural markets and their rich history and really the unique history of each of the markets. We talk about the agriculture markets, but for each of the crops how the futures markets work—they can be very different. Each agricultural crop has unique market characteristics, and I have always enjoyed learning about those and working with the various groups. I would look forward continuing to work with those groups to be educated on how the CFTC's regulatory program affects each of the agricultural commodities. I intend to have a very open, transparent office, and I invite folks to come in and meet with me if there are concerns, if they need further information about what the CFTC is doing. I am also very willing to go out and meet, to go and visit folks in their communities and in the various States. So I am very much looking forward to continuing to work with agricultural groups.

Senator BOOZMAN. Very good. Thank you. I do not have time to ask the question, but I do want to express to you, Mr. Berkovitz, we talked yesterday about the EU's proposal to expand their regulatory and supervisory authority to require all foreign central counterparties to register with the EU. I am very, very concerned that this could require the U.S. CCPs to implement additional EU law above and beyond our U.S. laws. So to maintain our sovereignty and thus maintain our markets I think is very, very important.

Thank you, Mr. Chairman.

Chairman ROBERTS. I would encourage the Senator to submit that question for the record.

Senator KLOBUCHAR?

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. Congratulations to both of you.

I think I will start there with Mr. Berkovitz on the renewable fuels and the standard and the RINs. In March the CFTC entered into a Memorandum of Understanding with the EPA related to the RINs market, and those are the renewable identification numbers. This included the EPA sharing the RIN data and information so that the CFTC could better advise about ways to minimize fraud.

What advice would you provide to the EPA regarding the RINs market as a Commissioner? As you know, Senator Grassley and I



have led a number of letters, and others on this Committee have been involved. The issue is that the EPA has been granting a bunch of waivers—now the Secretary is gone, so we hope that stops—to oil refineries, and we believe the best way to get out of this is just by blending fuels and moving ahead. I wanted you to talk about what could happen with this RINs market and what we have to watch out for given what we have been seeing.

Mr. BERKOVITZ. Well, Senator, thank you for the question. I would very much look forward to implementing that Memorandum of Understanding and continuing to provide that technical assistance. The CFTC has a lot of experience and I think it can offer to the EPA much in the area of that experience and assistance in helping EPA meet its responsibilities with respect to that market. I certainly would support the CFTC providing whatever technical assistance they need.

Senator KLOBUCHAR. Do you think that there is current information on trading data? Do you think that that would increase transparency if they had that just based on your experience with other markets?

Mr. BERKOVITZ. I would have to look more deeply into that when I am over at the agency, but I would definitely look into that and do that when I am over there. Thank you.

Senator KLOBUCHAR. I appreciate it. Your mother will be proud if you do that, so thank you.

With you, Mr. Hubbard, I am going to turn to some of the issues on forestry and fires. The Forest Plans for the Superior and Chippewa National Forests in Minnesota for the management of both young and old growth habitats are in place. Grasslands, pastures with shrubs, young forests, known collectively as “early successional habitat,” can have significant benefits for game species and forest health, but their development requires an active and sustainable timber program.

How will you ensure that the national forests in my State and other places meet Forest Plan goals for these types of early successional habitats?

Mr. HUBBARD. Thank you, Senator. When I spoke of the Forest Service needing some focus, that is part of it, that more work on the ground for sure needs to be done. We need to find ways of focusing on that work and getting it done.

I believe even with the national forests that they operate within a landscape that is a larger scale, so I think the idea that we collaborate on the actions to be taken and that then we publicly declare ourselves accountable is a step. The work needs to be done for sure, and we are not doing enough.

Senator KLOBUCHAR. Right. We have worked, of course, to expand the Good Neighbor Authority, and in the 2018 bipartisan budget agreement, in this farm bill, as noted and you noted there are some provisions. Senator Daines and I have a provision in there to improve coordination across Federal and private boundaries. I think there is good work and acknowledgment on a bipartisan basis, but we are still having these fires, and I think there are still huge management issues of the forests. So if you could just in the last minute just walk through how you would actually implement some of these plans.

Mr. HUBBARD. Certainly. Thank you. I would begin by approaching the State and deciding priorities, that if we cannot cover everything, what is most important? Where do we want to focus our work?

I would then go to those regional foresters and say: We have got a lot of assets. How do we want to apply those assets? Because right now a priority would be to get more active management on the land, especially where that active management reduces wildfire risk and protects communities.

So the Forest Service can come up with those plans, but I want to do the comparison with the State to decide where it is most important to implement those plans and get those projects underway.

Senator KLOBUCHAR. Thank you.

Chairman ROBERTS. Senator Fischer.

Senator FISCHER. Thank you, Chairman Roberts and Ranking Member Stabenow, for having today's hearing.

Agriculture is the backbone of Nebraska's economy, and it is a big part of my own life. As a rancher, I know that agriculture can be a very risky business. Ag producers often seek to hedge their products using commodity derivatives. The Commodity Futures Trading Commission plays a crucial role in ensuring that there is a stable, liquid, and transparent market.

Mr. Berkovitz, if confirmed, you will be taking a leadership role in an agency during a critical time, and you will be forced to address many difficult challenges, and I look forward to learning more about your background and qualifications for this role, which is so important to my constituents and all Americans.

Mr. Berkovitz, in your testimony you say that the American commodity markets are the most liquid in the world. I do not need to tell you that our farmers and ranchers rely on these markets to hedge the price of the products before harvest. When markets become not as liquid, it is harder for them to hedge or effectively ensure their crops. It also may raise the cost of these hedges. So can you, broadly speaking, identify what you see as the biggest threats to this liquidity?

Mr. BERKOVITZ. There are a number of issues that I think the agency has to be on the watch for in this respect with various products. It really depends on the various particular products, the evolving cash markets for some of these products, evolution for certain of the products themselves, different risk management tools can change liquidity characteristics, the availability of bank loans, and the nature of the participants in these markets. In some of our markets we have seen a withdrawal of participants. There are fewer participants. That has made it more difficult to obtain hedges for products further in the future. That has been a concern in a number of markets.

So I think we have to look at how certain markets are evolving, the impacts of various economic conditions and regulations on participants in the markets, and be vigilant in terms of how that is affecting the liquidity in the markets.

Senator FISCHER. As you know, when markets are not as liquid, the price goes up, and it goes up for farmers. When I am home in Nebraska, I speak to community bankers who tell me of the difficulty of offering such products for fear of running afoul of the

Volcker Rule. I also speak to farmers who cannot get these products. You alluded to that in your previous answer.

These farmers and these community banks are not the Wall Street traders that the Volcker Rule was meant to regulate. These farmers and bankers did not cause the financial crisis. Farming is a risky business, but they are now required to take on even more risk.

Can you comment about the recent moves by the Federal Reserve to change the Volcker Rule?

Mr. BERKOVITZ. The Federal Reserve and the CFTC have proposed rules to amend the Volcker Rule, and one of the things in that proposal was to establish various tiers of compliance and lesser degrees of compliance depending on—lesser requirements depending upon the size of the bank. So that is something that the Federal Reserve has proposed and the other financial regulatory agencies, including the CFTC, have proposed to lessen the obligations upon banks with lesser assets.

The public comment period for that is out, and if I am confirmed, I very much look forward to reviewing the comments on that proposal to looking at those comments, consulting with the Federal Reserve and the other prudential regulations, my fellow Commissioners, and making a decision on that proposal.

Senator FISCHER. If I can follow up with that, we did pass bipartisan legislation that was authored by Senator Crapo from Idaho, the Banking Committee Chair, and the goal of this bill was to provide targeted relief to community banks. The bill has a provision exempting banks under certain asset thresholds from the Volcker Rule. Again, you mentioned that in your answer. Can you get a little more in the weeds possibly about your vision for implementing this along with these new proposals that are coming forth?

Mr. BERKOVITZ. Well, obviously, to the extent that Congress has specified the particular exemptions, obviously it is the obligation of the CFTC to do that. Where there is discretionary authority, I think the CFTC has to be very cognizant of those concerns that have been expressed, consider the costs and benefits of the various proposals, the impacts on liquidity in the markets and the compliance obligations, at the same time ensuring that there is compliance. So I would look very carefully at those.

Senator FISCHER. Would you agree that the legislation that was recently passed, though, is obviously beneficial, not just to community banks but to people in agriculture as well?

Mr. BERKOVITZ. Absolutely, absolutely.

Senator FISCHER. When you look at that threshold we have for the assets.

Mr. BERKOVITZ. Absolutely. Yes, Senator.

Senator FISCHER. Okay. Thank you.

Thank you, Mr. Chairman.

Chairman ROBERTS. Senator Heitkamp.

Senator HEITKAMP. I am the proud co-author of Senate bill 2155, and we certainly think that community banks have, in fact, received the kind of relief that allows them to overcome the challenges of Volcker. We encourage additional discussion—or at least I do. I should not say “we.” So I look forward to hearing your concern.

One of the questions that I have as we look at the commodity markets and as we look at the futures markets, obviously we are in a difficult time for a lot of commodities today as we look at what is happening with soybeans, what is happening with corn, whether it is disruption, as Amy pointed out, in the E15 rules or in allowing basically small refiners to get exemptions, therefore giving the volumes out the back door. This all has an effect on the corn markets. I think as we look at disruption in trade, that is going to now raise some concerns about how the futures markets are responding.

I would just like to hear any comment that you have, Mr. Berkovitz, regarding how this trade war could, in fact, impact the work of this agency.

Mr. BERKOVITZ. Thank you, Senator. I am aware that due to a variety of factors there have been significant declines in prices for a number of commodities. Weather and the trade issues have been reported as factors. I have not had the opportunity yet to look closely into this. I am basically reading—my knowledge is limited right now to what I am reading in the press. Certainly, if confirmed over at the agency, I would very much look into the markets. There is a Market Surveillance Unit at the CFTC which follows these, and I would get together with the experts at the CFTC and get on top of exactly what is happening in our commodity markets, why we are seeing these price declines in certain of these markets at this time.

Senator HEITKAMP. Well, I can tell you with some certainty we are seeing a price decline because we are losing markets. When local grain elevators in North Dakota will not take soybeans, that tells you something about what is happening with commodity prices. So I think it is important that we not find—I think people who would take advantage of this trade war into speculation beyond liquidity, I mean, there is a fine line between liquidity and speculation. We are always looking for it. It depends on—you know, if you look at the cattle markets, obviously I think the cattle markets are one of those markets you have been talking about, which is we see fewer entrants, and it is becoming more and more difficult to find liquidity in the cattle markets. Obviously we have had the Chairman out, who spent a lot of time, and I think he can brief you very well on what the concerns are of North Dakota cattlemen as it relates to the futures market.

I want to turn to you, Mr. Hubbard, and thank you again, both of you, for your willingness to advance your careers, provide us with great public service. Mr. Hubbard, there are two issues that I want to address beyond all the regular ones. We spend a lot of time with the Forest Service by an anomaly of history. You have grasslands in my State, and that means the grazing associations are constantly running up against unnecessary and, I think, onerous kinds of regulations. One of the great problems they have right now is prairie dogs. I do not think we always feel like we have gotten the right kind of response from the Forest Service. I want you to take a look at the prairie dog issue. It literally will destroy your grasslands if we do not get out ahead of this. There are a lot of people who have, I do not know, some kind of attachment to prairie dogs. There is no rancher in North Dakota who has an attachment to prairie dogs. I will tell you that.

The other question that I want to raise, and I raised this with your predecessor, and that is a case that I was involved in when I was Attorney General in North Dakota. It is a case involving section lines. The grasslands were reacquired in North Dakota. We argued, and I think with a great deal of persuasive legal reasoning, that when the Forest Service reacquired those, they reacquired those lands with the impediment or with the easements embedded into those lands. By a fluke of the Department of Justice arguing that we were not timely—and I can get into a whole discussion, but I do not have a lot of time, and I know the Chairman is going to beat me up here pretty quick. I would ask that you look at that case that was decided in the North Dakota District Court, that you try and do right by the State of North Dakota, that tried to do right by the Forest Service and the Federal Government, and it feels like they got burned by being patient. So if you could look at that section line case, and obviously we need to get out ahead of the concerns that our ranchers and our grazing associations have regarding prairie dogs.

Thank you. Thank you both.

Chairman ROBERTS. Thank you, Senator.

Senator Hoeven?

Senator HOEVEN. Thank you, Mr. Chairman and Ranking Member, and thanks for having this hearing today. I also appreciate the witnesses being here.

Mr. Hubbard, I want to start with you, and I would like to invite you—if Senator Heitkamp did not already do it, I want to invite you to North Dakota, and I hope you will come out and check out our grasslands.

Mr. HUBBARD. I would be happy to, Senator.

Senator HOEVEN. All right. Good. We look forward to that, and you will love it. You will love to meet our ranchers. It is a great group. They will have some good questions for you and some good suggestions for you on the grasslands.

We have multiple uses on the grasslands, obviously, and so both our grazing associations and our grazers do a great job. I really do think you need to be out there on the ground and get a good understanding of the grasslands and meet with them and listen to them. You know, I am serious about you coming, and I guess my first question is: Will you commit to working with us to maintain and strengthen the relationship between the Forest Service and our grazers, our energy industry, and the other multiple uses on the grasslands?

Mr. HUBBARD. Thank you, Senator. Yes, I will commit to doing that. I think any of that public ownership has to be a good neighbor to everybody else, and I believe that comes face to face.

Senator HOEVEN. Good. I agree. I think you learn a lot by being there, and the other thing is you will build some relationships that will be helpful. There is no question about it.

The next thing, prairie dogs is a good example. I do not know if you have been out there, but the prairie dogs are overrunning the place, and we need some help. So give me your thoughts on that.

Mr. HUBBARD. It comes back to being that good neighbor. We cannot ignore the impacts that those lands have on the neighbors and the community, the ranching community. So I am not familiar

with specifically what is going on in North Dakota, but I would, if confirmed, be glad to come find out.

Senator HOEVEN. Well, see, these Montana prairie dogs come over.

[Laughter.]

Senator HOEVEN. They are taking over the place, so we either need to do something, or if you can get them to go back to Montana, you follow me? I am teasing there a little bit.

The same thing on infrastructure, we have a lot of energy development, so does eastern Montana. We have a great neighbor in Montana. We appreciate them. We are working on a lot of the same issues, so with prairie dogs, and another is energy development, and we need to build the infrastructure so you reduce and mitigate impacts, we capture natural—but to do that, we have got to get permitted. So talk to me about that, how you are approaching that issue.

Mr. HUBBARD. I would have to become more familiar with that issue, but I do know that that kind of process comes with Federal land and it sometimes is burdensome and slow, and streamlining it would be a priority.

Senator HOEVEN. Boy, you hit the right word there, “streamlining.” I mean, you nailed it there. It is slow. It is to everyone’s benefit to streamline the process and get it done.

Another is section lines. We have section lines—we have a section line law there that gives us access on the section line, which our farmers and the areas we farm, but our ranchers need as well to get access. So would you commit to working with us on the section line issue?

Mr. HUBBARD. Absolutely, I would.

Senator HOEVEN. All right. Then also on controlled burns. There you have just got to work with the locals. That is a commonsense thing. We need a real commitment that you are willing to work with the locals.

Mr. HUBBARD. Have to. Thank you, Senator, because there should not be no prescribed fire that all the neighbors are not aware of and accept.

Senator HOEVEN. Thank you. I appreciate it, Mr. Hubbard.

Mr. Berkovitz, how do we make sure that CFTC works in a way for our—I mean, I think the big guys always find a way to make it work. How do we make sure that that end user, that farmer, that rancher, you know, the smaller ag companies who are trying to hedge their business practices, how do we make sure CFTC works for them, that it is transparent, that the costs are reasonable, and that they can do what they are trying to do, which is hedge their business?

Mr. BERKOVITZ. Thank you, Senator. Absolutely, those are the fundamental objectives and the purpose of our commodity markets, indeed, as you have laid out, for the farmers and ranchers to be able to hedge in those markets. The CFTC needs to be and must remain vigilant and cognizant of those effects in everything it does. I pledge, if confirmed, I certainly will be receptive and open to agricultural producers and farmers and ranchers to their concerns, to meeting with them, to go visiting with them, to discuss their con-

cerns. I will have an open-door policy and be receptive and open to that.

Senator HOEVEN. How do you make sure the credibility is there so, again, for that small end user that is just trying to manage business risk, he does not feel like these big hedge funds, these big firms, derivatives, and all these different things are manipulating or distorting markets? How do you make sure, A, they do not and that people can have confidence that they are not, that that is not happening?

Mr. BERKOVITZ. Well, certainly there are a number of aspects to gain that confidence. Certainly being open and receptive to public comment is one of them, but also the enforcement program, when somebody violates the law, manipulates the market or there is fraud, to vigorously prosecute, regardless of size, and to enforce the law equally and fairly across all market participants.

Senator HOEVEN. Good. Thank you. I appreciate it.

Chairman ROBERTS. Senator Donnelly.

Senator DONNELLY. Thank you, Mr. Chairman, and I want to thank the witnesses for being here.

Mr. Hubbard, when people think of Indiana agriculture, conventionally everybody thinks about corn and soybeans. Among our most valuable industries in the State is hardwood production. We are home to the Hoosier National Forest, which is a source of great pride to our State. Our forests face a little bit different challenge than those facing the national forests out West. Climate change is bringing new pests and making management more difficult. Our hardwood production is also done primarily on private and State lands, but the Forest Service's expertise and policies are really impactful.

Can you commit to me that protecting the Hoosier National Forest and making sure that the Forest Service is responsive to the unique needs of Indiana's forests is an important part of the mission that you will be taking on?

Mr. HUBBARD. Thank you, Senator. Without a doubt, I can commit to that. I spent too much time as a State forester not to appreciate that, and with the Forest Service, too. So I think I understand both worlds.

Senator DONNELLY. Well, when you do have a chance—I know you will be busy getting started, but when you do have a chance, we would love to have you come out and go for a hike with us.

Mr. HUBBARD. I would be pleased to.

Senator DONNELLY. That would be great. We will bring the water.

Mr. Berkovitz, I have been advocating for a long, long time that position limits are an incredibly important tool in the toolbox of CFTC to be able to prevent market manipulation. We are now approaching a decade after the financial crisis. CFTC has yet to finalize a position limits rule as required by Congress. Will you commit to working on finalizing a good position limits rule in a timely fashion?

Mr. BERKOVITZ. Absolutely, Senator. I agree that it is essential that the CFTC complete that rulemaking in a timely manner, and if confirmed, you have my commitment to work with my fellow Commissioners toward that goal.

Senator DONNELLY. Great. What other issues do you consider priorities for the CFTC to address in the near future?

Mr. BERKOVITZ. I think in the near future there are several additional rulemakings that have been proposed. There is the rulemaking on the *de minimis* threshold, how large somebody is before they have to register as a swap dealer. The public comment period closes on that next week, I believe, and I believe it is important for the CFTC to complete that rulemaking in a timely manner.

I believe it is important for CFTC to be ahead of the curve on the cryptocurrency issue. There are significant regulatory issues, market integrity issues associated with cryptocurrency, and I think it is important that the CFTC be vigilant in that area as well.

Senator DONNELLY. Thank you to both of the witnesses. Thank you to your families for your willingness to serve our country. Thanks.

Mr. Chairman, thank you.

Chairman ROBERTS. Thank you, Senator.

We now have the distinguished Chairman of the Conservation, Forestry, and Natural Resources Subcommittee, whose strong interest and contribution with regards to forest management is welcome by all members of the Committee. Senator Daines.

Senator DAINES. Thank you, Chairman Roberts, Ranking Member Stabenow, and again, I appreciate your leadership on this Committee, the strong vote for the farm bill that got out of here, as well as translating to a strong vote on the Senate floor. That is not easy, and it is the steady hand of leadership, the two of you working together—

Chairman ROBERTS. That vote again, Senator?

Senator DAINES. What is that?

Chairman ROBERTS. What was that vote again?

Senator DONNELLY. Mr. Chairman, I think it was 86 in favor on the floor, and we had—86 in favor, yes.

Chairman ROBERTS. Two were out that would have voted for it. [Laughter.]

Senator DAINES. In Montana high school basketball, they declared the mercy rule and called the game early in that situation, so that is a good score.

Senator DONNELLY. Well, I think if your record is 86 and 11, you are in first place in baseball, too.

Chairman ROBERTS. All right.

Senator DAINES. Second, before I speak with the witnesses, I want to thank you for your comments earlier regarding forest management. Your visit to Montana, seeing it firsthand, Mr. Chairman, was greatly appreciated. We have got a lot of work to do there, and I appreciate the support we have had in this Committee, the Agriculture, Nutrition, and Forestry Committee. Thank you.

Mr. Berkovitz and Mr. Hubbard, congratulations on your nominations, and thank you for your willingness to serve, truly.

Mr. Hubbard, I very much enjoyed our recent visit regarding your nomination to be the USDA Under Secretary for Natural Resources and Environment. This is really important for Montana. This position oversees the management of approximately 17 million acres. With all due respect to the Senator from North Dakota, we tell North Dakota jokes, and they tell Montana jokes. I think that



is bigger than North Dakota, but I am not sure. That is probably not true.

Anyway, unfortunately, chronic litigation, insects, disease, wildfire, and other management issues continue to impede the Forest Service from fully carrying out its true multiple-use mission. As we speak, the fire season is just getting started in Montana, with significant wildfire potential expected for the remainder of the summer, despite higher than average snowpack, good spring rains. That just generates more grass and fuel, and we are going to probably have a tough fire season, it looks like, in the northern Rockies, particularly Montana.

I am fighting for three buckets of reform, Mr. Hubbard: reducing red tape, combating fringe litigation, and increasing the partnership between the Forest Service and State foresters in our national forests. While recent legislation included some good reforms, I want to say very clearly that Congress should do and must do much, much more.

Mr. Hubbard, the Forest Service indicates it takes an average of 3 to 4 years to prepare an EIS for a major Federal action that significantly affects the environment. Those are in quotes, "major Federal," "significantly affects." Further, it takes an average of 2 years to prepare an environment assessment for less impactful decisions. One rough estimate from the Forest Service indicated the agency spends nearly \$1 million every day to carry out the agency's environmental analysis.

Do these timeframes seem reasonable to you? Do you support efforts to streamline the environmental review process while at the same time retaining very important public input?

Mr. HUBBARD. Thank you, Senator, for all of that. The public input is critical, and the western movement toward more collaboratives in helping to resolve that has proven useful. Those timelines are frustrating. Those timelines to people who put that much work in coming to a compromise agreement is—it is just not right. So, no, I do not consider those timelines acceptable, and, yes, I think some streamlining would be necessary, still protecting that public involvement.

Senator DAINES. I want to shift gears and talk about the cottonwood new information requirement. The Ninth Circuit has a disastrous cottonwood decision ruling that triggers plan-level consultation requirements when "new information is made available," which occurs constantly. This results in more red tape and makes the Forest Service vulnerable in the courtroom all for a negligible conservation benefit. In fact, since January 2016, there have been at least six lawsuits involving ESA new information claims. In the same time period, the Forest Service received at least ten other notices of intent to sue, raising ESA new information as an issue in land management decisions. Unfortunately, the recent legislation that we passed did nothing to address this component of the cottonwood problem.

Mr. Hubbard, would you work with me to address this new information loophole?

Mr. HUBBARD. Thank you, Senator. Yes, sir, I would work with you, if confirmed, because you have made some progress, but there is still some work to be done.

Senator DAINES. Keep in mind with this cottonwood decision, in the last Congress we had the Obama Administration on board, we had bipartisan support. The problem is we have got a little bit of a moving target here as well on cottonwood. Thank you for your willingness to move there.

Mr. Chairman, could I ask another question? I am over my time, but—

Chairman ROBERTS. Certainly.

Senator DAINES. Okay. Thank you. I want to talk about pilot arbitration. In Montana there are currently 29 timber projects involving 230 million board feet of lumber, timber. I grew up in the housing business. That is a lot of houses. They are now currently impacted by lawsuits. In addition, there are 24 forced restoration projects in Montana which have been halted by injunctions. An arbitration pilot would ensure that we get swifter resolution to these legal challenges, not to stop the legal challenge but just try to get it done more quickly and more cost-effectively.

Mr. Hubbard, do you support establishing a pilot program, a test program, to resolve disputes regarding forest management projects through arbitration rather than the courtroom?

Mr. HUBBARD. Senator, I, if confirmed, would want to work on that issue. I need to know more about it, and I need to figure out what all the aspects are. That is part of one way of streamlining some process that gets work done, and, yes, I would be interested in—

Senator DAINES. Thank you. Well, as I wrap up, Mr. Hubbard, you have been a champion of the Good Neighbor Authority. Thank you. You have been a champion since its inception. You have been a strong supporter facilitating efforts to cross ownership boundaries. In States like Montana, it is important when we share a fence line, Good Neighbor is very important so our national forests are better managed. I very much look forward to your much-needed leadership, as it were, to achieve all three buckets of reforms that I have mentioned. The resiliency of our national forests and the future of our wood products work force in places like Montana are at stake.

Thank you.

Chairman ROBERTS. Senator Smith.

Senator SMITH. Just in time. Thank you very much, Chair Roberts and Ranking Member Stabenow. Thanks to both of you for being here today and for your willingness to serve. I very much appreciated you taking the time to come by my office in the last week so we had a chance to visit a little bit in person.

Mr. Hubbard, I would like to ask a question related to the National Environmental Policy Act. In the omnibus spending bill passed in March, the Forest Service granted a new categorical exclusion from the National Environmental Policy Act for projects that removed high-risk vegetation from areas to mitigate wildfire. Just a few months later, the White House Council on Environmental Quality announced that they were looking to revise NEPA in its entirety with the goal of streamlining and speeding up the review process.

So, Mr. Hubbard, is it your view that part of your mission as Under Secretary for Natural Resources and Environment would be to promote conservation and sustainability in our Federal forests?

Mr. HUBBARD. Thank you, Senator. Of course it is, and—

Senator SMITH. You and I talked about this. I appreciate that.

Mr. HUBBARD. Sustainability is essential, so all of our decision-making has to be based on that premise. Can we do better at that? I would be happy to explore ways.

Senator SMITH. Do you think—what is your view—is there evidence that would suggest that there is a need for further exemption from environmental protections for projects in Federal forests? Is there a need for that, do you think?

Mr. HUBBARD. I believe that the need is in critical areas where projects need to proceed, such as wildfire risk reduction around a community, and when the community is taking action and the private lands are taking action and the Federal land is holding it up, so situations like that. That is why I believe it is important for the Forest Service to be talking to the State about what those priorities are and where the action is most important to be taken and then finding ways to do that.

Senator SMITH. I really appreciate that sentiment. You and I talked about this in my office, the importance of having good consultation and good communications and a strong, robust public comment period. So I will look forward to working with you on that. I appreciate that very much.

Related to that, a few of us on this Committee have the privilege of also sitting on the Indian Affairs Committee, including Indian Affairs Chair Hoeven, who maybe you had a chance to talk with as well. When we met last week in my office, we talked about how important it is that the Federal Government conduct the proper Government-to-Government tribal consultation. It is just such an important responsibility.

Could you just tell us a little, talk a little bit more about that and how you see that consultation process?

Mr. HUBBARD. Thank you, Senator. The tribes feel strongly about that, as you well know, and so do I. It is Government-to-Government. It is a sovereign situation that needs to be respected, and so I fully subscribe to the consultation process.

I also subscribe to the collaboration that can be done with the tribes because they do a good job of managing their lands.

Senator SMITH. I thank you for that. Of course, the Senate farm bill has many good provisions related to the Forest Service-tribal relationships and protecting that, including the Good Neighbor Authority for tribes. So I appreciate that very much.

The last thing I would just like to touch on, and we also spoke about this in my office. As you know, nearly half of the Chippewa National Forest in my State of Minnesota is within the Leech Lake Band of Ojibwe Reservation, and I have introduced a bill to authorize a land transfer that would return ownership of about 11,700 acres of that land in the Chippewa National Forest back to Leech Lake. It was wrongly in error committed—you know, done incorrectly. We want to fix this through some special secretarial transfer process. We talked a little bit about this bill, and I wanted to just see if—you probably have not had a chance to look at it yet, but

I very much look forward to working with you on that one if you have any thoughts on that.

Mr. HUBBARD. If confirmed, I would be happy to work with you on that.

Senator SMITH. Thank you very much. That is very important to us, and I appreciate your partnership on that.

Thank you very much, Mr. Chair. I yield back my time.

Chairman ROBERTS. Thank you. Senator.

Well, Coop, you are up.

[Laughter.]

Senator THUNE. Thank you, Mr. Chairman. It is not even high noon yet, so we are here early. I appreciate you and Ranking Member Stabenow holding this hearing. I want to thank our nominees for their willingness to serve and the families that support that service. Thank you all for being here as well.

Mr. Hubbard, we have approximately 80 million acres of trees that are projected to be at risk of widespread mortality because of insects and disease, and despite recognition of the dire need to increase on-the-ground forest management activities, increases of timber sold through timber sales and stewardship projects to address these concerns have been slight and at current pace will take hundreds of years to treat those already identified at-risk areas.

So the question is: What types of changes are needed to fully treat at-risk acres and to restore our national forests?

Mr. HUBBARD. Thank you, Senator. I will come back to the notion that the Forest Service knows where their treatment needs are and where the legal authorities to allow that kind of a treatment. So we are not looking at wilderness areas. We are looking at areas that need that active management. I could not agree more that we are behind and need to accelerate that pace and get more work done.

I also believe that that can be done, that if the Forest Service provides the focus to the field leadership, they will respond. They need that kind of direction.

Are there obstacles? Of course, there are, but where I would start is the conversation with the State to discuss the priorities. Where should we make our investments? Where is it most important? Where does it mean different things—wildfire protection, economy, sustainability, resilience, all of those issues? The Federal agencies have their view. The States have their view. I want to compare those views and decide where we should get that work done and then use the tools available to us to go after it.

Senator THUNE. Good. Well, and on that point, collaborative processes in the Black Hills of South Dakota and Wyoming have been productive and resulted in numerous success stories in the battle against the mountain pine beetle, as a case in point. Those collaborative efforts continue with a new strategy for resilient forests across all ownerships in the Black Hills and have helped inform a new Black Hills National Forest timber management project.

However, as is seen in too many other planning efforts, objections have been filed by outside parties, and the Forest Service may face litigation on the project in the near future.

What can the Forest Service do to move more projects forward more quickly? How can we in Congress help that?

Mr. HUBBARD. Thank you, Senator. First of all, I think the Forest Service has to respect the processes that it has under law, and they will, of course. I think sharing that decision space, bringing in the stakeholders through the collaborative process and agreeing on what needs to move forward, having that kind of sit-down comparison with the State to decide what their priorities are, and, of course, in all those considerations can we get this project done would be a factor. I think we need to decide where we can get those projects done and under what authority we can get those done and focus our efforts there.

Senator THUNE. Well, thanks, and I hope that is, as you approach this, sort of the plan going forward, because I just think that when you get that kind of collaboration that we have seen in the Black Hills, for example, where you have State authorities and Federal and private sector all sort of working together to address some of these big problems, you want to encourage that, not discourage it. Obviously, it is inevitably the case you are going to end up in litigation. My hope would be that we can see more of that, not less, and that as you approach your work, that you will encourage more of that.

Mr. Berkovitz, we have heard complaints, especially from our livestock producers, that the Chicago Mercantile Exchange, or CME, is not performing as it should, which they say is negatively impacting cattle prices. Could you just kind of talk generally about your thoughts on that subject?

Mr. BERKOVITZ. Thank you, Senator. I think that contract is one contract that the CME, as you have noted, has been working on and certainly, if confirmed in this position at the CFTC, I would look into that and work with the CFTC to work with the CME to make sure that that contract performs correctly and that it can be used for hedging appropriately.

Senator THUNE. With your future potential oversight of CME at CFTC and based on what you now know, are there any CME activities that concern you regarding lack of transparency or price manipulation?

Mr. BERKOVITZ. Thank you, Senator. That is something that I would have to look into if confirmed at the agency. In terms of issues like that, I think it would be appropriate to look for it when I am over at the agency.

Senator THUNE. Okay. Well, and when you get there—and we expect that you hopefully soon will—I hope that you will address those concerns. Obviously, to have confidence in markets, there has got to be optimum levels of transparency, and anything that undermines that I think is very harmful to the overall markets and to the people's belief that they have got a fair marketplace.

Mr. BERKOVITZ. Thank you.

Senator THUNE. So my time has expired, Mr. Chairman. I will submit a couple of questions for the record. Thank you.

Chairman ROBERTS. I thank the Senator.

That is going to conclude our hearing today. I thank the nominees for taking time to address this Committee and to answer the Committee's questions. It is clear, at least to the Chairman—Mr. Berkovitz, how old is Eli?

Mr. BERKOVITZ. Eli is 17, Senator.

Chairman ROBERTS. Well, it just appeared to me that—since I am Chairman, obviously I paid attention to each and every word of the Senators who have asked you questions and to your responses, and I noticed that Eli was paying very close attention as well.

[Laughter.]

Mr. BERKOVITZ. Thank you, Eli.

Chairman ROBERTS. That is rather unique in the circumstances. I think Eli and myself are the only two that can say that.

[Laughter.]

Senator THUNE. We always pay attention when you are talking, Mr. Chairman.

Chairman ROBERTS. It is very clear you have all exhibited you are qualified to join the administration in the roles you have been nominated to at the CFTC and the Department of Agriculture. We learned a great deal today from the nominees. Your testimony provided us significant information and a solid basis upon which to report you out of Committee.

Per our rules, we cannot do so today but I assure you we will endeavor to do so in the very near future.

To that end, I would request my fellow members, if they have any additional questions for the record, that they be submitted to the Committee clerk by 12 noon tomorrow, July 25th. We look forward to receiving your responses and to further taking action on your nominations. We need to get you both on board.

The Committee is adjourned.

[Whereupon, at 11:30 a.m., the Committee was adjourned.]

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# **A P P E N D I X**

JULY 24, 2018

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**Statement of Dan M. Berkovitz****Hearing on the Nomination of Dan M. Berkovitz  
to be a Member of the U.S. Commodity Futures Trading Commission****U.S. Senate Committee on Agriculture, Nutrition, and Forestry****July 24, 2018**

Chairman Roberts, Ranking Member Stabenow, and Members of the Committee, thank you for the opportunity to appear before you today. It is an honor to be here as a nominee to be a Commissioner of the U.S. Commodity Futures Trading Commission (CFTC). I would like to thank President Trump for nominating me to this position, Minority Leader Schumer for recommending me, and others who have supported me throughout this process. I also appreciate the consideration the Committee staff has afforded me. My wife Michelle, daughter Zoe and son Eli are with me here, and I thank them for their steadfast support. My mother is closely following this hearing back home in Indiana, and I appreciate her in very many ways.

Today, the U.S. commodity markets are the strongest and most liquid commodity markets in the world. The strength and integrity of our commodity markets is essential to our nation's overall economic health and growth. A robust regulatory program is one of the foundations for this strength.

The basic purpose of our commodity markets is to enable American businesses—including farmers, ranchers, distributors, manufacturers, and commodity producers—to manage the price risks associated with their business. The regulatory system must prevent and prosecute fraud and manipulation, ensure the safeguarding of customer funds, provide a fair and transparent manner for price discovery, protect customers, and enable innovation. If confirmed, I will work diligently to ensure that the CFTC's regulatory program continues to work for and protect the farmers, ranchers, producers, consumers, and other end users that rely upon these markets.

On several previous occasions I have had the privilege of working with this Committee to improve the CFTC's regulation of the commodity markets. One of the highlights of my service on the staff of the Senate Permanent Subcommittee on Investigations, under the leadership of Senator Carl Levin, was working with the members and staff of this Committee, on both sides of the aisle, on the legislation that was included in the 2008 Farm Bill to regulate swaps that perform a "significant price discovery" function. This was the first legislation to regulate the then-unregulated swaps market, and it substantially improved the integrity, fairness, and price discovery process in the market for natural gas and other energy commodities.



While at the CFTC, I led the agency's legislative drafting and assistance team, which provided non-partisan technical assistance to the Congress – including this Committee – during its consideration of the Dodd-Frank Act. I am particularly proud of the fact that our team, which was composed of legislative and program experts, was relied upon extensively by both sides of the aisle in both the House and the Senate as the Congress developed the Act. I look forward, if confirmed, to continuing to work with the members of this Committee in this same spirit.

It has been eight years since the President signed the Dodd-Frank Act into law, and ten years since the height of the financial crisis. In my view, based on my experience at the CFTC and in private practice advising persons in the commodity markets, the Dodd-Frank Act, the CFTC's regulatory and enforcement program to implement the Act, and the industry's implementation of those regulations have substantially reduced systemic risks, strengthened market integrity, enhanced transparency, and improved public confidence in these markets.

The CFTC's work to implement the Act is not yet complete, however. The Commission has not yet enacted new rules to limit speculative positions or to establish capital requirements for swap dealers. The Commission recently proposed a rule regarding the de minimis threshold for swap dealer registration. If confirmed, I will work with my fellow Commissioners to complete these rulemakings in a timely manner.

My experience as an attorney in private practice has provided me with an appreciation of how the CFTC's regulatory program affects end users and other market participants. I have worked with many commercial end users, CFTC registrants, and other market participants on a variety of regulatory matters, including interpreting the CFTC's regulations, preparing registration applications, developing training materials, responding to CFTC requests, reporting data and other information, and establishing compliance programs. I am aware of the importance to market participants that the CFTC's regulations be clear and that the agency be consistent in their application. I understand the potential impacts of new regulations and requirements on persons and businesses subject to those regulations. In enacting or implementing regulations, it is critical for the CFTC to consider those impacts, consistent with the governing statutes.

Ever since the Grain Futures Act was enacted in 1922 to first regulate the agricultural futures markets, Congress and the agency that is now the CFTC have continually revised our commodity laws to respond to evolving markets. Looking forward, the CFTC's regulatory program should not be fixed as of any particular point in time; rather, the CFTC must monitor the commodity markets to evaluate and respond to new information and market conditions, and to adjust its regulatory approach accordingly. The emerging markets for cryptocurrencies are just the latest example of new market conditions that the CFTC has begun to address through its regulatory and enforcement programs. Similarly, as new information develops about existing markets, the

CFTC must examine its existing regulations to determine whether they continue to serve their intended function and Congressional directives in the most efficient and effective manner.

I strongly believe in transparency and openness to public comment and consultation in agency decisions. Although the agency may be required to seek and respond to public comments in rulemakings, as a more general matter it is basic fairness. People should have an opportunity to be heard before the government makes decisions that affect them. Public participation also leads to better decisions. If confirmed, I am committed to close consultation with stakeholders, members of Congress, and other interested persons.

The various commodity markets under the CFTC jurisdiction often present distinct market dynamics and regulatory issues. A “one size fits all” approach may not be appropriate. The agricultural commodity markets, for example, may present regulatory issues that differ from the issues arising in the markets for financial commodities. It is important for the CFTC to tailor its regulatory approach to specific markets as appropriate.

The CFTC should continue to consult and coordinate with other federal regulators in developing and implementing its regulations. This consultation and coordination can lead to better informed regulatory decisions and reduce conflicting and duplicative regulations among the various federal agencies that have jurisdiction over our financial and commodity markets, thereby reducing unnecessary costs and burdens on market participants.

International coordination and harmonization is important to reduce systemic risk globally, avoid market fragmentation, prevent regulatory arbitrage, and promote liquidity, all of which reduces risk and benefits the participants in our own markets. Following the G-20 Summit in Pittsburgh in the wake of the financial crisis, the United States has been a leader globally in implementing strong reforms in the financial markets. The CFTC should continue to be active in promoting international harmonization.

I am enthusiastic about returning to public service at the CFTC. Public service is both a privilege and a responsibility. If confirmed, I pledge to work with each of the members of this Committee to ensure that the CFTC’s regulatory program serves the public and protects the farmers, ranchers, producers, distributors, and consumers that rely on the futures and swaps markets to manage their price risks and discover prices for agricultural and other commodities.

Thank you for your time and consideration. I look forward to answering any questions you may have.

**Statement by James Hubbard**  
**Nominee for the USDA Under Secretary for Natural Resources and Environment**  
**Before the U.S. Senate Committee on Agriculture, Nutrition and Forestry**

**July 24, 2018**

Chairman Roberts, Ranking Member Stabenow, and members of the Committee, I thank you for your time today and your consideration of my nomination as Under Secretary for Natural Resources and Environment at the U.S. Department of Agriculture. I thank President Trump for nominating me to serve and Secretary Perdue for his support.

I was raised in rural Kansas, and am the product of the collective values of hard working people close to the land. My commitments run deep. 53 years ago, I married my wife, Cindy, and I am blessed that she is able to be here with me today. Together, we have 3 wonderful daughters, and 7 very busy grandkids.

Professionally, I have been a public servant for 48 years, beginning in the old growth forests of Oregon, and moving to Colorado's diverse ecosystem. I was lucky enough to serve as State Forester for Colorado for 20 years, serving under four Governors.

Wildland fire in Colorado demanded special attention due to the risks presented to the land, people, and local economy. I soon learned that the issue had to be addressed on a landscape scale and across boundaries. To achieve this, I worked tirelessly with my colleagues in Colorado to secure Congressional support to take action across the National Forest Boundary. This authority, known as the Good Neighbor Authority, was born out of a necessity for state, private, and federal forests to work together to achieve common land management objectives.

It was through my work in Colorado that I became involved with the National Association of State Foresters, a bi-partisan group representing all 50 states. While there, I oversaw the legislative agenda for 10 years, and served as the President of the Association in 1990, working with some of you on this Committee to craft the first Forestry Title in the Farm Bill.

In fact, this national policy work drew me to Washington D.C., first at the Department of Interior directing the Office of Wildland Fire. I then moved to the USDA Forest Service as Deputy Chief for State and Private Forestry. In this role I oversaw cooperative forestry with the States, Tribal Forestry, Wildland Fire, Forest Health and Conservation Education, all of which are landscape scale, cross-boundary programs. While I retired a few years ago, the call to serve is great, and I am hopeful for your support so that I can take on the many exciting opportunities and challenges at the Forest Service.

While that is a little about my past experience, I'd like to turn to the 3 top priorities I would like to address, if confirmed.

- 1: Provide a safe, inclusive work environment.
- 2: Increase sustainable active land management.
- 3: Share fire protection across jurisdictions.

I'd like to specifically address the first priority I mentioned in detail, as it is the most important. Secretary Perdue has a motto of "Do right, and feed everyone." This priority fits squarely into the bucket of "Do Right". If confirmed, I will be personally responsible for providing leadership to ensure that everyone is treated right, that instances of harassment are quickly identified, and accountable actions are taken. The Forest Service has already taken steps to both change the culture and improve accountability. If confirmed, my first briefing from NRE staff will be on

these activities so that I can assess where the Forest Service is now and identify what I can do to reinforce, and if needed, strengthen these efforts. If confirmed, I will continue to do whatever is necessary to ensure that everyone in our workforce feels safe, that our people are valued, and everyone looks out for one another. Beyond just being the right thing to do, this is one of the essential components of having the effective, skilled, dedicated workforce that is critical to the success of any endeavor.

Before I close, I want to take a moment to thank Congress for addressing the policy issue of suppression financing in the recent Omnibus Bill. This is an issue which has needed to be addressed for quite some time as it is a big step to allow the Forest Service to keep our nation's forest's healthy.

The U.S. has a natural resource asset unique in the world. My pledge is to see that these forests and grasslands have a sustainable future. I am honored to be with you today. Thank you, and I look forward to your questions.



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**DOCUMENTS SUBMITTED FOR THE  
RECORD**

JULY 24, 2018

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April 20, 2018

The Honorable Pat Roberts  
Chairman, Senate Agriculture,  
Nutrition, and Forestry Committee  
United States Senate  
Washington, DC 20510

The Honorable Debbie Stabenow  
Ranking Member, Senate Agriculture,  
Nutrition, and Forestry Committee  
United States Senate  
Washington, DC 20510

Dear Chairman Roberts and Ranking Member Stabenow:

On behalf of the millions of hunters, anglers, shooters, and outdoor enthusiasts that our organizations represent, we are writing to express our strong support for the confirmation of James Hubbard as the next U.S. Department of Agriculture Undersecretary for Natural Resources and Environment.

Having served for 20 years as the Colorado state forester and over a decade as the U.S. Forest Service Deputy Chief for State and Private Forestry, Mr. Hubbard has demonstrated a commitment to conserving and managing our nation's forests for the benefit of current and future generations.

Mr. Hubbard's experience uniquely suits him for the Undersecretary position that oversees the activities of the U.S. Forest Service and our nation's forests. Forests across the U.S. are facing tremendous challenges with issues such as disease, wild fire, and the need for proper forest management. Mr. Hubbard's experience and background make him extremely qualified to address the needs of the U.S. Forest Service in treating the more than 82 million acres of forest lands. Mr. Hubbard also understands the needs of state forest managers and private forest owners. He has long been a champion for collaborative efforts and "crossboundary" work to address challenges. By working closely with state agency and non-government partners, the U.S. Department of Agriculture can expand the capacity of the Forest Service to manage our nation's forests and better coordinate with state and private forest owners.

Mr. Hubbard is widely respected in the conservation community and within the Forest Service. His familiarity with the Forest Service and its leadership will allow him to quickly translate recently passed forestry legislation into work on the ground that will benefit our forests, wildlife resources, and the rural communities that depend on our nation's forests.

We appreciate your dedication to our nation's forests and wildlife resources and urge you to quickly confirm Mr. Hubbard's nomination. We look forward to working with you as his confirmation moves forward.

Sincerely,

American Woodcock Society  
Archery Trade Association  
Association of Fish and Wildlife Agencies  
Boone and Crockett Club  
Camp Fire Club  
Congressional Sportsmen's Foundation  
Conservation Force  
Council to Advance Hunting and the Shooting Sports



Delta Waterfowl  
Ducks Unlimited  
Houston Safari Club  
Izaak Walton League of America  
Mule Deer Foundation  
National Bobwhite Conservation Initiative  
National Rifle Association  
National Shooting Sports Foundation  
National Wild Turkey Federation  
National Wildlife Federation  
North American Grouse Partnership  
Pheasants Forever / Quail Forever  
Professional Outfitters and Guides of America  
Quality Deer Management Association  
Rocky Mountain Elk Foundation  
Ruffed Grouse Society  
Safari Club International  
The Conservation Fund  
Theodore Roosevelt Conservation Partners  
Wild Sheep Foundation  
Wildlife Forever  
Wildlife Management Institute  
Wildlife Mississippi

April 23, 2018

The Honorable Pat Roberts  
Chairman  
Committee on Agriculture, Nutrition, and Forestry  
United States Senate  
Washington, DC 20510

The Honorable Debbie Stabenow  
Ranking Member

Dear Chairman Roberts and Ranking Member Stabenow:

The undersigned organizations write to you in strong support for the nomination of James Hubbard to be Under Secretary of Agriculture for Natural Resources and Environment.

Jim's background, experience, and understanding of forests and the important role these lands play – from providing clean air and water, places to recreate, hike, hunt, and fish, habitat for fish and wildlife, jobs in rural America, to products we use every day – make him the right person for the job. He understands the Forest Service, and the many challenges facing the agency. He understands the importance of the National Forests to local economies and the environment, and is committed to creating jobs in hard pressed rural communities. He understands the role of private forest lands in meeting the nation's environmental, social, and economic goals. In short, he is uniquely qualified to lead USDA's efforts to conserve, protect, and manage all of our forest resources.

Jim is a career public servant with an impeccable record, and a clear dedication to both forest management and conservation. We are all anxious to begin working with him as soon as possible. We urge you to quickly confirm James Hubbard so he can begin working on the many challenges facing our forests.

Sincerely,

Alaska Forest Association  
Alabama Forestry Association  
Aldo Leopold Foundation  
Alliance for Community Trees  
American Chestnut Foundation  
American Farm Bureau Federation  
American Forests  
American Forest Foundation  
American Forest & Paper Association  
American Forest Resource Council  
American Loggers Council  
American Sheep Industry Association  
American Sportfishing Association  
American Wood Council  
American Woodcock Society  
Arbor Day Foundation  
Archery Trade Association  
Arizona Cattlemen's Association  
Arkansas Forestry Association  
Arkansas Timber Producers Association  
Association of Consulting Foresters

Association of Fish & Wildlife Agencies  
Associated California Loggers  
Associated Oregon Loggers  
Binational Softwood Lumber Council  
Biomass Thermal Energy Council  
Black Hills Forest Resource Association  
California Cattlemen's Association  
California Forestry Association  
California ReLeaf  
California Wool Growers Association  
Canfor Southern Pine  
Center for Heirs' Property Preservation  
Center for Invasive Species Prevention  
Colorado Cattlemen's Association  
Colorado Timber Industry Association  
Connecticut Forest & Park Association  
Douglas Timber Operators  
Evergreen Forest County Group  
Federal Forest Resource Coalition  
F.H. Stoltze Land & Timber  
Florida Forestry Association

Forest Landowners Association	National Wooden Pallet & Container Association
Forest Energy Co.	National Woodland Owners Association
Forest Ind. National Labor Management Cmte.	Nevada Cattlemen's Association
Forest Resources Association	New England Forestry Foundation
Forest Stewards Guild	New Hampshire Timberland Owners Association
Forest Trends	New Jersey Forestry Association
Genoverde Biosciences, Inc.	New Mexico Forest Industry Association
Georgia Forestry Association	Northeastern Loggers Association
Great Lakes Timber Professionals Association	Northern Arizona Loggers Association
Green Forests Work	Northern Forest Center
Hancock Natural Resources Group	North Carolina Forestry Association
Hardwood Federation	Oregon Cattlemen's Association
Hawaii Forest Industry Association	Oregon Women in Timber
Hedstrom Lumber	Outdoor Recreation Roundtable
Idaho Cattle Association	Pacific Forest Trust
Idaho Forest Group	Pennsylvania Forest Products Association
Idaho Wool Growers Association	Pennsylvania Forestry Association
Illinois Forestry Association	Pinchot Institute for Conservation
Intermountain Forest Association	PotlatchDeltic
International Snowmobile Mfgs. Association	Professional Logging Contracts of Maine
Intertribal Timber Council	Public Lands Council
Kansas Forestry Association	Rayonier
Kentucky Forest Industries Association	Resource Management Service, LLC
L&C Carbon LLC	Ruffed Grouse Society
Longleaf Alliance	RV Industry Association
Louisiana Pacific	Saloom Properties, LLC
Maine Audubon	SCJ General Services
Maine Woodland Owners	Shannon Ramsay Timber
Marine Retailers Assoc. of the Americas	Sierra Cascade Logging Conference
Michigan Forest Association	Sierra Pacific Industries
Michigan Forest Products Council	Smith Logging, Inc.
Minnesota Forest Industries	Society of American Foresters
Minnesota Forestry Association	South Carolina Timber Producers Association
Minnesota Timber Producers Association	Southeastern Lumber Manufacturers Association
Missouri Forest Products Association	Southern Group of State Foresters
Montana Logging Association	Sustainable Forestry Initiative
Montana Stock Growers Association	Sustainable Northwest
Montana Wood Products Association	Texas Forestry Association
Montana Wool Growers Association	The Conservation Fund
Mountain West Log Scaling & Grading Bureau	The Lyme Timber Company
National Alliance of Forest Owners	The Westervelt Company
National Association of Conservation Districts	Theodore Roosevelt Conservation Partnership
National Association of Forest Service Retirees	Trust for Public Land
National Association of Home Builders	Trees Forever
National Association of RV Parks & Campgrounds	U.S. Industrial Pellet Association
National Association of State Foresters	Utah Cattlemen's Association
National Bobwhite Conservation Initiative	Virginia Forestry Association
National Cattlemen's Beef Association	Virginia Loggers Association
National Marine Manufacturers Association	Wallowa Resources
National Shooting Sports Foundation	Washington Cattlemen's Association
National Ski Areas Association	Washington Contract Loggers Association
National Wild Turkey Federation	Washington Forest Protection Association
National Wildlife Federation	Washington Hardwoods Commission

West Fraser  
Western Hardwood Association  
Western Wood Preservers Institute  
Western Pallet Association  
Weyerhaeuser  
Wildlife Mississippi  
Wisconsin Paper Council  
Wyoming Stock Growers Association  
Vermont Woodlands Association

## RVCC

Rural Voices for  
Conservation  
COALITION

The Honorable Pat Roberts  
Chairman

The Honorable Debbie Stabenow  
Ranking Member

Senate Committee on Agriculture, Nutrition, and Forestry  
United States Senate  
Washington, DC 20510

May 9, 2018

Dear Chairman Roberts and Ranking Member Stabenow:

On behalf of the Leadership Team of the Rural Voices for Conservation Coalition (RVCC), I am writing to express support for the rapid confirmation of James Hubbard to the position of Undersecretary of Agriculture for Natural Resources and Environment.

RVCC promotes healthy landscapes and vibrant rural communities throughout the American West. Our work centers on balancing ecosystem productivity, social equity and economic well-being.

Having previously served as the State Forester of Colorado and as the Deputy Chief of State and Private Forestry for the Forest Service, Mr. Hubbard has a strong background for the role. His understanding of state forestry issues, as well as federal land management, will provide a unique and valuable perspective on the opportunities and challenges facing the Forest Service and Natural Resources Conservation Service.

The timing of Mr. Hubbard's confirmation is particularly important as the 2018 fire season is well under way. As this year will likely be another active fire season, the Forest Service will benefit from the clear leadership and direction that Mr. Hubbard will provide. To that end, we urge a rapid confirmation process.

Sincerely,



Karen Hardigg  
Director, RVCC

*On Behalf of the RVCC Leadership Team*

Heart of the Rockies Initiative, MT  
Ecosystem Workforce Program, OR

Siuslaw Institute, OR  
Sustainable Northwest, OR

Forest Stewards Guild, NM  
Mt Adams Resource Stewards, WA  
Salmon Valley Stewardship, ID

Sustainable SE Partnership, AK  
Wallowa Resources, OR  
Watershed Research & Training Center, CA

NATIONAL ASSOCIATION OF  
444 North Capitol Street NW | Suite 540 | Washington DC 20001



202-624-5415 Phone | 202-624-5407 Fax | [www.stateforesters.org](http://www.stateforesters.org)

STATE FORESTERS

May 4, 2018

The Honorable Pat Roberts  
Chairman, Committee on Agriculture,  
Nutrition, and Forestry  
U.S. Senate  
Washington, D.C. 20510

The Honorable Debbie Stabenow  
Ranking Member, Committee on Agriculture,  
Nutrition, and Forestry  
U.S. Senate  
Washington, D.C. 20510

Dear Chairman Roberts and Ranking Member Stabenow:

The National Association of State Foresters would like to express its full support for President Donald Trump's nomination of James Hubbard as undersecretary of the Agriculture Department's Natural Resources and Environment mission area.

Throughout his long and distinguished career in forestry, Jim has demonstrated an unwavering dedication to promoting active management across all of the nation's forests. His hallmark, in fact, has been his ardent support of cross-boundary forest and wildfire management. The nation's state and territorial foresters also believe that Jim thoroughly understands the complexity and interconnectedness of the local, state, and federal systems we use to control wildfires.

For ten years, Jim served as deputy chief of State and Private Forestry, managing all of the USDA Forest Service's cooperative forestry programs and its fire and aviation division, which accounts for half of the agency's total budget. This experience, combined with 20 years of service as Colorado's state forester, has made Jim both keenly aware of the risks posed by cross-boundary forest threats and aptly equipped to address these threats in collaborative, cost-effective ways.

The nation's state and territorial foresters welcome the wealth of knowledge Jim would bring to his new post and look forward to advancing comprehensive, landscape-scale forest management nationwide, together in partnership with the Agriculture Department.

Sincerely,

George Geissler  
NASF President  
Oklahoma State Forester

**Executive Director**  
Jay Farrell

**2017-18 Executive Committee**

<i>President</i>	George Geissler, Oklahoma	<i>Northeastern Representative</i>	Brad Simpkins, New Hampshire
<i>Vice President</i>	Lisa Allen, Missouri	<i>Western Representative</i>	Mike Lester, Colorado
<i>Treasurer</i>	Greg Josten, South Dakota	<i>Southern Representative</i>	Joe Fox, Arkansas
<i>Past President</i>	Bill Cropper, Wyoming		



RILEY STEGNER AND ASSOCIATES

May 4, 2018

The Honorable Pat Roberts  
Chair  
Committee on Agriculture, Nutrition, and Forestry  
United States Senate  
328-A Russell Senate Office Building  
Washington, DC 20510

The Honorable Debbie Stabenow  
Ranking Member  
Committee on Agriculture, Nutrition, and Forestry  
United States Senate  
328-A Russell Senate Office Building  
Washington, DC 20510

Dear Chairman Roberts and Ranking Member Stabenow,

We write to support the nomination of James Hubbard to be Under Secretary for Natural Resources and Environment at the United States Department of Agriculture (USDA).

We run a consulting firm specializing in natural resource policy. Our clients are forestland owners and mills across the nation and include Hancock Resource Management Group, Stimson Lumber Company, Sun Mountain Lumber, and Molpus Woodlands Group.

Mr. Hubbard's deep understanding of forestry issues and his long career in public service make him uniquely qualified for the Under Secretary of Agriculture for Natural Resources and Environment. As consultants for private forestland owners and mills, we recognize the importance personnel decisions has on federal forest policies. The health and proper management of National Forest System lands plays a crucial role in the efforts of private and state landowners to manage their own lands and reduce insects and disease and hazardous fuels. The USDA Under Secretary that oversees the Forest Service is an important position in the implementation of sound forest policies that will help keep our working forests healthy for a sustainable timber supply, wildlife, and the recreating public.

Mr. Hubbard has the knowledge and experience to effectively execute this important position, and we look forward to supporting him throughout the process.

Thank you for your consideration.

Sincerely,

\_\_\_\_\_  
Jim Riley  
Principal  
Riley Stegner and Associates

\_\_\_\_\_  
Peter Stegner  
Principal  
Riley Stegner and Associates



June 19, 2018

The Honorable Pat Roberts  
Chairman, Committee on Agriculture,  
Nutrition, and Forestry  
United States Senate  
Washington, DC 20510

The Honorable Debbie Stabenow  
Ranking Member, Committee on Agriculture,  
Nutrition, and Forestry  
United States Senate  
Washington, DC 20510

Dear Chairman Roberts and Ranking Member Stabenow,

The Society of American Foresters (SAF), representing more than 11,000 forestry professionals, and the National Association of State Foresters (NASF), representing the nation's 59 state and territorial foresters, strongly support President Donald Trump's nomination of Jim Hubbard as undersecretary of the Natural Resources and the Environment mission area within the United States Department of Agriculture (USDA). SAF and NASF have full confidence that Mr. Hubbard has the vision, leadership skills, and necessary experience to lead the Forest Service. With the legislative session extending into August, SAF and NASF urge this committee to confirm Mr. Hubbard's appointment as soon as possible.

Throughout his long and distinguished career in forestry, Mr. Hubbard has championed active and collaborative forest management on both public and private lands. He not only understands the many challenges facing the Forest Service, but also understands that working forests are key to meeting many of our nation's most pressing social, environmental, and economic needs. His 20 years of experience as Colorado's state forester, combined with ten years serving as deputy chief of State and Private Forestry, make him uniquely qualified for this critical undersecretary role.

With the 2018 wildfire year well underway, Mr. Hubbard's fire management expertise is needed now more than ever. The timely appointment of Mr. Hubbard will ensure our nation's forest managers are empowered to plan and implement important management activities for the upcoming fall and spring field seasons, reducing future wildfire risks and benefiting rural economies.

We appreciate the important work of your committee in developing the next farm bill. Now, we respectfully ask you to turn your attention to the nation's forests and expedite the confirmation of Mr. Hubbard as undersecretary for Natural Resources and Environment. Thank you for your consideration of this important request. We look forward to continuing our work with Mr. Hubbard and your committee.

Sincerely,

Dave Lewis  
SAF President  
Certified Forester

George Geissler  
NASF President  
Washington State Forester

## **AFF Statement Regarding USDA Undersecretary Nominee James Hubbard**

**APRIL 16, 2018**

**FOR IMMEDIATE RELEASE**

**Contact:** Elizabeth Greener; [egreener@forestfoundation.org](mailto:egreener@forestfoundation.org); 202-253-1096

### **AMERICAN FOREST FOUNDATION STATEMENT REGARDING USDA UNDERSECRETARY FOR NATURAL RESOURCES AND ENVIRONMENT NOMINEE, JAMES HUBBARD**

**WASHINGTON, D.C.** (April 16, 2018) – The following statement can be attributed to Tom Martin, President and CEO of the American Forest Foundation (AFF), in regards to the nomination of James Hubbard to U.S. Department of Agriculture Undersecretary of Natural Resources and Environment (USDA):

*"President Trump could not have picked a better nominee for USDA Undersecretary for Natural Resources and Environment than James Hubbard," said Tom Martin, AFF President and CEO. "Hubbard has spent his entire career in forestry, working at both the state and federal levels, to tackle some of the most pressing issues our forests face. As one of the creators of the Good Neighbor Authority agreement within the U.S. Forest Service, and as a long-standing advocate of working not just on federal lands but across ownership boundaries through an all lands approach, he embodies the collaborative, shared stewardship spirit that USDA Secretary Sonny Perdue has brought to USDA."*

*With the 2018 wildfire season upon us, and many other pressing issues to deal with, I hope the Senate acts quickly to confirm Hubbard, so he can begin the hard work of improving the health and resilience of the nation's forests."*

**###**

#### **About the American Forest Foundation**

The American Forest Foundation (AFF), a forest conservation organization, works on the ground with families, partners and elected officials to promote stewardship and protect our nation's forest heritage. A commitment to the next generation unites our nationwide network of forest owners working to keep our forests healthy and producing the clean water, wildlife habitat and sustainable wood supplies that all Americans count on from forests.



August 15, 2018

The Honorable Pat Roberts, Chair  
Committee on Agriculture, Nutrition,  
and Forestry  
United States Senate  
Washington, DC 20510

The Honorable Debbie Stabenow, Ranking Member  
Committee on Agriculture, Nutrition,  
and Forestry  
United States Senate  
Washington, DC 20510

Dear Chairman Roberts and Ranking Member Stabenow:

On behalf of the Outdoor Recreation Roundtable (ORR), the undersigned recreation trade associations and organizations thank you for your rapid and positive action on the nomination of James Hubbard to serve as the Under Secretary of Agriculture for Natural Resources and Environment for the U.S. Department of Agriculture, an appointment of significant importance to the outdoor recreation industry. We urge your active efforts to bring this nomination to a successful vote by the full Senate.

Both recreation and natural resources conservation are under the direction of the Under Secretary of Agriculture for Natural Resources and Environment, with policies directly impacting recreational access to key federally managed lands and waterways. Jim Hubbard's confirmation hearing confirmed our business community's support for his nomination as signers of a letter dated April 23, 2018, to the Committee on Agriculture, Nutrition and Forestry. We request that Mr. Hubbard's nomination be taken up and approved by the Senate as soon as possible. Secretary Perdue and the Department of Agriculture would benefit greatly from the active policy leadership and support Jim would instantly provide in this position.

Jim's background, experience and understanding of forests and the important role these lands play across America make him the right person for the job. In particular, Jim has a firm understanding of the economic, social and recreational values generated from providing clean air, water and habitats for fish and wildlife while offering places to for Americans to hike, bike, boat, camp, fish, hunt, target practice and participate in scores of other motorized and non-motorized outdoor recreational activities.

**The Hon. Pat Roberts and Debbie Stabenow**  
**August 15, 2018, Page Two**

He understands the importance of National Forests to local economies and the environment and is committed to creating jobs in hard pressed rural communities, often in partnership with businesses in our collective industry. He understands the role of private forest lands in meeting the nation's environmental, social and economic goals. In short, he is uniquely qualified to provide strong leadership to USDA's efforts to conserve, protect and manage all our forest resources.

Jim is a career public servant with an impeccable record and a clear dedication to forest management, recreation and conservation. We are all excited to begin working with him as soon as possible. Thank you for your efforts to promptly confirm James Hubbard so he can begin working on the many challenges facing our forests.

Sincerely,

American Horse Council  
 America Outdoors Association  
 American Sportfishing Association  
 Archery Trade Association  
 Association of Marina Industries  
 BoatU.S.  
 International Snowmobile Manufacturers Association  
 Marine Retailers Association of the Americas  
 Motorcycle Industry Council  
 National Association of RV Parks & Campgrounds  
 National Marine Manufacturers Association  
 National Park Hospitality Association  
 National Shooting Sports Foundation  
 Outdoor Industry Association  
 Recreation Vehicle Dealers Association  
 Recreational Off-Highway Vehicle Association  
 RV Industry Association  
 Specialty Equipment Market Association  
 Specialty Vehicle Industry Association

cc: Hon. Mitch McConnell  
 Hon. Charles Schumer  
 Hon. Sonny Perdue





DENNIS DAUGAARD  
GOVERNOR OF SOUTH DAKOTA  
CHAIR

DAVID IGE  
GOVERNOR OF HAWAII  
VICE CHAIR

JAMES D. OGSBURY  
EXECUTIVE DIRECTOR

May 14, 2018

Honorable Pat Roberts  
Chairman  
Committee on Agriculture, Nutrition,  
and Forestry  
United States Senate  
328A Russell Senate Office Building  
Washington, D.C. 20510

Honorable Debbie Stabenow  
Ranking Member  
Committee on Agriculture, Nutrition,  
and Forestry  
United States Senate  
328A Russell Senate Office Building  
Washington, D.C. 20510

Dear Chairman Roberts and Ranking Member Stabenow:

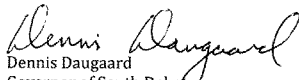
Western Governors write to convey our strong support for the nomination of James Hubbard to be Under Secretary for Natural Resources and Environment at the U.S. Department of Agriculture (USDA) and urge your expedited consideration of his nomination.

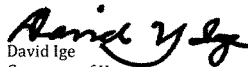
Mr. Hubbard has an extensive background in forest practice and policy at both the state and federal levels. His deep understanding of the difficulties our nation's public lands managers face will be a significant asset for the Department. His long experience as a state forester will likewise serve him well in recognizing the importance of state and federal interagency collaboration to address the myriad challenges faced by federal, state and private landowners. He also understands how national forests affect local economies and the need to provide sustainable economic opportunities for our rural communities.

Western Governors realize the Committee has many pressing responsibilities in coming months, including legislative action on the 2018 Farm Bill. We hope you will take the time, however, to consider Mr. Hubbard's nomination as quickly as feasible. His confirmation will provide needed stability to USDA's management structure and enable him to provide leadership to the U.S. Forest Service as we head into this summer's wildfire season.

We appreciate your consideration of this request and look forward to working with Mr. Hubbard in his new capacity.

Sincerely,

  
Dennis Daugaard  
Governor of South Dakota  
Chair, WGA

  
David Ige  
Governor of Hawaii  
Vice Chair, WGA

CALL (303) 629-9378  
VISIT 1600 Broadway  
Suite 1700  
Denver, CO 80202

WESTGOV.ORG



DAVID IGE  
GOVERNOR OF HAWAII  
CHAIR

DOUG BURSUM  
GOVERNOR OF NORTH DAKOTA  
VICE CHAIR

JAMES D. OGSBURY  
EXECUTIVE DIRECTOR

July 23, 2018

The Honorable Pat Roberts  
Chairman  
Committee on Agriculture, Nutrition,  
and Forestry  
United States Senate  
328A Russell Senate Office Building  
Washington, D.C. 20510

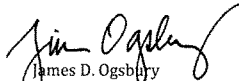
The Honorable Debbie Stabenow  
Ranking Member  
Committee on Agriculture, Nutrition,  
and Forestry  
United States Senate  
328A Russell Senate Office Building  
Washington, D.C. 20510

Dear Chairman Roberts and Ranking Member Stabenow:

In advance of the Committee's July 24, 2018 hearing on the nomination of James Hubbard to serve as the Under Secretary of Agriculture for Natural Resources and Environment, attached please find a copy of Western Governors' previous letter of support for Mr. Hubbard's nomination. I request that you include this document in the permanent record of the hearing.

Please contact me if you have any questions or require further information. In the meantime, with warm regards and best wishes, I am

Respectfully,

  
James D. Ogsbury  
Executive Director

Attachment

**U.S. SENATE COMMITTEE ON AGRICULTURE, NUTRITION & FORESTRY**  
**Questions for Executive Nominees**  
**115<sup>th</sup> Congress**

**1. Basic Biographical Information**

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
<u>Name of Position</u>	<u>Date of Nomination</u>
Commissioner, U.S. Commodity Futures Trading Commission	April 24, 2018

<i>Current Legal Name</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
Dan	Michael	Berkovitz	

<i>Addresses</i>					
<u>Residential Address</u> (do not include street address)			<u>Office Address</u> (include street address)		
			Street: 1875 Pennsylvania Avenue, NW		
City: Bethesda	State: MD	Zip: 20817	City: Washington	State: DC	Zip: 20006

<i>Other Names Used</i>						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<small>Check if Maiden Name</small>	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
N/A					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Birth Year and Place</i>	
<b>Year of Birth</b> (Do not include month and day.)	<b>Place of Birth</b>
1956	Los Angeles, CA

<i>Marital Status</i>					
<b>Check All That Describe Your Current Situation:</b>					
Never Married	Married	Separated	Annulled	Divorced	Widowed
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<i>Spouse's Name (current spouse only)</i>			
<u>Spouse's First Name</u>	<u>Spouse's Middle Name</u>	<u>Spouse's Last Name</u>	<u>Spouse's Suffix</u>
Michelle	Nadine	Berkovitz	

<i>Spouse's Other Names Used (current spouse only)</i>						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<u>Check if Maiden Name</u>	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
Michelle	Nadine	Plotkin			3/1958 <span>Est <input type="checkbox"/></span>	6/1995 <span>Est <input type="checkbox"/></span>
					<span>Est <input type="checkbox"/></span>	<span>Est <input type="checkbox"/></span>



<i>Children's Names (if over 18)</i>			
First Name	Middle Name	Last Name	Suffix
Zoe	Rachel	Berkovitz	

## 2. Education

List all post-secondary schools attended.

<u>Name of School</u>	<u>Type of School</u> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<u>Date Began School</u> (month/year) (check box if estimate)	<u>Date Ended School</u> (month/year) (check box if estimate) (check "present" box if still in school)	<u>Degree</u>	<u>Date Awarded</u>
Princeton University	University/Undergraduate	9/1974 Est <input type="checkbox"/>	6/1978 Est <input type="checkbox"/> Present <input type="checkbox"/>	A.B. Physics	6/1978
Stanford University	University/Graduate school	9/1978 Est <input type="checkbox"/>	4/1979 Est <input type="checkbox"/> Present <input type="checkbox"/>	None	
Univ. of California, Hastings College of Law	University/Law School	8/1979 Est <input type="checkbox"/>	6/1982 Est <input type="checkbox"/> Present <input type="checkbox"/>	J.D.	6/1982

### 3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

<u>Type of Employment</u> (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other)	<u>Name of Your Employer/Assigned Duty Station</u>	<u>Most Recent Position Title/Rank</u>	<u>Location</u> (City and State only)	<u>Date Employment Began</u> (month/year) (check box if estimate)	<u>Date Employment Ended</u> (month/year) (check box if estimate) (check "present" box if still employed)
Non-Government Employment	Wilmer Cutler Pickering Hale & Dorr, L.P.	Partner	Washington, DC	9/2013 Est <input type="checkbox"/>	Present <input checked="" type="checkbox"/>
Non-Government Employment	Georgetown University Law Center	Adjunct Professor	Washington, DC	1/2012 Est <input type="checkbox"/>	Present <input checked="" type="checkbox"/>
Unemployment			Bethesda MD	3/2013 Est <input type="checkbox"/>	9/2013 Est <input type="checkbox"/>
Other Federal employment	US Commodity Futures Trading Commission	General Counsel	Washington, DC	6/2009 Est <input type="checkbox"/>	3/2013 Est <input type="checkbox"/>
Other Federal employment	US Senate, Permanent Subcommittee on Investigations	Counsel	Washington, DC	6/2001 Est <input type="checkbox"/>	6/2009 Est <input type="checkbox"/>
Unemployment			Washington, DC	1/2001 Est <input type="checkbox"/>	6/2001 Est <input type="checkbox"/>
Other Federal employment	US Department of Energy, Office of Environmental Management	Deputy Assistant Secretary for Planning, Policy & Budget	Washington, DC	11/1995 Est <input checked="" type="checkbox"/>	1/2001 Est <input type="checkbox"/>
Other Federal employment	US Senate, Committee on Environment and Public Works	Counsel	Washington, DC	3/1985 Est <input type="checkbox"/>	11/1995 Est <input checked="" type="checkbox"/>
Other Federal employment	US Nuclear Regulatory Commission	Attorney	Washington, DC	10/1982 Est <input type="checkbox"/>	3/1985 Est <input type="checkbox"/>

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year) (check box if estimate)	<u>Date Service Ended</u> (month/year) (check box if estimate) (check "present" box if still serving)
None.		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <input type="checkbox"/>

#### 4. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

- Elected to Sigma Xi Scientific Research Society on the basis of my undergraduate senior thesis at Princeton University (honorary society membership).

#### 5. Memberships

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
American Bar Association	2013 (approx.) - present	Vice Chair, Committee on Futures and Derivatives (since 1/2017)
State Bar of California	1982- present	Member (Inactive)
D.C. Bar	1985-present	Member

Princeton University Department of History Advisory Council	July 2017 – present	Member
Bar of the U.S. Supreme Court	1985 (approx..) - present	Member
Smithsonian Institution	2014 (approx..) - present	None.
WETA/WAMU	Off and on over the past ten years.	None.

### 6. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (if applicable)</u>
Deputy Assistant Secretary, Office of Environmental Management, U.S. Department of Energy	Appointed	1995	1995-2001

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>
Hillary Victory Fund	Co-host fundraising event	Distribute invitations to event	9/2016
Hillary for America	Co-host fundraising event	Distribute invitations to event	3/2016

(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>
Hillary for America	\$500	2016
Hillary for America	\$1,700	2016
Hillary for America	\$200	2016
Hillary Victory Fund	\$2,000	2016
Hillary Victory Fund	\$500	2016

## 7. Publications

List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet.

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>
<b>WilmerHale Client Alerts (co-authored and published on the WilmerHale website):</b>		
<i>2016 CFTC Year-in-Review and a Look Forward</i>	WilmerHale	January 23, 2017
<i>CFTC Revises Proposed Reg AT</i>	WilmerHale	Nov. 3, 2016
<i>Federal Reserve Board Seeks New Limits on Bank Activities in Physical Commodities</i>	WilmerHale	Oct. 6, 2016
<i>Key Differences Between the CFTC and SEC Final Business Conduct Standards and Related Cross-Border Requirements</i>	WilmerHale	May 26, 2016
<i>SEC Adopts Rules on Non-US Firms That "Arrange, Negotiate, or Execute" Security- Based Swaps in the U.S.</i>	WilmerHale	Feb. 11, 2016
<i>2015 CFTC Year-in-Review, and a Look Forward</i>	WilmerHale	January 26, 2016
<i>FERC Investigations and Enforcement Remain Focused on Market Manipulation</i>	WilmerHale	Dec. 22, 2015
<i>CFTC Proposes "Regulation AT" for Automated Trading</i>	WilmerHale	Dec. 15, 2015
<i>Status of NFA's Section 4s Reviews and Swap Dealer Examinations</i>	WilmerHale	Oct. 23, 2015
<i>CFTC Updates Position Limits Rule</i>	WilmerHale	Sept. 29, 2015
<i>SEC Proposes Rules to Oversee Non- US Firms' Swap Activity in the United States</i>	WilmerHale	April 30, 2015
<i>2014 CFTC Enforcement Year-in- Review, and a Look Forward</i>	WilmerHale	Feb. 10, 2015
<i>2013 CFTC Enforcement Year-in- Review, and a Look Forward</i>	WilmerHale	Feb. 6, 2014

<i>Addressing the Need for Speed: CFTC Seeks Comment on Risk Controls for Automated Trading Environments</i>	WilmerHale	Oct. 7, 2013
<b>Articles published in financial market trade publications:</b>		
<i>WilmerHale Attorneys Detail 2016 CFTC Enforcement Actions and Potential Priorities Under Trump Administration</i>	The Hedge Fund Law Report, Vol. 10, No. 7	Feb. 16, 2017
<i>Federal Reserve Board Seeks New Limits on Bank Activities in Physical Commodities</i>	The National Law Review	Oct. 21, 2016
<i>Dodd-Frank Implementation Update: Key differences between the CFTC and SEC final business conduct standards and related cross-border requirements</i>	Journal of Investment Compliance, Vol. 17, No. 3	2016
<i>The Resurrection of CFTC Administrative Enforcement Proceedings: Efficient Justice or a Biased Forum?</i>	35 Futures & Derivatives Law Report, Vol. 2	March 2015
<i>Swaps Provisions of Dodd-Frank Act: Cost-Benefit Analysis and Judicial Review</i>	Banking & Financial Services Policy Report, Vol. 33, No. 9	Sept., 2014
<i>Swap Dealer Chief Compliance Officer Requirements – First Year in Review</i>	The Review of Securities & Commodities Regulation, Vol. 47, No. 15	Sept., 2014
<i>The CFTC's Implementation of Financial Market Reform: Progress and Legal Challenges</i>	34 Futures & Derivatives Law Report, Vol. 4	April, 2014
<b>Articles published in law reviews and legal journals:</b>		
<i>Pariahs and Prophets: Nuclear Energy, Global Warming, and Intergenerational Justice</i>	17 Columbia Journal of Environmental Law 245	1992
<i>The Price-Anderson Act: Model Compensation Legislation? -- The 63 Million Dollar Question</i>	13 Harvard Environmental Law Review 1	1989
<i>Waste Wars: Did Congress "Nuke" State Sovereignty in the Low-Level Radioactive Waste Policy Amendments Act of 1985?</i>	11 Harvard Environmental Law Review 437	1987
<i>Liability and Compensation for Nuclear Accidents at the Savannah River Site</i>	South Carolina Lawyer	Jan/Feb 1990
<i>California's Nuclear Power Regulations: Federal Preemption?</i>	9 Hastings Constitutional Law Quarterly 623	1982

<b>Articles Published in Legal Reference Materials:</b>		
<i>Introducing Broker Registration and Regulation</i>	Chapter 17 (co-authored) in "OTC Derivatives Regulation Under Dodd-Frank, A Guide to Registration, Reporting, Business Conduct, and Clearing," 2017 edition, Thomson Reuters	2017
<i>The Dodd-Frank Act: Commodity Position Limits</i>	LexisAdvance	2016
<b>Other Publications Related to Nuclear Energy:</b>		
<i>Modernizing the Atomic Energy Act: Updating the Role of the States in Regulating the Construction and Operation of Nuclear Power Plants and the Disposal of Nuclear Wastes</i>	Printed in Committee Print, "State Regulation of Nuclear Power, An Overview of Current State Regulatory Activities," Committee on Interior and Insular Affairs, U.S. House of Representatives	1992
<i>The Low-Level Radioactive Waste Policy Amendments Act of 1985: Improving Radwaste Disposal Through Increased Application of Federalism</i>	Proceedings of the Symposium on Waste Management 87	1988
<i>Waste Wars: "Take Title" May Survive in Compact States</i>	The Radioactive Exchange, Vol. 11, No. 11	June 29, 1992
<i>Reflections on Writing an Unconstitutional Law: The LLRWPA</i>	The Radioactive Exchange, Vol. 11, No. 6	March 31, 1992
<i>Comments on the Decision of the U.S. District Court for the Northern District of New York Affirming the Constitutionality of the Low Level Radioactive Waste Policy Act Amendments of 1985,</i>	The Radioactive Exchange	December 24, 1990
<b>I co-authored the following reports in my official, professional capacity as counsel to the U.S. Senate Permanent Subcommittee on Investigations:</b>		
<i>Excessive Speculation in the Wheat Market</i> , Report Prepared by the Staff of the Permanent Subcommittee on Investigations of the Senate Committee on Homeland Security and	U.S. Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations	2009



Governmental Affairs, 111 <sup>th</sup> Cong., 1 <sup>st</sup> Sess. (2009).		
<i>Excessive Speculation in the Natural Gas Market</i> , Report Prepared by the Staff of the Permanent Subcommittee on Investigations of the Senate Committee on Homeland Security and Governmental Affairs.	Reprinted in Hearing of the Permanent Subcommittee on Investigations of the Senate Committee on Homeland Security and Governmental Affairs, <i>Excessive Speculation in the Natural Gas Market</i> , 110 <sup>th</sup> Cong., 1 <sup>st</sup> Sess. (June 25 and July 9, 2007).	2007
<i>The Role of Market Speculation in Rising Oil and Gas Prices: A Need to Put the Cap Back on the Beat</i> , Report Prepared by the Staff of the Permanent Subcommittee on Investigations of the Senate Committee on Homeland Security and Governmental Affairs, 109 <sup>th</sup> Cong., 2 <sup>nd</sup> Sess. (June 27, 2006).	U.S. Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations	2006
<i>Supplemental Report on Bayoil Diversions of Iraqi Oil and Related Oversight Failures</i> , Report Prepared by the Minority Staff of the Senate Permanent Subcommittee on Investigations (October 31, 2005)	U.S. Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations	2005
<i>U.S. Strategic Petroleum Reserve: Recent Policy Has Increased Costs to Consumers But Not Overall U.S. Energy Security</i> , Report Prepared by the Minority Staff of the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs, S. Prt. 108-18, 108 <sup>th</sup> Cong., 1 <sup>st</sup> Sess. (2003).	U.S. Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations	2003
<i>Gas Prices: How Are They Really Set?</i> Report Prepared by the Majority Staff of the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs, 107 <sup>th</sup> Cong., 2d Sess. (2002).	U.S. Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations	2002

**8. Lobbying**

**In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).**

In 2015, I was registered with the Senate and House as a lobbyist on behalf of The Clearinghouse.

**Senate Committee on Agriculture, Nutrition and Forestry**

**Supplemental Response to Question 7**

**Dan M. Berkovitz**

Question 7 of the Senate Agriculture Committee Core Questionnaire for Nominees requests the nominee to “List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet.” My initial response to this question identified these publications. Subsequently, the Committee requested a list of all speeches, public presentations, and testimony.

This Supplemental response provide a list of such speeches, presentations, and testimony. Electronic copies and two printed copies of these documents are also being provided to the Committee, except as noted below. Because I generally have not spoken from a prepared text, where there is no prepared text I have provided the Committee with the notes or talking points for such speeches or presentations that I retained.

**I. CFTC Statements, Testimony & Presentations (2009-2013)**

**A. Statements at CFTC Meetings**

1. *Oral Statement on Proposed Order for Exemptive Relief*, CFTC Meeting, June 14, 2011.
2. *A Brief Legislative History of the Regulation of Significant Price Discovery Contracts*, Statement of Dan M. Berkovitz, General Counsel, at Meeting to Consider Significant Price Discovery Contract Determinations, April 27, 2010.
3. *Speculative Position Limits and Metals: A Brief Regulatory History*, CFTC Meeting, March 25, 2010.
4. *Background on Position Limits and the Hedge Exemption*, CFTC Meeting, January 14, 2010.
5. *Position Limits and the Hedge Exemption, Brief Legislative History*, CFTC Meeting, July 28, 2009.

**B. Congressional Testimony**

1. Testimony, Hearing on H.R. \_\_ The Swap Data and Clearinghouse Indemnification Correction Act of 2012 Before the Subcommittee on Capital Markets and Government Sponsored Enterprises, Committee on Financial Services, United States House of Representatives, March 21, 2012.

2. Testimony Before the U.S. House of Representatives Subcommittee on Oversight and Investigations of the Committee on Financial Services, Hearing on MF Global, December 15, 2011.
3. Testimony Before the House Committee on Agriculture, Subcommittee on General Farm Commodities and Risk Management, CFTC's Rulemaking Process to Implement the Dodd-Frank Act, April 13, 2011.
4. Testimony Before the Senate Committee on Agriculture, Nutrition, and Forestry, CFTC's Regulation of Derivatives Markets, March 30, 2011.
5. Written Testimony of Dan M. Berkovitz, General Counsel U.S. Commodity Futures Trading Commission Hearing to Review Proposals to Establish Exchanges Trading "Movie Futures" Before the Subcommittee on General Farm Commodities and Risk Management House Committee on Agriculture, April 22, 2010.

**C. Public speeches and presentations**

As General Counsel of CFTC, I made a number of presentations at public conferences. Generally, I did not speak from prepared text, but rather from my own notes or powerpoint presentations. I am providing printed and electronic copies of the notes or powerpoint presentations that I retained. This list and the attached documents is not necessarily an all-inclusive list of all such presentations; there may have been other presentations for which I did not retain any notes or powerpoint presentations and for which I do not have a specific recollection.

1. *Background on Dodd-Frank and Status of CFTC Implementation*, Presentation to Western Systems Power Pool, September 27, 2011.
2. *Status of CFTC Implementation of Dodd-Frank Act*, Presentation to Institutional Investor Legal Forum, October 18, 2011.
3. *CFTC Implementation of the Dodd-Frank Act*, Presentation to EEI Compliance Conference, June 26, 2012.
4. *CFTC Implementation of the Dodd-Frank Act*, Presentation to University of Texas Power & Gas Institute Conference, August 23, 2012.
5. *CFTC Implementation of the Dodd-Frank Act*, Presentation to IMN Derivatives Trading Conference, September 6, 2012.
6. *Dodd-Frank Implementation*, Presentation to American Bankers Association, April 18, 2012.
7. *CFTC Implementation of the Dodd-Frank Act*, Presentation to Bracewell & Giuliani Oil & Gas Symposium, March 1, 2012.

8. *CFTC Implementation of the Dodd-Frank Act*, Presentation to Energy Risk USA, May 15, 2012.
9. *Regulating Carbon as a Commodity*, Carbon Forum North America (date unknown).
10. Presentation to Columbia University Law School, January 21, 2010.
11. *Over-the-Counter Derivatives Reform*, Remarks of Dan M. Berkovitz, General Counsel, Commodity Futures Trading Commission, Conference on Optimizing Operational Efficiency in the Energy Trading Market, March 12, 2010.
12. Presentation to Energy Bar Association (CFTC's activities to implement Dodd-Frank legislation), May 5, 2011.
13. *Futures and Derivatives Regulation*, Presentation to New York City Bar Committee, April 9, 2010.
14. Presentation at PLI Hedge Fund 2011 Seminar, September 21, 2011.
15. *CFTC's Implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act*, Presentation to Energy in the Northeast Conference, September 27, 2010.
16. Presentation to Energy Bar Association (CFTC's activities to implement Dodd-Frank legislation), December 10, 2010.
17. Presentation to New York City Bar Derivatives Section, June 10, 2011.
18. Presentation to Women in Hedge Funds (CFTC's activities to implement Dodd-Frank legislation), March 17, 2011.
19. Presentation on Regulatory Reform, Natural Gas Supply Association, March 3, 2010.

## **II. Conference Presentations, 2013-2017.**

Over the past several years I have given numerous presentations at financial industry conferences. I did not speak from prepared text, but from notes or powerpoint slides. I am providing printed and electronic copies of the notes, powerpoint presentations, and other written materials that I used to prepare for and present at these conferences.

1. *Derivatives Enforcement Update*, Practicing Law Institute, New York, NY, October 25, 2017.
2. *Financial Markets: Regulatory Outlook 2017*, Natural Gas Supply Association Annual Meeting, Houston, TX, March 2, 2017.
3. *CFTC Enforcement Update, Advanced Swaps & Other Derivatives*, Practicing Law Institute, New York, NY, October 26, 2016.

4. *Proving Manipulation Under the Commodity Exchange Act: Recent Cases and Issues*, Futures Industry Association: 38th Annual Law & Compliance Division Conference, Baltimore, MD, May 6, 2016.
5. *Federal Reserve Regulation of Bank Physical Commodities Activities*, American Conference Institute 13<sup>th</sup> National Forum on Energy Trading Compliance and Regulatory Enforcement, Houston, TX, May 25, 2016.
6. *Key Concerns Surrounding Systemic Risk Related to Instruments and Entities Impacted by the CFTC*, Presentation at George Washington University Symposium, February 4, 2016.
6. *Private Rights of Action under the Commodity Exchange Act*, NGSA Compliance and Enforcement Roundtable, Houston, TX, January 14, 2016.
7. *Federal Reserve Regulation of Bank Physical Commodities Activities*, American Conference Institute 12<sup>th</sup> National Forum on Energy Trading Compliance and Regulatory Enforcement, Houston, TX, November 17, 2015.
8. *The Future of Federal Reserve Regulation of Physical Commodities Activities*, Futures Industry Association: 37th Annual Law & Compliance Division Conference, Washington, DC, June 23, 2015.
9. *Federal Reserve Regulation of Bank Physical Commodities Activities*, American Conference Institute 11<sup>th</sup> National Forum on Energy Trading Compliance and Regulatory Enforcement, Houston, TX, June 22, 2015.
10. Moderator, Panel Discussion, *ISDA Symposium: Complying with Dodd-Frank Five Years Later, Panel on Obligations of Chief Compliance Officers under Dodd-Frank – The Regulatory Perspective*, 2015.
11. *CFTC Proposed Rulemakings on Speculative Position Limits*, Advanced Swaps & Other Derivatives, Practising Law Institute, New York, NY, October 16, 2014.
12. *The CFTC's Implementation of Financial Market Reform: Progress and Legal Challenges*, WestLegalEDcenter Webcast, June 24, 2014.
13. *2009-2014: The New Financial Regulatory World Order*, Financial Markets Law Committee, London, UK, June 2014.
14. *The Swaps Clearing Requirement under the Dodd-Frank Act*, Federal Financial Institutions Examination Council, Capital Markets Specialists Conference, Arlington, VA, April 30, 2014.
15. *New Financial Market Regulations Affecting Commodity Trading*, GARD Conference, New York, NY, April, 2014.

16. *CFTC Update: High-Frequency Trading, Customer Protection, & Position Limits*, Presentation to NGFA's 42nd Annual Country Elevator and Trade Show, Dec. 9, 2013, Dec. 9, 2013

17. *CFTC Implementation of the Dodd-Frank Act: An Update and Perspective*, Presentation to the Deloitte Dodd-Frank Compliance Leadership Academy, Dallas, TX, Nov. 14, 2013.

18. *The Regulation of Swaps under the Dodd-Frank Wall Street Reform and Consumer Protection Act*, American Public Power Association Legal Seminar, Seattle, WA, Oct. 20, 2013.

19. Remarks to Edison Electric Institute Dodd-Frank Compliance Conference, Oct. 8, 2013.

20. *The Regulation of Swaps under the Dodd-Frank Wall Street Reform and Consumer Protection Act*, William J. O'Neill Great Lakes Bankruptcy Institute, Cleveland, OH, June 6, 2013.

### **III. Senate Permanent Subcommittee on Investigations Presentations (2007)**

The following are presentations I made as Counsel to the Senate PSI. I am providing printed and electronic copies of these presentations. It is possible that there may have been other presentations, but I do not have any further records or recollections.

1. *Preventing Excessive Speculation in the Natural Gas Market*, Presentation to American Public Gas Association (APGA), APGA Annual Conference, August 7, 2007.

2. *Closing the Enron Loophole*, Presentation to Institute of Public Utilities 39<sup>th</sup> Annual Regulatory Policy Conference, December 3, 2007.

### **IV. Congressional Testimony on Nuclear Regulatory Issues (1995-2000)**

1. To the best of my recollection, I testified before Congress on two occasions as Deputy Assistant Secretary for Planning, Policy and Budget in the Department of Energy's (DOE) Office of Environmental Management. One occasion related to legislation affecting the Hanford Nuclear Reservation and, to the best of my recollection, the other related to the DOE budget request for the EM program. I do not have any records or specific recollection of the dates of these hearings, or the committee or subcommittee that held the hearings.

2. In February 1995, I testified at the Senate Committee on Environment and Public Works hearing on my nomination by President Clinton to be Commissioner of the U.S. Nuclear Regulatory Commission. The Hearing print is: *Nominations of Shirley M. Jackson and Dan M. Berkovitz*, Hearing Before the Committee on Environment and Public Works, United States Senate, 104<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Feb. 16, 1995). I have only a single copy of the Committee print of this hearing, and it is not feasible to copy this document while preserving its current form intact. However, this Senate document should be readily available from the Senate Library or the Library of Congress.

UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**

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May 2, 2018

The Honorable Pat Roberts  
Chairman  
Committee on Agriculture, Nutrition,  
and Forestry  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Dan M. Berkovitz, who has been nominated by President Trump for the position of Commissioner, Commodity Futures Trading Commission.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,  
**DAVID  
APOL**

David J. Apol

Acting Director and General Counsel

Digitally signed by DAVID APOL  
DN: cn=US, o=U.S. Government, ou=Office  
of Government Ethics, cn=DAVID APOL,  
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Date: 2018.05.02 16:51:05 -0400

Enclosures





April 25, 2018

Daniel J. Davis, General Counsel and  
Designated Agency Ethics Official  
Office of the General Counsel  
U.S. Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

Dear Mr. Davis:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Commissioner for the Commodity Futures Trading Commission ("CFTC").

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will resign from my position as Senior Partner with the law firm of WilmerHale. In April 2018, I received my final distribution of 2017 firm profits from WilmerHale. As a result of this payment, WilmerHale has fully compensated me for all amounts owed pursuant to my partnership agreement. I will receive no other compensation from WilmerHale. Upon my confirmation and resignation from the firm, WilmerHale will also return to me all of the funds in my capital account at the firm. In addition, upon my separation from WilmerHale, the assets in my defined benefit plan will be distributed in accordance with WilmerHale's practice of paying a lump-sum distribution to partners after separation from the firm. Under this standard practice, the lump-sum will be paid in the year following the year I depart from the firm. Until I have received these payments, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the ability or willingness of the firm to pay this refund, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1). For a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which this firm is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R.

§ 2635.502(d). In addition, I will not participate personally and substantially in any particular matter involving specific parties in which a former client of mine is a party or represents a party for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). In addition, for the duration of my appointment as Commissioner for the Commodity Futures Trading Commission, I will not participate personally and substantially in any particular matter involving specific parties in which I know I previously participated in my capacity as an attorney with the law firm of WilmerHale, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

Upon confirmation, I will resign from my position as an Adjunct Faculty Member at Georgetown University Law Center and the American Bar Association Committee on Futures and Derivatives. For a period of one year after these resignations, I will not participate personally and substantially in any particular matter involving specific parties in which I know Georgetown University Law Center or the American Bar Association Committee on Futures and Derivatives is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

My spouse is an employee of Verizon and she participates in the company's compensation incentive plan through which she holds Verizon common stock, unvested Verizon Restricted Stock Units (RSUs) and unvested Verizon Performance Stock Units (PSUs). She does not have any vested RSUs or PSUs or stock options. I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of Verizon unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1).

I will retain my position as trustee of an irrevocable Family Trust. I will not receive any fees for the services that I provide as a trustee during my appointment to the position of CFTC Commissioner. I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of the Family Trust, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

As required by 7 U.S.C. § 2(a)(8), I understand that, when I am appointed a Commissioner of the CFTC, I will be prohibited during my term from employment with any entity subject to regulation by the CFTC, and I will also be prohibited from participating, directly or indirectly, in any registered entity operations or transactions of a character subject to regulation by the CFTC. Further, I understand that, if I am confirmed as Commissioner of the CFTC, I must comply with the requirements of 7 U.S.C. § 13(c) and (d), 5 C.F.R. § 5101.102, 17 C.F.R. § 140.735-2, and 17 C.F.R. § 140.735-2a.

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

D. Berkovitz  
Page 3

I will meet in person with you during the first week of my service in the position of Commissioner in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order no. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

Finally, I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan M. Berkovitz", with a stylized flourish at the end.

Dan M. Berkovitz

## Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e)

### Filer's Information

**Berkovitz, Dan Michael**

Commissioner, Commodity Futures Trading Commission

Other Federal Government Positions Held During the Preceding 12 Months:  
None

Names of Congressional Committees Considering Nomination:

- Committee on Agriculture, Nutrition, and Forestry

Electronic Signature - I certify that the statements I have made in this form are true, complete and correct to the best of my knowledge.

/s/ Berkovitz, Dan Michael [electronically signed on 03/08/2018 by Berkovitz, Dan Michael in Integrity.gov]

Agency Ethics Official's Opinion - On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments below).

/s/ Davis, Daniel J, Certifying Official [electronically signed on 04/25/2018 by Davis, Daniel J in Integrity.gov]

Other review conducted by

U.S. Office of Government Ethics Certification

/s/ Apol, David, Certifying Official [electronically signed on 05/02/2018 by Apol, David in Integrity.gov]

## 1. Filer's Positions Held Outside United States Government

#	ORGANIZATION NAME	CITY, STATE	ORGANIZATION TYPE	POSITION HELD	FROM	TO
1	Wilmer Cutler Pickering Hale and Dorr, LLP ("WilmerHale")	Washington, District of Columbia	Law Firm	Partner	9/2013	Present
2	Georgetown University Law Center	Washington, District of Columbia	University/College	Adjunct Professor	1/2012	Present
3	American Bar Association Committee on Futures and Derivatives	Chicago, Illinois	Voluntary Bar Association	Vice Chair	1/2017	Present
4	Family Trust 1	Dunlap, Illinois	Trust	Trustee	9/2017	Present

## 2. Filer's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	WilmerHale (law firm)	N/A			\$1,186,543
2	WilmerHale capital account	N/A	\$250,001 - \$500,000	Interest	\$15,001 - \$50,000
3	Georgetown University Law Center	N/A		Salary	\$6,500
4	DFA International Core Equity Portfolio Institutional Class (DFIEX) (Personal IRA)	Yes	\$15,001 - \$50,000		\$1,001 - \$2,500
5	DFA US Core Equity II Portfolio Institutional Class (DFQTX) (Personal IRA)	Yes	\$50,001 - \$100,000		\$2,501 - \$5,000
6	iShares Core US Aggregate Bond ETF (AGG) (Personal IRA)	Yes	\$1,001 - \$15,000		None (or less than \$201)

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#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
7	Vanguard Target Retirement 2025 Fund (VTTVX) (WilmerHale Contribution Plan)	Yes	\$100,001 - \$250,000		\$2,501 - \$5,000
8	WilmerHale defined benefit plan	N/A	\$100,001 - \$250,000		None (or less than \$201)
9	U.S. brokerage money market account (cash) (Personal IRA)	N/A	\$1,001 - \$15,000		None (or less than \$201)
10	WilmerHale anticipated partnership share	N/A	\$500,001 - \$1,000,000		None (or less than \$201)

### 3. Filer's Employment Agreements and Arrangements

#	EMPLOYER OR PARTY	CITY, STATE	STATUS AND TERMS	DATE
1	WilmerHale	Washington, District of Columbia	Pursuant to the partnership agreement, I will receive my final partnership share distribution in April 2018. The total amount of the payments will be calculated as of that date, based on the work I performed through December 2017. Pursuant to the partnership agreement, following my withdrawal from the firm, I will receive a lump sum payment of my capital account. This payment will be calculated as of the date of my withdrawal.	9/2013
2	Georgetown University Law Center	Washington, District of Columbia	Upon confirmation, I will resign from my position as an Adjunct Faculty Member at Georgetown University Law Center.	6/2010
3	WilmerHale	Washington, District of Columbia	I will not participate in this defined contribution plan after my separation. The plan is maintained by an independent U.S. brokerage firm.	9/2013
4	WilmerHale	Washington, District of Columbia	Upon my separation from WilmerHale, the value of the assets in my defined benefit plan will be distributed in accordance with WilmerHale's practice of paying a lumpsum distribution to partners after separation from the firm.	9/2013

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#	EMPLOYER OR PARTY	CITY, STATE	STATUS AND TERMS	DATE
5	American Bar Association Committee on Futures and Derivatives	Chicago, Illinois	Upon confirmation, I will resign from my position as Vice Chair of the American Bar Association Committee on Futures and Derivatives.	1/2017

4. Filer's Sources of Compensation Exceeding \$5,000 in a Year

#	SOURCE NAME	CITY, STATE	BRIEF DESCRIPTION OF DUTIES
1	Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale")	Washington, District of Columbia	Partner, provide legal services to clients.
2	Georgetown University Law Center	Washington, District of Columbia	Teach class in derivatives regulation.
3	Citigroup, Inc.	New York, New York	Legal services (client of WilmerHale).
4	Barclays Financial Corp.	New York, New York	Legal services (client of WilmerHale).
5	Currencies Direct Holdings, Ltd.	London, U.K., Outside U.S.	Legal services (client of WilmerHale).
6	Citadel, LLC	Chicago, Illinois	Legal services (client of WilmerHale).
7	UBS Financial Services Inc.	New York, New York	Legal services (client of WilmerHale).
8	Andreessen Horowitz	Menlo Park, California	Legal services (client of WilmerHale).
9	One Confidential Client/individual/ non-public investigation	New York, New York	Legal services (client of WilmerHale).
10	JPMorgan Chase & Co.	New York, New York	Legal services (client of WilmerHale).
11	StockX	Detroit, Michigan	Legal services (client of WilmerHale).

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#	SOURCE NAME	CITY, STATE	BRIEF DESCRIPTION OF DUTIES
12	Seed CX Ltd.	Chicago, Illinois	Legal services (client of WilmerHale).
13	Aston Capital Management	New York, New York	Legal services (client of WilmerHale).
14	Bloomberg, LP	New York, New York	Legal services (client of WilmerHale).
15	Intercontinental Exchange, Inc.	Atlanta, Georgia	Legal services (client of WilmerHale).
16	Morgan Stanley	New York, New York	Legal services (client of WilmerHale).
17	Abu Dhabi Investment Authority	Abu Dhabi, UAE, Outside U.S.	Legal services (client of WilmerHale).
18	Monex Deposit Company	Newport Beach, California	Legal services (client of WilmerHale).
19	Chicago Board Options Exchange, Inc.	Chicago, Illinois	Legal services (client of WilmerHale).
20	BGC Financial, LP	New York, New York	Legal services (client of WilmerHale).
21	Alcoa	Pittsburgh, Pennsylvania	Legal services (client of WilmerHale)

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#### 5. Spouse's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Verizon	N/A		salary, bonus	
2	Verizon, Restricted Stock Units	N/A	\$50,001 - \$100,000		None (or less than \$201)
3	Verizon, Performance Stock Units	N/A	\$100,001 - \$250,000		None (or less than \$201)

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
4	DFA International Core Equity Portfolio Institutional Class (DFIEX) (Personal IRA)	Yes	\$100,001 - \$250,000		\$2,501 - \$5,000
5	DFA US Core Equity II Portfolio Institutional Class (DFQTX)(Personal IRA)	Yes	\$250,001 - \$500,000		\$5,001 - \$15,000
6	DFA US Small Cap Value Portfolio Institutional Class (DFSVX) (Personal IRA)	Yes	\$50,001 - \$100,000		\$2,501 - \$5,000
7	DFA Real Estate Securities Portfolio Institutional Class (DFREX)(Personal IRA)	Yes	\$15,001 - \$50,000		\$1,001 - \$2,500
8	StoneRidge Reinsurance Risk Premium Interval Fund (SRRIX(Personal IRA))	Yes	\$50,001 - \$100,000		None (or less than \$201)
9	Verizon 2025 Fund (TPTP)	Yes	\$250,001 - \$500,000		None (or less than \$201)
10	Verizon Stock Fund (Verizon Common Stock & Cash) (Verizon Executive Compensation Plan (EDP))	N/A	None (or less than \$1,001)	Dividends	\$201 - \$1,000
11	U.S. brokerage money market account #1 (cash)	N/A	\$15,001 - \$50,000		None (or less than \$201)
12	U.S. brokerage money market account #2 (cash)	N/A	\$1,001 - \$15,000		None (or less than \$201)
13	U.S. brokerage money market account #3 (cash)(Verizon Executive Compensation Plan (EDP))	N/A	\$1,001 - \$15,000		None (or less than \$201)
14	Verizon Communications Inc	N/A	\$100,001 - \$250,000	Dividends	\$2,501 - \$5,000
15	Verizon 2025 Fund (UPTP) (Verizon Executive Compensation Plan (EDP))	Yes	\$15,001 - \$50,000		None (or less than \$201)
16	U.S. brokerage money market account (cash) (Personal IRA)	N/A	\$1,001 - \$15,000		None (or less than \$201)

## 6. Other Assets and Income

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	DFA T.A. U.S. Core Equity 2 Portfolio Institutional Class Fund (DFTCX)	Yes	\$250,001 - \$500,000		\$5,001 - \$15,000
2	DFA International Core Equity Portfolio Institutional Class Fund (DFIEX)	Yes	\$250,001 - \$500,000		\$1,001 - \$2,500
3	DFA US Core Equity II Portfolio Institutional Class Fund (DFQTX)	Yes	\$250,001 - \$500,000		None (or less than \$201)
4	DFA Emerging Markets Core Equity Portfolio Institutional Class Fund (DFCEX)	Yes	\$100,001 - \$250,000		\$2,501 - \$5,000
5	DFA US Small Cap Value Portfolio Institutional Class Fund (DFSVX)	Yes	\$100,001 - \$250,000		\$2,501 - \$5,000
6	DFA Real Estate Securities Portfolio Institutional Class Fund (DFREX)	Yes	\$50,001 - \$100,000		\$1,001 - \$2,500
7	Stoneridge All Asset Variance Risk Premium Fund (AVRPX)	Yes	\$50,001 - \$100,000		\$5,001 - \$15,000
8	Vanguard Dividend Appreciation Fund ETF (VIG)	Yes	\$50,001 - \$100,000		\$201 - \$1,000
9	iShares Core U.S. Aggregate Bond ETF (AGG)	Yes	\$50,001 - \$100,000		\$1,001 - \$2,500
10	Adobe Systems Incorporated - Common Stock	N/A	\$1,001 - \$15,000		None (or less than \$201)
11	Vanguard Intermediate-Term Tax-Exempt Fund Admiral Shares (VWIUX)	Yes	\$50,001 - \$100,000		\$1,001 - \$2,500
12	Vanguard Long-Term Tax-Exempt Fund Admiral Shares (VWLUX)	Yes	\$50,001 - \$100,000		\$1,001 - \$2,500
13	Vanguard Limited-Term Tax-Exempt Fund Admiral Shares (VMLUX)	Yes	\$50,001 - \$100,000		\$201 - \$1,000

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#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
14	Vanguard Total International Stock Index Fund Admiral Shares (VTIAX)	Yes	\$100,001 - \$250,000		\$2,501 - \$5,000
15	Vanguard Total Stock Market Index Fund Admiral Shares (VTSAX)	Yes	\$250,001 - \$500,000		\$2,501 - \$5,000
16	U.S. Bank Checking Account #1 (cash)	N/A	\$15,001 - \$50,000		None (or less than \$201)
17	U.S. Bank Savings/Money Market (cash)	N/A	\$1,001 - \$15,000		None (or less than \$201)
18	U.S. Bank Checking Account #2 (cash)	N/A	\$1,001 - \$15,000		None (or less than \$201)
19	U.S. Bank Checking Account #3 (cash)	N/A	\$100,001 - \$250,000	Interest	\$201 - \$1,000
20	Gold Coins	N/A	\$1,001 - \$15,000		None (or less than \$201)
21	U.S. brokerage money market account (cash)	N/A	\$1,001 - \$15,000		None (or less than \$201)
22	DFA T.A. US Core Equity 2 Portfolio Institutional Class (DFTCX)	Yes	\$100,001 - \$250,000		\$2,501 - \$5,000
23	DFA International Core Equity Portfolio Institutional Class (DFIEX)	Yes	\$100,001 - \$250,000		\$2,501 - \$5,000
24	DFA US Core Equity II Portfolio Institutional Class (DFQTX)	Yes	\$15,001 - \$50,000		\$201 - \$1,000
25	DFA Emerging Markets Core Equity Portfolio Institutional Class (DFCEX)	Yes	\$15,001 - \$50,000		\$201 - \$1,000
26	Indiana CollegeChoice Direct 529 Savings Plan	See Endnote	N/A	None (or less than \$1,001)	Distribution \$64,386
27	Maryland ABLE Account (Able Aggressive) (Cash)	Yes	\$15,001 - \$50,000		None (or less than \$201)

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
28	DFA Global Equity Portfolio Institutional Class (DGEIX) (UTMA)	Yes	\$15,001 - \$50,000		\$201 - \$1,000
29	Maryland College Investment Plan #1(529)	No			
29.1	Equity Portfolio	Yes	\$50,001 - \$100,000		None (or less than \$201)
29.2	Portfolio 2018	Yes	\$50,001 - \$100,000		None (or less than \$201)
30	Maryland College Investment Plan #2 (529)	No			
30.1	Portfolio 2018	Yes	\$100,001 - \$250,000		None (or less than \$201)

## 7. Transactions

(N/A) - Not required for this type of report

## 8. Liabilities

#	CREDITOR NAME	TYPE	AMOUNT	YEAR INCURRED	RATE	TERM
1	PNC Bank	Mortgage on Personal Residence	\$500,001 - \$1,000,000	2012	3.875%	30 years

## 9. Gifts and Travel Reimbursements

(N/A) Not required for this type of report

Endnotes

PART	#	ENDNOTE
6.	26	Plan controlled by relative for the benefit of a dependent child.

## Summary of Contents

### 1. Filer's Positions Held Outside United States Government

Part 1 discloses positions that the filer held at any time during the reporting period (excluding positions with the United States Government). Positions are reportable even if the filer did not receive compensation.

This section does not include the following: (1) positions with religious, social, fraternal, or political organizations; (2) positions solely of an honorary nature; (3) positions held as part of the filer's official duties with the United States Government; (4) mere membership in an organization; and (5) passive investment interests as a limited partner or non-managing member of a limited liability company.

### 2. Filer's Employment Assets & Income and Retirement Accounts

Part 2 discloses the following:

- Sources of earned and other non-investment income of the filer totaling more than \$200 during the reporting period (e.g., salary, fees, partnership share, honoraria, scholarships, and prizes)
- Assets related to the filer's business, employment, or other income-generating activities that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in income during the reporting period (e.g., equity in business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents)

This section does not include assets or income from United States Government employment or assets that were acquired separately from the filer's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF).

### 3. Filer's Employment Agreements and Arrangements

Part 3 discloses agreements or arrangements that the filer had during the reporting period with an employer or former employer (except the United States Government), such as the following:

- Future employment
- Leave of absence
- Continuing payments from an employer, including severance and payments not yet received for previous work (excluding ordinary salary from a current employer)
- Continuing participation in an employee welfare, retirement, or other benefit plan, such as pensions or a deferred compensation plan
- Retention or disposition of employer-awarded equity, sharing in profits or carried interests (e.g., vested and unvested stock options, restricted stock, future share of a company's profits, etc.)

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#### 4. Filer's Sources of Compensation Exceeding \$5,000 in a Year

Part 4 discloses sources (except the United States Government) that paid more than \$5,000 in a calendar year for the filer's services during any year of the reporting period.

The filer discloses payments both from employers and from any clients to whom the filer personally provided services. The filer discloses a source even if the source made its payment to the filer's employer and not to the filer. The filer does not disclose a client's payment to the filer's employer if the filer did not provide the services for which the client is paying.

#### 5. Spouse's Employment Assets & Income and Retirement Accounts

Part 5 discloses the following:

- Sources of earned income (excluding honoraria) for the filer's spouse totaling more than \$1,000 during the reporting period (e.g., salary, consulting fees, and partnership share)
- Sources of honoraria for the filer's spouse greater than \$200 during the reporting period
- Assets related to the filer's spouse's employment, business activities, other income-generating activities that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in income during the reporting period (e.g., equity in business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents)

This section does not include assets or income from United States Government employment or assets that were acquired separately from the filer's spouse's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF). Amounts of income are not required for a spouse's earned income (excluding honoraria).

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#### 6. Other Assets and Income

Part 6 discloses each asset, not already reported, that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in investment income during the reporting period. For purposes of the value and income thresholds, the filer aggregates the filer's interests with those of the filer's spouse and dependent children.

This section does not include the following types of assets: (1) a personal residence (unless it was rented out during the reporting period); (2) income or retirement benefits associated with United States Government employment (e.g., Thrift Savings Plan); and (3) cash accounts (e.g., checking, savings, money market accounts) at a single financial institution with a value of \$5,000 or less (unless more than \$200 of income was produced). Additional exceptions apply. Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF).

#### 7. Transactions



Part 7 discloses purchases, sales, or exchanges of real property or securities in excess of \$1,000 made on behalf of the filer, the filer's spouse or dependent child during reporting period.

This section does not include transactions that concern the following: (1) a personal residence, unless rented out; (2) cash accounts (e.g., checking, savings, CDs, money market accounts) and money market mutual funds; (3) Treasury bills, bonds, and notes; and (4) holdings within a federal Thrift Savings Plan account. Additional exceptions apply.

#### **8. Liabilities**

Part 8 discloses liabilities over \$10,000 that the filer, the filer's spouse or dependent child owed at any time during the reporting period.

This section does not include the following types of liabilities: (1) mortgages on a personal residence, unless rented out (limitations apply for PAS filers); (2) loans secured by a personal motor vehicle, household furniture, or appliances, unless the loan exceeds the item's purchase price; and (3) revolving charge accounts, such as credit card balances, if the outstanding liability did not exceed \$10,000 at the end of the reporting period. Additional exceptions apply.

#### **9. Gifts and Travel Reimbursements**

This section discloses:

- Gifts totaling more than \$390 that the filer, the filer's spouse, and dependent children received from any one source during the reporting period.
- Travel reimbursements totaling more than \$390 that the filer, the filer's spouse, and dependent children received from any one source during the reporting period.

For purposes of this section, the filer need not aggregate any gift or travel reimbursement with a value of \$156 or less. Regardless of the value, this section does not include the following items: (1) anything received from relatives; (2) anything received from the United States Government or from the District of Columbia, state, or local governments; (3) bequests and other forms of inheritance; (4) gifts and travel reimbursements given to the filer's agency in connection with the filer's official travel; (5) gifts of hospitality (food, lodging, entertainment) at the donor's residence or personal premises; and (6) anything received by the filer's spouse or dependent children totally independent of their relationship to the filer. Additional exceptions apply.

#### Privacy Act Statement

Title I of the Ethics in Government Act of 1978, as amended (the Act), 5 U.S.C. app. § 101 et seq., as amended by the Stop Trading on Congressional Knowledge Act of 2012 (Pub. L. 112-105) (STOCK Act), and 5 C.F.R. Part 2634 of the U. S. Office of Government Ethics regulations require the reporting of this information. The primary use of the information on this report is for review by Government officials to determine compliance with applicable Federal laws and regulations. This report may also be disclosed upon request to any requesting person in accordance with sections 105 and 402(b)(1) of the Act or as otherwise authorized by law. You may inspect applications for public access of your own form upon request. Additional disclosures of the information on this report may be made: (1) to any requesting person, subject to the limitation contained in section 208(d)(1) of title 18, any determination granting an exemption pursuant to sections 208(b)(1) and 208(b)(3) of title 18; (2) to a Federal, State, or local law enforcement agency if the disclosing agency becomes aware of violations or potential violations of law or regulation; (3) to another Federal agency, court or party in a court or Federal administrative proceeding when the Government is a party or in order to comply with a judge-issued subpoena; (4) to a source when necessary to obtain information relevant to a conflict of interest investigation or determination; (5) to the National Archives and Records Administration or the General Services Administration in records management inspections; (6) to the Office of Management and Budget during legislative coordination on private relief legislation; (7) to the Department of Justice or in certain legal proceedings when the disclosing agency, an employee of the disclosing agency, or the United States is a party to litigation or has an interest in the litigation and the use of such records is deemed relevant and necessary to the litigation; (8) to reviewing officials in a new office, department or agency when an employee transfers or is detailed from one covered position to another; (9) to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record; (10) to contractors and other non-Government employees working on a contract, service or assignment for the Federal Government when necessary to accomplish a function related to an OGE Government-wide system of records; and (11) on the OGE Website and to any person, department or agency, any written ethics agreement filed with OGE by an individual nominated by the President to a position requiring Senate confirmation. See also the OGE/GOVT-1 executive branch-wide Privacy Act system of records.

#### Public Burden Information

This collection of information is estimated to take an average of three hours per response, including time for reviewing the instructions, gathering the data needed, and completing the form. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Program Counsel, U.S. Office of Government Ethics (OGE), Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917.

Pursuant to the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number (that number, 3209-0001, is displayed here and at the top of the first page of this OGE Form 278e).

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July 20, 2018

The Honorable Pat Roberts  
Chairman  
Senate Committee on Agriculture, Nutrition, and Forestry  
328A Russell Senate Office Building  
Washington, DC 20510

Dear Chairman Roberts:

Pursuant to the requirements of the Ethics in Government Act of 1978, as amended, and 5 C.F.R. 2634.606(a), I am hereby updating the information pertaining to outside earned income and honoraria received as reported in my Public Financial Disclosure Report (OGE Form 278e), signed on March 8, 2018.

Accordingly, please be advised that from March 8, 2018, to date, I have the following outside earned income:

(1) On April 10, 2018 I received \$500,956.37 from WilmerHale as the final distribution of 2017 firm profits. I previously identified on my SF-278 that I would be receiving approximately this amount of income from WilmerHale for 2017 firm profits and I also identified it in my letter dated April 25, 2018 to CFTC General Counsel Daniel J. Davis.

(2) On May 31, 2018 I received \$5,000 from Georgetown University for teaching at the law school in the spring semester of 2018. I previously identified on my SF-278 that I had received this plus additional income for teaching this course, but due to a clerical error in fact I had not received this portion of my compensation for this course at the time my SF-278 was filed.

I have no other covered income or honoraria to report.

Thank you for your consideration of this correspondence.

Sincerely,



Dan M. Berkovitz

Cc: The Honorable Debbie Stabenow, Ranking Member

**U.S. SENATE COMMITTEE ON AGRICULTURE, NUTRITION & FORESTRY**  
**Questions for Executive Nominees**  
**115<sup>th</sup> Congress**

**1. Basic Biographical Information**

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
<u>Name of Position</u>	<u>Date of Nomination</u>
Under Secretary for Natural Resources and Environment	04/24/2018

<i>Current Legal Name</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
James	Edward	Hubbard	

<i>Addresses</i>					
<u>Residential Address</u> (do not include street address)			<u>Office Address</u> (include street address)		
			Street:		
City: Fort Collins	State: CO	Zip: 80526	City:	State:	Zip:

<i>Other Names Used</i>						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<u>Check if Maiden Name</u>	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
None					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Birth Year and Place</i>	
<b>Year of Birth</b> (Do not include month and day.)	<b>Place of Birth</b>
1946	Independence, KS

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married	Married	Separated	Annulled	Divorced	Widowed
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<i>Spouse's Name</i> (current spouse only)			
<u>Spouse's First Name</u>	<u>Spouse's Middle Name</u>	<u>Spouse's Last Name</u>	<u>Spouse's Suffix</u>
Lucinda	Kay	Hubbard	

<i>Spouse's Other Names Used</i> (current spouse only)						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<u>Check if Maiden Name</u>	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
Lucinda	Kay	Lyon		X	Sept./1946    Est <input type="checkbox"/>	Mar./1965    Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Children's Names (if over 18)</i>			
<b>First Name</b>	<b>Middle Name</b>	<b>Last Name</b>	<b>Suffix</b>
Sherri	Elizabeth	Hubbard	
Amy	Katherine	Nordic	
Emily	Anne	Emerick	

## 2. Education

List all post-secondary schools attended.

<b><u>Name of School</u></b>	<b><u>Type of School</u></b> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<b><u>Date Began</u></b> <b><u>School</u></b> (month/year) (check box if estimate)	<b><u>Date Ended</u></b> <b><u>School</u></b> (month/year) (check box if estimate) (check "present" box if still in school)	<b><u>Degree</u></b>	<b><u>Date</u></b> <b><u>Awarded</u></b>
Pittsburg State	College	Sept./1964 Est <input type="checkbox"/>	May/1965 Est Present <input type="checkbox"/> <input type="checkbox"/>		
Kansas State	University	Sept./1965 Est <input type="checkbox"/>	May/1966 Est Present <input type="checkbox"/> <input type="checkbox"/>		
Colorado State	University	Sept./1966 Est <input type="checkbox"/>	May/1969 Est Present <input type="checkbox"/> <input type="checkbox"/>	B.S.	1969
		Est <input type="checkbox"/>	Est Present <input type="checkbox"/> <input type="checkbox"/>		

### 3. Employment

**(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.**

<u>Type of Employment</u> (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other)	<u>Name of Your Employer/Assigned Duty Station</u>	<u>Most Recent Position Title/Rank</u>	<u>Location</u> (City and State only)	<u>Date Employment Began</u> (month/year) (check box if estimate)	<u>Date Employment Ended</u> (month/year) (check box if estimate) (check "present" box if still employed)
Retired			Fort Collins, CO	Est <input type="checkbox"/> Oct./2016 <input type="checkbox"/>	Est <input type="checkbox"/> Present <input checked="" type="checkbox"/>
Federal	United States Department of Agriculture – Forest Service	Deputy Chief, State and Private Forestry	Washington, DC	Est <input type="checkbox"/> Jan./2006 <input type="checkbox"/>	Est <input type="checkbox"/> Oct./2016 <input type="checkbox"/>
Federal	United States Department of Interior	Director, Office of Wildland Fire Coordination	Washington, DC	Est <input type="checkbox"/> Nov./2004 <input type="checkbox"/>	Est <input type="checkbox"/> Jan./2006 <input type="checkbox"/>
State Government	Colorado State University	Director/ State Forester	Fort Collins, CO	Est <input checked="" type="checkbox"/> 1984 <input type="checkbox"/>	Est <input type="checkbox"/> Oct./2004 <input type="checkbox"/>
State Government	Colorado State University	Chief of Staff, Programs	Fort Collins, CO	Est <input checked="" type="checkbox"/> 1978 <input type="checkbox"/>	Est <input checked="" type="checkbox"/> 1984 <input type="checkbox"/>
State Government	Colorado State University	Assistant State Forester, Administration	Fort Collins, CO	Est <input checked="" type="checkbox"/> 1973 <input type="checkbox"/>	Est <input checked="" type="checkbox"/> 1978 <input type="checkbox"/>
State Government	Colorado State University	Project Leader, Resource Inventory	Fort Collins, CO	Est <input checked="" type="checkbox"/> 1970 <input type="checkbox"/>	Est <input checked="" type="checkbox"/> 1973 <input type="checkbox"/>
State Government	State of Oregon	Timber Cruiser	Roseburg, OR	Est <input type="checkbox"/> June/1969 <input type="checkbox"/>	Est <input type="checkbox"/> Apr./1970 <input type="checkbox"/>

**(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.**

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year)	<u>Date Service Ended</u> (month/year) (check box if estimate) (check
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		(check box if estimate)	"present" box if still serving)	
		Est <input type="checkbox"/>	Est <input type="checkbox"/>	Present <input type="checkbox"/>
		Est <input type="checkbox"/>	Est <input type="checkbox"/>	Present <input type="checkbox"/>
		Est <input type="checkbox"/>	Est <input type="checkbox"/>	Present <input type="checkbox"/>

#### 4. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

- Distinguished Alumni, Colorado State University, College of Natural Resources
- Lifetime Achievement, National Association of State Foresters
- Meritorious Service Award, President of the United States

#### 5. Memberships

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
Society of American Foresters	1967-Present	Chapter Chair Board Member, State
American Forests	1975-2015	Board Member President
Colorado State University Science Club	1986-Present	President
First United Methodist Church	1960-Present	Chairman




**6. Political Activity**

**(A) Have you ever been a candidate for or been elected or appointed to a political office?**

No

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (if applicable)</u>

**(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.**

None

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>


**(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.**

[illegible]

## 7. Publications

List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet.

<u>Title</u>	<u>Publisher</u>	<u>Date(S) Of Publication</u>
Improving Interagency Forest Management To Strengthen Tribal Capabilities For Responding To And Preventing Wildfires And S. 3014, A Bill To Improve The Management Of Indian Forest Land, And For Other Purposes	U.S. Senate; Committee On Indian Affairs	June 8, 2016
Ensuring Aviation Safety In The Era Of Unmanned Aircraft Systems	U.S. House Of Representatives; Committee On Transportation And Infrastructure; Subcommittee On Aviation	Oct. 7, 2015
Wildfires: Assessing First Responder Training And Capabilities	U.S. Senate; Committee On Homeland Security And Governmental Affairs; Subcommittee On Emergency Management, Intergovernmental Relations, And The District Of Columbia	June 5, 2014
Wildfires And Forest Management: Prevention Is Preservation	U.S. Senate; Committee On Indian Affairs	May 14, 2014
Shortchanging Our Forests: How Tight Budgets And Management Decisions Can Increase The Risk Of Wildfire	U.S. Senate; Committee On Agriculture, Nutrition, And Forestry; Subcommittee On Conservation, Forestry And Natural Resources	Nov. 5, 2013
Wildfire And Forest Management	U.S. House Of Representatives; Committee On Natural Resources; Subcommittee On Public Lands And Environmental Regulations	July 11, 2013
Colorado Wildfires	U.S. Senate; Committee On Energy And Natural Resources	August 15, 2012
Improving The Nation's Response To Catastrophic Disasters: How To Minimize Costs And Streamline Our Emergency Management Programs	U.S. House Of Representatives; Committee On Transportation And Infrastructure; Subcommittee On Economic Development, Public Buildings, And Emergency Management	March 30, 2011
Interior, Environment, And Related Agencies Appropriations For 2008 (Appeared before committee, but did not provide testimony)	U.S. House Of Representatives; Committee On Appropriations; Subcommittee On Interior, Environment, And Related Agencies	April 26, 2007

Interior, Environment, And Related Agencies Appropriations For 2008	U.S. House Of Representatives; Committee On Appropriations; Subcommittee On Interior, Environment, And Related Agencies	Feb. 16, 2007
Wildfires On The National Forests: An Update On The 2002 Wildland Fire Season	U.S. House Of Representatives; Committee On Natural Resources; Subcommittee On Forests And Forest Health	July 11, 2002
Implementation Of National Fire Plan In Colorado	U.S. Senate; Committee On Energy And Natural Resources	May 18, 2002
National Fire Plan	U.S. Senate; Committee On Energy And Natural Resources; Subcommittee On Public Lands And Forests	Sept. 25, 2001
Formulation Of The 2002 Farm Bill	U.S. House Of Representatives; Committee On Agriculture	June 28, 2001
National Fire Plan	U.S. Senate; Committee On Energy And Natural Resources	March 29, 2001
Review Of The National Fire Plan Implementation	U.S. House Of Representatives; Committee On Agriculture; Subcommittee On Department Operations, Oversight, Nutrition, And Forestry	March 28, 2001
National Fire Plan	Joint Hearing- U.S. House Of Representatives; Committee On Appropriations; Subcommittee On Interior: U.S. Senate; Committee On Appropriations; Subcommittee On Interior	March 14, 2001
Wildfire Risks On Federal Lands (Appeared before committee, but did not provide testimony)	U.S. House Of Representatives; Committee On Agriculture	Oct. 4, 2000
Forest Service Stewardship Contracting Program	U.S. Senate; Committee On Energy And Natural Resources; Subcommittee On Forests And Public Land Management	May 4, 2000
U.S. Forest Service Forest Inventory And Analysis	U.S. House Of Representatives; Committee On Agriculture; Subcommittee On Department Operations, Oversight, Nutrition, And Forestry	April 14, 1999
Forested Landscapes In Perspective -- America's Non-Federal Forests	National Research Council	1998
Hearing On H.R. 2458, The Community Protection And Hazardous Fuels Reduction Act Of 1997	U.S. House Of Representatives; Committee On Resources; Subcommittee On Forest And Forest Health	Sept. 23, 1997

Forest Ecosystem Health In The United States  (Appeared before committee, but did not submit written testimony)	U.S. House Of Representatives; Committee On Agriculture	June 19, 1997
Federal Lands Forest Health Protection And Restoration Act	U.S. Senate; Committee On Energy And Natural Resources; Subcommittee On Forests And Public Land Management	March 1, 1995
Sustaining Long-Term Forest Health And Productivity	Society Of American Foresters	1993
Review Of The Fiscal Year 1992 Budget Of The Forest Service, U.S. Department Of Agriculture	U.S. House Of Representatives; Committee On Agriculture; Subcommittee On Forests, Family Farms, And Energy	Feb. 21, 1991
National Tree Trust Act Of 1990-S. 2426	U.S. Senate; Committee On Agriculture, Nutrition, And Forestry	July 24, 1990
Department Of The Interior And Related Agencies Appropriations For 1991	U.S. House Of Representatives; Committee On Appropriations	March 7, 1990

**8. Lobbying**

**In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).**

No

### **Hubbard speeches**

A thorough search of Mr. Hubbard's records did not return any records capturing details or content of any speeches Mr. Hubbard has given.

From the best of his recollection he has given speeches before the following groups:

- Natural Resource Professionals
- Land Management Agencies
- Forest Landowner Associations
- Natural Resource Non-Profits
- Forest Industry
- Western Governors
- University Faculty & Students
- Native American Groups
- Wildfire Conferences
- Land Trusts

Topics on which he recalls giving remarks on include:

- Forest Policy; Forest Conservation
- Collaboration/Public Involvement
- Forest Health
- Private Forestry in the U.S.
- Tribal Forestry
- Forest Products/Markets
- Forest Watersheds
- Wildfire Suppression
- Wildfire Hazard Mitigation
- Wildland Urban Interface
- Urban Forestry
- Geospatial Information



UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**

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May 2, 2018

The Honorable Pat Roberts  
Chairman  
Committee on Agriculture, Nutrition,  
and Forestry  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by James E. Hubbard, who has been nominated by President Trump for the position of Under Secretary for Natural Resources and Environment, Department of Agriculture.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,  
**DAVID  
APOL**

David J. Apol  
Acting Director and General Counsel

Digitally signed by DAVID APOL  
DN: c=US, o=U.S. Government, ou=Office  
of Government Ethics, cn=DAVID APOL,  
o.9.2342.19200300.100.1.1-954910029818  
70  
Date: 2018.05.02 17:25:50 -0400

Enclosures



April 11, 2018

Mr. Stuart Bender  
Designated Agency Ethics Official  
U.S. Department of Agriculture  
Washington, DC 20250

Dear Mr. Bender:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Under Secretary for Natural Resources and Environment, Department of Agriculture.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

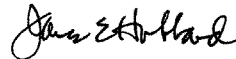
I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order no. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I will meet in person with you during the first week of my service in the position of Under Secretary for Natural Resources and Environment in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

Page 2 of 2

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Hubbard", written in a cursive style.

James E. Hubbard

## Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e)

### Filer's Information

**Hubbard, James E**

Under Secretary (Natural Resources & Environment), Department of Agriculture

Other Federal Government Positions Held During the Preceding 12 Months:  
None

Names of Congressional Committees Considering Nomination:

- **Committee on Agriculture, Nutrition, and Forestry**

Electronic Signature - I certify that the statements I have made in this form are true, complete and correct to the best of my knowledge.

/s/ Hubbard, James E [electronically signed on 11/06/2017 by Hubbard, James E in Integrity.gov]

Agency Ethics Official's Opinion - On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments below).

/s/ Bender, Stuart, Certifying Official [electronically signed on 04/27/2018 by Bender, Stuart in Integrity.gov]

Other review conducted by

U.S. Office of Government Ethics Certification

/s/ Apol, David, Certifying Official [electronically signed on 05/02/2018 by Apol, David in Integrity.gov]

### 1. Filer's Positions Held Outside United States Government

None

### 2. Filer's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Colorado State University, (Colorado Public Employees Retirement Association)(defined benefit plan (value not readily ascertainable)	N/A		Retirement Payments (monthly)	\$9,500
2	Colorado State University defined contribution plan				
2.1	Variable Annuity Life Insurance Company (VALIC)	No			
2.1.1	Merrill Lynch Strategic Balanced Index Fund (MLSB:IND)	Yes	\$250,001 - \$500,000		\$5,001 - \$15,000
2.1.2	VALIC S&P 500 Monthly Average Fund	Yes	\$100,001 - \$250,000		\$2,501 - \$5,000

### 3. Filer's Employment Agreements and Arrangements

#	EMPLOYER OR PARTY	CITY, STATE	STATUS AND TERMS	DATE
1	Colorado State University	Fort Collins, Colorado	I will continue to participate in this defined contribution plan, but the plan sponsor no longer makes contributions.	4/1970
2	Colorado State University (Colorado Public Employees Retirement Association)	Fort Collins, Colorado	I will continue to participate in this defined benefit plan.	4/1970

#### 4. Filer's Sources of Compensation Exceeding \$5,000 in a Year

None

#### 5. Spouse's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	VALIC	No			
1.1	VALIC Fixed Account Plus Fund	Yes	\$1,001 - \$15,000		\$201 - \$1,000
1.2	VALIC Strategic Bond Fund	Yes	\$1,001 - \$15,000		\$201 - \$1,000
1.3	Vanguard Wellington Fund	Yes	\$15,001 - \$50,000		\$201 - \$1,000
1.4	VALIC Aggressive Growth Lifestyle Fund	Yes	\$15,001 - \$50,000		\$201 - \$1,000
1.5	VALIC MidCap Index Fund	Yes	\$15,001 - \$50,000		\$201 - \$1,000
1.6	VALIC Health Sciences Fund	Yes	\$15,001 - \$50,000		\$201 - \$1,000

#### 6. Other Assets and Income

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	U.S. bank account (cash) #1	N/A	\$250,001 - \$500,000	Interest	\$201 - \$1,000

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
2	U.S. bank account (cash) #2	N/A	\$50,001 - \$100,000	Interest	\$201 - \$1,000
3	VALIC	No			
3.1	VALIC Blue Chip Growth Fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
3.2	VALIC Mid Cap Index Fund	Yes	\$50,001 - \$100,000		None (or less than \$201)
3.3	VALIC Health Sciences Fund	Yes	\$50,001 - \$100,000		None (or less than \$201)
3.4	VALIC Fixed Account Plus Fund	Yes	\$50,001 - \$100,000		None (or less than \$201)
3.5	VALIC Strategic Bond Fund	Yes	\$1,001 - \$15,000		None (or less than \$201)
4	VALIC	No			
4.1	VALIC Blue Chip Growth Fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
4.2	VALIC Mid Cap Index Fund	Yes	\$50,001 - \$100,000		None (or less than \$201)
4.3	VALIC Health Sciences Fund	Yes	\$15,001 - \$50,000		None (or less than \$201)
4.4	VALIC Aggressive Growth Lifestyle Fund	Yes	\$1,001 - \$15,000		None (or less than \$201)
4.5	VALIC Fixed Account Plus Fund	Yes	\$1,001 - \$15,000		None (or less than \$201)
4.6	VALIC Strategic Bond Fund	Yes	\$1,001 - \$15,000		None (or less than \$201)
5	U.S. bank account (cash) #3	N/A	\$15,001 - \$50,000	Interest	\$201 - \$1,000



7. Transactions

(N/A) - Not required for this type of report

8. Liabilities

None

9. Gifts and Travel Reimbursements

(N/A) - Not required for this type of report

Endnotes

## Summary of Contents

### 1. Filer's Positions Held Outside United States Government

Part 1 discloses positions that the filer held at any time during the reporting period (excluding positions with the United States Government). Positions are reportable even if the filer did not receive compensation.

This section does not include the following: (1) positions with religious, social, fraternal, or political organizations; (2) positions solely of an honorary nature; (3) positions held as part of the filer's official duties with the United States Government; (4) mere membership in an organization; and (5) passive investment interests as a limited partner or non-managing member of a limited liability company.

### 2. Filer's Employment Assets & Income and Retirement Accounts

Part 2 discloses the following:

- Sources of earned and other non-investment income of the filer totaling more than \$200 during the reporting period (e.g., salary, fees, partnership share, honoraria, scholarships, and prizes)
- Assets related to the filer's business, employment, or other income-generating activities that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in income during the reporting period (e.g., equity in business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents)

This section does not include assets or income from United States Government employment or assets that were acquired separately from the filer's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF).

### 3. Filer's Employment Agreements and Arrangements

Part 3 discloses agreements or arrangements that the filer had during the reporting period with an employer or former employer (except the United States Government), such as the following:

- Future employment
- Leave of absence
- Continuing payments from an employer, including severance and payments not yet received for previous work (excluding ordinary salary from a current employer)
- Continuing participation in an employee welfare, retirement, or other benefit plan, such as pensions or a deferred compensation plan
- Retention or disposition of employer-awarded equity, sharing in profits or carried interests (e.g., vested and unvested stock options, restricted stock, future share of a company's profits, etc.)

#### 4. Filer's Sources of Compensation Exceeding \$5,000 in a Year

Part 4 discloses sources (except the United States Government) that paid more than \$5,000 in a calendar year for the filer's services during any year of the reporting period.

The filer discloses payments both from employers and from any clients to whom the filer personally provided services. The filer discloses a source even if the source made its payment to the filer's employer and not to the filer. The filer does not disclose a client's payment to the filer's employer if the filer did not provide the services for which the client is paying.

#### 5. Spouse's Employment Assets & Income and Retirement Accounts

Part 5 discloses the following:

- Sources of earned income (excluding honoraria) for the filer's spouse totaling more than \$1,000 during the reporting period (e.g., salary, consulting fees, and partnership share)
- Sources of honoraria for the filer's spouse greater than \$200 during the reporting period
- Assets related to the filer's spouse's employment, business activities, other income-generating activities that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in income during the reporting period (e.g., equity in business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents)

This section does not include assets or income from United States Government employment or assets that were acquired separately from the filer's spouse's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF). Amounts of income are not required for a spouse's earned income (excluding honoraria).

#### 6. Other Assets and Income

Part 6 discloses each asset, not already reported, that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in investment income during the reporting period. For purposes of the value and income thresholds, the filer aggregates the filer's interests with those of the filer's spouse and dependent children.

This section does not include the following types of assets: (1) a personal residence (unless it was rented out during the reporting period); (2) income or retirement benefits associated with United States Government employment (e.g., Thrift Savings Plan); and (3) cash accounts (e.g., checking, savings, money market accounts) at a single financial institution with a value of \$5,000 or less (unless more than \$200 of income was produced). Additional exceptions apply. Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF).

#### 7. Transactions

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Part 7 discloses purchases, sales, or exchanges of real property or securities in excess of \$1,000 made on behalf of the filer, the filer's spouse or dependent child during reporting period.

This section does not include transactions that concern the following: (1) a personal residence, unless rented out; (2) cash accounts (e.g., checking, savings, CDs, money market accounts) and money market mutual funds; (3) Treasury bills, bonds, and notes; and (4) holdings within a federal Thrift Savings Plan account. Additional exceptions apply.

#### **8. Liabilities**

Part 8 discloses liabilities over \$10,000 that the filer, the filer's spouse or dependent child owed at any time during the reporting period.

This section does not include the following types of liabilities: (1) mortgages on a personal residence, unless rented out (limitations apply for PAS filers); (2) loans secured by a personal motor vehicle, household furniture, or appliances, unless the loan exceeds the item's purchase price; and (3) revolving charge accounts, such as credit card balances, if the outstanding liability did not exceed \$10,000 at the end of the reporting period. Additional exceptions apply.

#### **9. Gifts and Travel Reimbursements**

This section discloses:

- Gifts totaling more than \$390 that the filer, the filer's spouse, and dependent children received from any one source during the reporting period.
- Travel reimbursements totaling more than \$390 that the filer, the filer's spouse, and dependent children received from any one source during the reporting period.

For purposes of this section, the filer need not aggregate any gift or travel reimbursement with a value of \$156 or less. Regardless of the value, this section does not include the following items: (1) anything received from relatives; (2) anything received from the United States Government or from the District of Columbia, state, or local governments; (3) bequests and other forms of inheritance; (4) gifts and travel reimbursements given to the filer's agency in connection with the filer's official travel; (5) gifts of hospitality (food, lodging, entertainment) at the donor's residence or personal premises; and (6) anything received by the filer's spouse or dependent children totally independent of their relationship to the filer. Additional exceptions apply.

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#### Privacy Act Statement

Title I of the Ethics in Government Act of 1978, as amended (the Act), 5 U.S.C. app. § 101 et seq., as amended by the Stop Trading on Congressional Knowledge Act of 2012 (Pub. L. 112-105) (STOCK Act), and 5 C.F.R. Part 2634 of the U. S. Office of Government Ethics regulations require the reporting of this information. The primary use of the information on this report is for review by Government officials to determine compliance with applicable Federal laws and regulations. This report may also be disclosed upon request to any requesting person in accordance with sections 105 and 402(b)(1) of the Act or as otherwise authorized by law. You may inspect applications for public access of your own form upon request. Additional disclosures of the information on this report may be made: (1) to any requesting person, subject to the limitation contained in section 208(d)(1) of title 18, any determination granting an exemption pursuant to sections 208(b)(1) and 208(b)(3) of title 18; (2) to a Federal, State, or local law enforcement agency if the disclosing agency becomes aware of violations or potential violations of law or regulation; (3) to another Federal agency, court or party in a court or Federal administrative proceeding when the Government is a party or in order to comply with a judge-issued subpoena; (4) to a source when necessary to obtain information relevant to a conflict of interest investigation or determination; (5) to the National Archives and Records Administration or the General Services Administration in records management inspections; (6) to the Office of Management and Budget during legislative coordination on private relief legislation; (7) to the Department of Justice or in certain legal proceedings when the disclosing agency, an employee of the disclosing agency, or the United States is a party to litigation or has an interest in the litigation and the use of such records is deemed relevant and necessary to the litigation; (8) to reviewing officials in a new office, department or agency when an employee transfers or is detailed from one covered position to another; (9) to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record; (10) to contractors and other non-Government employees working on a contract, service or assignment for the Federal Government when necessary to accomplish a function related to an OGE Government-wide system of records; and (11) on the OGE Website and to any person, department or agency, any written ethics agreement filed with OGE by an individual nominated by the President to a position requiring Senate confirmation. See also the OGE/GOVT-1 executive branch-wide Privacy Act system of records.

#### Public Burden Information

This collection of information is estimated to take an average of three hours per response, including time for reviewing the instructions, gathering the data needed, and completing the form. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Program Counsel, U.S. Office of Government Ethics (OGE), Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917.

Pursuant to the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number (that number, 3209-0001, is displayed here and at the top of the first page of this OGE Form 278e).

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July 23, 2018

The Honorable Pat Roberts, Chairman  
Committee on Agriculture, Nutrition & Forestry  
United States Senate  
Washington, D.C. 20510

The Honorable Debbie Stabenow, Ranking Member  
Committee on Agriculture, Nutrition & Forestry  
United States Senate  
Washington, DC 20510

Dear Chairman Roberts and Ranking Member Stabenow:

Please be advised that pursuant to section 101 (b) of the Ethics in Government Act of 1978, as amended, I have informed the appropriate ethics officials that the information required by section 102(a)(1)(A) of the Act with respect to income and honoraria contained in OGE Form 278e (Executive Branch Public Financial Disclosure Report) executed by me on November 6, 2017 is correct.

This information is current as of Monday, July 23, 2018. This date is within five days prior to the date of the first hearing scheduled to consider my nomination.

Sincerely,

A handwritten signature in dark ink, appearing to read "James E. Edwards". The signature is fluid and cursive, with the first name "James" and last name "Edwards" clearly distinguishable.

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## **QUESTIONS AND ANSWERS**

JULY 24, 2018

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**Senate Committee on Agriculture, Nutrition, & Forestry**

Hearing to consider the nomination of Dan Berkovitz to be a Commissioner of the Commodity  
Futures Trading Commission  
July 24, 2018  
Questions for the Record  
Mr. Dan Berkovitz

**Chairman Roberts**

- (1) The Commission could vote on a final rule regarding “position limits” later this year, could you discuss what in your view are the important considerations for the Commission when establishing a position limit regime, and how those considerations would affect producers, cooperatives, and other market participants?

ANSWER: When establishing position limits, the Commodity Exchange Act (CEA) directs the Commission to set position limits that, to the “maximum extent practicable,” in its discretion, accomplish the following objectives: (i) diminish, eliminate, or prevent excessive speculation; (ii) deter and prevent market manipulation, squeezes, and corners; (iii) ensure sufficient market liquidity for bona fide hedgers; and (iv) ensure that the price discovery function of the underlying market is not disrupted. In accordance with this statutory directive, the Commission’s position limits rulemaking should seek to maximize the achievement of these objectives. The Commission’s rulemaking must also conform to the other specific statutory requirements regarding the scope and extent of such limits. Additionally, it must consider the costs and benefits of any limits it seeks to impose, in accordance with Section 15 of the CEA.

The CEA specifically exempts transactions and positions that are bona fide hedging transactions or positions from any position limits imposed by the Commission. In establishing position limits, the Commission must ensure that farmers, ranchers, producers, cooperatives, and other commercial market participants remain able to use the futures and swaps markets to hedge their sales or purchases. To ensure that end users remain fully able to engage in bona fide hedging transactions, the Commission should carefully consider the public comments on the proposed rulemakings, including those of commercial end users and other market participants.

- (2) While “blockchain” is mostly discussed in its context as the technology underlying Bitcoin, the potential benefits are substantial for multiple industries—from Agriculture, to financial services, to healthcare, and so on. As this technology and its transformative potential continue to emerge, what role, if any, should regulators play in these early stages? How do you view the handling of the Bitcoin futures contracts, and do you have thoughts on CFTC’s role in the realm of virtual currency?



ANSWER: One of the fundamental purposes of the Commodity Exchange Act is “to promote responsible innovation and fair competition among boards of trade, other markets and market participants.” The Commission’s regulatory program should be sufficiently flexible to accommodate and foster the development of new technologies, such as blockchain, that have the potential to save costs, increase efficiency, and provide other benefits to the markets under the CFTC’s purview. At the same time, the Commission must be vigilant to ensure that new technologies are not used for improper or malicious purposes, such as fraud or manipulation, and that potential new risks that may be posed by these new technologies are properly addressed.

I support the measures the Commission has taken to ensure the integrity of the Bitcoin futures contracts. In particular, the “heightened review” the CFTC staff applied to the Bitcoin futures contract self-certification – and which the Commission staff has stated it will apply to other virtual currency self-certifications – sets forth a number of important commitments by DCMs offering Bitcoin futures contracts to improve the ability of these DCMs and the CFTC to monitor the underlying cash markets for fraud and manipulation. (This “Heightened Review” is described in “CFTC Backgrounder on Oversight of and Approach to Virtual Currency Futures Markets”, at [https://www.cftc.gov/sites/default/files/idc/groups/public/%40customerprotection/documents/file/backgrounder\\_virtualcurrency01.pdf](https://www.cftc.gov/sites/default/files/idc/groups/public/%40customerprotection/documents/file/backgrounder_virtualcurrency01.pdf)). Additionally, Commission staff recently issued an advisory with respect to virtual currency derivative product listings to provide guidance to exchanges and clearinghouses on the staff’s priorities and expectations in its review of virtual currency derivatives. [https://www.cftc.gov/sites/default/files/idc/groups/public/%40lrlettergeneral/documents/letter/2018-05/18-14\\_0.pdf](https://www.cftc.gov/sites/default/files/idc/groups/public/%40lrlettergeneral/documents/letter/2018-05/18-14_0.pdf)

I support the measures the Commission has taken to date with respect to virtual currencies, including the Heightened Review, staff advisory, the LabCFTC outreach program, consumer education, robust enforcement, and inter-agency collaboration regarding oversight, regulation, and enforcement with respect to virtual currencies. The nature and uses of virtual currencies are rapidly evolving, and the CFTC should continue to monitor these technologies and market developments and may need to adjust its approach accordingly.

- (3) In regards to “Reg AT,” what are your views on the 2015 proposed rule that would allow the CFTC and Justice to access proprietary source code without first having to issue a subpoena? Do you think this provision should be maintained in a final rule? We have heard concerns about CFTC’s commitment and ability to protect that data once acquired – what are your views on these concerns, considering your institutional knowledge of CFTC’s capabilities?

ANSWER: Based on my prior experience at the CFTC and in private practice, the CFTC’s subpoena authority is adequate to enable the CFTC to obtain relevant information it needs for investigatory purposes in a timely manner. Proprietary source code is the intellectual property of the person or entity that created it and must be afforded the highest level of protection. If confirmed, I will review with my fellow

Commissioners and the CFTC staff their views on whether the subpoena authority is sufficient to access proprietary source code, as well as consider the extensive public comment on this issue.

The CFTC obtains a significant amount of confidential information about market positions, business transactions, trade secrets, and names of customers, all of which it is obligated to keep confidential. The agency must continue to work to ensure that all confidential data is protected against unauthorized releases, misappropriation, or hacking. Even a single inappropriate release can cause significant harm. In recent years, we have seen breaches of privacy and theft of confidential customer or personal information that was held in other protected data systems, both in the government and in the private sector. As the CFTC acquires and maintains an increasing amount of electronic data that it is obligated to protect, it must be vigilant and protect against both physical and evolving cyber-security threats. This should be a high priority for the CFTC.

- (4) Do you think section 15 of the Commodity Exchange Act has been applied appropriately by the Agency regarding cost-benefit analysis? During your time as general counsel, was rigorous economic analysis performed by the economists at the Agency during rulemaking, including orders? What is your opinion regarding the more robust cost-benefit provisions that have been discussed?

ANSWER: During my time as General Counsel, the CFTC significantly improved the manner in which it considered costs and benefits during its rulemakings. Following the initial publication of several proposed rules to implement the Dodd-Frank Act, a number of concerns were raised, including by the CFTC Inspector General, regarding the manner in which the Commission had considered costs and benefits under section 15 in these proposals. In response to these concerns, the agency implemented a number of measures to provide for a more fulsome consideration of costs and benefits in subsequent final and proposed rules and orders. At the direction of the Chairman, I worked with the Chief Economist to develop revised guidance to address the concerns and ensure that costs and benefits were considered in the final rules and future proposed rules in a robust manner. Along with the program experts, each rulemaking team consisted of an economist from the Office of Chief Economist to prepare or assist in the preparation of the cost-benefit analyses (this team approach was initiated when the Dodd-Frank rulemakings began). The Chairman also required a sign-off from both the Chief Economist and General Counsel prior to forwarding a draft proposed or final rule or order to the Commission for its approval. The manner in which the Commission considered costs and benefits in the rulemaking to rescind one of the exclusions from registration for commodity pool operators was upheld by the U.S. Court of Appeals for the D.C. Circuit in *Investment Company Institute v. CFTC*, 720 F.3d 370 (D.C. Cir. 2013).

If confirmed, I will support the robust consideration of costs and benefits in agency rulemakings and orders. I will work with my fellow Commissioners and the agency staff to provide for the robust consideration of costs and benefits in rulemakings and orders. I will seek the views of market participants, members of Congress, and other interested

persons as to the adequacy of the agency's consideration of costs and benefits and whether any programmatic changes should be made to achieve this goal.

- (5) With the recent high profile resignations of UK secretaries David Davis and Boris Johnson, Brexit has reemerged as a top news item. What are your views regarding the 2016 equivalence agreement for cross border supervision of CCPs regardless of the ultimate outcome of Brexit?

ANSWER: Under the equivalence framework agreed to by the CFTC and the European Commission (EC) in 2016, US-based CCPs supervised by the CFTC can operate in the EU without substantial additional European supervision and can provide services in European markets if they implement certain EU risk management measures that are not part of the CFTC regulatory framework. Correspondingly, EU-based CCPs registered with the CFTC can comply with certain CFTC regulations by demonstrating compliance with the comparable European requirements set forth in the European Market Infrastructure Regulations (EMIR), pursuant to the CFTC's substituted compliance framework for foreign-based registered CCPs. In March 2016, the EC issued an equivalence decision for the CFTC, and the CFTC issued its substituted compliance framework. As both the CFTC and the EC stated when this framework was agreed to, this type of common approach to market regulation "is critical to supporting cross border activity and maintaining financial stability. Both the CFTC and EU requirements are based on international principles, which accounts for the high degree of similarity between the two regimes."

Failure to maintain the agreement could lead to the imposition by the EU of unnecessary costs and burdens upon US CCPs operating in the EU without commensurate benefits, as the EU has recognized the equivalency of the CFTC's regulatory regime regarding these CCPs. More broadly, failure to maintain the equivalence agreement and the common approach to market regulation it embodies could jeopardize the benefits to the global markets and financial stability achieved by the agreement and common approach. Accordingly, I believe it is important to keep the 2016 equivalency agreement intact.

- (6) In a world of shrinking budgets and calls for greater government efficiency, there tend to be rumblings about whether it makes sense from a budgeting perspective to combine the SEC and CFTC. Can you talk about the role of the CFTC in its oversight of specific risk management tools important to agriculture end-users and how it is distinct, different, and better positioned than the SEC which specializes in equities regulations?

ANSWER: The nature and purposes of the agriculture and other commodity markets overseen by the CFTC---i.e., risk management and price discovery---are fundamentally different from the nature and purpose of the markets overseen by the SEC---i.e., capital formation. The resources and expertise needed to oversee the commodity markets are fundamentally different from the resources and expertise needed to oversee the security markets. The CFTC and its predecessor agencies have nearly a century of experience in

agricultural markets. Furthermore, Commissioners and staff often have a professional background in the agriculture markets. The CFTC is uniquely structured and positioned to oversee the agricultural markets and be responsive to issues as they arise. Although combining the two agencies may result in some efficiencies in administrative and support functions, such a merger also would diminish the ability of decision makers to become informed about and address agricultural market issues, as those and other commodity market issues would need to be prioritized together with equity market issues.

**Senator Debbie Stabenow**

- (1) It has been eight years since the passage of the historic Dodd-Frank Wall Street Reform and Consumer Protection Act. This important legislation has brought greater transparency to previously unregulated markets that caused the financial meltdown.

(a) Will you commit to supporting Title VII of Dodd-Frank?

ANSWER: Yes.

(b) Will you commit to not rolling back or weakening Title VII of Dodd-Frank?

ANSWER: Yes.

- (2) In your testimony, you committed to working with your fellow Commissioners to complete the CFTC's position limits rule in a timely manner. This rule is critically important to protecting American consumers and businesses, and market participants need certainty on the rules of the road. The CFTC must finalize this rule promptly. If confirmed, how will you approach this issue, and how can the CFTC bring the rule to a speedy completion?

ANSWER: When establishing position limits, the Commodity Exchange Act (CEA) directs the Commission to set position limits that, to the "maximum extent practicable," in its discretion, accomplish the following objectives: (i) diminish, eliminate, or prevent excessive speculation; (ii) deter and prevent market manipulation, squeezes, and corners; (iii) ensure sufficient market liquidity for bona fide hedgers; and (iv) ensure that the price discovery function of the underlying market is not disrupted. If confirmed, I will work with my fellow Commissioners and agency staff to ensure that the Commission's rule meets these objectives to the maximum extent practicable, as well as to conform to the other specific statutory requirements regarding the scope and extent of such limits. The Commission also must consider the costs and benefits of any limits it seeks to impose, in accordance with Section 15 of the CEA.

The CEA specifically exempts transactions and positions that are bona fide hedging transactions or positions from any position limits imposed by the Commission. In establishing position limits, the Commission must ensure that farmers, ranchers, producers, cooperatives, and other commercial market participants remain able to use the futures and swaps markets to hedge their sales or purchases. To ensure that end users remain fully able to engage in bona fide hedging transactions, the Commission should carefully consider the public comments on the proposed rulemakings, including those of commercial end users and other market participants.

If confirmed, I will diligently review the agency's rulemaking record on this issue, including the public comments from end users and other market participants, and work

with my fellow Commissioners to address those comments and expeditiously complete this rulemaking.

- (3) CFTC currently has five advisory committees that exist to give input and make recommendations to the Commission on issues within the CFTC's jurisdiction. The advisory committees play an important role in providing stakeholders with a channel for communication to the CFTC. As a Commissioner, if confirmed, you would presumably sponsor one of the advisory committees.

- (a) What would be your priorities in leading an advisory committee?

ANSWER: The purpose of the CFTC advisory committees is to provide input and make recommendations to the Commission on a variety of regulatory and market issues that affect the integrity and competitiveness of U.S. markets. The committees facilitate communication between the Commission and U.S. futures markets, trading firms, market participants, and end users. If confirmed and in the role of sponsoring an advisory committee, I would work to ensure that the committee is composed of a diverse representation of stakeholders and experts in the advisory committee's subject matter area. I would consult with my colleagues at the CFTC and the members of the advisory committee to prioritize and focus the activities of the committee on the most significant and timely issues facing the CFTC. These are the issues on which the advisory committee's input and recommendations could be most beneficial to the agency.

- (b) Will you commit to ensuring that membership on any advisory committee that you sponsor will include a diverse representation of stakeholders, including end-users and consumer groups?

ANSWER: Yes.

- (c) How will you work to build consensus among the members of your advisory committee?

ANSWER: I will work to ensure that all members of the committee have the opportunity to participate in the committee's meetings and deliberations. Also, I will ensure that committee members will have full access to all committee information. I will work to foster open dialogue and encourage give-and-take between members of the committee as well as between members of the committee and myself.

- (d) How will you ensure that any recommendations of the advisory committee are reflective of all members?

ANSWER: In the event that consensus amongst all members cannot be reached, I will work to ensure that the members who disagree with the views of a majority of the committee membership have a concurrent opportunity to present their views.

- (e) How will you ensure transparency in your advisory committee?

ANSWER: I will work to ensure that the advisory committee conducts public meetings, particularly prior to making recommendations. The public should be able to view these meetings either in person or via webcast. Documents considered by the committee at these meetings should also be publicly available, as well as any reports and recommendations by the committees.

- (f) Will you commit to providing my staff with regular updates on the activities of your advisory committee?

ANSWER: Yes.

- (4) In recent years, the CFTC has increased its focus on financial technology (FinTech) and digital currency. More recently, the CFTC has established LabCFTC and actively engaged with exchanges on the launch of Bitcoin futures. How can the CFTC best promote innovation in our financial markets while also promoting strong customer protections and market integrity?

ANSWER: The CFTC should continue its outreach to new financial technologies through LabCFTC and other staff interactions. The CFTC should ensure that its regulatory program is sufficiently flexible to accommodate new technologies and does not impose unnecessary regulatory obstacles to innovation. At the same time, the CFTC must remain vigilant to protect against fraud and manipulation, ensure that customer funds are safeguarded, and guard against potential systemic risks that may emerge from new technologies or products. It also is critical for the CFTC to engage in consumer outreach and education and aggressively investigate and prosecute wrongdoing.

- (5) Cybersecurity continues to pose one of the gravest systemic risks facing our financial system. The CFTC has taken significant steps in recent years to address this critical issue, but more must be done to protect our markets, our consumers, our businesses, and the broader economy. What steps should the CFTC take to further address cybersecurity issues?

ANSWER: Cybersecurity should be a major priority for the agency. In 2016, the CFTC issued rules imposing certain cybersecurity program testing requirements on exchanges, swap execution facilities, clearinghouses, and swap data repositories. The CFTC should continue to ensure that this rule is being implemented appropriately. The CFTC also must ensure that the confidential data in its own possession is adequately protected against cyber threats. If confirmed, I would work with my fellow Commissioners to ensure that the CFTC has sufficient staffing and technical resources, including infrastructure, to ensure that the data in the CFTC's possession is adequately protected against cyber threats.

- (6) I look forward to having a close working relationship with you, if you are confirmed. The work in this very important area is truly a bipartisan effort. If confirmed, do you agree without reservation to:

- (a) Reply promptly to any request for information from me?

ANSWER: Yes.

- (b) Reply promptly to any request from other members of this Committee and other Senators?

ANSWER: Yes.

- (c) Respond to my requests for data and technical assistance in informing or drafting legislation or implementation of the law?

ANSWER: Yes.



**Senator John Boozman**

- (1) Mr. Berkovitz, when we met prior to your hearing, we also discussed the E.U.'s proposal to expand their regulatory and supervisory authority to require all foreign central counterparties (CCPs) to register with the E.U. I am concerned that this could require U.S. CCPs to implement additional E.U. law above and beyond our U.S. laws, and would subject them to new surveillance and on-site inspections and examinations by European regulators, without the CFTC being made aware.
- (a) Could you share your thoughts on the importance of keeping the 2016 equivalence agreement intact?

ANSWER: Under the equivalence framework agreed to by the CFTC and the European Commission (EC) in 2016, US-based CCPs supervised by the CFTC can operate in the EU without substantial additional European supervision and can provide services in European markets if they implement certain EU risk management measures that are not part of the CFTC regulatory framework. Correspondingly, EU-based CCPs registered with the CFTC can comply with certain CFTC regulations by demonstrating compliance with the comparable European requirements set forth in the European Market Infrastructure Regulations (EMIR), pursuant to the CFTC's substituted compliance framework for foreign-based registered CCPs. In March 2016, the EC issued an equivalence decision for the CFTC, and the CFTC issued its substituted compliance framework. As both the CFTC and the EC stated when this framework was agreed to, this type of common approach to market regulation "is critical to supporting cross border activity and maintaining financial stability. Both the CFTC and EU requirements are based on international principles, which accounts for the high degree of similarity between the two regimes."

Failure to maintain the agreement could lead to the imposition by the EU of unnecessary costs and burdens upon US CCPs operating in the EU without commensurate benefits, as the EU has recognized the equivalency of the CFTC's regulatory regime regarding these CCPs. More broadly, failure to maintain the equivalence agreement and the common approach to market regulation it embodies could jeopardize the benefits to the global markets and financial stability achieved by the agreement and common approach. Accordingly, I believe it is important to keep the 2016 equivalency agreement intact.

**Senator Tina Smith**

- (1) I believe that it's important to crack down on inappropriate speculation in the energy markets. Big banks and oil speculators shouldn't be allowed to drive up the costs for everyday Americans. We recently passed eight years since the Dodd-Frank Act was signed into law, and the CFTC still hasn't finalized its position limits rule. I know there are a number of reasons for the delay in finalizing the rule, but nonetheless I think it's unacceptable that the rule hasn't been finished yet. Do you agree that the rule is long overdue? Will you commit that if confirmed, you will push for the commission to promptly finalize a strong position limits rule?

ANSWER: Yes. If confirmed, I will work diligently with my fellow Commissioners to expeditiously finalize a strong position limits rule.

**Senate Committee on Agriculture, Nutrition, & Forestry**

Hearing to consider the nomination of James E. Hubbard to be Undersecretary of Agriculture for  
Natural Resources and Environment

July 24, 2018

Questions for the Record

Mr. James E. Hubbard

**Chairman Pat Roberts**

1. In order to protect communities in Kansas and across the nation from wildfire, we need to significantly increase the pace and scale of hazardous fuels work on all ownerships of land, not just within the boundaries of National Forests. During your career, you were a champion of cross-boundary fuels management. If confirmed, how will you work with states and significantly increase that cross boundary work?

**Response:** If confirmed I would consult with regional foresters and state officials to prioritize, then move forward on those programs. We can't treat all the millions of acres we know need attention but working together we can maximize the impact of our work across boundaries.

2. Congress has provided streamlined authorities to expedite forest management, particularly in fire prone forests. If confirmed, how will you work to ensure that every region uses all of the authorities that it has at its disposal to start reducing the backlog of untreated acres?

**Response:** I want to see active management of our forests, particularly projects that would speed tree-thinning projects aimed at reducing wildfire risks. This work would be done in cooperation with state forestry officials. If confirmed I would work with Interim Chief Christiansen and our regional forests to ensure the expanded authorities provided by Congress are being fully utilized.

3. Recently, the Forest Service has gained attention related to the agency's workplace environment and complaints related to harassment. If confirmed, how will you approach issues related to ongoing personnel issues to ensure that all Forest Service employees work in a safe and welcoming environment?

**Response:** Making sure that all USDA Forest Service employees can count on a safe working environment free from the fear of retaliation would be my top priority. If confirmed, my first order of business will be to gauge progress on the issue and chart a path forward that protects all employees.

4. In January, the U.S. Forest Service issued an advance notice of proposed rulemaking in the Federal Register seeking public comment on ways to improve an often costly, lengthy process to comply with the National Environmental Policy Act (NEPA) when making land management decisions. In the notice, the Forest Service requested comments on ways the agency can increase efficiency in moving through the NEPA process, improve application of the NEPA process on landscape-scale restoration projects, determine which types of activities could undergo an abbreviated NEPA review, and improve coordination with other agencies on multi-agency projects. If confirmed, will you commit to continuing to work on this effort and ensure that the rulemaking gets finalized in a timely fashion?

**Response:** Yes, Chairman Roberts. If confirmed, I commit to improving the efficiency with which the USDA Forest Service complies with the National Environmental Policy Act.

5. Mr. Hubbard, if confirmed what would be your goals related to the better use of technology at the Department and within your mission area? The Secretary has made modernizing USDA's information technology infrastructure, facilities, and support services a significant part of his strategic plan. As the Under Secretary ensuring land management and the restoration of our resources—including overseeing the Forest Service—how do you envision better access to data and better use of available information?

**Response:** I fully support Secretary Perdue's goal to ensure USDA programs are delivered efficiently, effectively, with integrity and with a focus on customer service. If confirmed, I will dedicate myself to meeting the objectives of modernizing USA Forest Service systems, streamlining processes, and making more data-driven decisions. The Forest Service has good data and I want to ensure that it is used in combination with improved technologies to further these goals.

**Senator Debbie Stabenow**

1. The Forest Service manages 193 million acres of public land on behalf of the American people. Some in Congress and elsewhere have suggested that the federal government ought to sell some of these lands to private parties or transfer their management authority to the states. The President opposed this idea on the campaign trail and Secretary Zinke, to his credit, opposed this idea as it related to Interior Department land during his confirmation process.

Will you commit to following the lead of the President and of Secretary Zinke, and oppose the sale of Forest Service lands to private parties or the transfer of management responsibilities to the states? Will you make the commitment to always keep in mind that our national forests belong to all Americans and agree that we should all have a say in the management of these public lands?

**Response:** I agree we need to protect the national forests. We have a unique asset in our public lands, and I would want to see that continued.

2. Secretary Zinke has expressed his desire to see USDA's Forest Service moved to the Interior Department. The Forest Service comprises nearly a quarter of the overall USDA workforce and a significant amount of the agency's non-nutrition budget. Will you commit to strenuously opposing efforts to move the Forest Service to the Interior Department?

**Response:** Secretary Perdue has made clear that USDA is the appropriate Department for the Forest Service and I agree.

3. If confirmed, will you commit to showing support for wilderness – both in directing your Forest Service to recommend suitable wilderness areas to Congress for designation, and in testifying in support of locally-led wilderness bills that are heard by this Committee?

**Response:** I will continue to support Wilderness as an appropriate multiple use, recognizing that Congress has the authority to create Wilderness.

4. Do you support the mission of the Land and Water Conservation Fund, which was signed into law in 1965 after garnering bipartisan support in Congress? If confirmed, can we count on you to be an advocate for the Fund in Congress and to oppose attempts to subvert the Fund's original purpose?

**Response:** Yes, I support the mission of the Land and Water Conservation Fund. I will manage the program as the law directs and Congress funds, keeping in mind the budget constraints that Congress and the Executive Branch must operate within.

5. The 2001 Roadless Rule, which was in place during your tenure at the Forest Service during both the Bush and Obama Administrations, ensured that national forest areas without roads remained that way. If confirmed, will you commit to continue the Forest Service support for the Roadless Rule?

**Response:** The Roadless Rule is current policy that I would respectfully implement according to existing requirements.

6. If confirmed, you would oversee the National Forest System, including our three national forests in Michigan. In recent years, we've seen impressive data showing that public lands, including our national forests, provide substantial economic benefits through recreation activities like hunting, fishing, wildlife viewing, skiing, snowmobiling, and others. One estimate suggests that outdoor recreation brings in nearly a trillion dollars a year to the domestic economy while sustaining six million jobs in the industry. Can you describe how you will work with your Forest Service Chief to ensure that our national forests and grasslands will be able to sustain this economic growth and continue creating new jobs? If confirmed, would you partner with me and this committee to ensure that as the much-needed fire fix is implemented and we debate effective ways to create jobs and support rural economies in Michigan and nationwide that outdoor recreation has a seat at the table?

**Response:** Yes, if confirmed, I would be happy to partner with you and this Committee to ensure that as the fire fix is implemented, we develop effective ways to create jobs and support rural economies in Michigan and nationwide, with a seat at the table for outdoor recreation.

7. Strong forest products markets can be helpful in avoiding loss of private forestlands, allowing our nations forest landowners to keep their forests healthy and intact. What is your view of the future of forest markets in the US and how can the Forest Service help expand possibilities for wood products so we can keep private forests as forests?

**Response:** I believe that there is a lot of room for growth for forest markets in the U.S. If confirmed, I would continue the support the Forest Service has provided through the work of State and Private Forestry and Research, particularly the Forest Products Lab, to expand markets for wood and wood products.

8. The fishing and tourism industries in Southeast Alaska account for 26 percent of all jobs and 21 percent of all earnings in the region. According to local economic development organizations, Southeast Alaska is the most visited part of the state, with two-thirds of all of Alaska's tourists visiting the region. Tourism and fishing sectors rely on the productive salmon streams, abundant wildlife, and natural beauty of the Tongass National Forest, including its Roadless Areas. It is imperative that these sectors of the economy are engaged in decisions affecting how Roadless Areas are managed on the Tongass. How will you ensure fishing and tourism/visitor industries have a seat at the table and the opportunity to provide meaningful input as the Department considers the State of Alaska's roadless petition?

**Response:** Fishing and recreation are an important part of the USDA Forest Service multiple use mission throughout the country and particularly in Southeast Alaska. I would work to ensure the role fishing and tourism play in healthy rural economies is recognized.

9. Late last year, the Trump Administration made the decision to shrink the acreage comprising the Bears Ears National Monument (BENM) in Utah. Setting aside the question over the legal legitimacy of this action, the intent was, in part, to remove several hundred thousand acres of the Manti La Sal National Forest from protective status. Will you commit to meeting with me in advance of any future considerations to remove Forest Service lands from protective status?

**Response:** Yes, if confirmed, I would be happy to work with you and the Committee on this and all issues of importance and concern.

10. Our national forest trail system is an amazing asset to this country, connecting wild places and enabling Americans to get out and experience our public lands. In spite of these benefits, the Administration has proposed cuts to trails programs in recent years. The President's budget request for last year for the Forest Service proposed cutting the trails program by over 80% and zeroing out the Legacy Roads and Trails Program. Will you commit to fighting for more resources to the Forest Service trails system in future budget requests so that it can continue to provide opportunity and access for millions of Americans?

**Response:** I recognize the importance of roads and trails. I will manage the program as the law directs and Congress funds, while recognizing the challenging budget constraints we face.

11. Earlier this year, Secretary Zinke signed a Secretarial Order to improve habitat and migration corridors for certain wildlife species in Western states. Would you commit to considering, and discussing with Secretary Perdue, such a policy for Forest Service lands that would protect habitat and migration corridors for a broad range of wildlife species across all regions of the country?

**Response:** If confirmed, I would be happy to discuss this issue with Secretary Perdue.

12. Will you support forest supervisors who exercise their discretion and make decisions regarding mineral leasing designed to protect recreation, including hunting, fishing and hiking, cultural and historic resources, and traditional use areas?

**Response:** I support Forest Supervisors and their efforts to thoughtfully manage national forests and grasslands within the scope of their authorities as dictated in regulations and the law.

13. In recent years, Western stakeholders, including republican and democratic governors, worked hard to reach an agreement across 11 states that balanced needed habitat conservation for the Greater sage grouse with the opportunity for energy and other development activities. Those plans were deemed sufficiently protective to avoid the need to list the Greater sage grouse under the Endangered Species Act. The Forest Service recently joined the Bureau of Land Management in proposing significant changes to those plans, some of which appear to put the Greater sage grouse back on a path to be listed. What will you do to ensure the Forest Service plans remain sufficiently protective to preserve the 'not warranted' listing status for the Greater sage grouse?

**Response:** I recognize the importance of the Greater sage grouse and the need to strike the right balance. If confirmed, I would be happy to work with you and the Committee on finding an approach that balances habitat conservation with energy production and other development activities.

14. At more than 371,000 miles, the Forest Service road system is eight times the length of the U.S. interstate highway system. Many of these roads were created decades ago and are unmaintained and obsolete, threatening fish and wildlife habitat, among other values. With a maintenance backlog estimated to be in the billions of dollars how would you prioritize road maintenance and decommissioning to ensure the Forest Service road system is serving the public's best interest and not creating a burden for taxpayers or a threat to our environment?

**Response:** The USDA Forest Service indeed has a daunting road maintenance backlog. If confirmed, I will work with the Regional Foresters as well as the State Foresters to identify priority investments in road maintenance and decommissioning.

15. The Forest Service has launched its Environmental Analysis and Decision-Making (EADM) process with a goal of reducing the costs and timeframes associated with analysis and procedural processes, all while still encouraging collaborative outcomes and protecting the environment. How will you ensure that any efforts to improve environmental analysis and decision-making at the Forest Service does not come at the expense of public input or environmental considerations?

**Response:** If confirmed, I would work to ensure the USDA Forest Service reduces the cost and timeframes, without sacrificing public participation and environmental concerns.

16. If you are confirmed, I look forward to working with you. If confirmed, do you agree, without reservation, to:

- a. Promptly reply to any request for information from me or any duly constituted committee of the Congress and provide the requested information?

**Response:** If confirmed, yes.

- b. Respond to my requests for data and technical assistance in informing or drafting legislation or implementation of the law?

**Response:** Yes.

- c. Notify me or my staff in advance of any public announcement of any major changes made by you or within the National Resources and Environment mission area during your tenure?

**Response:** Yes.

- d. Provide to this Committee any reports provided by National Resources and Environment mission area or the Forest Service to the Senate Appropriations Committee or the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Subcommittee?

**Response:** Yes.

- 17. During the Committee vetting process you disclosed that while you were working at the Interior Department and USDA from 2004-2016 you filed state tax returns in the Commonwealth of Virginia only, despite maintaining many ties to Colorado. Sometime after retiring from USDA, according to a letter you received from the State of Colorado the State of Colorado believed that you should have filed a tax return in Colorado for 2013.

- a. Please explain why and on whose advice you filed tax returns only in the Commonwealth of Virginia while you were working at the Interior Department and USDA from 2004-2016.

**Response:** From 2004-2016 I used an office of the national firm of H&R Block located in the Commonwealth of Virginia. The tax firm's advice was that I was only required to file state tax returns in Virginia. Virginia statute is based on the number of days lived in and worked in the state.

- b. Please explain what you have done to satisfy all concerns raised by the State of Colorado and any other Colorado tax related issues concerning tax years while you were working at the Interior Department and USDA.

**Response:** Once the matter was brought to my attention by the State of Colorado, I immediately hired a Certified Public Accounting firm in Colorado to help resolve these matters with the State. With the CPA firm's help, we determined what was owed to Colorado, and worked to promptly satisfy any outstanding balance due. My tax liabilities with Colorado are paid in full



which satisfies all concerns raised by the State of Colorado and any other Colorado tax related issues.

- c. For what years between 2004 – 2016 have you filed a Colorado State tax return and paid any taxes due? Please provide the date any such returns were filed and the date any taxes due were paid.

**Response:** Per State of Colorado requirements, I have filed returns and paid taxes for the years 2013-2016.

- 2013: Filed- 9/5/17 Paid in full- 9/15/17
- 2014: Filed- 12/05/17 Paid in full- 12/27/17
- 2015: Filed- 12/22/17 Paid in full- 1/22/18
- 2016: Filed- 01/08/18 Paid in full- 2/2/18

- d. Have you now filed all returns and paid all taxes due to the State of Colorado? Are you required to file any additional returns or pay any additional taxes to the State of Colorado? On what do you base this assessment? Please explain in detail.

**Response:** Yes, I have now filed and paid all taxes due to the State of Colorado. No, I am not required to file any additional returns or pay any additional taxes to the State of Colorado. I base my assessment on a letter from my accountants stating that I am in compliance with Colorado and a tax summary from the State of Colorado showing a zero balance. I have provided both of these items to the Committee to demonstrate that I have satisfied all outstanding tax obligations and I am in full compliance with all tax laws and regulations in the State of Colorado. In addition, I have provided documentation from the State of Colorado showing exactly when each year was paid and the amount that was paid.

#### **Senator Steve Daines**

1. The rising cost of fire suppression has resulted in a reduction in all non-fire personnel at the Forest Service. The recent fire funding “fix” should begin to help provide additional personnel for the agency’s non-fire programs, yet hiring freezes, retirements and other factors threaten the ground capacity and skill base for the Forest Service to better manage the National Forest System. Once confirmed, can you take a hard look at the capacity and skill base concerns that have been brought to my attention?

**Response:** Yes, Senator Daines. If confirmed I will assess the on-the-ground capacity and skill base of the USDA Forest Service.

2. You have been a champion of the Good Neighbor Authority since its inception and have been a strong supporter of coordinating efforts with state foresters to cross ownership boundaries so that our nation’s forests are in better shape. To that end, would it be helpful for Congress to provide clear authority for the Forest Service to be able to utilize funds from states and other entities, as well a portion of timber revenues under Good Neighbor Agreements, to carry out management activities on the National Forests?

**Response:** If confirmed, I would be happy to work with you to explore the benefits and opportunities that would be provided by this expanded authority.

**Senator Patrick Leahy**

1. Secretary Perdue has made it clear that accelerating timber production from our National Forests is a priority for this administration. In Vermont, the Green Mountain National Forest has the capacity for significant increases in sustainable harvests each year. However, the limiting factor appears to lie in the capacity of the U.S. Forest Service staff to plan and execute those timber sales. However, the administration's budget proposals for both Fiscal Year 2018 and Fiscal Year 2019 proposed to decrease staffing within the timber program, and proposed cuts to nearly every budget line supporting the National Forest system. I am very concerned that ramping up timber production could starve other critical functions such as recreation, land acquisition, and maintenance.

If confirmed, how will you make clear within the administration that it is not possible to meet the stated goal of increased timber production from national forests, without eroding other important activities such as recreation management and capital maintenance, if the administration continues to seek dramatic cuts to the funding and resources available to plan and execute those timber sales and for other National Forest priorities across the board?

**Response:** If confirmed, I commit to work with the Administration to strike a balance that best meets the multiple use mandate of the USDA Forest Service for Vermont and the country.

2. For over 50 years, the Land and Water Conservation Fund (LWCF) has been our nation's premier conservation funding source for ensuring access to the outdoors for all Americans and protection of the nation's precious natural and cultural resources. There are important forest conservation programs funded through LWCF under the jurisdiction of the Agriculture Department, including national forest inholding acquisitions, sportsmen's access, and national trail protection through the U.S. Forest Service land acquisition program and matching grants to states for the conservation of working forests through the Forest Legacy Program. It is very disappointing that the administration's budget proposals for both Fiscal Year 2018 and Fiscal Year 2019 proposed to essentially eliminate this critical funding and abandon long-standing partnerships with state foresters and conservation partners in the field.

If confirmed, will you urge the Secretary and the administration to reverse course and support LWCF and the Forest Legacy Program so that we can continue to increase public recreational access to our forests, support local communities, and sustainably harvest timber, while protecting water quality and wildlife habitat?

**Response:** I support the mission of the Land and Water Conservation Fund and the Forest Legacy Program. I will manage the program as the law directs and Congress funds, recognizing the budget constraints that Congress and the Executive Branch must operate within.

3. The U.S. Forest Service's Community Forest and Open Space Conservation Program, commonly referred to as the "Community Forest Program," provides matching funds to help communities protect forests that are threatened by development. I worked hard in the 2008 Farm Bill to authorize this new program, which was designed to assist local communities to secure these threatened assets for public recreation, sustainable forestry, wildlife habitat, and water quality preservation. Since the program's first grant round in Fiscal Year 2012, it has supported more than 40 community forest projects across 19 states and territories, including several great projects in Vermont. Through the latest round of grants, project partners have leveraged a total of \$8.5 million in Federal funds to secure \$18 million in non-Federal match. As a result of these partnerships, nearly 14,000 acres of private forestlands have been or soon will be acquired from willing sellers to create new or expand existing community forests. However, the administration's budget proposals have called for the elimination of this important forest conservation program.

3.a. Do you agree that the Community Forest Program is an important tool to help rural communities conserve productive forestland, while also providing community and economic development opportunities for our forest-based communities?

**Response:** Yes, I agree the Community Forest Program is an important tool for rural communities. If confirmed, I will manage the program as the law directs and Congress funds, recognizing the challenging budget constraints that Congress and the Executive Branch must operate within.

3.b If confirmed, will you recommend that the Community Forest Program receive strong funding in future budget requests? And what other ways will you work to help to support this program?

**Response:** If confirmed I will carefully consider funding levels for all of the USDA Forest Service programs. I will look for ways to be a better partner and neighbor to build on the economic value national forests bring to local communities. My focus would be on shared ideas to identify solutions that enhance and advance our work across boundaries.

4. For the Green Mountain/Finger Lakes National Forest, in Vermont and New York, the Forest Supervisor's Office has long been in a leased space, not on Forest Service land. Planning for a Forest Supervisor's Office has been underway in fits and starts for well over 10 years. The current lease is short-term and very expensive, which is why moving into a Forest Service-owned facility would be cost effective, even in the short run.

If confirmed, will you look at the short and long-term cost savings and operational efficiencies, especially within Region 9, resulting from quickly completing work on the long-planned Green Mountain/Finger Lakes National Forest Supervisor's office on U.S. Forest Service-owned land in Vermont?

**Response:** If confirmed, I will look into the issue.

5. During your time at the Forest Service, the State and Private Forestry Division focused its efforts on working closely with non-Federal landowners on efforts around forest health management and insect and disease problems that do not stop at a landowner's boundary or state borders. With respect to invasive forest pests such as the Asian long horned beetle and emerald ash borer that are of concern in Vermont, I repeatedly hear from Vermont forestland owners not about the Forest Service's work on invasive species, but rather the lack of funding and support for the Animal Plant Health Inspection Service (APHIS), which is a vital part of the USDA team working to address invasive insects and pathogens that have an enormous effect on our forests.

5.a. Do you agree that the cuts that the President has proposed to the APHIS Plant Health program and for the Tree and Wood Pests work undermine these programs and could lead to a failure by the USDA to protect our forests from non-native insects and pathogens?

**Response:** At this time, I'm not familiar with the proposed changes to the APHIS budget. If confirmed, I would be interested in learning more about the current situation and seeing how Forest Service and APHIS can partner to protect our forests from insect and disease.

5.b. If confirmed for this position, how will you work across mission areas with APHIS to ensure the USDA is doing all that it can to protect our forests from invasive insects and pathogens?

**Response:** Much like I plan to work across boundaries on the landscape, I would work across USDA mission areas to leverage all available resources to protect our farmers from invasive species.

**Senator Michael F. Bennet**

1. The Forest Service is moving forward with 8-years of budget certainty starting in 2020 as a result of the 2018 Omnibus. This "fire fix" also included new forest management reforms such as expanded Good Neighbor Authority.

- a. If confirmed, will you join us in Colorado to discuss how the Forest Service will implement the fire fix package, including the new forest management tools?

**Response:** Yes, I would be very happy to meet in Colorado for this discussion.

- b. There are over 200,000 acres of approved hazardous fuels projects ready to go in Colorado. If confirmed, will you work with us to direct these new resources to forest health projects that are vital to the safety of our communities and health of our watersheds in Colorado?

**Response:** If confirmed, building on work to address hazardous fuels and forest health will be one of my top priorities.

- c. Outdoor recreation is central to our way of life and our economy in Colorado. In your view, how will ending fire borrowing help the Forest Service improve recreational access and infrastructure?

**Response:** The fire funding fix, in combination with new tools to accomplish our work in forest health, are key elements to ensure resources are available to improve the outdoor recreation experience enjoyed by so many Americans. If confirmed, I look forward to being able to provide increased focus in these areas using the funding provided by Congress.

- 2. As you know, the Outdoor Retailer Summer Market is in Denver this week thanks to the leadership that Coloradans exhibit when it comes to protecting public lands. Given your experience in Colorado, you know how important outdoor recreation is to our economy and our way of life.

- a. If confirmed, will the Agency prioritize resources for recreation, staffing, and permitting needs in our most visited National Forests, such as the White River National Forest?

**Response:** We will strive to meet the needs of high-visitation National Forests such as the White River and continue our efforts to balance resources for sustainable recreation management across the National Forest System.

- b. If confirmed, will you work with us to identify a path forward for the bipartisan Ski Area Fee Retention Act to address broad recreation needs in these high use National Forests?

**Response:** I understand that the Forest Service recently provided testimony on this important legislation and I support the concept of the bill as well as continuing to work together on this and other efforts to improve ski area permit management.

- c. Secretary Perdue has indicated that trails stewardship work started this summer in the 15 priority trail areas established by the National Forest Trails Stewardship Act of 2016 that Sen. Enzi and I passed last Congress. If confirmed, will you continue to prioritize the implementation of this bill, including selecting outfitter and guide pilot areas?

**Response:** Yes. If confirmed, I would continue implementing the provisions of the National Forest Trails Stewardship Act. I appreciate the support of Congress in providing focus to this important resource.

- 3. Since you started in forestry more than 40 years ago, Colorado's climate has warmed considerably. Drier conditions are affecting forest health and have contributed to the largest bark beetle outbreaks in the state's recorded history. Continued warming is also affecting the quality and quantity of our water supply.

- a. If confirmed, what steps will you take to ensure the Forest Service is more resilient to the conditions that our changing climate is causing?

**Response:** I would diligently work to continue the Forest Service's efforts on forest health and improved resiliency to fire, insects, and disease. I am committed to collaborating closely with states, tribes, counties, local communities, and stakeholders to focus resources in the right places to achieve outcomes at a scale that matters.

4. Last winter, I introduced the Continental Divide Recreation, Wilderness, and Camp Hale Legacy Act that would establish new wilderness and conservation areas, as well as the first ever National Historic Landscape around Camp Hale. This spring, I also introduced the San Juan Mountain Wilderness Act to establish new wilderness and special management areas in the heart of the San Juan Mountains. Both of those bills represent what can be accomplished through a collaborative approach to protection and conservation of our public lands.

- a. If confirmed, will you work with my staff to find a path forward on these important designations for Forest Service lands in Colorado?

**Response:** Yes, I would certainly work with your staff on these issues.

5. As you know, partnerships can stretch Forest Service resources and help address community needs. Last year, along with Sen. Boozman, I introduced a bill, the Forest Service Flexible Partnerships Act, to provide new authority for the Forest Service to partner with communities for shared employee housing and shared infrastructure.

- a. In your view, how could the Forest Service better partner with states and communities to advance economic development?

**Response:** The Forest Service has explored a variety of ways to be a better partner and neighbor in order to build on the economic value national forests bring to local communities. My focus would be very much on identifying shared ideas and creative solutions to enhance and advance these efforts across boundaries.

6. The Forest Service has partnered with Conservation Corps in Colorado to address priority forestry and recreation needs, and supported the 21st Century Conservation Service Corps (21CSC) initiative. In the FY18 Omnibus, The Forest Service was directed to increase partnerships with Conservation Corps to accomplish some of this priority conservation work.

- a. If confirmed, how will you enhance partnerships with supporting organizations like these?

**Response:** Partnerships are fundamental for achieving the Forest Service mission. Not only do they provide real work accomplishments on the ground, but they help foster a new generation of conservation leaders for the future. I would engage with Forest Service leaders on creative ways to enhance these and other important partnerships.

- b. In your view, could Conservation Corps, Veterans Corps, and the Forest Services' own Jobs Corps help address priority needs such as fire mitigation and maintenance?

**Response:** These groups have been deployed on efforts such as these. They serve as a compliment to the hard work of agency employees across a wide range of resource work. I will continue assessing our capabilities to best use available resources.

7. In Colorado and across the country, the Forest Service maintains roads and trails to support timber management and other multiple uses of national forests. Reducing the maintenance backlog is critical to preserve critical public access to our lands and to protect clean water.
  - a. If confirmed, what solutions will you propose to address the backlog of maintenance projects on Forest Service land? How will the new resources available in 2020, as a result of the fire fix, be used to address the maintenance backlog?

**Response:** If confirmed, I would look forward to working with Forest Service leaders and with Congress to address this sizeable challenge. The National Forest transportation system is critical to provide for active forest management, recreation access, wildfire response, and other multiple uses such as grazing and mining, and I believe a wide array of creative solutions are available when we work together on these challenges.

**Senator Tina Smith**

1. The Senate Farm Bill has many good provisions when it comes to the Forest Service-tribal relationships, including extending Good Neighbor Authority to tribes. When I talk with Indian leaders in Minnesota though, I hear a lot about “638 authority” when it comes to forest land. “638 authority” gives Indian tribes the ability to engage more efficiently with the USDA and the forest service by allowing tribes to operate forest land on their reservations. Do you support extending 638 authority to USDA forestry programs?

**Response:** I understand the “638 authority”, or Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, gave Indian tribes the authority to contract with the Federal government to operate programs serving their tribal members and other eligible persons. If confirmed, I would be happy to work with you to explore this authority further.

