

NOMINATIONS OF RODNEY E. SLATER, DAVID GARDINER, STEVEN A. HERMAN, AND GEORGE T. FRAMPTON, JR.

Y 4. P 96/10: S. HRG. 103-134

Nominations of Rodney E. Slater, Da... NG

BEFORE THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

THE NOMINATIONS OF RODNEY E. SLATER, TO BE ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION; DAVID GARDINER, TO BE ASSISTANT ADMINISTRATOR, POLICY, PLANNING, AND EVALUATION, ENVIRONMENTAL PROTECTION AGENCY; STEVEN A. HERMAN, TO BE ASSISTANT ADMINISTRATOR, ENFORCEMENT, ENVIRONMENTAL PROTECTION AGENCY; AND GEORGE T. FRAMPTON, JR., TO BE ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR

MAY 19, 1993

Printed for the use of the Committee on Environment and Public Works



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**NOMINATIONS OF RODNEY E. SLATER, DAVID
GARDINER, STEVEN A. HERMAN, AND
GEORGE T. FRAMPTON, JR.**

WEDNESDAY, MAY 19, 1993

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The committee met, pursuant to notice, at 10:08 a.m. in room 406, Dirksen Senate Office Building, Hon. Max Baucus [chairman of the committee] presiding.

Present: Senators Baucus, Warner, Chafee, Faircloth, Kempthorne, Lautenberg, and Simpson.

**OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR
FROM THE STATE OF MONTANA**

Good morning. The Committee on Environment and Public Works meets today to consider the nominations of four individuals:

Mr. George Frampton, to be the Assistant Secretary for Fish and Wildlife and Parks at the Department of the Interior; Mr. Rodney Slater, to be the Federal Highway Administrator at the Department of Transportation; Mr. David Gardiner, to be the Assistant Administrator for Policy, Planning, and Evaluation at the Environmental Protection Agency; and Mr. Steven Herman, to be the Assistant Administrator for Enforcement at the Environmental Protection Agency.

I want to welcome the nominees and their families. Thanks for coming here this morning.

As the Assistant Secretary of the Interior for Fish and Wildlife and Parks, George Frampton will oversee the National Park Service and the U.S. Fish and Wildlife Service.

Last week, Mr. Frampton appeared before the Energy and Natural Resources Committee, which shares jurisdiction over the nomination with this Committee, to discuss issues relating to the National Park System.

This Committee has jurisdiction over fisheries and wildlife, and we will focus today on the duties of the Assistant Secretary for Fish and Wildlife and Parks to conserve these resources.

Mr. Frampton you will be charged with a number of key responsibilities, including protection of endangered species, management of the National Wildlife Refuge System, and conservation of migratory birds, wetlands, and sport fisheries.

Most fish and wildlife habitat is not found on Federal lands, and the most serious threats to the National Wildlife Refuge System

come from outside refuge boundaries. Consequently, for you to be successful in carrying out your duties as Assistant Secretary for Fish and Wildlife and Parks, you will need to work closely with the states and with private landowners.

As Administrator of the Federal Highway Administration, Mr. Slater will be responsible for more than half of the Department of Transportation's budget. Mr. Slater also will oversee the various programs established in ISTEA. The National Highway System, the solvency of the Highway Trust Fund and the Department's implementation of new programs are just a few of the important issues he will face as Administrator.

Montana is the fourth largest State in land area, so highways are critical to our way of life. Under ISTEA, States have the flexibility to choose the types of projects that best suit their individual transportation needs. For instance, the needs of Montana are dramatically different than the needs of New Jersey.

By giving States more options in the types of projects that can be funded, it allows them to make wise investment decisions—whether it is a highway, a mass transit system, a bikepath or a pedestrian walkway. In these times of budget constraints—both on the State and Federal level—it is important that we give States the tools they need to make prudent investment decisions.

As the Assistant Administrator for Policy, Planning, and Evaluation, Mr. Gardiner you will be responsible for keeping EPA focused on the big picture. As you know, it's very easy to get lost in the details of media-specific—air, water, or waste—regulations, particularly when implementing media-specific statutes. Far too often we fall into the trap of treating each environmental problem as separate from all others. We know that the problems are not independent.

As the agency's chief planning officer, Mr. Gardiner, it will be up to you to look at the integrated whole rather than the independent parts. You must look for new initiatives that foster greater integration of environmental policy both internally among EPA's programs, and between environmental policy and other policies. This is especially critical now because today's environmental problems do not fit neatly into the traditional air, water, and land regulatory boxes. Mr. Gardiner, if confirmed, you will be in a terrific position to see the big picture and shape the next generation of environmental policies.

Mr. Herman, like Mr. Gardiner, you have been nominated to lead one of the most important positions in the EPA, the Office of Enforcement. If you are confirmed as the chief enforcement officer of the agency, you will be responsible for ensuring that our environmental laws are being implemented. That's a tall order. But its going to become even more demanding than in the past as we move toward multi-media protection of our environment.

As you know, Mr. Herman, most environmental enforcement historically, has been media-specific. The Office of Enforcement has focused considerable effort tracking down specific violators of the Clean Air Act, the Clean Water Act, RCRA, and other statutes. These efforts have been highly effective. But we must increasingly supplement these media-specific enforcement actions with multi-media initiatives. And balancing these media specific enforcement

actions with multi-media initiatives will be one of your greatest challenges.

In many respects, Mr. Herman and Mr. Gardiner, you both face similar challenges. As Assistant Administrators for Enforcement and for Policy, Planning, and Evaluation you must help move the agency toward a more integrated approach to environmental protection, through multi-media inspections and enforcement, through integrated rulemakings.

As daunting a task as what I have described for each of you may seem, your job entails much more than that. The public expects the Congress and the new Administration to break the gridlock that has impeded the formulation of solutions to our Nations problems. Your job is to help replace this gridlock with cooperation so we can formulate policies that will lead our nation into the 21st century as global leaders in your areas of responsibility.

Together, we must move forward. We must move more quickly to recover the more than 600 threatened species and endangered species. And more importantly, we must act earlier to prevent species from becoming endangered or threatened in the first place.

We must stop the destruction of our wetlands, which are disappearing at the rate of 300,000 acres per year.

We must eliminate some of the 11 billion tons of waste we generate each year and with it the need for more landfills and incinerators.

We must fulfill the promise we made to the American public in 1972 of assuring fishable and swimmable waters throughout the nation. And honestly implement the new clean air act.

And while highways are important out West, we in Montana and the Nation as a whole need to look at other transportation alternatives and begin looking at the future role of transportation as we implement ISTEA.

These should be challenging and exciting tasks. They call for a new way of thinking about our nation, our people, and about our infrastructure, our natural resources, and our environment. It means being bold, reaching out for new ideas, finding out what's broken and fixing it, and dispelling old myths—like the myth that we must choose between a clean environment and a strong economy.

That dangerous myth drives Americans apart. The fact is, a clean environment and a strong economy are really two sides of the same coin. They both are based on simple, fundamental ideas: planning ahead, investing in the future rather than squandering resources; building a better life for our children. Ultimately, we will have both good jobs and a clean environment, or we will have neither.

Each of you brings enormous potential to help dispel this old myth by looking for progressive, fair and responsible solutions to our problems.

I wish you well, thank you for coming and look forward to working closely with you.

I would like to recognize Senator Warner for his opening remarks.

OPENING STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR
FROM THE COMMONWEALTH OF VIRGINIA

Senator WARNER. Thank you, Mr. Chairman.

It is a pleasure for me today to introduce to you David Gardiner, the President's nominee for Assistant Administrator for Policy, Planning, and Evaluation at the Environmental Protection Agency.

Also I want to take this opportunity to welcome to the committee and recognize Mr. Gardiner's family: his wife Betsy, and two of his three daughters, Kate and Anna. If they would stand, please? There we are, right there.

I have assured this family that the father will be home no later than 7:00 o'clock each night.

[Laughter.]

Senator WARNER. Having had some experience myself in the Executive Branch, I recognize that decisions made after 7:00 are reversed the next morning anyway, so home we go.

[Laughter.]

Senator WARNER. Mr. Gardiner is a graduate of Harvard University and currently resides in the Commonwealth of Virginia. He brings to this position over 15 years of experience in the environmental field. He has worked with this committee over those years, representing the Sierra Club on a number of environmental policy matters involving the Clean Air Act, the Clean Water Act, Superfund, the Resource Conservation and Recovery Act, and other statutes.

In the position of Assistant Administrator for Policy, Planning, and Evaluation, Mr. Gardiner will be able to use his diverse knowledge of these issues as he evaluates the cross-media impacts of regulations proposed by the agency and identifies initiatives to integrate environmental policies with other Federal programs.

In my private discussions with him I was very much impressed with this nominee's consciousness of the impact of this agency on the Nation's economy in many ways. Recognizing the desire of all of us to see that the President's economic initiatives take hold and create jobs, he is prepared to work with the Administrator in seeing that the policies of EPA try to foster economic growth wherever possible.

Mr. Chairman, the relationship between the Clean Air Act and the Intermodal Surface Transportation Efficiency Act, ISTEA, is certainly one example of coordinating the compatible objectives of improving the quality of the air we breathe, and improving the efficiency of our transportation network.

Mr. Chairman, but we have here an outstanding nominee. The President should be congratulated for successfully persuading him to leave the private sector and join the ranks of public service.

I will have nothing further to say. You are on your own. Good luck.

Senator BAUCUS. Thank you very much, Senator.

Senator Chafee will be delayed in arriving due to a prior commitment, he has a statement and we will include it in the record at this point.

[Senator Chafee's statement follows:]

OPENING STATEMENT OF HON JOHN H. CHAFEE, U.S. SENATOR FROM
THE STATE OF RHODE ISLAND

Thank you, Mr. Chairman, for scheduling this hearing to consider nominations for positions at EPA, The Department of the Interior and the Department of Transportation. It is important that we get high caliber senior managers confirmed and in their jobs as quickly as possible, so that these departments can get on with the urgent business of protecting this country's environment. Welcome to all of you.

First up will be Mr. George Frampton, the President's nominee for Assistant Secretary for Fish and Wildlife and Parks in the Department of the Interior. Mr. Frampton will oversee the Fish and Wildlife Service and he will play a major role in the implementation and reauthorization of the Endangered Species Act. Your decisions on the acquisition and management of lands within the National Wildlife Refuge System and the National Park System will have a major impact on whether and how critical natural resources are conserved for future generations.

Mr. Frampton's record demonstrates that he has the experience and commitment to meet these challenges. Secretary Babbitt is already off to an excellent start in finding innovative ways to assist private landowners and communities in complying with the Endangered Species Act—while avoiding the so-called "train wrecks"—and I look forward to working with you to continue this approach.

I am also looking forward to working with Rodney Slater, the President's nominee for Administrator of the Federal Highway Administration. Mr. Slater will be assuming the leadership of the Federal Highway Administration at a challenging and critical time in this agency's history. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) became law 17 months ago. This legislation gives the Federal Highway Administration a new mission and Mr. Slater will be on the front lines of carrying out that mission. Your agency can no longer focus just on building new highways. Its objectives now include clean air, energy conservation, intermodalism, and international competitiveness.

The intent of the new transportation law is to change the way we have viewed transportation programs in the past. The law recognizes the effect transportation projects have on our environment and on our neighborhoods; it recognizes the need for integrated, multi-modal transportation systems; and, it recognizes that we have to use the facilities we have more efficiently.

Mr. Slater's role at the agency is so important because the new transportation law is more a blueprint for change than a mandate for change. Realizing the promise of ISTEA depends on many people but the Administrator and the employees of the Federal Highway Administration are in a key position to deliver the promise of the new transportation law.

Next will be Mr. Gardiner, whom I remember as a foot soldier for the Sierra Club during the battles over reauthorizing the Clean Air Act. Mr. Gardiner has been nominated to oversee EPA's Office of Policy, Planning, and Evaluation, and, if confirmed, will be charged with analyzing and reviewing all EPA regulations. This is a difficult and challenging position and will require a strong sense of vision, as well as good managerial skills to avoid being "captured" by the bureaucracy.

I am also happy to welcome to the Committee Steve Herman, the President's nominee to serve as the Assistant Administrator for Enforcement at the Environmental Protection Agency. Mr. Herman, in your new position, you will continue what has been an impressive career of government service, having most recently served as an assistant section chief in the Environment and Natural Resources Division of the Department of Justice.

According to many who know your work at the Justice Department, one of your most impressive efforts was clearly your work on the Everglades case against the State of Florida and one Carol Browner. Apparently, you were so effective as an adversary in that case that Administrator Browner decided to keep you on her side in the future.

You now take on the important job of enforcing this nation's environmental laws. Perhaps the most challenging of your tasks is that of enforcing those laws against the federal government itself. I encourage you to be forceful in performing these tasks, and wish you well in your new position.

I look forward to the each of the nominee's statements, and a good round of questions. Again, thank you.

Senator BAUCUS. Mr. Gardiner, before you give your statement, could you introduce your family and have them stand?

Mr. GARDINER. Sure, I'd be glad to.

My wife, Betsy, is standing back here.

My oldest daughter, Kate, who is 10, and middle daughter, Anna, and we have a 3-year-old daughter, Robin, who we decided it would be better to have stay at home today.

[Laughter.]

Senator BAUCUS. We welcome all of you.

Mr. GARDINER. Thank you very much, and thank you, Senator Warner, for that kind introduction. I appreciate it very much.

Senator BAUCUS. You can proceed with your statement at this time, if you wish.

Mr. Gardiner, I see Senators Bumpers and Pryor here, and they both have other engagements shortly.

Senators, would you like to introduce Mr. Slater at this point? It's up to you, what your preference might be.

Senator BUMPERS. Mr. Chairman, I am reluctant to ask the indulgence of the committee, but it would be a great favor to Senator Pryor and me if we could do our introduction of Mr. Slater now.

Senator BAUCUS. All right, let's do that.

We are honored to have the two Senators from Arkansas.

Senator WARNER. And we thank you very much for doing this so that you will be merciful to Senator Baucus and me when we appear before your committees.

[Laughter.]

STATEMENT OF HON. DALE BUMPERS, U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator BUMPERS. I will begin by saying that, first of all, you are looking at one of the most outstanding citizens of Arkansas, and I'm not talking about Senator Pryor or Senator Bumpers. I'm talking about a real comer by the name of Rodney Slater whom, as you know, the President has nominated to be Administrator of the Federal Highway Administration.

He is Chairman of the Arkansas Highway Commission now, but before that he has had an extremely illustrious career. He has been on the Commission now for many years, but as I say, he is now the Chairman. It was not totally under his leadership, but I would like to say that Arkansas—

Senator BAUCUS. Excuse me. Senator.

Mr. Slater, why don't you come on up? Bring a chair up here, right there between your two Senators.

Senator BUMPERS. Thank you, Mr. Chairman, for correcting our bad manners. Senator Pryor and I should have invited him up earlier.

But in any event, as is so often the case, I remember I was introduced one time when I was first elected Governor, and the Department of Education head, a fellow by the name of Arch Ford, was introducing me, and said that he was in Illinois at a convention. And they said, "Was that new, young Governor down there born in a log cabin?" He said, "No, but his folks moved into one just as soon as they could afford it."

[Laughter.]

Senator BUMPERS. Rodney Slater was born very much the same way. You are looking at a man with a very forceful personality, a very keen mind, who has grubbed it out by himself and on his own

to become, truly, one of the most respected and well-known citizens in our State. He was formerly an Assistant State Attorney General from 1980 to 1982; he was then-Governor Clinton's Special Assistant for Community and Minority Affairs in 1983; and was the Executive Assistant for Economic and Community Programs from 1985 to 1987.

He is a man with boundless energy. He has been Secretary-Treasurer of the Arkansas Bar Association; a member of the Arkansas Adult Literacy Fund Advisory Board; and an executive board member of the East Arkansas Area Council of the Boy Scouts of America.

In 1986 he was listed as one of the 10 outstanding young men in America by the American Jaycees, and he was named Arkansas Hero in the 1989 issue of the Arkansas Times, which is a fairly prestigious publication in Arkansas.

He is a member of WinRock, International's present advisory council. That's one of the legacies that Win Rockefeller left the State of Arkansas, and he's a member of the board of trustees of Bethel A.M.E. Church in Arkansas.

Mr. Chairman, the Arkansas Highway Department is the 16th largest in America, and yet we rank 34th in available revenues. Yet it is consistently voted one of the four or five top, well-run highway departments in America, and that is due in no small measure to the leadership of the man the President has nominated. The President would not have nominated him if he hadn't been around him for 10 to 12 years and known of his energy and his capabilities.

Finally let me just say on a totally nongermane issue, you often hear that Dale Bumpers is considered one of the better orators in the Senate, I just want to say that if Rodney Slater were in the Senate, you would never hear that again.

Senator BAUCUS. Thank you very much, Senator.

I notice that Congressman Jay Dickey and Congressman Tim Hutchinson are here. Would you like to join them at the table here? Bring some chairs up here.

Senator Pryor?

STATEMENT OF HON. DAVID PRYOR, U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator PRYOR. Mr. Chairman and colleagues, thank you for letting me appear this morning. I might say that this is a bipartisan endeavor this morning; two of our colleagues who are from the Republican side of the aisle in the House have joined us. We understand that it is impossible for Congressman Thornton to come; however, he wanted to show his full support. And we understand that Congresswoman Blanche Lambert is going to try to make it, and may perhaps be on her way now.

I will just reiterate, as I have to you personally, Mr. Chairman, my strong support for this outstanding man, Rodney Slater, to be the Administrator of the Federal Highway Administration.

Senator Bumpers has eloquently stated his qualifications, his past record, his professional role, his memberships in organizations, and some of his honors. His honors are too numerous to mention,

Mr. Chairman and colleagues, but I can tell you, having know this man for a long time, a lot of years, I would classify him as splendid in every way.

I would say that there might be three major characteristics that would be necessary for the position of Administrator of the Federal Highway Administration.

The first of those is knowledge. Rodney Slater has that knowledge. It has been demonstrated in our State. In fact, his knowledge was recognized by the State General Assembly in S.R. 28 and H.R. 1055, recommending this man.

The second qualification that I think is necessary for this position is fairness. Rodney Slater has that characteristic and has an abundance of it. It goes without saying that to be the Administrator of the Federal Highway Administration is going to take fairness, Mr. Chairman, because of the need to allocate the funds to the Federal Highway System and make the correct and right decisions as to our road programs and the vision that we have for our highway system. He certainly has that fairness.

I think the third characteristic necessary for this position, Mr. Chairman, is the ability to listen—to listen to people; to listen to groups; to listen to concerns—as we basically go into the next century with a highway program that must be second to none and a highway program that I truly believe is going to be in the most capable hands with Rodney Slater as our Administrator of the Federal Highway Administration.

It is without reservation or qualification, Mr. Chairman and colleagues, that I come before this distinguished committee to recommend my friend and our friend, Rodney Slater, to be the Administrator of the Federal Highway Administration.

I thank you and I thank the committee.

Senator BAUCUS. Thank you very much, Senator.
Congressman Hutchinson?

STATEMENT OF HON. Y. TIM HUTCHINSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. HUTCHINSON. Thank you, Senator. I appreciate the opportunity to appear before the committee.

On a personal level, speaking first of all as a Republican; second, as a Republican Congressman; and third, as a former State legislator in Arkansas who has had an opportunity to work with Rodney on that level. As a member of the House Public Works Committee, I am very enthusiastic and excited to be able to support the nomination of Rodney Slater. He has done such a superb job in the State of Arkansas, where I have had an opportunity as a State legislator to see his leadership on the Arkansas Highway and Transportation Commission in our State, to see how quickly he has taken that leadership role and displayed his competence.

Let me just touch upon it, because I think Senator Pryor hit the right points: knowledge, fairness, and the ability to listen, because that's exactly what Rodney displays. As a member of the minority party, I can certainly testify to his knowledge, his competence, his fairness. Partisanship was never an issue with Rodney; it was what was good for the State of Arkansas and what was right. So he is a

very fair individual, and he has always displayed his willingness to listen to my viewpoints.

So I don't know how to put it; I am more than enthused to be able to support his nomination, to be able to sit here today and to testify on his behalf.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you very much.

Congressman Dickey?

**STATEMENT OF HON. JAY DICKEY, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF ARKANSAS**

Mr. DICKEY. Yes. I'd like to have unanimous consent for my remarks to be filed here, if I may.

Senator BAUCUS. Without objection.

[Congressman Dickey's statement follows:]

**STATEMENT OF HON. JAY DICKEY, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF ARKANSAS**

Mr. Chairman and Members of the Committee, it is a pleasure and honor for me to lend my strong and enthusiastic support for the nomination of Rodney Slater to serve as Administrator of the Federal Highway Administration.

Those of us from Arkansas are rightly proud that President Clinton has nominated a native of Arkansas for this position in the Administration. Rodney Slater brings to this job his integrity, dedication and outstanding knowledge and experience in highway issues. He will in fact contribute to moving America forward through effective leadership of federal highway programs. He also brings to the job a diverse and proud background. He is a trusted friend and confidant of the President.

As a member of the Arkansas State Highway and Transportation Commission since 1987, and most recently as Chairman of the Commission, Rodney has first hand experience and hands-on knowledge of the transportation needs of state and local governments and commuting citizens. He has brought to his work in Arkansas, a spirit of innovation and vision in working effectively to solve problems.

In doing so, he has spearheaded what resulted last year in the most productive period of highway project contracting and construction at the state and local level in Arkansas. He worked closely with local elected officials to move rapidly forward to implement a major highway improvement program authorized by the Arkansas State Legislature in 1991. The efforts of Rodney and the other members of the Commission saw significant investment in local road and highway projects to include 641 state highway projects totaling \$457 million to improve nearly 2,000 miles of state highways; 178 bridge improvements, and \$62 million in contract awards for city and county road improvements.

This record of accomplishment demonstrates the same qualities of innovation and flexibility that are embodied in the Intermodal Surface Transportation and Efficiency Act (ISTEA) of 1991, which this Committee was so instrumental in crafting. That is exactly the type of understanding and vision that is needed in the Federal Highway Administration as it works with the other transportation entities within the Department of Transportation and in concert transportation officials in all fifty states, to make the most efficient use of federal, state and local surface transportation funds.

It seems to me Rodney's background and intellect are especially well suited to help move forward America's vital surface transportation system into the 21st Century. And an exciting time that will be. Rodney has served as Arkansas Assistant Attorney General; as then-Governor Clinton's Special Assistant for Community and Minority Affairs; was the Governor's Executive Assistant for Economic and Community Programs, and now as Chairman of the State highway Commission. As the Congress and the country strive to remove barriers to international trade, America's highway transportation system must be ready to provide the crucial corridors of commerce across America and from Canada to Mexico. Rodney is prepared to provide the leadership to meet that challenge.

We are now proceeding to the designation of a new and improved National Highway System, based on the successful lessons learned from the interconnected Interstate Highway Program. It is more important than ever that America's surface

transportation system adapt to the inviting new challenges of "smart highways" and new and exciting modes of high-speed rail systems, and contribute further to economic development and job creation through this country. Indeed, this will be a new era for surface transportation in this country. Rodney brings to his new job his youthful energy and commitment to effective and productive leadership to meet these challenges and innovative transportation network opportunities.

I am very pleased to be here today to commit my full support to helping Rodney achieve these goals for America. I encourage the Committee to act swiftly to confirm his nomination so he can get to work on the exciting surface transportation challenges that lie ahead.

Thank you.

Mr. DICKEY. I want to say this, the bipartisan part of Mr. Slater's qualifications are the really significant thing that I would like to testify to. I think it's something for us to all get together and say we want to serve the country; he did it as a State employee and as a Highway Commissioner, and I think it's a wonderful thing.

We have a lot of tremendous people coming out of Arkansas. You all know that, don't you?

[Laughter.]

Senator WARNER. We're still waiting.

[Laughter.]

Mr. DICKEY. Well, let me tell you this, Senator, Rodney Slater is one of the best of us, and I'm proud to be behind him in this nomination.

Thank you.

Senator WARNER. Mr. Congressman, I didn't mean to be facetious. I had the opportunity to visit at length with the nominee yesterday, and I concur in all that's been said.

The thing that impressed me most about the nominee, Mr. Chairman, was the fact that he is so conscious of the need to improve highway safety, and he is aware of all the technological improvements that are there—on the shelf, in many instances—waiting to be incorporated into our highway system.

I think, you will be known as the Highway Safety Administrator. Good luck.

Senator BAUCUS. Mr. Slater, could you please introduce your family?

Mr. SLATER. I'd be honored to, Mr. Chairman.

I have present here my wife, Cassandra; our lovely daughter, Bridget Josette—you can tell she just arrived a little while ago; and my mother-in-law is also here, State Representative Josetta Wilkins.

Senator BAUCUS. We are honored to have you here, ma'am.

Mr. SLATER. And my sister-in-law, Angela Wilkins.

Senator BUMPERS. Mr. Chairman, it's worthy of note that Senator Pryor and I were both honored to serve our State as Governor. Ms. Wilkins is now a member of the legislature, and her husband was a long-time member of the Arkansas Legislature. She succeeded him in her own right by being elected to that office. He was a truly outstanding legislator, as is she. So you can see that this is a very distinguished family.

Senator BAUCUS. Right. Thank you very much, Senator.

Senator CHAFEE. Mr. Chairman, could I just say one thing?

Arkansas has come into prominence lately in many, many ways. It's an astonishing State. We have the President and Mr. Slater; I went to a hearing which Senator Bumpers presided over, and the

president of the American Bankers Association came up. He was asked, "Where are you from?" "Well, I'm from Arkansas." And then Prairie Bayou wins the Preakness last week—

[Laughter.]

Senator CHAFEE. It's been a big six months for Arkansas.

Senator BAUCUS. Yes, it has.

I must say, too, one common trait that I've noticed, and Congressman Hutchinson touched on it, and that is that Arkansans are willing to listen. Any of us who have spent any time with the President know how much he listens. He just sits and looks you straight in the eye, and when you are talking to him, he is focused. He is listening.

I know that the two Senators from Arkansas very much have that trait, and I was struck—

Senator PRYOR. Even Dale?

[Laughter.]

Senator BAUCUS. With one exception. With one exception.

[Laughter.]

Senator CHAFEE. You're pressing it here.

Senator BAUCUS. I know I'm pressing it.

[Laughter.]

Senator BAUCUS. But I was struck by the Congressman's point about the nominee, because the more we listen, the more effective we are.

I heard someone say that he or she who communicates best is he or she who listens best. I think that Arkansans seem to have found that and practice that, probably more than most people. That may account, Senator Chafee, for their success.

Senator Faircloth?

Senator FAIRCLOTH. You keep mentioning the politicians from Arkansas. You're forgetting Don Tyce and Sam Walton and J.B. Hunt. They're the people that make you work. They keep the politicians going.

Senator BAUCUS. Thank you all very much. You can stay as long as you want.

We're going to change the order here. Mr. Slater, you are at the table so you might as well give your statement now.

Mr. Slater, your entire statement will be included in the record, so I would just ask you to make whatever comments you wish to make at this time.

STATEMENT OF RODNEY E. SLATER, NOMINATED TO BE FEDERAL HIGHWAY ADMINISTRATOR

Mr. SLATER. Thank you, Mr. Chairman. I would like to just make a few high points, and I will be as brief as possible.

Mr. Chairman, Senator Chafee, members of the committee on Environment and Public Works, please know that I am honored to appear before you this morning. I thank you for the expeditious scheduling of this confirmation hearing, and I am deeply honored that President Clinton has chosen to entrust me with the position of Federal Highway Administrator. If confirmed, I look forward to serving in this capacity.

I am also proud to be nominated to head an agency that this year celebrates 100 years of service to the Nation and to the world. I am humbled by the representation of the Arkansas national political leadership that appeared here this morning on my behalf: Senator Bumpers, Senator Pryor, Congress Members Dickey and Hutchinson, Congressman Thornton, wanted to be here but is in Little Rock because of the illness of his wife, and Congresswoman Lambert, hopefully will make it before the conclusion of the hearing.

As a member and as Chairman of the Arkansas Highway and Transportation Commission, I am very aware of the significant national role that this committee has played in the past, most especially your dedicated work in the development and passage of the Intermodal Surface Transportation Efficiency Act of 1991. ISTEA, as it is known, represents a landmark national contribution to the American transportation system. It serves as a model to be emulated by many other nations.

My respect for your past accomplishments is exceeded only by my respect for the role that you will and must play in the critical times of challenge and change which lie before us. The implementation of ISTEA by the Department of Transportation will be a major component to fulfill President Clinton's call to rebuild America.

To this end, Secretary Peña has set forth five keynote themes to guide the department: strengthening the role of transportation in supporting the economy; supporting transportation safety; building linkages between transportation policy and the environment and environmental policy; advancing American transportation technology and expertise; and fostering intermodalism.

I believe the Federal Highway Administration can serve as a key member of Secretary Peña's team to carry out each of these themes.

There is much more that I could say, and my written remarks, submitted yesterday, are much more extensive than the oral statement I make at this point.

The many exciting legislative provisions of ISTEA—the National Highway System, Intelligent Vehicle Highway System, transportation enhancements, just to name a few—provide opportunities for innovative thinking and creative implementation. Ongoing programs established by legislation must continue to be implemented and reviewed to ensure that Congressional mandates are being met. One in particular that I am very interested in is the Disadvantaged Business Enterprise Program, and I look forward to working with this committee and with the Congress for its full implementation.

In conclusion, I hope my remarks have provided you some general sense of my thinking as to the directions that I will pursue, if confirmed.

The 100 years of Federal Highway Administration history provide a rich base on which to act in the coming years. All of my professional experiences have brought me to this moment before you today and have prepared me to assume the position for which I have been nominated.

I sincerely want to thank the committee for the consideration it has extended to me and I again want to express my appreciation to Secretary Peña and to President Clinton for the confidence they have placed in me. I have the background; I have enjoyed varied experiences I have worked with many diverse groups, and I have faced the challenge of balancing competing interests. With other modal administrators and transportation officials, I believe I can serve as a strong transportation advocate, as an effective manager, and as an eager partner in working with Congress to implement its legislative mandates and the President's Policy to Rebuild America.

I look forward to moving forth and seeing what the future holds. At this time I will entertain any questions you may have.

Senator BAUCUS. Thank you very much, Mr. Slater.

First, a couple of obligatory questions.

Mr. SLATER. Yes.

Senator BAUCUS. Are you willing, at the request of any duly constituted committee of the Congress, to appear in front of it as a witness?

Mr. SLATER. I am.

Senator BAUCUS. Do you know of any matters which you may or may not have thus far disclosed which might place you in any conflict of interest if you are confirmed in this position?

Mr. SLATER. No.

Senator BAUCUS. I would like to ask you a few questions about the National Highway System. As you know, the National Highway System is now being developed by the Department and various States are submitting their recommendations, and certainly as Federal Highway Administrator you will have considerable say in the formulation of that map.

Give us your general thoughts on how that process is coming along. Are we going to meet the deadline dates so that the Congress will receive that on time?

Mr. SLATER. Mr. Chairman, the process is moving along very well. The agency is aggressively working with the States to ensure that they meet our deadlines as far as submission of their recommendations. We are reviewing those recommendations and making sure that the system is representative and that the individual parts become a system with the proper connectivity.

We have a requirement to submit our recommendation to Congress in the coming months. We will meet that deadline, and then Congress has roughly two years to approve a National Highway System.

In the interim, we will continue to work with members of Congress so as to keep them up to date as to how the effort is progressing.

To date we have received recommendations from 32 States, and in the coming weeks we hope to receive the others.

Senator BAUCUS. How do you propose to handle requests of States for increased mileage on the system?

Mr. SLATER. After we receive all of the recommendations, we will then total up the miles, because we have to work within a 155,000-mile scope, with a 15 percent increase or decrease. After we get the

total recommendations we will look at all of them, and then we will start making judgments about what has been proposed to us.

At that point we will have to consider what some States are interested in, especially in the west, as far as increased mileage on the system. We will take that into account at that time.

Senator BAUCUS. I appreciate that, particularly one of your last points. This country is different; it is not homogeneous. I just encourage you to be particularly sensitive to the different needs of different parts of our country.

In that vein, I encourage you very strongly to get out and travel around the country and see first-hand—you are very familiar with Arkansas, obviously, but I encourage you to go to very urban parts of the country and learn their needs, and also to very rural parts of the country. For example, in my State of Montana the population density is about five people per square mile; in the State of New Jersey, it's over 1,000 people per square mile. We have very different highway needs. New Jersey has its own very important needs, and States that are sparsely populated, like Montana, have theirs.

Many members of Congress are going to use the National Highway System recommendations to change the formula allocation. What are your views on that?

Mr. SLATER. Well, I do know that questions have been raised by some members of Congress, and I am sure that when we deal with the National Highway System issue, there will be attempts to effect other concerns. It is my hope that we can focus strictly on establishing the National Highway System. I know that during the course of your deliberations that led to the passage of ISTEA, a lot of those concerns were raised. There will be time in the coming years to revisit the question, but I would not like to see that done as we try to make a decision on a key component of ISTEA, that being the designation of a National Highway System.

Senator BAUCUS. I appreciate that, and I think you're right. ISTEA passed the Congress and was signed by the President, that process we worked out the allocation formulas. The NHS is not intended to be a formula allocation process; it's intended to be a system under which we designate which highways and the number of miles in each State are part of the system. It's not a formula question. ISTEA will again come up for reauthorization at a later date, and in my view that would be the appropriate time to deal with formulas.

One final question deals with the status of the trust fund. The trust fund is somewhat in jeopardy under the so-called "Byrd rule"—we have a lot of Byrd rules around here—the one that refers to reconciliation, named after Robert Byrd. The Byrd rule I have in mind is named after Harry Byrd, a previous Senator, and under that Byrd rule, when obligations under the highway bill begin to exceed the amount that's in the trust fund, then necessarily the Congress must proportionately reduce the number of dollars that are allocated to the States.

We don't want the Byrd rule to be triggered, but there's some danger that it might be triggered in the not-too-distant future.

What are your thoughts about the dedication of a tax of \$0.025 two years earlier—that is, instead of 1996, to 1994—to make it less likely that the Byrd rule would go into effect?

Mr. SLATER. I think that it would be wise to consider that, because one thing that makes ISTEA workable is having enough resources to allow the States to engage in a give-and-take that the law allows them regarding issues of flexibility, transferability, transportation enhancements, etc.

You can't really enjoy that flexibility if you have to worry about whether there's going to be enough money. That then drives more consideration for projects already on the shelves, projects that have backed up over the years because there hasn't been enough money.

So I think we definitely need to move forth aggressively to try to get the monies that have been dedicated to the general fund for deficit reduction placed into the trust fund so as to protect against any significant concerns regarding the impact of the Byrd amendment.

Senator BAUCUS. I agree, because it has no effect on the budget deficit. Instead of putting highway taxes in the general fund, put them in the trust fund. It would have no effect on the budget, but it will tend to stave off triggering an event which I think no American wants to happen, this Byrd rule, which would cause a reduction in the funds being allocated to the States.

Thank you very much.

Mr. SLATER. Thank you.

Senator BAUCUS. In order of appearance, Senator Faircloth?

Senator FAIRCLOTH. Thank you, Mr. Chairman.

To follow up on a point I didn't really understand, and then I will get to my questions, if we transfer money from the Highway Trust Fund to the general fund, are we talking about bringing it back?

Mr. SLATER. We never really transferred the money from the Highway Fund to the general fund. What Congress did was to pass a law where they increased the gasoline tax, and devoted those monies to the general fund rather than placing them in the trust fund, which traditionally had been the policy and procedure.

Senator FAIRCLOTH. OK. But when you pull that back out of the general fund you're going to have to replace it from somewhere, aren't you? It will take a tax increase somewhere else to replace that money, won't it?

Mr. SLATER. I don't think so, Senator. As a matter of fact, the President's budgetary proposal suggests that in 1995 we should make the effort to move the funds from the general fund back to the trust fund anyway, to make sure that ISTEA is fully funded.

Senator FAIRCLOTH. Specifically, if the money from gasoline taxes that's has been going into the general fund goes back to the Highway Fund, isn't a new tax needed to replace it?

Mr. SLATER. I wouldn't think so.

Senator BAUCUS. The point is, we're talking for the purposes of the unified budget. This drinking glass here, or this glass here—one full, the other near empty—it makes no difference, because under the unified budget they are all totalled. That's how budget deficits are calculated, or the national debt is calculated.

Senator FAIRCLOTH. Not in real money.

Senator BAUCUS. Well, it is real money. It's in one pot, not another. But in terms of calculating the totals, it's irrelevant.

Senator FAIRCLOTH. All right.

Senator CHAFEE. Except this. I don't want to make this a budget discussion here, but if that money goes into the Highway Trust Fund, it's going to be spent for highways. Whereas if it's not in that fund, then the money that is spent on highways will remain at a lower amount, and the \$0.025 that is now in the general fund will help the Highway Trust Fund.

Just to help Mr. Slater, there's not unanimity with the Chairman's view on this. I am a great believer that the more we can put in the general fund to help reduce this deficit, the better off we are. There's a split, as you can see.

Senator FAIRCLOTH. Mr. Slater, to get—as Mr. Perot said the other day, “to where the rubber hits the road”—we're talking about the rubber in the road.

Mr. SLATER. Yes.

Senator FAIRCLOTH. As the Federal Highway Administrator, you are going to be responsible for implementing section 1038?

Mr. SLATER. Yes, sir.

Senator FAIRCLOTH. This section will eventually require a high percentage of scrap rubber to be put into asphalt.

Mr. SLATER. That's correct.

Senator FAIRCLOTH. Being very familiar with the paving business myself, and I've talked to a number of North Carolina pavers, I have some questions I would like to ask you on this subject. Will these questions be unfair? Have you had an opportunity to study this, and are you familiar with it?

Mr. SLATER. Well, I don't think the questions would be unfair. This committee, and you as a committee member, have the prerogative to ask any question you like, and I'd be more than happy to try to respond.

Senator FAIRCLOTH. It would be unfair if you hadn't had a chance to study the issue; that's what I'm talking to.

Mr. SLATER. Well, it is clearly an issue that the agency is concerned about. I have been briefed on the magnitude of the concern and the law that requires us to proceed.

Senator FAIRCLOTH. Do you have the funds in the 1994 budget to undertake further research on this asphalt rubber, particularly on the health and environmental issues that are involved in it?

Mr. SLATER. We do. As a matter of fact, we are involved in a study with EPA that should be complete around the middle of June. At that time we will report our findings to this committee. It deals with questions regarding health and environmental concerns, the performance of asphalt once you include rubber, as well as the recyclability of the product.

Senator FAIRCLOTH. Don't you think this should be done before we mandate the use of asphalt rubber into the asphalt mix?

Mr. SLATER. There is a timetable that we have to follow that was provided for in ISTEA. We are trying to follow the requirements that have been placed on us. We will provide the results of our study the middle of next month, and even though we will just meet particular obligation at that point, we will continue in the coming years to study the impact of the infusion of this particular product in the asphalt mix.

Senator FAIRCLOTH. You are now beginning to require 5 percent.

This has not worked in a lot of States. The asphalt simply has not held up. You are talking about going to 20 percent. Are the funds for checking on it for 1993, or are they for 1994?

Mr. SLATER. Well, I think when we first start using crumb rubber in asphalt, the requirement is that it be in 5 percent of the States' asphalt, and then it increases over a period of time up to about 10 percent.

Senator FAIRCLOTH. Twenty.

Mr. SLATER. Up to 20 percent, I'm sorry.

At least by starting off at 5 percent, we'll have more time to continue to study the issue. If after a period of time we find that there are problems, then we will bring that to the attention of Congress. But as it stands now, with the passage of ISTEA, we are required to do what we're doing, and we intend to be responsive, to carry out our obligation.

Senator FAIRCLOTH. I think you need to back off and take a look at it quickly. I have noticed that in North Carolina it is not working. It is crumbling. There is a lot of seepage through it. I am not a highway expert, but I spent eight years running the North Carolina system—the largest in the Nation, incidentally. That one system is 80,000 miles.

But I'll talk to you later on it.

Mr. SLATER. Yes, let me just make one comment, Senator. We understand the points that you're raising. There are also concerns about cost, and we're evaluating that, but the law provides certain actions for us to take, and we will move forth in trying to be responsive.

Senator FAIRCLOTH. I know Senator Chafee has had a lot of interest in it. I want to have a chance to talk to him on it. But it is creating some problems, and there are other ways that are environmentally responsible to get rid of the rubber.

Mr. SLATER. I understand.

Senator BAUCUS. Thank you very much, Senator.

Senator Chafee?

Senator CHAFEE. Thank you, Mr. Chairman.

I know that Senator Faircloth has given a lot of thought and concern to this particular problem, in which I have likewise been deeply interested. I look forward to having a chance to visit with him because, as you have noted, the statute does provide that X percent be included in the highways.

These confirmation hearings are probably most useful for us to get a chance to tell you our concerns. You come here with a very, very fine background and experience in highways.

I would just like to say this, that as Administrator you will find in your Department that the people are interested in building highways. After all, that's the name of the organization. It seems to me that for you to press them in these other directions—as you recall, you referred to ISTEA, and ISTEA in itself is an acronym for the "Surface Transportation Efficiency Act." We named it that and provided for that very purposefully because we didn't want the sole accent to be on highways. The objective is to get people and goods from here to there in the cheapest and most efficient manner.

So therefore, you have somewhat, as I say, of a mindset to deal with because your organization is filled with people who are ex-

perts in building highways. Somebody once told me, as the coach of a baseball team, what does the best hitter practice doing? He doesn't go out and practice shagging flies; he practices hitting because he's good at it and he likes it.

And so it is with your folks. They are good at building highways, and they're always going to press you for bigger and wider and new highways, and not consider the alternatives.

So I would urge you to bear in mind the objectives of the Surface Transportation Act. And those things that you touched on in your statement—the intelligent vehicles and the advances in travel and all those—those are wonderful ideas, but they are not going to come to fruition unless you, at the top of the heap, do something about it and press them.

Furthermore, I would like to just touch briefly on a subject that is of interest to me, and that deals with the matter of safety. Senator Warner spoke to you about that. There isn't anybody who would dream of repealing the requirement for safety glass in our vehicles, yet we have people opposed to the wearing of motorcycle helmets. In our ISTEA legislation we provide that if States do not pass a motorcycle helmet bill, then a small portion of their highway construction funds will have to go into safety programs. Frankly, if I had my daughters, it would have been an ever-increasing percentage of their highway funds.

But this isn't very popular. I march in the Bristol parade in our small town of Bristol every Fourth of July, and all the motorcyclists gather in one place and lustily boo me when I go by.

[Laughter.]

Senator CHAFEE. And they wave with less than all five fingers.

[Laughter.]

Senator CHAFEE. But that's one of those things.

I just hope that you concentrate in this area, to the extent you can. In other words, if the States don't pass it, then make sure that percentage of their highway funds is derived and has to be oriented toward the safety programs.

Are you somewhat familiar with that?

Mr. SLATER. I am, Senator.

Senator CHAFEE. I don't know what Arkansas has. Our State had a motorcycle helmet law and then repealed it. That has happened in many States.

Mr. SLATER. Right. Arkansas has the motorcycle helmet law, as well as the seat belt law. They have both.

Senator CHAFEE. Oh, they have them?

Mr. SLATER. Yes.

Senator CHAFEE. Well, good for you, three cheers. I know that our colleague, Senator Wilson, who went back to California and became Governor, signed it into law, likewise. I'm not going to give you the statistics, but you're familiar with what happens to motorcyclists without those helmets.

So I would leave you with those two brief messages: one, if you could pay attention to that, and second, the alternative methods in the intelligent vehicles and all those other techniques that you yourself referred to and praised in your statement.

Thank you. Glad you're here.

Mr. SLATER. Thank you.

Senator BAUCUS. Thank you, Senator.

Senator KEMPTHORNE?

Senator KEMPTHORNE. Thank you, Mr. Chairman.

Mr. Slater, congratulations on your nomination.

Mr. SLATER. Thank you, sir.

Senator KEMPTHORNE. As we consider confirmation of your nomination to a very important Government position, if we had a number of Arkansas highway user groups in this room and asked them for comments on your performance in Arkansas with regard to transportation, what would I hear from them?

Mr. SLATER. I believe that you would hear from all of them that I am a good student; that I will always try to look beyond what is apparent; that I am a listener; that I am fair, and that I will always seek to reconcile, if you will, the wants and desires of people who have an interest in our system.

I believe that you would hear from them that I am a strong advocate for transportation in all of its forms. Even though I was a member of the Arkansas Highway and Transportation Commission, and its primary responsibility is to promote the maintenance and construction of highways, as a Commissioner I also took advantage of your Transportation Enhancement Program and promoted a rails-to-trails project took approximately a year, as far as persuading my fellow members of the Commission. It also involved working with a number of groups that had become new partners with the Commission.

So I believe you would hear that I am an individual who studies a situation, who deals with what he is dealt, but always keeps an eye on the future; who tries to think innovatively; who tries to think creatively; and who then commits himself to the task at hand.

Senator KEMPTHORNE. In the 1991 Highway Improvement Program, which I've been reading about, did that include building coalitions of diverse groups across the State?

Mr. SLATER. Oh, yes. In Arkansas, in order to pass a bill creating new resources for highway construction, it requires a super majority of the Arkansas General Assembly. You have to sell a program for members of the General Assembly to feel, number one, politically committed to it, substantively committed, and second, to feel politically secure in knowing that the resources will be used in the way outlined, and also in knowing that the public is not going to respond negatively to the implementation of a program.

So we definitely had to go out and sell it. It took a long time. We actually started trying to sell it two years prior to the 1991 session. We pulled the program down in 1989, and then came back in 1991 and sold it, and the support was overwhelming.

Senator KEMPTHORNE. Again, as we look to your taking on a Federal role, you come with a perspective from a State role.

Mr. SLATER. That's correct.

Senator KEMPTHORNE. I come from the perspective of a local government role.

Mr. SLATER. Yes.

Senator KEMPTHORNE. Where do you think the decision making should reside with the Federal Highway System? For example, in one of the communities in my State, they had a transit system that

was designed based on the Federal criteria. It did not work, yet it was a Federal program. The Federal Government's attitude was, "You must keep this." Ultimately, we were able to get it modified.

But where should decision making be made in this program?

Mr. SLATER. First of all, it is true that I come to this position with a State perspective, and that is clearly the dominant perspective I enjoy. But as a citizen of Arkansas, when I talked about transportation, I always talked about it in terms of linking Arkansas with the Nation and the world, because we play on an international stage and we are players in a global economy.

With that stated, I do believe that when it comes to addressing the particular needs of creating a transportation network that links any city or State with the Nation and the world, people who are closest to the problem have a greater insight when it comes to how to address it. I think one of the most creative features of ISTEA is the fact that it gives more responsibilities to the States, to local elected officials and to local groups to be an integral part of the transportation planning process to set priorities and participate in the selection of transportation projects. I think that is appropriate.

So while we must act locally in dealing with our individual concerns, I would hope that as we take those actions locally, we have a global perspective, always seeking to connect our city or our State with the Nation and the world. It is in that arena that we must operate and play our roles as full partners.

Senator KEMPTHORNE. My time has expired.

Do I conclude, then, that you will be an advocate that decision making should be pushed to as close a level as possible to the citizens who are affected by the decision?

Mr. SLATER. Yes, and that the Federal Highway Administration will serve as a facilitator, bringing the various interest groups together and encouraging them to take action; not to just engage in analysis, but to take action.

Senator KEMPTHORNE. All right, thank you very much.

Senator BAUCUS. Mr. Slater, you were a State Highway Administrator. What's the most legitimate complaint that States have with respect to the Department of Transportation or Washington generally?

Mr. SLATER. It's probably that they don't have enough freedom when it comes to dealing with the day-to-day concerns of implementing a particular program. They probably have some concern regarding inconsistencies in direction.

Senator BAUCUS. Could you give us some examples?

Mr. SLATER. Under the new ISTEA provision, we are putting a lot of responsibility on the States. Until we have some time to really work with them on what's required, we're going to get questions about the direction and the focus.

So in a general sense, I think that's what we're dealing with right now.

In a more traditional sense, questions about design, and who can sign off on a given project, that kind of thing, are questions that have been raised in the past and probably will continue to be raised. But again, we have given a lot more of that responsibility to the States.

Senator BAUCUS. Do you think the Federal highway financing system has found that the structure of our present Federal system, of receiving Federal gasoline taxes and then allocating them back to the States, is a sound practice? Should that be continued and maintained? Or should States basically build their own highways? Arkansas is a donor State, for example.

Mr. SLATER. That's right.

Senator BAUCUS. Arkansas could make a case to opt out and not pay all this money to the Federal system, because it's not getting back as many dollars as taxes paid.

Mr. SLATER. That's true, and we have a number of other donor States. Additionally I think that questions regarding the redistribution of funds are legitimate.

But I would also argue that no State can be so concerned about its individual interests that it starts to think of itself or view itself as an island. It is a part of a Nation, and there are nationwide concerns that have to be pushed forth. A Federal agency, if it carries out its function in a visionary, responsive and innovative manner, can be a good facilitator, a good partner.

Senator BAUCUS. Just sitting back for a moment, thinking about your experience in Arkansas and thinking about your new responsibilities and kind of "thinking big" a little bit, if you had a magic wand, how would you change the present highway structure? And second, in what direction should we be moving in order to provide better service for our people?

Mr. SLATER. Again, I focus on the Intermodal Surface Transportation Efficiency Act. I think that it provides a lot of flexibility for us to continue to address the issues. It provides States a lot of flexibility when it comes to moving funds, whether within the surface transportation program, or between programs for a transit system or, again, continued use of resources for the construction and maintenance of highways. I think that the flexibility is there.

I do believe that as we move forth to implement ISTEA, we will have to address and revisit concerns as they reveal themselves. But prior to 1991, the transportation philosophy that was driving this Nation was developed in the 1950's. A significant change occurred in 1991, and we just have to see where that takes us.

Senator BAUCUS. Right. I appreciate that.

Senator Chafee?

Senator CHAFEE. Thank you, Mr. Chairman.

One of the problems that we're running into in my State, and I suspect it's true in other States—I don't know what your experience was in Arkansas—is that any time you have a highway that is going to be improved in a scenic or historic or rural setting, what occurs is that the highway engineers come in and seem hidebound by the demands that they have to conform to Federal standards, the AASHTO standards. Therefore they straighten out the curves; they cut down the hills; they widen the roads; they cut back any trees or whatever might be along the side, and end the rural character of the road and the attractiveness of it. This is coming up more and more, particularly as roads are being added to the National Highway System.

It is my understanding that under the AASHTO standards there is flexibility, but the State highway people are afraid to use it, per-

haps because of liability. I think they need some encouragement to use the flexibility that they have there, and that comes from you folks at the Federal level. I certainly would hope that you would do this. At home I face folks in rebellion about what's taking place on some really lovely rural roads that we have that need a little work, but by the time the State people—in conformance with the AASHTO standards—have designed, it, it's a disaster.

So I would hope that you would encourage this use of the flexibility that does exist, but which they are afraid to use.

Mr. SLATER. We will do that.

Senator BAUCUS. I must say that I have the same experience in Montana, too, the same problem that Senator Chafee is referring to.

Senator CHAFEE. They always fall back on, "Oh, the Federal standards require it." Well, that's not true. The Federal standards don't require it, but the safe thing for the State people to do is to follow the Federal standards, and then they can fend off any objections that come up.

Mr. SLATER. That's true.

Senator BAUCUS. Senator Faircloth?

Senator FAIRCLOTH. Thank you, Mr. Chairman.

After eight years, I can assure you that there has never been anything that a State Highway Commissioner wanted to do that he couldn't do, and anything that he didn't want to do that he couldn't put on the Federal Highway Administration.

Senator CHAFEE. That's absolutely true. It's a great shield to hide behind.

Senator FAIRCLOTH. Anything that you don't want to do, the Federal Government will not allow it.

[Laughter.]

Senator FAIRCLOTH. You talk about the National Highway System. Is that the Interstate, or are you talking about Federal-Aid, secondary—what exactly is under the National Highway System?

Mr. SLATER. The National Highway System is a system that is addressed in ISTEA. It is to include our principal arterial routes which include the interstates.

Senator FAIRCLOTH. OK, so it's not strictly limited to the Interstate?

Mr. SLATER. No.

Senator FAIRCLOTH. All right. Another question.

What percentage of the Interstate does the State have to put up now? It used to be 90/10. What is it now?

Mr. SLATER. It's still 90/10.

Senator FAIRCLOTH. Do we still have the Interstate system, or was that not changed to something like 70/30 for Interstate-type roads?

Mr. SLATER. In the future, when it comes to adding lanes, there will be some change in the match to 80/20. But for those States that haven't completed initial construction of their segments of the Interstate system, the traditional match remains.

Senator FAIRCLOTH. The 90/10?

Mr. SLATER. Yes.

Senator FAIRCLOTH. Another question. For a long time the Federal Highway Administration forbade the utilization of Federal-Aid money for maintenance. That was perceived as a State responsibility. The cost of maintenance of the Interstate system is becoming astronomical.

Mr. SLATER. Sure.

Senator FAIRCLOTH. Is that rule still in effect? Or can Federal-Aid money now be used for maintenance for the Interstate system for the State? If the maintenance on the Interstate in a State is terrible, and a lot of money needs to be spent, is that money available for maintaining the Interstate?

Mr. SLATER. The money for rebuilding is available under funds for the National Highway System that will include the Interstate system. Resources can be used for the maintenance in rebuilding the Interstate system.

Senator BAUCUS. I think I can clarify here. The formula is 90/10 for new HOV construction. It is 80/20 for maintenance and non-HOV widening of lanes and adding of lanes and so forth. So it is 80/20 for maintenance under NHS, which would obviously include Interstate as well as the primary system.

Senator FAIRCLOTH. It's 80/20?

Senator BAUCUS. Yes, 80/20.

Senator FAIRCLOTH. Thank you.

Senator BAUCUS. Senator Kempthorne?

Senator KEMPTHORNE. Thank you, Mr. Chairman.

Just to complete the discussion that was taking place on the formula, you stated just a moment ago that redistribution of funds is a legitimate question.

I would just like to ask you a question similar to one that I asked to Secretary Peña. Do you favor the current formula? Wonderful States like Montana that are sparsely populated, but large land masses, are net importers of those funds, that help us with this coast-to-coast commerce. So do you favor the current formula?

Mr. SLATER. Let me say I can live with the current formula. Arkansas is a donor State, so in the past we have definitely raised issues that spoke to our interests as a donor State. And Congress, I think, has tried to be responsive with various equity provisions so as to respond to the legitimate concerns of donor States.

It is a difficult question, and I think we have resolved it as best we can at this point in time. But there is currently a study underway that hopefully will give us some information about the various equities of the formula provisions as they now stand. We can make some evaluation of that, and as we come to the time for reauthorization, as I am sure we will, we can revisit the question.

Senator KEMPTHORNE. I guess I'm looking for a little stronger statement than that you "can live with it." Do you anticipate that you'd be an advocate to change it? Or do you think you would be an advocate to retain the current formula?

Mr. SLATER. I want to see the information from the study that is underway now, what it will provide. Prior to sitting in this seat, solely as a representative of Arkansas, my opinion was clear; now, having this responsibility and having to look at the system as it impacts our Nation, I want more information.

Senator KEMPTHORNE. Mr. Chairman, thank you.

Senator BAUCUS. Senator Faircloth?

Senator FAIRCLOTH. I have one question. Arkansas now gets \$0.77 back.

Mr. SLATER. I believe it's a little more, but—

Senator BAUCUS. It's more than that. There's a minimum allocation formula.

Mr. SLATER. That's right.

Senator FAIRCLOTH. But the new minimum allocation is going to be 90 percent—

Mr. SLATER. That's correct.

Senator FAIRCLOTH.—putting you up 13 percent.

Senator BAUCUS. It was \$0.85. The prior law was \$0.85, and it was raised to \$0.90. It was raised a nickel.

Mr. SLATER. It's raised to \$0.90.

Senator FAIRCLOTH. It was raised to \$0.90 from \$0.85?

Mr. SLATER. Yes.

Senator FAIRCLOTH. No State could get less than \$0.90?

Mr. SLATER. That's correct.

Senator FAIRCLOTH. Do you support that allocation?

Mr. SLATER. Arkansas, as other donor States, has legitimate concerns regarding redistribution of the funds. Our Congressional officials have come here and they have made that case. The case was made during formulation of the ISTEA legislation. People came to a meeting of the minds. They probably swallowed some things they didn't want so as to move forth with a bill. And you are always in those situations.

But I do think that it's a legitimate question. As the Federal Highway Administrator I will play an active role in trying to reconcile the wants and desires of all the States that make up our great Union when it comes to dealing with this particular issue.

Senator FAIRCLOTH. I thank you. Your answer was better than my question.

[Laughter.]

Senator BAUCUS. Senator Lautenberg, any questions of the nominee?

Senator LAUTENBERG. Thank you very much. I will be brief, Mr. Chairman. Sorry to be so late.

I welcome Mr. Slater here. He has unique qualifications. He has hands-on experience with State highway programs. We are delighted to see you here.

You have no choice but to support the existing law in terms of allocations. This is a discussion that goes on constantly. In case you are surprised by that, I can commend you to the record. We worked very hard at providing a compromise in ISTEA to establish a fair distribution of the funds. So we welcome you.

I have a few questions, including some areas that I take a particular interest in. Having authored a part of the ISTEA, one of the sections was the IVHS sections, Intelligent Vehicle Highway System portion of the bill. I was pleased to see that the President's 1994 budget included an increase of \$70 million for the Intelligent Vehicle Highway System.

So I'd like to ask what experience you've had to date with technology, and what role you see in expanding DOT's program for this

area to do what we want to accomplish, that is, to reduce congestion and make more efficient use of our highways?

Mr. SLATER. That's a very good question, Senator.

I believe that research and development at the Department has to be increased, because what we have to find is more effective and efficient usage for our various modes of transportation. IVHS provides an excellent opportunity for us to improve the service of our system as it is, and it forces us to not take the easy out of just deciding to build more highways.

My experience in this area is limited. As a member of the Arkansas Highway and Transportation Commission we were just starting to get into the whole question of how a rural State like Arkansas could take full advantage of IVHS. But we were always in contact with the Federal Highway Administration, trying to find out about its research as far as the composition of various pavements, their durability, that sort of thing, that came as a result of research.

But when it comes to that higher level of research and development that IVHS promises, Arkansas, like many States, is just coming in sync with that.

Senator LAUTENBERG. What we are looking at is trying to make the existing highway structure more efficient by incident avoidance and alternate routing, and with the kind of technology that is off the shelf, not things that we have to invent at this point.

While you may not have had direct exposure in Arkansas, anyone who has been interested in highways is keenly aware of the fact that we can perhaps as much as double the traffic volume on the highway by introducing technology at the appropriate place.

We have heard a lot from GAO regarding the future of the Highway Trust Fund and the \$0.025 per gallon tax on motor fuels through 1998. What I think is not well known, however, is the problem that we have in this country with fuel tax evasion.

Mr. SLATER. Yes.

Senator LAUTENBERG. It's a problem that could be costing us, it is believed, as much as \$2 billion to \$4 billion each year. I understand DOT has just finished a report outlining recommendations in this area, which is currently under review at OMB.

Are you familiar with the problem? Do you see specific things that we can do to address this situation?

Mr. SLATER. I am familiar with the problem. I think that there are many things we can do. DOT has made some pretty specific recommendations in that regard. One is that we can dye diesel fuel that is used for non-automotive purposes. At least that can help us deal with what has been a problem, the concern of farmers in particular, that it just creates an undue burden to start following the sale and movement of diesel fuels that aren't being used for automobiles.

Senator LAUTENBERG. That is something that you would take an active interest in?

Mr. SLATER. I would definitely do that.

Senator LAUTENBERG. Mr. Slater, as you may know, I have been a long-time advocate of high-speed rail systems as a way to meet the Nation's future transportation needs. Secretary Peña has made several positive statements regarding the potential for high-speed

rail, and submitted a new high-speed rail bill, which I have cosponsored.

Do you share his enthusiasm for the expansion of high-speed rail? Do you see a place for it in the transportation network of this country?

Mr. SLATER. I do.

Senator LAUTENBERG. We will be looking to you in your new post to help create an understanding about the flexibility side of ISTEA in terms of transfers of funds. In some places, high-speed rail or rail systems support commuter service that could at least give some balance to an area's need for transporting goods and people. I hope we will be able to enlist your support for that flexibility to continue.

Mr. SLATER. I look forward to working with you in that regard.

Senator LAUTENBERG. Thanks, Mr. Chairman.

Senator BAUCUS. Thank you very much, Senator.

If there are no further questions, I wish you very well, Mr. Slater. This has been a productive and fruitful hearing. I think the country will be well-served by having you serving us in your new capacity.

I notice that Congresswoman Blanche Lambert of the Arkansas delegation is here.

Congresswoman, would you like to make a statement on behalf of Mr. Slater?

STATEMENT OF HON. BLANCHE M. LAMBERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Ms. LAMBERT. Thank you, Mr. Chairman. I apologize for being late. I am a freshman member over in that other body, and I am still learning my way around. I know my colleagues were here earlier; I was in a caucus with the President.

But I do come to you today wholeheartedly and with the utmost of confidence to recommend Mr. Slater for this position. I represent the 1st Congressional District in Arkansas, which is the eastern half of the State. It is an area that encompasses the area which Mr. Slater comes from; he was born and raised there, as well as an area in which he has done a diligent amount of work in providing new and progressive means of transportation and highways for that area. It's basically a rural area. He has worked hard, both on the Highway Commission and in the communities, to see those projects happen. We are seeing the fruits of his labor and his hard work. He has been very progressive in his thoughts and in his hard work, but he has not limited himself simply to the needs and concerns of the communities there. He has looked at how it impacts not only our communities, but how they interact with the Nation as a whole, being a transportation network and an area for that in the Delta.

So I come to you with recommendations of the utmost, and certainly hope you will take every consideration. Thank you.

Senator BAUCUS. Thank you very much. We appreciate that. The statements of the other members of your delegation were equally strong. Thank you very much.

Ms. LAMBERT. He serves on the Highway Commission where my grandfather served 50 years ago. I must say that Rodney has done a tremendous job. I am as proud of him as I was of my grandfather. Senator BAUCUS. Thank you very much.

Thank you, Mr. Slater.

Welcome back, Mr. Gardiner and Mr. Herman. In the interest of time I think I would like each of you just to give very short statements, then we will proceed with the questions.

I will start with you first, Mr. Gardiner.

STATEMENT OF DAVID MCLANE GARDINER, NOMINATED TO BE ASSISTANT ADMINISTRATOR FOR POLICY, PLANNING, AND EVALUATION, ENVIRONMENTAL PROTECTION AGENCY

Mr. GARDINER. Thank you, Mr. Chairman. I again want to thank you and members of the committee for having me here, and especially thank Senator Warner again for his warm introduction for me. That is much appreciated.

It is a great honor to be here today as the nominee of President Clinton and Administrator Browner for the position of Assistant Administrator for Policy, Planning, and Evaluation at the Environmental Protection Agency. If confirmed, I am looking forward to the privilege of serving President Clinton, Administrator Browner, and the American people, and I am looking forward to the challenges which lie ahead.

I have had the chance to witness what effective, cooperative efforts for environmental protection can do for the quality of people's lives in this country. My father's family home is on the banks of the Kennebec River in the State of Maine. When I was growing up you could not swim in it because it was too polluted. Now, as a result of the joint efforts of thousands of people and of the Clean Water Act, my father, my children, and I swim in the Kennebec River, and the salmon and sturgeon are coming back.

At the Environmental Protection Agency, I hope that I can help improve the quality of people's lives as much as the cleanup of the Kennebec River has improved the quality of my family's life.

The second thing which I wanted to say to the committee is that for the last 12 years, my primary responsibility in my job with the Sierra Club has been to work with Congress on major environmental initiatives. My work in this area has taught me that the Congress must be a full partner in the development of environmental policy, and I remain committed to working with this committee and others in the Congress to strengthen that partnership.

During the late 1980's I led an effort to bring together two unusual bedfellows, the natural gas industry and the environmental industry. We held a series of dialog sessions to examine the extent to which we might agree on the common goal of improving our Nation's air quality. Although the dialog did not lead to a grand agreement, it did broaden the understanding of all parties and increase support for passage of the 1990 Clean Air Act Amendments.

The effort also taught me much that I hope I will bring to my work at the Environmental Protection Agency. I learned that many in the business community are as committed to environmental protection as I am. I also learned that the barriers between

people who are in disagreement can only be broken down through sustained, patient dialog.

I am convinced that, as Administrator Browner said in her confirmation hearing, we must open a new era in communication between EPA and America's business community, between environmentalists and business leaders. We must break down the adversarial relationship which now exists between the EPA and its stakeholders. Together with Administrator Browner, I am committed to examining the real complexities of environmental and business problems so that we can achieve the common goals of a strong economy and healthy environment.

These are challenging times for the Environmental Protection Agency. The Administrator has identified several exciting and ambitious challenges for the agency, and if I am confirmed, I intend to offer my assistance to help her achieve them.

As you know, the Administrator's goals include:

First, establishing that pollution prevention is a cornerstone of all EPA's programs, so that our industries have every incentive to minimize waste and prevent pollution before it gets started;

Second, that ecosystem or the protection of entire natural systems must be an objective of EPA's programs because of its direct connection to the protection of human health;

Third, that developing innovative environmental technologies must become a part of EPA's daily mission. Only through these new technologies can we clean up our environment at low cost and stimulate the innovation necessary to make American industry competitive in world markets;

Fourth, EPA's mission cannot succeed if it does not repair and strengthen its partnerships with all parts of government, Federal, State and local;

And finally, environmental justice must be a guiding principle for decision making at EPA. EPA must be vigilant so that every American gets what is rightfully theirs, equal protection from the hazards of pollution.

The Office of Policy, Planning, and Evaluation has an important role to play in implementing the Administrator's goals. It promotes the integration of goals such as ecosystem protection, which cut across different programs within the agency and which do not fall neatly into the major program areas of air, water, waste, and toxics.

The office has a similar responsibility to promote the coordination of EPA's policies with other parts of the Federal Government with major environmental responsibilities, such as Department of Transportation or Department of Agriculture.

The office has recognized expertise in economic analysis and is playing a key role in developing the administration's climate change policies. The office also is home to the agency's strategic planning function, and is currently assisting the Administrator on two of her significant internal initiatives: a complete base review of the entire EPA budget, as well as an effort to improve the overall manner in which the agency develops regulations.

In conclusion, I would note that during the past several months I have worked as a consultant to the agency pending Senate confirmation. I have met many of the career civil servants within OPPE

and across the agency. They have impressed me as talented, hard-working servants of the American public. If confirmed, I look forward to working with them to protect our environment and to strengthen our economy.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you very much, Mr. Gardiner.

Senator Lautenberg, I understand you wanted to introduce Mr. Herman?

**OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S.
SENATOR FROM THE STATE OF NEW JERSEY**

Senator LAUTENBERG. If I might, Mr. Chairman

I have a rather long statement, and I would ask that the complete statement be included in the record.

Senator BAUCUS. Without objection.

[Senator Lautenberg's statement follows:]

**OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR
FROM THE STATE OF NEW JERSEY**

Mr. Chairman, it is my pleasure to introduce to the Committee today, Steven Herman, nominated by President Clinton to serve as Assistant Administrator for Enforcement of the Environmental Protection Agency.

I want to extend a personal welcome to Mr. Herman, who spent many of his early years in my home State of New Jersey where he received both his undergraduate and law degrees from Rutgers University.

During his fifteen years at the Department of Justice, in the Environmental and Natural Resources Division, Mr. Herman served as a trial attorney, a team leader, and in his current capacity, as Assistant Section Chief in the General Litigation Section.

As Assistant Section Chief, Mr. Herman manages a staff of approximately ninety people in four offices around the country. He also supervises much of the Section's varied, complex, and often controversial environmental litigation.

In 1991, Mr. Herman negotiated a landmark settlement agreement between the federal government, the State of Florida, and the South Florida Water Management District to protect the Everglades. Working with then Florida environmental chief Carol Browner, Mr. Herman helped reach a settlement that outlined the steps that the State must take over the next ten years to repair, restore, and protect one of our country's most precious national parks and a nearby wildlife refuge, including specifying water quality standards that must be attained for the future.

Clean Water Act enforcement presents one of the greatest challenges for Mr. Herman as Assistant Administrator for Enforcement. The Administration and the Congress are dedicated to reauthorizing the Clean Water Act, and the assistance that Mr. Herman can provide will be critical to this effort.

Later this month, I will introduce a bill that addresses problems with clean water enforcement. Over the past decade, EPA has frequently ignored violations of clean water regulations, even when patterns of chronic violations appear. Additionally, EPA has collected penalties which are less than the economic benefit or savings recognized as a result of the violation. Mr. Herman will have to put an end to this practice of providing incentives to pollute.

I have discussed these and other problems that my bill addresses with Mr. Herman, and I am confident that can count on his support.

Superfund is another area to which Mr. Herman will devote a significant amount of time. I have introduced S. 965, a comprehensive bill to provide relief for local taxpayers and small businesses from inappropriate Superfund burdens. This bill, which has the support of a broad array of national municipal and environmental organizations, provides a much needed reform.

I look forward to working with Mr. Herman on this issue and hope that he can move quickly to issue a municipal settlement policy which was killed by the Bush White House last year.

I am also hopeful that a "de micromis" and "de minimis" policy that the agency has worked on for the past two years will get a jumpstart by Mr. Herman and pro-

vide urgently needed help to thousands of tiny contributors who are facing extortionate suits and vastly disproportionate transaction costs.

Mr. Herman's extensive experience in dispute resolution will quickly be put to the test at EPA. As Assistant Administrator for Enforcement, he will provide the principal direction and review of civil environmental enforcement cases, manage the criminal enforcement program, and work with the Department of Justice in bringing civil and criminal actions. Additionally, he will be responsible for coordinating enforcement policy with other Assistant Administrators, and providing technical assistance to EPA regions and state offices.

Mr. Herman's extensive experience in dispute resolution will quickly be put to the test at EPA. As Assistant Administrator for Enforcement, he will provide the principal direction and review of civil environmental enforcement cases, manage the criminal enforcement program, and work with the Department of Justice in bringing civil and criminal actions. Additionally, he will be responsible for coordinating enforcement policy with other Assistant Administrators, and providing technical assistance to EPA regions and state offices.

Mr. Herman, you are fortunate to be serving under an environmentally conscious Administration, and for the most concerned and involved public in history. Your mission is to turn this excitement about protecting the environment into effective programs that do just that.

While we in Congress can pass environmental laws, they are only as good as the Administration's enforcement efforts.

You are undertaking an enormous responsibility. I am certain that you will approach this challenge with the same commitment that you did your tasks at the Justice Department. Wish you every success in getting the job done and look forward to working with you.

Senator LAUTENBERG. I do want to say a few things about Steve Herman, who has been nominated to serve as the Assistant Administrator for Enforcement of the Environmental Protection Agency. It is a very important task, and I want to extend a personal welcome to Mr. Herman, who spent many of his early years in my home State of New Jersey. He did both his undergraduate and graduate work, and got his law degree, from Rutgers University.

I understand he is here with members of his family. I am told that his mother, father, wife, son, and daughter are here. Is that true?

Mr. HERMAN. That's correct.

Senator LAUTENBERG. They're all here? Well, if you would put up your hands, we will congratulate you appropriately.

Senator BAUCUS. Why don't you all stand so that everybody can see? That looks like a big family there.

Senator LAUTENBERG. That looks like good support, I would say. Congratulations. They were wise enough to bring Steve to New Jersey at a young age—

[Laughter.]

Senator LAUTENBERG.—so they must be very intelligent people.

Mr. Herman is particularly well suited for this job because he is currently with the Attorney General's Office as Assistant Section Chief for Litigation. He has managed a staff of approximately 90 people in four offices around the country, and supervises much of the section's complex and often controversial environmental litigation.

I would like to make particular note about a settlement that he negotiated, a landmark settlement among the Federal Government, the State of Florida, and the South Florida Water Management District, to protect the Everglades, working with the then-Florida environmental chief, Carol Browner. Mr. Herman helped reach a settlement that outlines the steps that the State has to take over the next 10 years to repair, restore, and protect one of our coun-

try's most precious national parks and a nearby wildlife refuge, including specifying water quality standards that must be attained for the future.

I listened with interest to Mr. Gardiner's statement about the Kennebec River, and we see it in places around the country. Giving nature half a chance, she fights back very aggressively. This was a particularly important settlement that Mr. Herman directed.

As I said, Mr. Chairman, I have many other things, all complimentary and all encouraging, about Mr. Herman in my statement. We're going to be talking about Superfund. I've had a meeting with Mr. Herman; we talked about some of the things we'd like to see happen with Superfund. In the case of clean water, I have introduced a bill that includes tougher penalties.

I look forward to working with him. He will head a department that is almost 1,400 persons strong. It's a giant responsibility, and he comes at a time when we can point with a degree of satisfaction to the number of settlements that have been arrived at under Superfund, a much-denigrated program that works very well. We have collected over \$7 billion from responsible parties, and I look to that kind of aggressive action to continue and even to be stepped up under Mr. Herman.

So we welcome both of you. In particular, Steve, we look forward to working with you.

Senator BAUCUS. Thank you very much, Senator.

Mr. Herman?

STATEMENT OF STEVEN A. HERMAN, NOMINATED TO BE ASSISTANT ADMINISTRATOR FOR ENFORCEMENT, ENVIRONMENTAL PROTECTION AGENCY

Mr. HERMAN. Senator Baucus, Senator Lautenberg, Senator Chafee, I am very honored to appear before you today as the President's nominee to be the Assistant Administrator for Enforcement at the Environmental Protection Agency.

President Clinton and EPA Administrator Carol Browner have made clear their strong commitment to a vision of environmental protection that will create a new, constructive relationship between the Government, its citizens, and the world around us. The cornerstone of this new relationship has to be the recognition that economic growth and strong environmental safeguards are not incompatible or mutually exclusive; rather, they are mutually reinforcing.

Strong and fair enforcement of our environmental laws must be a key component of such an effort. I intend to use all of my efforts to help the Administrator make this vision a reality for the benefit of the American people.

I would like to begin by discussing with you my personal and professional background. I was born in The Bronx, New York, in 1944. My grandparents came to this country from Russia less than 90 years ago, seeking the American dream for themselves and their children. They, and then my parents, worked extremely hard, much of the time seven days a week, to make the dream a reality. Indeed, it would be an understatement to say that my presence

here today is a product of their tireless efforts on behalf of their children and the values they instilled in us.

I attended school in New York and New Jersey and received my law degree in 1969. From that time on I have practiced public interest law, first with legal services organizations in Arkansas and New York, and for the past 15 years, with the Department of Justice. In my legal career I have represented Presidents and Cabinet Secretaries, along with some of the poorest people in our country. I would like to think that they all received the very best representation that I had to give.

During these years I have had opportunities to develop skills as a negotiator, conciliator, listener, as well as aggressive adversarial litigator. I have had the opportunity to work closely with representatives of many Federal agencies, State and local communities, and public interest groups of all political shades. I have traveled and worked with people in all parts of this country, from Missouri to Miami and Biloxi to Anchorage. I will try to draw on all of these experiences to carry out my responsibilities as Assistant Administrator for Enforcement, if I am confirmed.

Administrator Browner has identified several key goals for her administration of EPA: pollution prevention; ecosystem protection; environmental justice; and building new partnerships with State and local governments. The Administrator believes that a strong, vigorous, and fair environmental enforcement program is essential if her program is to succeed. I agree wholeheartedly. Indeed, I am very fortunate to have the benefit of a highly committed and qualified career staff in the Office of Enforcement, and with their assistance I am sure we will improve on an already impressive record of accomplishments in this area.

Simply stated, the goal of strong enforcement is a cleaner environment. This means that we must move swiftly and effectively against violators of environmental laws. We must deploy our limited resources in a strategic and deliberate manner so that we target violators who most seriously threaten our citizens and our ecosystems. Moreover, we must take maximum advantage of new technologies and other pollution prevention opportunities in resolving our cases. We must not allow polluters to profit from their violations of the law, and we must maximize the resources of our Federal, State, and local governments so that their efforts compliment and support each other, not compete with or thwart each other.

Following the Administrator's instruction, we will continue our ongoing efforts to use creative and innovative solutions for environmental contamination through pollution reduction and prevention mechanisms in civil settlements. We want to expand our capability to address problems more holistically, cutting across ecosystems, cutting across media and the various regions, and thus maximize the agency's impact.

Inextricably entwined in all of our efforts must be a total commitment to enforce our environmental laws in a way that ensures equal protection to all from environmental degradation regardless of race, gender, ethnic background or economic status. The Administrator has made clear her personal commitment to environmental justice. I will work for, and support, all of the Administrator's ef-

forts to institutionalize, integrate, and instill environmental justice principles into all of EPA's policies and programs.

I also believe very strongly that the Federal Government itself must obey the pollution laws. The Federal Government should be an example to others. I will use all the authorities at my command to work with other Federal agencies to ensure success in this area. In that regard, I will work to expedite the return of closed military bases to productive use for our communities. EPA should not become a bottleneck, but neither should it ignore its responsibilities to ensure that these bases are as safe and clean as the law requires prior to reopening them for productive use. Under Administrator Browner's committed leadership, there is a new opportunity for enhanced partnership in the environmental area. I am sure that one vivid example will be the cleanup effort with regard to Federal facilities.

I also believe in a strong criminal enforcement program. Environmental crimes are not white collar or victimless crimes, in my book. They often result in serious harm to people and dreadful violation of our Nation's natural heritage. Individual corporate officers and employees, as well as the corporate entity, must be held accountable for their actions. Stiff prison sentences and fines must be used to punish and deter environmental criminal conduct.

More than two years ago, Congress enacted the Pollution Prosecution Act which, among other things, calls for the strengthening of EPA's criminal and civil enforcement program. I will endeavor to carry out the provisions of this statute and will continue to work to recruit top quality agents and investigators for the program.

Finally, and on somewhat of a personal note, I want to say that I look forward to a cooperative and effective relationship with my colleagues at the Department of Justice to ensure that the criminal laws are vigorously enforced. Many of my friends from the Department are here this morning, and I can think of no finer people to have as my lawyer, if I am confirmed in this position.

As this committee knows, the Administrator is committed to confronting not just these, but other critical environmental issues. If I am confirmed, I will be honored to assist her in that effort. I will also be honored to work with the Senate and the House, and the members of this committee in particular, in that effort.

I would like to end on a personal note, if I may. After the President announced my nomination, my brother—who, I might mention, is a younger brother—sent me a book about the complicated workings of the Government bureaucracy. He wrote an inscription to me which I would like to read to you. He wrote, "Good luck. Remember: what you do and how you do it matters to real people. Be bold and make things better." I thanked him for that, and I will take his words to heart.

Again, I am very pleased and honored to be here, and look forward to answering any questions you might have. Thank you.

Senator BAUCUS. Thank you, Mr. Herman.

Mr. Gardiner, you mentioned that you are going to "break down adversarial relationships." How are you going to do that?

Mr. GARDINER. Well, as I said in my opening statement, Mr. Chairman, I think there is only one way to do that. I think that you do it by having sustained and patient dialog. I don't think

there are silver bullets out there that magically create the breaking down of barriers that may exist between people. I think that conversation and an open door policy is the way to do it, and I am pledged to take that approach.

Senator BAUCUS. It's curious, because lots of the environmental groups tend to be adversarial; at least, that's the impression that a lot of people have. You come from one, the Sierra Club, which is known to be perhaps a little more adversarial than some others.

Given that background, given that orientation, what lessons have you learned or what insights do you have as to how to reach some resolution here in a less adversarial way?

Mr. GARDINER. Well, Senator, in my time at the Sierra Club, as I indicated in my opening statement, we did conduct one effort in particular to reach out to an unusual group of people with whom the Sierra Club might not normally agree, the natural gas industry. I think that dialog was useful. It certainly helped me and taught me important lessons, as I discussed in my opening statement.

The second thing that I think is important to recognize is that I understand the difference between these jobs. The job I held at the Sierra Club was to represent the interests and views of members of the Sierra Club and to take their approach on particular issues. I understand that if confirmed by the Senate, my responsibility will be to represent the views and interests of all of the American people, and I am pledged to take that approach.

I would hope that people who might have concerns about my background would set those aside, come have a conversation with me, and take advantage of the open door policy which I intend to have at the Environmental Protection Agency.

Senator BAUCUS. One of the biggest problems that this committee has and that I think the country has with the EPA is its failure to meet deadlines. As you well know, in 1984, the Hazardous and Solid Waste Amendments included specific deadlines for revising and implementing criteria for municipal solid waste landfills. That statute required revisions by March 31st, 1988, and compliance 18 months later, which would be the end of 1989.

Here we are in 1993, and we thought that these landfill regulations were going to be effective pretty soon; and now we hear that the EPA is thinking of extending those deadlines for another six months.

How can EPA, in good faith, do that? This is a new regime, a new Administration, a new Administrator. How can one of their first acts be another extension of deadlines, particularly when there are many who are opposed, many who have relied upon those deadlines? For example, I have a letter from the State of Montana which states in part,

A delay in the compliance date for the new standards will not only reward delayed decision making, but will extend the time that our surface and ground water resources may be threatened by unlined landfill cells and trenches.

The State is very much opposed to another delay, another extension. How can EPA conduct business and have the confidence of the American people if it continues to delay and not meet its deadlines?

Mr. GARDINER. Mr. Chairman, I think that's an important issue. I know the Administrator has been considering it. I have not participated in any of the discussions at the Environmental Protection Agency of that particular policy, so I can't enlighten you as to what the views of the Administrator or others might be.

Senator BAUCUS. I mention it because you are to be the Assistant Administrator for Policy, Planning, and Evaluation. If anything is in the line of policy, planning, and evaluation, it would be this question of deadlines.

Mr. GARDINER. I know the Administrator is committed to doing everything possible to meet deadlines, whether this one in particular or others. I know that she pledged in her confirmation hearings to do everything possible to bring the Environmental Protection Agency into compliance with the law, and certainly meeting deadlines where they exist is an important part of doing that.

Senator BAUCUS. What about this general problem of extension of deadlines? Doesn't it cause disrespect? Doesn't it cause people to think, "If deadlines are always extended, the agency is not doing its job"?

Mr. GARDINER. Well, I certainly think that is very much of a concern. I know that there have been concerns raised on the other side of the question by many communities that feel as if they are unable to comply from the deadlines, and they have sought relief from the deadlines.

Senator BAUCUS. But this was passed in 1984.

Mr. GARDINER. I'm not saying whether I would agree or disagree with their opinion on this. I am only stating the fact that there are some—

Senator BAUCUS. No, but you will be charged with evaluating those opinions. Do you think there's merit in those opinions?

Mr. GARDINER. I certainly think it's appropriate for communities to raise their concerns. I have not had the opportunity in this case to review or evaluate any of them in any detail. I certainly think the whole question of meeting the deadlines and the burdens that may be placed on communities generally is a serious problem.

Senator BAUCUS. I appreciate that. My time has expired, but just one note here. I have a copy of a letter from Dr. Benjamin Chavez, the new Executive Director of the NAACP, who says that "A blanket extension of the compliance date for subtitle (d) will guarantee that minority communities will experience further exposure and health risk." In your opening statement you talked about environmental justice.

Mr. GARDINER. Absolutely. The Administrator is committed to environmental justice, and I'm sure the views of Mr. Chavez and others will be taken into account as we go forward on making that decision.

Senator BAUCUS. Senator Chafee?

Senator CHAFEE. Thank you, Mr. Chairman. Unfortunately, I have to go.

I think these are good nominees. I am sorry to have to miss Mr. Frampton, who will be coming up next.

I have had a chance to visit with Mr. Herman and Mr. Frampton, and I have known Mr. Frampton's work for a good number of years, as well as that of Mr. Gardiner.

So I think the President did well in nominating these folks. I hope we can move right ahead with their confirmation.

Senator BAUCUS. Thank you, Senator.

Senator Lautenberg?

Senator LAUTENBERG. Thank you, Mr. Chairman.

I wanted to say, Mr. Gardiner, I commend you for your commitment to support environmental justice, coming from a State like I do, an urbanized State with huge pockets of poverty. The last thing that is needed to help gain some personal self-respect and dignity in those areas is to be a Superfund site, an incinerator site, you name it, or just clear abandonment. So I am pleased to hear that. It is also a focus of mine and of the Administrator.

I wanted to ask Mr. Herman a couple of questions.

We talked about the Superfund municipal settlements policy, and that was killed by last year's White House. I hope that settlement policy for municipalities will be issued promptly. Can I count on your effort on that behalf?

Mr. HERMAN. Yes, you can.

Senator LAUTENBERG. I learned a new expression here last week, Mr. Chairman; you're a lawyer, and I don't know whether it's part of your everyday vocabulary, but it was brand new to me—"de micromus," which is even more de minimis than de minimis, a settlement policy for providing relief to the small contributors to Superfund sites. In a hearing before my subcommittee last week, Administrator Browner promised to take a look at the status of that policy, which could help thousands of small businesses and individuals who are charged with minuscule amounts of pollution. But they are being sued and forced to hire lawyers to get out of the Superfund system.

Can I also count on your help for the issuance of this de micromus policy?

Mr. HERMAN. Senator, the entire Superfund reauthorization question, as you know, is under consideration by Congress and the Administrator—

Senator LAUTENBERG. We call it "scrutiny," not "under consideration."

Mr. HERMAN. OK, under scrutiny. And the Administrator has expressed her concern for both the municipalities question and the de micromus question. I think the Administrator referred to the de micromus people as the "itsy-bitsy-bitsy" contributors last week, the IBCs.

[Laughter.]

Mr. HERMAN. And this is a question we're going to look at very closely. She is very sympathetic to the concerns, and shares your concerns, and I hope we can resolve it satisfactorily and quickly.

Senator LAUTENBERG. In past years we've had some bad experiences, as everyone knows. One of them was under Administrator Anne Burford. She deliberately split apart the enforcement functions of the agency from those of the program offices—frankly, to slow down enforcement. Many believe that the organizational decision has crippled enforcement, resulting in delays, duplication, intra-agency warfare, and other problems.

Would you be willing to look at some fundamental organizational changes, even across different Assistant Administratorships, to try to fix this situation?

Mr. HERMAN. Senator, as you may know, the Administrator has embarked on an entire review of the EPA budget and its operations, a baseline review, to determine what is operating effectively and what is not. Right now we have several hundred people in the headquarters doing enforcement work. They are in the Office of Enforcement and, as you said, in all of the other program offices. They are also in all of the ten regions.

While this review is going on, I am doing my own review within the Office of Enforcement to determine how we can make enforcement an even more efficient operation than it is. I think we have to cut out the duplication, we have to cut out the delay. We can't afford them any more in terms of the budget situation. The problems are just too numerous to tolerate.

Senator LAUTENBERG. I think that with the experience of more than 10 years now, it is time to look at the structure to see what can be done. I am pleased to hear your commitment there.

Mr. Herman, your office includes a division devoted to environmental justice issues?

Mr. HERMAN. Yes, sir.

Senator LAUTENBERG. We were discussing that with Mr. Gardner and others. What can you do to assure that those issues are addressed to all of the agency's activities, particularly in the areas of enforcement, where EPA has been criticized for implementing the environmental laws in, frankly, a discriminatory manner?

Mr. HERMAN. Senator, as I mentioned to you yesterday, this is an issue on which I feel very, very personally committed.

At this point there is a small group within Enforcement, chaired by the Assistant Administrator for Enforcement, called the Environmental Equity Cluster, and it is made up of representatives of all the other Assistant Administratorships. We have already started meeting with the Administrator herself. We have met with various minority constituent groups within EPA. The Enforcement Management Group met with representatives of environmental justice community groups two weeks ago, and I attended that meeting. We intend to spend the first part of our time reaching out and listening and letting the people in these communities know that they have somebody in the administration that wants to hear them. Then we will collaborate with them to come up with programs and policies to ensure that everybody is a beneficiary of equal protection of all our environmental laws, including those regarding enforcement.

Senator LAUTENBERG. What do you think might be a fair standard by which to measure your success as Assistant Administrator for Enforcement?

Mr. HERMAN. I was warned not to keep saying, "That's a very complicated question."

Senator LAUTENBERG. I'll tell you what, I'm going to let you think about it and ask you to submit a response in writing to that, OK?

Mr. HERMAN. OK. (See p. 112.)

Senator LAUTENBERG. Mr. Chairman, with your indulgence I have a couple more questions, then I'll be finished.

Senator BAUCUS. We have another nominee, too.

Senator LAUTENBERG. Right. I'll leave that entirely to you, Mr. Chairman.

Senator BAUCUS. That's why I urge you to be very brief in your questions.

Senator LAUTENBERG. Thank you.

Under clean water, the Public Interest Research Group, PIRG, has found that EPA frequently ignores violations, even when patterns of chronic violation appear. The clean water enforcement bill, which I will introduce later this year, contains provisions for mandatory minimum penalties for serious violations.

What do you see as your policy in your efforts to deal with chronic violators?

Mr. HERMAN. I think that chronic violators should be subject to the most severe penalties available.

I am not familiar with the PIRG study, but I will certainly get hold of it and review it. And I look forward to working with your staff on your legislation.

Senator LAUTENBERG. Thank you, Mr. Chairman.

Senator BAUCUS. Thank you very much, Senator.

I have two obligatory questions which I forgot to ask each of you. I will ask the same question of both, and the record will indicate your responses.

Are you willing at the request of any duly constituted committee of the Congress to appear in front of it as a witness?

Mr. GARDINER. Yes, Senator.

Mr. HERMAN. Yes, I am.

Senator BAUCUS. OK, the record will show that both witnesses answered yes.

Do you know of any matters which you may or may not have thus far disclosed which might place you in any conflict of interest if you are confirmed in this position?

Mr. GARDINER. No, I do not, Senator.

Mr. HERMAN. No, I do not.

Senator BAUCUS. Again, the record will show that both answered accordingly.

Thank you very much. There are no further questions. Good luck to both of you.

Mr. HERMAN. Thank you.

Mr. GARDINER. Thank you.

Senator BAUCUS. The final nominee is Mr. George Frampton.

Mr. Frampton, we are very happy to have you before us and to know that you are nominated to be Assistant Secretary of Interior for Fish and Wildlife and Parks. You appeared before the Energy and Natural Resources Committee last week; that committee shares jurisdiction with the various attributes at your command.

I will dispense with any statement I have and just turn it over to you and let you say whatever you want to say at this point.

**STATEMENT OF GEORGE THOMAS FRAMPTON, JR., NOMINATED
TO BE ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND
PARKS, DEPARTMENT OF THE INTERIOR**

Mr. FRAMPTON. Thank you, Senator.

Before I begin I would like to introduce my wife, Betsy, who is here with me today.

Senator BAUCUS. Could you please stand so that everybody can see you? Thank you.

Mr. FRAMPTON. Our sons, Adam and Thomas, who are 13 and 9, and who missed a few tests when they accompanied me to the Energy Committee last week, decided that they had better go to school today.

Senator, I have submitted a statement for the record, and I would be happy to just summarize that in the interest of time.

Senator BAUCUS. If you would, please.

Mr. FRAMPTON. I was brought up, Mr. Chairman, in Champaign-Urbana, Illinois, which is a farm town and Big 10 university campus town. I studied physics and economics before I finally got to law school.

Since graduating from law school in 1969, I have held Government positions, and I have also been an advocate. As an advocate in private law practice, I represented a range of clients, from a small petroleum refiner in Tennessee to the government of the State of Alaska; from 21 widows whose husbands were killed in a coal mine explosion, to the Board Chairman and the President of the Lockheed Corporation.

In 1986 I was fortunate to be offered a job as President of the Wilderness Society that allowed me to combine my personal interest in public lands with my profession. In that capacity I represented a board of 25; the most senior member of the board was a very distinguished forester and professor from Montana, Arnie Bolle, and about 300,000 members.

If confirmed in the position to which I have been nominated, I am very well aware that I am going to be representing the interests of more than 200 million Americans. And if confirmed, I will bring to Government service not only my commitment to National Parks and wildlife protection and the experience of the last seven years, but also the practical experience and traits of mind that I've gained from a professional career that's stretched almost 25 years.

I realize that the job for which I have been nominated is a very different job than the one that I've been doing for the last seven years. I realize that in forming my recommendations to the Secretary, that I am going to have to balance many competing interests and concerns, including the interests of all the members of this committee. I will be part of a team; ultimately, the final decisions will be those of the President and the Secretary. But as part of a team to accomplish their decisions and carry out their objectives, I am also going to have to listen to and take into account the views of many different constituencies if their objectives are to be realized.

I have always believed in teamwork. I have believed in consensus-building. My instinct is to reach out, to try to broaden support, to be practical in moving an issue to closure.

If you, Mr. Chairman, and your colleagues report my nomination, and if I am confirmed, I believe you will find me to be open and fair; and even when we do not agree on issues, you will find me to be a reasonable and constructive partner.

Thank you very much.

Senator BAUCUS. Thank you very much, Mr. Frampton.

First, the obligatory questions.

Are you willing, at the request of any duly constituted committee of the Congress, to appear in front of it as a witness?

Mr. FRAMPTON. I certainly am.

Senator BAUCUS. And do you know of any matters which you may or may not have thus far disclosed which might place you in any conflict of interest if you are confirmed to this position?

Mr. FRAMPTON. I do not.

Senator BAUCUS. I'd like to ask you just a couple questions about the Interior Department's proposed National Biological Survey.

Can you tell me essentially whether the types of research projects that Fish and Wildlife Service scientists are currently conducting will be continued when those scientists are moved to the National Biological Survey?

Mr. FRAMPTON. Mr. Chairman, the proposal that the Secretary has made in the budget amendment that has been submitted is to transfer almost all of the biological research component, which is Region 8 of the Fish and Wildlife Service, which includes 12 laboratories, to the National Biological Survey, as well as the Environmental Monitoring and National Wetlands Inventory.

Those laboratories, the largest of which is Patuxent Laboratory, do a wide variety of research, and some inventory and monitoring, ranging from fish pathology and contaminants research to migratory bird research. That portion of research that is now done at the Fish and Wildlife Service would be about 75 percent of the new National Biological Survey.

Senator BAUCUS. My question, though, is whether the Fish and Wildlife Service, for example, will continue to conduct biological research—will it be able to—with roughly 88 percent of its personnel transferred and 75 percent of its funding transferred?

Mr. FRAMPTON. Secretary Babbitt's intention is to consolidate all of the biological research in the Department into a single bureau. The bureau itself, the National Biological Survey—the proposal is that bureau would serve as the research arm not only of the Fish and Wildlife Service, but also the Park Service, the BLM, and other bureaus. So the Fish and Wildlife Service would be a research client of the new National Biological Survey.

Senator BAUCUS. I guess what I'm getting at is whether this, in fact, will be more efficient or not, because in effect it is creating still another office. And if the goal is to better coordinate, then by definition we have one more organization to deal with, and it raises questions as to whether in fact there would be better coordination or not. How are we going to be assured that will actually happen, that is, that there will be better coordination?

Mr. FRAMPTON. Senator, I think that the Secretary really has four objectives here.

One is to try to power up and create a more effective and prioritized research effort for the Fish and Wildlife Service.

A second is to do what 10 years of studies have called for, which is to build a research component that can serve the Park Service.

A third is to provide a research component for the Bureau of Land Management.

And fourth is to create the base for a national survey of biological information that can help us get ahead of our endangered species and habitat protection efforts.

There are really four different objectives that are all sought to be realized in this National Biological Survey. The concept is to do that through one single entity. That would be the most efficient approach.

Senator BAUCUS. Well, what would the role of the Fish and Wildlife Service then be under the Endangered Species Act?

Mr. FRAMPTON. The Endangered Species Program under this proposal that the Secretary has put forward would stay in the Fish and Wildlife Service. Most of the endangered species listings and evaluations and decisions that are made are made on the basis of existing research. It tends to be more private research or outside academic research, more than research done within the Department. That would all stay.

Senator BAUCUS. Would the Fish and Wildlife Service consult with or deal with the National Biological Survey under the act at all? Would it have any relationship with the National Biological Survey?

Mr. FRAMPTON. Absolutely. Each bureau would be a client of the National Biological Survey.

Senator BAUCUS. Under the Endangered Species Act?

Mr. FRAMPTON. Under the Endangered Species Act, the National Biological Survey would not have a regulatory function. It would not be involved directly in the decision making by the Fish and Wildlife Service.

Senator BAUCUS. Not regulatory, but it's the National Biological Survey. It just seems to me necessarily that they would be very deeply involved in habitat considerations, etc.

Mr. FRAMPTON. Senator, the goal is to create a research entity and a repository for information that the Fish and Wildlife Service could use to be more anticipatory in its approach to endangered species. In that sense, as we go forward, it would be the base of information for good planning to get ahead of the regulatory program so that you can avoid some of the impacts of regulation. It would not, however, be directly involved in administering the Endangered Species Act.

Senator BAUCUS. Well, why couldn't the benefits attributed to this survey be obtained without creating a new bureau? That is, by more focused direction and better coordination of research efforts in existing bureaus?

Mr. FRAMPTON. Well, as I mentioned, there are really four goals here that are sought to be served.

Senator BAUCUS. I understand the goals, but frankly, I am just not persuaded that the goals are going to be accomplished.

Mr. FRAMPTON. If the Secretary were to seek to set, as a major priority, building up the research capability of the Fish and Wildlife Service itself, I think it's his feeling that really would detract

from the other priorities that he has as a Department as a whole, to do the same thing in the Park Service, BLM, and so on.

Senator BAUCUS. Here's my concern. The analogy here is that someone wants a fourth car, so he takes parts of three cars to build a fourth car, only the parts from the three cars don't fit well together to make the fourth car, so he ends up with no cars.

Mr. FRAMPTON. I think the question that you are asking, whether the Fish and Wildlife Service will get the same or better service from the National Biological Survey than it now gets from its own research arm, is really a question of whether the Secretary and his team are successful in the way this proposal is implemented, if you approve it.

Senator BAUCUS. It just sounds to me like a good idea on the surface, but when you think it through, it's not very likely to accomplish the objectives that, on the surface, it is intended to accomplish. That's just my concern. I don't want to belabor the point, but it is a concern.

Senator Kempthorne?

Senator KEMPTHORNE. Mr. Chairman, thank you very much.

Mr. Frampton, congratulations on your nomination to this post.

Several years ago at a Wilderness Society meeting in Stanley, Idaho, when you visited our State, you were on record as saying that Idaho citizens should be better informed about the areas in contention and the values of wilderness, and that they should be involved in determining which areas are worth more as wilderness.

Your stated prerequisite was that you would support negotiations only if it is an open, democratic, educational process. Is that still your view?

Mr. FRAMPTON. It is, Senator. I made those remarks at a time when there was a mediation or a discussion process that had been encouraged—actually, before the State legislature got into a similar process—and the local environmental community was very frustrated and wanted to walk away from that process. I think that my role was to try to convince them to stay in the process and see if some kind of a consensus process could result in making progress on the Idaho wilderness allocation issue.

Senator KEMPTHORNE. Our Idaho Congressional delegation, all members, have been working very closely together, and with our Governor Cecil Andrus, to resolve this Idaho wilderness debate that has been going on for some years.

The process that we are pursuing is open; it is straightforward; and has and will include public meetings throughout the State. Will you support any proposal that we as a delegation, with our Governor, reach through such a process?

Mr. FRAMPTON. Senator, let me first say that I am not sure that this is something that will come to the Interior Department, or to me in the position for which I've been nominated, if I'm confirmed. But if there is a question of whether or to what extent the Interior Department supports a proposal from the Idaho delegation for a National Forest/Wilderness designation, I will certainly follow the position that the Secretary takes.

About what his position is likely to be, I can only say that I think Secretary Babbitt is someone who in the past has embraced, and is certainly trying to embrace now, his own policy making and

consensus approach to some very difficult issues, and I think his hearings on grazing fees and grazing policy are examples of that. I would suspect that he would be very favorable toward any proposal that had gone through a process such as that you've described.

Senator KEMPTHORNE. With regard to wilderness, do you believe that State water rights should be subordinated to the Federal Government?

Mr. FRAMPTON. Well, the question of reserved water rights is really one for Congress. My understanding of that issue is that if Congress reserves a water right for a particular designation or seaside, it has always been the understanding that right must be adjudicated in State Water Court. In other words, ultimately the State system is not superseded by Federal law, but accommodates a Federal water right that is created by Congress.

I am a little reluctant to comment on what may be the legal position of the Department of the Interior, but my understanding is that is the position of the Department and will continue to be the position of the Department.

Senator KEMPTHORNE. So philosophically, then, are you supportive of State water rights?

Mr. FRAMPTON. We operate under a system, Senator, in which the State system is the dominant system, and water rights are recognized through a State process. I am supportive of that; that is existing law and has been for a very long time, as I understand it. Again, I'm a little bit out of my depth here and I don't want to volunteer any legal opinions on behalf of the Secretary, but that's my understanding of the system. I would be certain that the Department would be supportive of that.

Senator KEMPTHORNE. All right, thank you.

My time is about up, Mr. Chairman. I'll just wait for the next round.

Senator BAUCUS. OK.

Senator Simpson?

Senator SIMPSON. I have talked to George Frampton. We have visited, and he knows of my deep concern about western issues.

You have a remarkable background; there isn't any question about that, and your educational and avocational and vocational pursuits are quite exemplary. And yet, as I have shared with you, I represent a State with so much Federal land that we just are always on the alert and on the prod. Fifty-two percent of our surface is owned by the Federal Government; 63 percent of our mineral estate. So now you come on the scene, and you have raised our anxiety level, because we think that you really have trouble with the concept of multiple use, even though it was on the books long before I came here, in the 1920's, I believe.

But we also understand, at least thoughtful westerners, that this is our land. It belongs to everybody in the United States, and I think we realize that. Some don't, but it's true.

As Assistant Secretary for Fish and Wildlife and Parks, you're going to be handling issues which have just burned and seared the west in these last years: the wetlands issue; failure to understand irrigated land; failure to understand the doctrine of prior appropriation of water, rather than riparian rights, so totally different; the issues of the Endangered Species Act, as we watch the adminis-

tration of the parks; such things as snowmobiling through the parks.

The thing that concerns me is that it would be so much better, and I think you're going to do this—I may not like it, but I think if you just don't want to do something, do that, instead of, say, designating an area within a park where there is a denning grizzly, and therefore no one within two to twenty acres will go to that area.

Well, get us a better excuse than that. A denning grizzly is not going to hear a snowmobile go over them at 18 feet of snow in January. So tell us the truth.

I'll never forget the most magnificent one, that there would be no more canoes on the South Arm of Yellowstone Lake, or motorboats, because of erosion of the shore. This is a lake at 8,000 feet; we're in the middle of August; all of a sudden there is a howling wind, and waves of six to ten feet, which can do a lot more to a shore than the wake of a motorboat.

So when you're doing it to us, do it to us.

The other one was on the Endangered Species Act, using it as a pawn to close up Federal lands. We were told recently in Yellowstone Park with regard not just to the grizzly but—I think we're going to make a mockery of the Endangered Species Act if we do not delist, and I think that's got to come. But, you see, once the bureaucracy of grizzly bear studiers kicks in, you never get rid of that, and then we never do delist.

And then, of course, the final one was that we were going to prohibit kayaking and canoeing on the rivers and streams in Yellowstone to protect the wolf and the whooping crane population, but we don't have any.

So it's a matter of credibility. If you want to do it, and you say, "I want to limit public lands," say that to us. We've been through the wilderness issue in Wyoming, and it has been an anguishing one for my colleagues on both sides right here, Montana and Idaho. We were able to do it with a Democratic Governor, Ed Herschler, and Dick Cheney and Malcolm Wallop and ourselves, and they still came at us. They are never satisfied.

So I hope that you will just listen. It will be refreshing if you just say, "Look, we don't think that we want any more use there, and we're going to just tell you that." At least that would stick in the craw a little more lightly. Not much, but a little more lightly.

So we have grave trepidation. I hope, as you told me, you will visit with me from time to time when I call and be accessible, and you said that, didn't you?

Mr. FRAMPTON. I did, Senator, and I appreciated the very good time that I had, the opportunity I had to spend with you in your office. As I said, and I certainly want to repeat for the record, I am very well aware of the concerns, the skepticism that you expressed. I do not have a problem with multiple use. I think that Secretary Babbitt's style and his professional career have certainly been built on listening, and then being straight, and I think that's the kind of administration the Department will have. I am comfortable with that and I hope to do that, too. Even if I weren't, he would make his team approach these issues that way.

Senator SIMPSON. Thank you very much, Mr. Chairman.

Senator BAUCUS. Thank you, Senator.

Mr. Frampton, I guess some of the concern of many of us in the west would be is, what is he going to say and do then? It really gets to the degree to which you are sensitive to legitimate western points of view. These are States, as Senator Simpson said, that are primarily public land States. It's an excellent point. Water rights, as you know, are based on prior appropriation, not riparian rights. Most people in the east are used to a riparian water rights system. They have no understanding or contemplation or appreciation of prior appropriation, which is the western way in the public land States.

What are you going to do? How can you reassure us, from the west, that you are going to be legitimately sensitive to and will act according to a balanced approach, listening not only to some of the conservation community, with which you have been deeply involved in the past, but also other Americans, who are Americans, too? How can you persuade us that you're going to listen and act with appropriate balance and sensitivity?

Mr. FRAMPTON. Well, Senator, at the Wilderness Society I represented an organization that had some very strong views. It was founded in 1935. I think that given those strong views and positions about land and resource protection, that in the last few years I have tried to bring to the organization an awareness that if you really want to see ecosystems protected, you have to realize that communities and people are part of ecosystems, that you have to understand the economic implications of resource protection decisions.

Four years ago the Wilderness Society developed the first set of proposals for economic revitalization and economic assistance for timber-dependent communities in the northwest, provisions that are now in most proposed legislation dealing with ancient forests. The organization worked directly with communities in the Yellowstone area, spent hundreds of thousands of dollars working with more than 20 timber-dependent communities in two counties in Oregon and Washington, with local leaders who saw the environmental community as the enemy before we went and offered to work with them and make money available for community diversification.

I am aware of all of that being a part of any kind of public land management program, and I will be working as one member of a team for a former western Governor who sees that very well, and who I think will make all of us work toward some kind of reform, where reform is appropriate; for greater efficiency, where efficiency is appropriate, that takes into account the economic realities and the lives of people and the future of communities. That is something that I have tried to do in the last few years within the framework of the advocacy I was engaged in, and I look forward to doing that if I am confirmed in this position.

Senator BAUCUS. I just have to tell you, I think it's going to take extraordinary effort and extraordinary creativity, both, to break down some of the adversarial relationships that have existed and to find some solutions here. I say extraordinary because in my experience, because this country is so large and because there are so many groups that are so active and pressing their points so narrowly, and there is so little time in the day, that there is a tenden-

cy to react to all of the pressures rather than getting ahead of the curve and finding the beginnings of a creative solution that puts some of these pieces together. That takes immense effort, and you're going to have to set aside a lot of your time, your own proactive time, to make this happen, so that you're not reacting to all these pressures.

I very strongly encourage you to set aside a large chunk of your time out of your office, out in the country, particularly in public land States. You will learn much more than you think you're going to learn. You will be much more effective in your job the more time you spend outside of Washington, D.C., on the ground, just talking to people, the farmers and ranchers, conservation groups, and so forth. I guarantee it; you will be a much better administrator and a much better Assistant Secretary if you do so.

In that regard, I would like to ask your views about changing the Endangered Species Act to better accommodate State involvement in the act, because as you know, in some cases States—my State of Montana has more jurisdiction; that's where the wildlife is, it's on State land or it's on private land, and so forth, and State agencies have the personnel, and so forth. So how can the States be made better partners in the administration of the act?

I must tell you up front that a lot of the States don't think that they're treated as partners at all by Uncle Sam, and particularly by the Fish and Wildlife Service.

Mr. FRAMPTON. Senator, that's certainly a complaint that I've heard a lot in the last eight weeks in my discussions with State fish and wildlife directors about their relationship with the U.S. Fish and Wildlife Service. And I think that's something that, if I am confirmed, I would like to try to work hard on.

I think the Secretary believes that there are two kinds of things that need to be done to make the Endangered Species Act work better. One is to use a lot of flexibility that is in the act, but has never really been used, to avoid a situation where we come to the end of the road and all you've got is the sharp edge of regulation. What he has done in writing a proposed special regulation for the gnat catcher in southern California is almost a model for that, and that is to try to push planning down to the local level, get the people who are going to be impacted involved in doing their own local planning, so that even after a species is listed, enough habitat can be set aside or protected so that development can go forward in a predictable way.

Senator BAUCUS. I appreciate that. I think that's probably a pretty good example, the California example. Again, I encourage you to spend a lot more time with the States and let the States make a lot more decisions.

Mr. FRAMPTON. I think a major challenge for this Administration will be trying to develop such models and see them be successful.

Senator BAUCUS. Thank you.

Senator Kempthorne?

Senator KEMPTHORNE. Thank you, Mr. Chairman.

Mr. Frampton, you've been critical of grazing on Federal lands, yet many of the ranchers have grazed these lands for generations. They have made improvements on the range. They've been good stewards in preserving and protecting the land so that their chil-

dren can utilize those grazing rights and those children can be brought up to respect the land.

What is your attitude toward grazing rights on public lands?

Mr. FRAMPTON. Senator, as you know, in the position for which I have been nominated I will be basically responding to a Secretary who has said that he does want to reform grazing policy. He wants to take a look at the fees as they relate to that. Obviously, I will be following the administration's policy when it is developed. There is a process that is in place of hearings, and there are going to be more hearings for the Secretary and others to listen to concerns.

I would say that I think at the Wilderness Society, that organization was one of the first to begin to look at maintaining grazing in areas in which the open space values become terribly important; not just for traditional economies, but the habitat values of open space. Ranching on private land that is adjacent to public land is so important that maintaining those operations becomes an environmental priority. I think that's part of what the whole new look at grazing policy is going to have to consider; not only some of the negative impacts of areas that have been overgrazed, as identified in 25 years of Government reports, but also the positive impacts of continuing grazing operations, where the alternative may be subdivision and development or something that causes pollution. And if you continue grazing and ranching in an area, then you're maintaining wildlife values.

That's a part of what the Secretary is hearing and looking at in terms of an Administration approach to grazing issues.

Senator KEMPTHORNE. But your personal views, Mr. Frampton. Do you feel that Federal lands should be cattle-free?

Mr. FRAMPTON. No, I don't. I don't think that the Wilderness Society has ever taken a position like that. Grazing has always been recognized as a legitimate use of public lands. I believe that, and the Wilderness Society certainly believes that.

Senator KEMPTHORNE. Also, I believe that over the years you have been particularly critical of mining and logging, as well as the grazing on public lands, and more recently you have stressed the need for diversifying local economies in the west.

What kind of diversification do you envision? And how do you anticipate that it should be accomplished?

Mr. FRAMPTON. As you know, the administration is developing—one of the things that the President has instructed four or five Cabinet Secretaries to develop is a set of programs for timber-dependent communities in the Pacific Northwest to assist them in economic diversification. That is a plan that is well along in development between various Departments.

I think if you look at an area—like the Yellowstone area, for example—what's happened there is that the quality of life is drawing small manufacturing, entrepreneurs, and people who work with only one or two employees to the area, so that sometimes preservation of the quality of life—open space, small communities—is attracting some of the biggest elements of business growth in the country to those areas.

However, I think that the key to economic diversification is that it has to be based on local circumstances. Every place is different. Every community has its own comparative advantage, and the key

is for the community to identify that comparative advantage and get people involved in promoting it.

Senator KEMPTHORNE. Mr. Frampton, you've been to Idaho, and I appreciate that. We're very proud of our State. We think it's a beautiful State. It is filled with avid fishermen, campers, backpackers, and many of these are Idahoans who derive their living from the land. They may be the loggers, the ranchers, the farmers, the wool-growers.

For those that have a concern with this particular nomination, what is the message we should give to those Idahoans who have that concern?

Mr. FRAMPTON. I guess you're asking me to say what the Secretary would want to say to those people on behalf of his team—

Senator KEMPTHORNE. No, Mr. Frampton—

Mr. FRAMPTON.—since I will be a member of his team.

Senator KEMPTHORNE. Right, but at this point I would rather hear what you have to say, your personal view.

Mr. FRAMPTON. My personal view is that in many areas of the west which are public land areas, communities in those areas are affected by economic and demographic changes that nobody can really control, and that the key to an effective public lands policy is to try to help those communities adapt to those changes so that we can both protect the quality of life and the natural resources, and also build sustainable economies for the future; because if we simply fight those inevitable changes, national and international economic market forces and demographic forces, then we risk losing both. We risk losing both the quality of the environment and the opportunity to build a better economy and a more diversified and sustainable economy for the future. It seems to me that should be a very, very high priority for the Department of the Interior in this Administration.

Senator KEMPTHORNE. Mr. Chairman, is my time up?

Senator BAUCUS. Go ahead.

Senator KEMPTHORNE. Just following that, and I appreciate your response, then a healthy environment and a healthy economy are not mutually exclusive?

Mr. FRAMPTON. I think it's the commitment of this Administration and the Secretary of the Interior, and it will be my commitment if I am confirmed, to demonstrate that that's right, that they are not mutually exclusive. As the Chairman said, that may be a challenging order, but I think it can be done.

Senator KEMPTHORNE. And my final question, there was a case, Voyagers Region National Park Association. This was dealt with in the 8th U.S. Court of Appeals. It refused to enjoin snowmobile use within a wilderness study area in a National Park. The Court held that the decision of the National Park Service to permit snowmobiling in the WSA did not violate the Wilderness Act and was not arbitrary and capricious.

In your role as Assistant Secretary, would you ask the Secretary to promulgate a policy banning snowmobiles from National Parks under similar circumstances?

Mr. FRAMPTON. Senator, I am not familiar with the case, even though I believe that the Wilderness Society may have been a party at some point in the past.

I think that an individual park policy and system-wide policy for snowmobiling should be developed, but I am just simply not familiar enough with the issue to know what the pros and cons are. In the Voyagers Park case, as I understand it, the Court sustained the Park Service's policy, and it continues to be their policy to allow snowmobiling in a wilderness study area in the park, consistent with the park's General Management Plan.

I think these issues should be addressed as part of park General Management Plans, and if I am confirmed, I am obviously going to give a great deal of weight to the professionals' view on a park-by-park basis of what fits the resource.

Senator KEMPTHORNE. But would you be uncomfortable with that current policy that apparently is in place in that park?

Mr. FRAMPTON. If it is justified, I would not at all be uncomfortable with that policy.

Senator KEMPTHORNE. All right. Thank you very much.

Mr. Chairman, thank you.

Senator BAUCUS. Thank you, Senator.

Mr. Frampton, Doug Kostel, when he was Administrator of EPA, said that he set out a list of goals that he intended to accomplish in his four years as Administrator of EPA, and he had looked at those goals every day to see the degree to which he had reached them.

What are yours?

Mr. FRAMPTON. Well, Senator, I guess my first goal, if I am confirmed, is to really learn more about the constraints of the current management teams, and people who could be part of the management teams, both the Fish and Wildlife Service and the National Park Service.

On the National Park Service side, I think that the essential priority needs to be revitalize a service which has a remarkable number of committed people in it who don't feel they've received the pay, the training, and the support they deserve, and that they are part of an agency that I think is probably not run as efficiently as it might be, and to try to recreate a sense of spirit within the agency.

On the Fish and Wildlife Service side of this position, there is no question in my mind that the biggest challenge is to support the kind of strategy that the Secretary has to use the Endangered Species Act more flexibly in terms of authorities that have not been used, and to devise new ways to get ahead of the problem of protecting species and habitats, to be anticipatory, to do planning, to provide a better information base, to push planning down to a local level. That's a whole new strategy. And trying to enable the Fish and Wildlife Service to support that strategy in the most effective way appears to me to be the biggest challenge that the administration has with respect to that service over the next couple of years.

Senator BAUCUS. How will you know whether you've accomplished those goals? How will you know whether in fact you have sufficiently revitalized the Park Service or made it more efficient and so forth? Those are nebulous goals; how do you know whether in fact you have attained them? Or, say, the changes to the Fish and Wildlife Service?

Mr. FRAMPTON. I think the key on the Fish and Wildlife Service side is whether the Endangered Species Act has broader public sup-

port and whether we can begin to see some of these habitat conservation planning models succeed, reach final plans so that development can go forward and you have protected habitat.

In that case, the results will be very clear, one way or another. There's a good benchmark by which to judge.

On the Park Service side, I think it's harder to evaluate, obviously, whether an agency has provided an environment in which people who work there feel that they are operating at 90 or 95 percent of their capability. I guess I would say that that's something that probably this and other committees of the Congress would have to ask some of the career people, to find out whether the administration had been successful in that endeavor.

Senator BAUCUS. Well, I encourage you to set fairly precise—and if possible, quantifiable—benchmarks. It's the only way you're going to be able to know, because other than that, we just spin our wheels around here and things happen, but what's really changed?

I wish you well. I have some of the concerns that other Senators have raised with respect to western public lands, but there is no doubt that you are going to approach that with a very open mind and with sensitivity. I appreciated your response with respect to the grazing fees issues. I think you've touched on a lot of the different components of that issue, and that's encouraging.

Basically I wish you well, and four years from now we'll look back and see whether we've attained those goals or not.

Mr. FRAMPTON. Thank you, Mr. Chairman. Thank you for your advice, too.

Senator BAUCUS. For Senators who are not here but their staffs may be, I would like for all Senators to have their questions in for any of the nominees by close of business today.

The hearing is adjourned.

[Whereupon, at 12:47 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

[Statements, replies to additional questions, and replies to a committee questionnaire follow:]

STATEMENT OF RODNEY E. SLATER

Mr. Chairman, Senator Chafee, Members of the Committee, I thank you for quickly scheduling this confirmation hearing and I am honored to appear before you. I look forward to meeting with each member of the Committee and I regret that the busy congressional schedule has prevented me from meeting with all members before this hearing. As a Member and Chairman of the Arkansas State Highway and Transportation Commission, I am well aware of the significant role this Committee has played in advancing innovative surface transportation initiatives and look forward to working with you in the future to find solutions to moving people and goods in the safest and most expedient manner possible. I am honored that President Clinton has chosen to entrust me with the position of Federal Highway Administrator and if confirmed I look forward to working with Secretary of Transportation Peña.

I am proud to be nominated to head an agency which this year will celebrate 100 years of service to the Nation and to the world—an agency that has built what is described as the greatest public works project in the world and has also assisted other nations with advanced technology in road building and related efforts. In thinking about the responsibilities that lie ahead for the next Federal Highway Administrator, I have looked at the agency's history and what the country has become in the past 100 years. Certainly, the Federal Highway Administration (FHWA) and its predecessor agencies have played a critical role in the economic growth of the Nation by providing a system of improved highways which has advanced the Nation's growth, wealth, and its interstate commerce. As an attorney, it interests me

that the genesis for the Federal-aid Highway Program is derived from the U.S. Constitution. Article I, Section 8 grants to the Congress the power to provide for the "general welfare," and expressly authorizes the Congress to establish post roads. These two clauses underlie the Federal government's work of building postal roads and "getting the farmer out of the mud."

The first federally-aided road appears to have been Zane's Trace. On May 16, 1796, the Congress approved Col. Ebenezer Zane's request to build a post road through the territory northwest of the Ohio River to the river port in what is now Maysville, Kentucky. This request was approved with the stipulation that Zane establish and operate ferries on the three rivers crossed by the road. Zane's Trace was used by boatmen who had navigated downriver, some as far as New Orleans, and who were returning upriver over land. This was only the beginning. Over the years, Federal commitment to our Nation's roads continued to increase, with the first Federal highway program signed into law on March 29, 1806, by our Nation's third President, Thomas Jefferson.

Growing up in the rural Arkansas Delta region near a Louisiana Purchase Survey Marker, I learned that one of the purposes of the 1803 Louisiana Purchase was to connect the East and the West. Not only did it accomplish that, it also doubled the size of the United States and spawned the region's major cities. Thomas Jefferson realized that to reap the benefits of this vast expanse required what we would refer to today as "intermodal connectors." Jefferson, before he completed the Louisiana Purchase, spoke of such enterprises, saying,

I experience great satisfaction at seeing my country proceed to facilitate the intercommunications of its several parts by opening rivers, canals and roads. How much more rational is this disposal of public money, than that of waging war.

In 1956, the Federal Bureau of Public Roads assumed a much greater national role with the passage of the Federal-Aid Highway Act of 1956. The Act provided funding to complete financing of the National System of Interstate and Defense Highways, which had been designated by Congress in 1947. The Act also created the Highway Trust Fund as the financing mechanism.

I grew up during the beginning years of the Interstate era. Throughout my life, I have seen this system dominate transportation philosophy, policy, and practices. The Interstate System makes it possible for Americans to engage in ever more productive commercial pursuits, to travel easily and quickly throughout our vast country, and to work with one another as members of a national community. This System is the central tie that binds our many communities, towns, cities, and States as a Nation.

The European Community is now confronting this issue -looking for a central tie to make the Community one commercial unit. Without an infrastructure system to link the many markets of Europe, the countries of the European Community may be unable to reap the benefits of their economic union. Consequently, Europe is considering a transportation system similar to our Interstate System. While some might argue against the dominant role that highways traditionally have had in the United States, few would dispute that the Interstate System has been enormously successful in facilitating the commercial development of our Nation. If it were not in place, we would be building it right now. Therefore, I am thankful for the foresight of those who have gone before us. Today, however, we are called to deal creatively with the Interstate System; to enhance it as a transportation resource. I believe the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) creates an atmosphere within which these considerations can be addressed in a dynamic, intellectual, and stimulating environment.

This Committee was largely responsible for formulating and advancing the ISTEA, legislation which revolutionized transportation decision making in almost the same manner as the Louisiana Purchase served as a catalyst for the development of our great Nation. The ISTEA has been termed "landmark" legislation, as was the Federal-Aid Highway Act of 1956. I personally believe that the ISTEA can go down in history as the more significant "landmark" Act, and I am committed to work with the Congress in seeing that it is properly implemented.

Senator Daniel Patrick Moynihan, who played a key role in formulating the ISTEA, stated in a 1960 article assessing the newly established Interstate System—"roads can make or break a Nation." As I read his article "New Roads and Urban Chaos," I asked myself and officials of the Federal Highway Administration how the ISTEA can cause our highways to better fulfill their role as the "central link" in an intermodal transportation network; how can we ensure that highways are a 21st century program? Certainly, I believe that under the ISTEA, it can no longer be "business as usual."

Throughout this statement I will make many references to the importance of intermodalism, but that is not to be interpreted to mean that I am not mindful of the singular importance of the Federal-aid Highway Program. Highway travel dominates personal and freight transportation. Over 90 percent of all trips to work, and a similar percentage of all personal trips, whatever the purpose, occur on roads. Virtually every product we buy travels by road at some point on its journey to our home. At the national level, I believe we must continue to ensure the strategic investment in roads that are critical for interstate and interregional travel and commerce.

President Clinton has called on us to "Rebuild America." To me that means that FHWA must serve as a mechanism which brings to the fore creative ideas and fresh thinking while achieving the laudatory goals Congress established in the ISTEA. We must create those links that create a truly intermodal national transportation system. We must rank our investments in order of priority, and protect and improve our various transportation infrastructures. Because many of today's transportation problems require intermodal solutions, transportation planners and local officials must better understand how actions directed at one mode affect other modes and overall system performance. I am committed to finding intermodal solutions to transportation problems. If that means new ways of doing business must be devised, I will devise them. If it means taking controversial actions, I will take them. And certainly, I intend to work cooperatively with Secretary Peña, my modal counterparts, and with this Committee in determining the best way to carry out the spirit and the intent of ISTEA.

The President's Rebuild America initiative calls for important investments in this Nation's infrastructure:

- Full funding of the ISTEA, which could create 14,000 new jobs in 1994, and about 150,000 over a four year period, just on projects designed to improve and maintain the Nation's transportation infrastructure;
- Accelerating "smart cars, smart highways" through the Intelligent Vehicle-Highway Systems (IVHS) program, which I will address further;
- Increased funding for investment in magnetic levitation (Maglev) and high speed rail transportation systems to meet the needs of several of the Nation's high-density corridors;
- Grants to States for alcohol-related highway safety measures and increased use of safety belts and motorcycle helmets; and
- Greater investments in public lands highways and Indian reservation roads.

Secretary Peña has set forth five key themes for his efforts which build on the President's goals to stimulate the economy, to invest in the future, and to reduce the deficit. I would look to these themes in developing plans for the FHWA. The Secretary's themes are:

- Strengthening Transportation's Role in Supporting the Economy;
- Supporting the Safety of our Transportation Systems;
- Strengthening the Linkage Between Transportation and Environmental Policy;
- Advancing U.S. Transportation Technology and Expertise; and
- Fostering Intermodalism.

Having been nominated to be the Federal Highway Administrator, I see it as my responsibility to do what I can to ensure that the Nation's highways make their contribution to achieving the President's policy goals and Secretary Peña's objectives. That does not necessarily mean more and bigger roads. It means that I want to make sure that highways are as efficient, safe, and responsive to the Nation's transportation needs as it may be in my power to make them.

Briefly, let me set forth my personal thoughts on how the FHWA could assist in a team effort to carry out these aims.

1. Strengthening Transportation's Role in Supporting the Economy. A commitment to infrastructure investment is strongly related to economic growth and productivity. Transportation provides an essential foundation for the national economy since nearly all the essentials of modern life are delivered over the transportation system. With the Federal government and many State governments faced with budget deficits, the idea of injecting millions of dollars into programs such as highways may not be appealing to everyone. Nevertheless, businesses, as well as individuals, are paying the price when those public functions are placed lower on our list of pressing priorities. These are issues which I believe the public intuitively understands, although it often takes a crisis to galvanize the public's thinking and to make its needs clear. The potential damage to our business communities and standard of living is too great to risk. It will take strong leadership and political will at all levels of government to take the initiative necessary to foster responsible public

actions. If we can keep in mind transportation's basic role, serving the economy and our citizens' quality of life, we can develop public programs which will ensure that the basic infrastructure investments are made. At a minimum, putting these infrastructure investments in place will ensure that transportation does not constrain private sector productivity growth. At best, it will stimulate full use of what our industries have to offer.

The Interstate System is the backbone of our Nation's highway system, but it alone cannot adequately serve modern surface transportation demand. Changes in the nature of international competition, our industrial strengths, and our economic geography have changed the shape of transportation demand. As a principal component of the Nation's surface transportation system, the National Highway System (NHS) will focus Federal investment on those highway routes critical to national productivity and international competitiveness. Intermodal transfer facilities (including international airports and major shipping ports) crucial to interstate and regional commerce and travel are at the heart of an interconnected NHS. Only through facilitating efficient interregional movements will we be able to provide a high level service to major centers of economic activity and population that are not directly served by the Interstate System but are critical to American industry.

2. Supporting the Safety of our Transportation Systems. Since its creation, the primary responsibility of the Department of Transportation (DOT) to the users of the Nation's highway systems has been to ensure and promote transportation safety. I believe the FHWA has never lost sight of this most important mission. I am sure that safety research will address the DOT goal of continuing to cut the fatality rate below the current level (1.76 deaths per 100 million vehicle miles traveled) through the next decade, even in the face of increasing travel. I hope to contribute to this positive trend by enhancing safety through a number of DOT's broad-based initiatives, such as the commercial drivers license program, stricter drug and alcohol enforcement, designation of high speed rail corridors to eliminate hazards of rail crossings, and an enhanced Motor Carrier Safety Assistance Program.

Special highway safety funds are provided by the ISTEA through a 10 percent set-aside of STP funds. These funds may be used to eliminate safety hazards on existing highways, improve the safety of rail-highway crossings, provide corridor and community safety programs, and develop safety management systems. Through this funding flexibility, the ISTEA encourages innovative, efficient, and effective activities that provide the greatest safety benefits.

3. Strengthening the Linkage Between Transportation and Environmental Policy. Including environmental considerations in every aspect of agency decisionmaking should be a major goal of the FHWA. Major policy development efforts should be pursued with environmental considerations clearly in focus, such as the proposed new rules for metropolitan and statewide planning, which include mechanisms to assure that environmental factors are evaluated at the very earliest stages of transportation planning through active coordination with Federal, State, and local environmental resource agencies. The FHWA should take the lead on improving project development processes to provide an effective way of structuring the sharing of decisions between the FHWA, as a funding agency, and the variety of Federal agencies which have environmental review and permitting responsibilities. Moreover, the FHWA should timely pursue its new authority under the ISTEA to finance environmental work, such as Congestion Mitigation and Air Quality Improvement projects, transportation enhancements, wetland conservation planning and mitigation banking. Finally, the FHWA should evaluate the environmental implications of new initiatives, such as IVHS development. In all of its environmental work, the FHWA should employ an unprecedented level of coordination with the Environmental Protection Agency (EPA) and with other Federal agencies with environmental responsibilities.

4. Advancing U.S. Transportation Technology and Expertise. The Nation's transportation technology is critical to the economy of the country as well as to our foreign competitiveness. I believe that the FHWA, cooperating with business, academia, and other governments, can advance a research and technology program to meet current and future transportation needs. This requires innovation, advanced technology, and expanded partnerships among the diverse organizations that have a stake in the future of transportation. Infrastructure research will continue to develop tools and materials to rebuild, strengthen, and preserve the U.S. highway system.

Research, of course, needs to be complemented by technology transfer in all areas of highway technology. I think that a primary effort within the FHWA's technology transfer program should be to identify and assess innovative results that hold potential for alleviating problems generated by current and future system demands. Pri-

ority technology items should be packaged and delivered to the end user by the most appropriate media to facilitate rapid and widespread application throughout the highway industry. Training, including advanced technical courses, should be used to effectively implement changes resulting from advances in technology as well as to address needs related to a shrinking and changing highway work force. International technology transfer efforts should include identification of new technologies and innovations that will help the United States improve and advance its highway transportation systems.

New safety solutions discovered through research can be coordinated and developed in parallel with the goals of the IVHS program and in cooperation with the National Highway Traffic Safety Administration in areas of joint responsibility and interest. The IVHS program, a prime example of a program to advance U.S. transportation technology and expertise, will improve the mobility, safety, and productivity of our Nation's highway transportation system. The program includes major private industry involvement and advancements for motor vehicles coupled with major government involvement for compatible highway enhancements to achieve its objectives.

5. **Fostering Intermodalism.** I would support FHWA efforts to continue to foster intermodal cooperation both within the agency and in joint activities with other modal administrations. I understand that six model State intermodal transportation planning grants will be completed and showcased to other localities across the Nation to encourage and promote the development of a national intermodal transportation system that will move people and goods in an energy-efficient manner. I will certainly support outreach efforts such as this. Also, I would encourage the FHWA to utilize the results of a series of regional workshops on Intermodal Transportation Planning and Management Systems being held around the country to provide a greater awareness of the necessity for States and Metropolitan Planning Organizations (MPOs) to address intermodal issues. The FHWA should assist in the development of transportation plans that include intermodal components to provide for the efficient movement of both people *and* goods.

With regard to activities involving other modal agencies, I recommend that the FHWA work jointly with the Federal Transit Administration (FTA), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Maritime Administration (MARAD), the new Bureau of Transportation Statistics, and the Office of Intermodalism. As examples, the FHWA should:

- Continue its efforts with the FRA on the elimination of high speed railroad-highway crossing hazards throughout the United States;
- Pursue the National Bicycling and Walking Study in which intermodal trips which involve walking or bicycling to a transit station will be encouraged with the help of the FTA;
- Cooperate with the FAA on airport access planning; and
- Work with MARAD on efficient goods movements at ports and other transfer points.

I will work for a team approach (both within the FHWA and with other DOT agencies) in addressing intermodal issues to enhance the FHWA's ability to participate with its public and private partners in the development of a balanced transportation system in which the most efficient mechanisms for transporting people and goods can be provided. By working closely with its intermodal partners, the FHWA can provide technical expertise and become more responsive to the needs of the other team members.

Briefly, I would like to address just a few of the issues that I will need to explore with the Committee if I am confirmed.

National Highway Systems (NHS)

I see the National Highway System created by the ISTEA as the backbone of the Nation's intermodal system and the tie to bind a seamless intermodal transportation network to serve our Nation and its citizens in the 21st century. I am committed to working with the States and the Congress on the designation of the best system possible within the parameters of the legislation. The purpose of the NHS is to provide an interconnected system of principal arterial routes which will serve major population centers, international border crossings, ports, airports, public transportation facilities, intermodal transportation facilities, and major travel destinations; to meet national defense requirements; and to serve interstate and interregional travel.

Congress authorized a proposed 155,000-mile network of principal arterials, plus or minus 15 percent. The entire Interstate System will be included, so the easy part

is the first 45,000 or so miles—the 42,795 miles built under the Interstate Highway Program and a further 2,200 miles built with other funds and then added to the Interstate System. The ISTEA also identified a series of high-priority multi-State corridors, totalling about 4,500 miles, that are to be included as well—for example, Kansas City to Shreveport, St. Louis to St. Paul, and Indianapolis to Houston. Finally, the NHS will include a system of highways, called the Strategic Highway Corridor Network, that the Department of Defense has identified to provide defense access, continuity, and emergency capabilities for movements of personnel and equipment in peacetime and wartime.

That totals about 67,000 miles. Beyond that, the slate is clean and I am anxious to work with State and local officials to fill in the blanks. Factors to be considered in NHS selection are multi-State corridors, State connectivity, relationship to the Interstate System, rural/urban connectivity, border crossings with Canada and Mexico, and access to major ports.

The FHWA asked the States to submit their proposed NHS routes by the end of April of this year. The FHWA will begin defining the Federal proposal to ensure that the NHS reflects the national interest in an intermodal transportation network. If I am confirmed, I will take an active role in this process. By December 18, 1993, the ISTEA requires the FHWA to submit the completed proposal to the Congress for approval. The agency intends to meet that deadline and I, too, am committed to meeting that deadline if I am confirmed. The Congress has given itself a deadline of September 30, 1995, for approving the proposal. If it does not approve the NHS, the FHWA is prohibited from apportioning funds to the States after that date—the last day of fiscal year 1995—for the NHS or for Interstate maintenance.

I would like to think that things will go smoothly and that the NHS will be approved in plenty of time. Nevertheless, we have to consider the possibility that it may not be approved. After all, some Members of Congress were skeptical of the concept. Many environmental and some other groups think the highway era is over and that we should put the money into other modes of transportation, principally rail and transit. It will be up to us to demonstrate that if America wants to remain economically strong, if America wants to compete with other countries in a global marketplace, if we want to move goods and people efficiently, and if we want our standard of living to continue to grow, then we must invest in the NHS. Certainly our principal economic competitors in the world, nations such as Germany and Japan, have poured vast resources into their highway systems over the last few years and are now reaping even greater economic rewards from those investments.

I believe that the NHS is based on a sound concept that will produce significant benefits for our country. These benefits will directly relate to several factors that support the concept of an NHS, namely:

- Benefits to economic growth;
- Intermodal connectivity and trade corridors;
- System connectivity;
- Commercial vehicle use;
- Expanded trade among Canada, Mexico, and the U.S.;
- Travel and tourism;
- Safety;
- Congestion relief;
- System performance; and
- Environmental considerations.

Finally, the North American Free Trade Agreement (NAFTA) has been the recent focus of Congressional hearings and much political discussion. The NHS goals, to me, would seem to coincide with the goals of the NAFTA and the expansion of trade between the United States, Canada, and Mexico.

HIGHWAY TRUST FUND

I am aware of the concerns of the Congress over the status and fiscal condition of the Highway Trust Fund based on findings of the recent General Accounting Office (GAO) report. I want to work with the Congress in developing recommendations to assure that the Highway Trust Fund remains secure. I would consult with this Committee and the Congress on any further actions the President takes on increasing investments in surface transportation in order to stimulate the economy. I am committed to the President's intent to fully fund the ISTEA highway program.

IVHS

In discussing the NHS, I suggested that it is a crucial part of the grand intermodal transportation plan. A far more imaginative intermodal venture, however, is the Intelligent Vehicle-Highway Systems (IVHS) public-private partnership. IVHS offers us a great challenge for the future: To reach beyond the limits of highways and carry IVHS technology to all forms of surface transportation.

President Clinton has laid out a plan for bold comprehensive change not only to make our economy once again an engine of general prosperity, but to reinforce our leadership in world markets. That plan includes an overall investment, incentive, and deficit reduction strategy as well as an aggressive technology initiative. I commend the President's support for increased funding for IVHS. The FHWA budget calls for an increase of \$214 million for IVHS, or 48 percent more than the FY 93 level. We plan to invest \$923 million over four years. This increased funding will allow IVHS products to reach the marketplace faster, providing early benefits to users of the transportation system.

With the Intelligent Vehicle Highway Society of America (IVHS AMERICA), and other dew partners, I believe that the United States can lead the world in this technology, increasing our nation's productivity and competitiveness.

The Administration views IVHS technology as not only improving traffic control and warning drivers of dangerous situations, but making better use of existing transportation infrastructure. I share the vision of an IVHS that combines state-of-the-art communications, warning systems, electronic displays, and computer technology. This combination will lead to "smart" fare cards and toll cards and information and communications systems that create seamless intermodal links. It may also produce advances in other areas, such as artificial intelligence and defense-related technologies.

In addition, these new technologies will be an enormous boost to our economy and will open up world markets for the new systems and products. With each new development will come new, high wage, permanent jobs and a stronger U.S. economy.

One IVHS strategy is to establish a National Commercial Vehicle Network that uses advanced technologies to increase the safety and productivity of the motor carrier industry. In this network, trucks will be able to travel on highways without stopping at State borders and weigh stations. Vital safety and regulatory checks can be made through the use of these technologies, automatically, and without delays. The productivity gains for the trucking industry from this one IVHS technology will be phenomenal.

In addition, the IVHS Corridors Program holds great promise for benefiting all who travel on our Nation's highways, but especially commuters. Under the Corridors Program, the Department of Transportation has designated four locations as priority corridors to further the goals of the national IFS program. In the northeast, a large section of I-95 recently was designated from Maryland to Connecticut as a priority corridor. An array of IVHS projects aimed at improving traffic flow and traveler mobility, as well as improving air quality, will be implemented in the priority corridors. These sites will become national test beds for IVHS and the basis for the establishment of an IVHS infrastructure. In many cases, the priority corridors will be where the public is first introduced to new IFS services and technologies.

Several weeks ago, I had the opportunity to attend the Third Annual Meeting of IVHS AMERICA, and came away very impressed with the sense of excitement, opportunity, and genuine enthusiasm expressed by the participants. IVHS AMERICA brings together a rich mixture of public and private sector officials to exchange ideas, foster close working partnerships, and develop plans and programs to achieve the IVHS vision.

While at the meeting, I had the opportunity to test drive a prototype car to be used in the "ADVANCE" project. About 5,000 of these vehicles, which provide automated navigation and route guidance through dash-mounted color video screens and audio, will be put into service in the Chicago area. There, they will serve to evaluate technical and driver-related issues. This project follows up on the recently-completed "TravTek" project which tested similar concepts with 100 automobiles in Orlando, Florida. The evaluation phase of the Orlando project is now underway, but the extensive press coverage of the one-year test created a lot of excitement over these technologies.

Also while at the IVHS AMERICA meeting, I visited the large number of exhibits which were sponsored by manufacturing firms, associations, consulting firms, and others. I was very impressed by the scope and depth of private sector participation. This partnering of private firms with the public sector is one hallmark of the IVHS program, as demonstrated by operational tests such as ADVANCE and TravTek.

The Rebuild America proposal will accelerate the benefits of those elements of the IVHS program I have just mentioned. I commend the Committee's foresight in moving the IVHS program forward as part of the ISTEA legislation. Your support has enabled this program to flourish, and the FHWA and the Department are working very hard with their partners in the States, localities, and the private sector to deliver the IVHS program.

RESEARCH AND DEVELOPMENT

One of my first visits to the FHWA after being nominated by President Clinton was to the Turner-Fairbank Highway Research Center in Virginia. I realize that a large Federal investment has been made in the facility and I believe its efforts will certainly support the general concept of the ISTEA in research.

Further, I believe that the FHWA research programs are consistent with the Rebuild America initiative on revitalizing technology. Hopefully, this research will create markets that encourage the use of defense technology for civilian purposes. I am told that the facility is shared with other DOT modes and I would encourage intermodal cooperation in all FHWA research efforts.

ISTEA AND THE CLEAN AIR ACT

The Clean Air Act Amendments of 1990, together with the ISTEA, call for significant changes in the way we go about meeting transportation and air-quality goals. I support coordinated efforts in order to achieve both of those goals. I believe that the ISTEA complements the Clean Air Act by providing funding and giving State and local transportation officials the flexibility to use it in ways that will help us develop a balanced, environmentally sound, intermodal transportation system.

The Clean Air Act requires that transportation plans and projects conform to air-quality plans, otherwise Federal-aid projects may not proceed. I am committed to working with Secretary Peña and the EPA on the conformity rules and the new programs to help fund transportation control measures and other projects intended to help meet air-quality standards in nonattainment areas.

TRANSPORTATION ENHANCEMENTS

I agree with the many observers of the ISTEA who consider the transportation enhancements program as one of its most exciting new provisions. The program gives States new tools and new mandates to make highways better neighbors. I have read with interest of the many States and localities that are taking advantage of new innovative funding for transportation enhancements. I believe that healthy new partnerships are forming and that these projects are building tremendous good will for State transportation agencies. If I am confirmed, I will encourage the use of transportation enhancements to compliment transportation projects environmentally.

BUREAU OF TRANSPORTATION STATISTICS (BTS)

The implementation of the BTS has basically been left by the outgoing Administration to the discretion of the new Administration. I am committed to working with Secretary Peña on this effort. I see it as a very useful tool in transportation decision making and I am interested in being a part of a dialogue between the new director, when appointed, the Department of transportation, and congressional members and staff.

DISADVANTAGED BUSINESS ENTERPRISE

One FHWA program in which I am very interested is the Disadvantaged Business Enterprise (DBE) program. I want to compliment the FHWA on its early role in putting a DBE program into effect. I come from a State that has always exceeded the DBE set-aside goal and that also has a DBE requirement for State work. I am pleased the Department of Transportation has released new proposed DBE regulations which I want to consider. Some of my personal concerns with the program, which I think warrants review, include the graduation of rates of DBEs and DBE bidding problems. I think that FHWA technical assistance to States to provide supportive services could enhance the program. I compliment this Committee and the Congress for putting the initial DBE program into law.

SAFETY

I realize that one of the FHWA's principal obligations is to promote transportation safety. I was pleased to see that the Nation's highway fatality rate had fallen by 1992 to 1.76 deaths per 100 million vehicle miles traveled, an all time low. I am committed to implementing all the safety programs that the FHWA carries out, including the very successful Motor Carrier Safety Assistance Program, and to work closely with FHWA's sister agency, NHTSA, on safety issues.

The ISTEA provided a penalty or transfer provision to encourage States to enact motorcycle helmet and safety-belt-use laws. The Secretary has announced his intention to see that the mandatory safety belt and helmet laws of ISTEA are implemented. If the penalty-transfers become necessary, I would see that the ISTEA's mandates are carried out. I am pleased to note that my home State of Arkansas has passed both the seat belt and helmet laws.

CONCLUSION

I would like to thank this Committee for the consideration it has extended to me, and I thank Secretary Peña and President Clinton for the confidence they have placed in me.

I am ready for the challenge of serving as Federal Highway Administrator. With other modal Administrators and transportation officials, I believe I can serve as a strong transportation advocate. I have a background of varied experiences which will be of benefit. I have had to work with many diverse groups and balance a variety of competing interests.

During the Presidential campaign, I traveled with candidate Clinton across the entire country. The experience provided me with my first opportunity to see most of this vast country-to behold its beauty, to witness its diversity, and to fathom its potential. It opened my eyes to the range of transportation alternatives as we traveled by water taxi in San Diego and by train from Philadelphia to New York, as we motored on the famous bus tours through middle America and as we flew across the country in the closing 29 hours of the campaign to nine cities in eight States. This travel odyssey certainly sharpened my focus on the importance of transportation in America.

I look forward to joining an agency with a history of 100 years of exemplary professional service. I would be proud to follow in the footsteps of dedicated civil servants, such as Bertram D. Tallamy, the first Senate-confirmed Federal Highway Administrator, and Francis C. Turner, a career highway engineer who rose to become the first Federal Highway Administrator in the newly created Department of Transportation.

Again, I wish to thank this Committee for the expeditious consideration of my nomination.

UNITED STATES SENATE
 COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
 STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Slater Rodney Earl
 (Last) (First) (Middle)

Position to which nominated: Federal Highway Administrator Date of Nomination: April 28, 1993

Date of birth: 23-02-55 Place of birth: Tutwiler, Mississippi
 (Day) (Month) (Year)

Marital status: Married Full name of spouse: Cassandra Felecia Wilkins

Name and ages of children: Bridgette Josette Wilkins Slater 6 weeks

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	<u>Lee Senior High School</u>	<u>Sept '70-May '73</u>	<u>Diploma</u>	<u>May '73</u>
	<u>Eastern Michigan University</u>	<u>Aug '73-April '77</u>	<u>B.S.</u>	<u>April '77</u>
	<u>University of Arkansas School of Law</u>	<u>Aug '77-May '80</u>	<u>Juris Doctorate</u>	<u>May '80</u>
	_____	_____	_____	_____
	_____	_____	_____	_____

Employment record: List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

* Assistant Attorney General-Litigation Division, Arkansas State Attorney General's Office, Little Rock, Arkansas, May '80-Merch '82.

* Deputy Campaign Manager, Clinton for Governor Campaign Committee, Little Rock, Arkansas, Mar. '82-Jan. '83. (Took leave from employment on the Governor's staff to serve in the same capacity, Sept. '84-Nov. '84 and Sept. '86-Nov. '86.)

Employment record—Continued

- * Special Assistant to Arkansas Governor Bill Clinton, Office of the Governor, Little Rock, Arkansas, January '83-January '85
- * Executive Assistant to Arkansas Governor Bill Clinton, Office of the Governor, Little Rock, Arkansas, January '85-March '87
- * Director of Governmental Relations, Arkansas State University, Jonesboro, Arkansas, March '87-present, on leave to serve as Intermittent consultant for the Department of Trans.
(Leave taken to work in Clinton Presidential Campaign and currently serves as Intermittent consultant for the Department of Trans.)
- * Deputy Campaign Manager, Clinton for President, Little Rock, Arkansas, Feb. '92-July '92.
- * Deputy Campaign Manager, Clinton-Gore '92 Committee, Little Rock, Arkansas, July '92-Nov. '92.

- * Deputy to Transition Director Warren Christopher, Clinton-Gore Presidential Transition and the Democratic National Committee Services Corporation, Little Rock, Arkansas, Nov. '92-Jan. '93.

Honors and awards:

- List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.
- * National Bar Association President's Award Recipient, 1989
- * Named "Arkansas Hero" by Arkansas Times magazine, December '89
- * Ten Outstanding Young Arkansans Award Recipient, Arkansas Jaycees, Mar. '90
- * W. Harold Flowers Law Society Lawyer-Citizen Award Recipient, June '90
- * Named Arkansas Public Transportation Advocate Award Recipient by the Arkansas Transit Assoc., '90
- * Who's Who Among Black Americans, 1988
- * Outstanding Young Men in America, 1986
- * Eastern Michigan University Young Alumni Award Recipient, 1987
- * Elton Rynerson Grid-Scholar Award Recipient, Eastern Michigan University, 1977
- * Member, Eastern Michigan University National Championship Forensics Team, 1977
- * Eastern Michigan University Top Ten Student Award Recipient, 1977
- * Mid-American Conference All-Academic Football Team, 1975 and 1976
- * Co-Captain, 1976 Eastern Michigan University Football Team

Memberships:

List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Arkansas Highway and Transportation Commission	Chairman	1992 to present
	Member	1987 to present
Arkansas Bar Association	Secretary-Treasurer	1989 to present
W. Harold Flowers Law Society	President	1985-1991
National Bar Association	Member, Judicial Selection Committee	1991
United Way of Greater Jonesboro	Campaign Chair	1991
	President's Advisory	
Winrock International	Council	1991 to present
The Arkansas Institute	Board of Directors	1991 to present

Memberships - Continued

• U. S. Olympic Committee	Arkansas Board of Directors	1991 to present
• AASHTO	Member Executive Committee Special Committee of Commissions & Boards	1987 to present 1991
• SASHTO	Member	1987 to present
• Arkansas Adult Literacy Fund	Advisory Board	1991 to present
• Arkansas Community Foundation	Advisory Board	1991 to present
• Arkansas Advocates for Children & Families	Executive Board	1982 to present
• East Arkansas Area Council Boy Scouts of America	Executive Board	1987 to present
• Commission on Arkansas' Future	Member	1988
• Eastern District of Arkansas Comm. on the Bicentennial of U. S. Constitution	Member	1987
• Dr. Martin Luther King, Jr. Federal Holiday Commission	Arkansas State Liaison	1985 to 1987
• Arkansas Sesquicentennial Commission	Member	1986
• Prince Hall Masons	Member	1982 to present
• NAACP	Member	1980 to present

Qualifications: State fully your qualifications to serve in the position to which you have been named.
See attached statement

Future
employment
relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

No.

3. Has anybody made a commitment to you for a job after you leave government?

No.

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

N/A

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No.

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

N/A

Financial
Statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).
2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

None.

3. Are any assets pledged? (Add schedule).

No.

4. Are you currently a party to any legal action?

No pending law suits against me individually; I am named in three suits in an official capacity involving the Arkansas State Highway Commission.

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

Yes.

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

None.

Potential conflicts of interest:

1. Describe any financial or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

None.

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

I will avoid participation in those matters with which I may have a conflict.

- 5 Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

Please refer to General Counsel's opinion letter dated May 3, 1993.

Political affiliation and activities: List all memberships and offices held in, or financial contributions (in excess of \$1,000), and services rendered to any political party or election committee during the last 10 years.

* Member, Arkansas State Democratic Party

* Former Legal Counsel, Young Democrats of Arkansas

* Member, Democratic Leadership Council

* Member, Arkansas Democratic Black Caucus

While I have made campaign contributions to a number of candidates and to the Democratic Party, I do not recall ever having made a contribution in excess of \$1,000 to any single candidate or to any political entity.

Published writings

List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters)

None.

Additional Matters:

1. If there is any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

I am an individual committed to family, community, and service. I am active in my church and in civic organizations serving the community in which I live, as well as charitable organizations and organizations supporting the causes of civil and human rights.

2. Do you agree to appear before all Congressional Committees which seek your testimony?

Yes.

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No.

AFFIDAVIT

Rodney E. Slater) ss, being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Rodney E. Slater

Subscribed and sworn before me this 6th day of May, 1993.

Forrest D. Rutchey
Notary Public

My Commission Expires 10/31/95

QUALIFICATIONS: State fully your qualifications to serve in the position to which you have been named:

Attachment

My public and private sector experiences have been extensive and diverse, providing me with increasingly complex duties and responsibilities. Since the time of my initial appointment to the staff of the Arkansas Attorney General, I have exercised responsibilities of great magnitude and trust. This position was followed by service on the staff of the Governor of Arkansas, and more recently, in my current position as Director of Governmental Relations at Arkansas State University. As a member and as Chairman of the Arkansas State Highway and Transportation Commission. I have had first-hand experience with decisions effecting every aspect of the Arkansas State Highway system. Each endeavor I have undertaken during my career has provided me with direct involvement in efforts to make government work for the betterment of society.

At the very practical level, and on a daily basis, I presently deal with every facet of the highway world--its legislative mandates, both Federal and State, organized groups which have an interest in the highway decision making process, and the real highway and transportation needs of ordinary people. I also face issues of meeting increasingly complex transportation needs with scarce and limited resources. This, I submit, prepares me well for Federal office with the many demands on the Nation's resources.

My experience has also led me to conclude that today we must think of transportation as an engine of economic growth. Enhanced international competitiveness and environmental concerns are contingent upon our transportation system. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) is an excellent start, emphasizing intermodalism, flexibility and transferability, technology, safety, public and private sector partnerships, and new and greater State and local responsibilities. This Act represents innovative thinking and creative new directions - it is a base on which to build for the future.

I grew up during the beginning years of the Interstate era. Throughout my life, I have seen this system dominate transportation philosophy, policy, and practices. The Interstate System makes it possible for Americans to engage in ever more productive commercial pursuits, to travel easily and quickly throughout our vast country, and to work with one another as members of a national community. This System is the central tie that binds our many communities, towns, cities, and states as a nation.

The President is well aware of my many activities and accomplishments in these various capacities and my personal dedication to public service. He and I have been personally acquainted for over 10 years. Our relationship began in Democratic Party politics in Arkansas, it continued throughout his service as Governor and during his campaign for President. I am deeply honored that he has nominated me to serve in the critical position of Federal Highway Administrator in the Department of Transportation.

I submit that I have the requisite experience, the necessary analytical abilities and temperament, and the managerial skills which qualify me to serve as a team member with Secretary Peña, other modal administrators, Federal executives and career staff at all levels, and our old and new transportation partners. I believe my track record demonstrates that I will manage the Federal Highway Administration in accordance with principles of law and administration, national objectives and sound public policy, and personal integrity and dedication. I look forward to working with the President, Secretary Peña, and the Congress to address America's transportation needs of the 21st Century.

ADDITIONAL QUESTIONS FOR MR. SLATER

QUESTION FROM SENATOR BOB GRAHAM

QUESTION: I was pleased as Governor of Florida to initiate a project which eventually became our Tri-Rail system serving Dade, Broward, and Palm Beach Counties in South Florida. This commuter rail service was designed around an existing rail line to take cars off of an extremely congested segment of Interstate 95.

When commuter rail can operate on an existing right of way, as is the case with Tri-Rail, it does not require new construction through existing neighborhoods. It does not disturb the environment and is beneficial in promoting compliance with the Clean Air Act.

The ISTEA legislation authorizes States to use highway funds for commuter rail projects. However, because commuter rail service has not traditionally been an eligible type of project under the highway program, I am concerned that steps must be taken to ensure that the commuter rail alternative received appropriate attention.

When I raised this matter during Secretary Peña's confirmation hearing, he answered that commuter rail "can be an excellent alternative." Yet, when the FHWA issued proposed planning rules in early March, commuter rail was not mentioned even once as a possible use of highway funds even though it is specifically included in section 3010 of the statute.

I would like your assurance that you will consider comments in the FHWA planning rules docket on this matter.

ANSWER: I can assure you that I will examine the proposed rule and the docket comments. I understand that a reference in the proposed regulation to a "fixed guideway transit facility" could include "commuter rail."

I assure you that all comments on these regulations will be considered in the development of a final rule. I understand that the FHWA has already received at least one comment suggesting that commuter rail should receive greater visibility in the final rule.

QUESTION FROM SENATOR BARBARA BOXER

QUESTION: Section 4(f) of the U.S. Transportation Act of 1966 (49 U.S.C. 303) prohibits the Secretary of Transportation from approving use, for highway purposes, of any park land, recreation area, or wildlife or water fowl refuge, or any land from an historic site unless there is no feasible and prudent alternative.

The record of the Federal Highway Administration in following this law has been spotty at best. The National Trust for Historic Preservation has recently accused the agency of failing to develop and sufficiently analyze a "low build" alternative for the Highway 710 project in Los Angeles, where construction of an eight-lane highway would divide the city of South Pasadena and destroy more than 30 historic properties and five National Register historic districts.

What do you plan to do as administrator to ensure that the FHWA will abide by the provisions of section 4(f) and that all "feasible and prudent" alternatives to a highway project are fully investigated?

ANSWER: "Section 4(f)" has been part of the law since the establishment of the Department of Transportation in 1966. The FHWA has extensive regulations, policies and practices regarding this important requirement. As Federal Highway Administrator, I intend to require the full implementation of section 4(f).

The Route 710 project will soon be before the FHWA for decision. Before the FHWA acts on the project, we must consider a number of issues, not the least of which is a referral of the project to the Council on Environmental Quality by the Advisory Council on Historic Preservation. The adequacy of the analysis of alternatives, including low build alternatives, will be considered before the FHWA takes any action with respect to this project. I will keep you and the Committee informed of the status of this controversy.

QUESTIONS FROM SENATOR JOHN H. CHAFEE

QUESTION 1. ISTEA PLANNING REQUIREMENTS

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) created new responsibilities for local governments through the Metropolitan Planning Organizations (MPOs). Information we are getting back from local officials suggests that some States and localities are working well with this new structure and some not so well.

What can you do at the Federal Highway Administration to make sure that MPOs have the necessary information, technical expertise and assistance, and cooperation from State and Federal officials to make this process work so that effective transportation planning can occur?

ANSWER: A great deal, I believe. The FHWA, in collaboration with the FTA and other modal administrations as appropriate, has substantially enhanced its research and technical assistance activities in support of States and MPOs in the implementation of ISTEA planning requirements. The agency has engaged in a national public outreach program to solicit input from interested parties, including States and MPOs, in the development of the regulations that implement the ISTEA. This effort has been supplemented by sponsoring national conferences to develop and identify the best practices in transportation planning (including air quality) to provide assistance to State and local transportation planners. Additionally, FHWA officials have made presentations at national meetings and conferences on the expectations of the legislation and the requirements imposed on all agencies in its implementation.

Internally, the FHWA, in cooperation with the FTA, has initiated a number of processes to minimize burdensome administrative requirements, including simplifying project review, where possible. The agency has jointly issued guidance on metropolitan and statewide planning and utilization of flexible funding to assist our partners in fulfilling the responsibilities under the ISTEA and utilizing the tools and techniques provided by Congress.

I believe that the full implementation of the ISTEA will necessarily involve an ISTEA learning curve to permit MPOs and States to "gear up" to their new responsibilities. I am personally committed to working with FHWA partners to identify new methods to assist them, including appropriate professional development training opportunities, staffing resources, and technical assistance. The success of the Federal effort is tied to the success of our partners in meeting their obligations.

QUESTION 2. TRANSPORTATION ENHANCEMENT PROGRAM

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) requires that States spend at least 10 percent of their Surface Transportation Program (STP) funds on transportation enhancements. Some States are taking this program seriously and setting up mechanisms to take proposals from a wide variety of groups. Other States are seeking to count other environmental requirements required by law prior to ISTEA which they would have to do anyway.

The purpose of this program was to recognize the impact transportation projects have on local communities, and to provide money to improve the community as transportation investments are made. How will the Federal Highway Administration monitor the State's implementation of the transportation enhancements program?

ANSWER: First, let me say that I am proud that I was involved as a member of the Arkansas Highway Commission with efforts to utilize the transportation enhancement provisions of ISTEA. We were successful in committing \$1 million of enhancement funds for a fine rails-to-trails project in the Arkansas Delta region.

Since the new transportation enhancement authority was created by the ISTEA, I understand that the FHWA field offices are devoting a considerable amount of time to assisting State DOTs in setting up mechanisms for the use of these funds and in establishing understandings on the eligibility of specific activities for transportation enhancement funding. I would support that effort.

What the FHWA has stressed to the State DOTs is that normal mitigation work associated with minimizing highway project impacts does not qualify to be financed with the funds set aside for transportation enhancements. The FHWA field staff also stress the need for decision-making on transportation enhancements and integrating them into the metropolitan and statewide planning processes. I would see that this point is further emphasized in the implementation of the new planning rules.

At the national level, the FHWA is continuously monitoring the rate of obligation of funds for transportation enhancements, collecting year-end data on funds used by category of transportation enhancement, assembling information on State processes, and compiling project-specific information on a small sample of projects. The Headquarters staff also routinely consults with field offices, State DOT representatives and interested outside parties on program and project-specific issues. I believe that the FHWA should continue to share information both inside and outside of Government on progress made in implementing the transportation enhancement provisions. I believe that day-to-day monitoring and information sharing will enable the

FHWA to stay on top of this area and to promote those approaches and endeavors that are most successful.

QUESTION 3. IMPLEMENTATION OF NEW ISTE A PROGRAMS

In fiscal year 1992, States spent 90 percent of their Interstate Maintenance funds, 94 percent of their National Highway Funds, 70 percent of their Surface Transportation Program funds, 42 percent of their Congestion Mitigation and Air Quality Program funds, and 22 percent of their transportation enhancement funds.

The variation of spending in the different categories may be due partly to the fact that States tended to have the more traditional highway projects on the shelf ready-to-go. These projects fit into the Interstate Maintenance and National Highway System categories most easily, and these are also the categories where the State has control over the decision-making process. There is also some concern that it may be due partly to the fact that the Federal Highway Administration has not issued any regulations and little guidance on the new, more innovative programs.

How will you facilitate the implementation of these new programs and what kind of data do you believe should be collected to monitor these programs?

ANSWER: I believe that the FHWA has actively worked at all levels to facilitate the implementation of the new ISTE A programs. I am in the process of reviewing their interim guidance and will see that further guidance is timely issued and regulations issued where necessary. Secretary Peña has stated that prompt issuance of regulations is one of his principal concerns and it will be mine also.

I am conferring with the FHWA staff on establishing a fiscal monitoring system to track all categories of obligations in some detail and collecting case studies of good examples for dissemination to all States.

QUESTION 4. TRANSFERABILITY BETWEEN HIGHWAY AND TRANSIT PROGRAMS

One of the major changes made by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) is the transferability of funds between the highway and transit programs. The purpose of this provision is to provide a "level playing field" when decisions are made on how to solve a transportation problem.

There are some, particularly in the highway community, who do not believe that ability to transfer is a good idea. They view it as a diversion of money that should be spent on highway projects.

What is your view of the ability to transfer funds between the highway and transit program, and what kind of message will the Federal Highway Administration send out to the highway and transit communities on this issue?

ANSWER: I fully support the ISTE A provisions which gave the States considerable flexibility in using highway resources to fund capital transit facilities, as well as the flexibility to fund highway projects with transit funds. Creation of this two-way flow between programs gives State and local officials the opportunity to direct their Federal resources to the more pressing highway and/or transit improvement needs they face.

The Federal Highway Administration should work with the Federal Transit Administration on implementing procedures to help streamline these transfers so that funds can be obligated in an efficient and timely manner. With this new transfer process in place, I believe we should now look to the States and the cities to decide to what extent they want to exercise the options available to them.

QUESTION 5. BUREAU OF TRANSPORTATION STATISTICS AND DATA COLLECTION

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) created the Bureau of Transportation Statistics. To date, the Department has done little to organize the Bureau. The Federal Highway Administration has also not done very much to set up mechanisms to collect information that will be helpful in analyzing the effect of new programs created in ISTE A like transportation enhancements, the Surface Transportation Program (STP), and the Congestion Mitigation and Air Quality Program (CMAQ).

How do you intend to use the Bureau of Transportation Statistics to collect and analyze data to determine the effectiveness of the transportation program? And how will you make sure that the analysis looks not just at how well we provide mobility for cars and trucks, but at how well we provide mobility for people and goods, and if we are doing it in an environmentally responsible way?

ANSWER: The Bureau of Transportation Statistics (BTS) was formally established in December 1992 at the close of the prior Administration and is now in the organization and staffing stages. As you are probably aware, the BTS is designed to

be an independent agency within the DOT framework. The Federal Highway Administration is, however, already working closely with the new Bureau in a number of activities. These include, for example, issues associated with the use of Census data (both 1990 and 2000) in transportation/air quality planning; the Commodity Flow Survey; pulling together, for better user accessibility, a depository of transportation data from various DOT sources; and in the design of new surveys of nationwide passenger movement. We anticipate, in the coming year, increasing cooperative efforts as BTS undertakes new initiatives.

I intend to work closely with the BTS and with the Administrators of the other modal agencies to insure compatibility and reliability of cross-modal data. I expect BTS analyses to assist us in evaluating multimodal commodity flows and passenger movements. I anticipate that the BTS will tap a wide array of sources, including data collected by the modes, Census information, and uniquely commissioned surveys.

With regard to the new programs associated with ISTEA, data collection mechanisms are being established. For instance, an interim reporting mechanism was put in place in 1992 to collect fiscal year 1992 data for the Surface Transportation Program. Final innovations are now being incorporated into our standard reporting procedures. In addition, data collection procedures for programs, such as the Congestion Mitigation and Air Quality Program (CMAQ) and Transportation Enhancements, are currently being considered in conjunction with changes in our Fiscal Management Information System, our core program database.

On the broader issue of effectiveness of the transportation program, the Federal Highway Administration, in cooperation with the States and metropolitan planning organizations (MPO's), is currently in the process of implementing significant changes to the Highway Performance Monitoring System (HPMS). National workshops discussing the new data reporting procedures with all States have just been completed. This effort is closely coordinated with the six management systems to be established under ISTEA requirements. These data, coupled with the output of the freight and passenger movement surveys being conducted by BTS, should provide excellent insights on the Nation's mobility and the resultant environmental impact.

QUESTION 6. CONGESTION PRICING

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) created a pilot program for several congestion pricing projects.

What is your view on the potential of using congestion pricing mechanisms to make our transportation system more efficient, and to reduce the need for new or expanded highways?

ANSWER: Congestion pricing is not a substitute for necessary capacity increases, but is viewed as a way to encourage more effective use of existing facilities. Since congestion pricing involves charging vehicles for road use according to location, time of day and extent of congestion, it can rationalize the use of limited road capacity by encouraging some peak period road users to shift to off-peak periods, to high occupancy vehicle modes, including transit, to less congested routes, and/or to make more efficient trip decisions.

Despite its widespread acceptance among transportation economists, congestion pricing has not really entered the public domain as an instrument of transportation policy. There are several reasons for this lack of public acceptance, including that highway users in the United States have never been faced with paying extra charges for the use of congested highways, even though congestion charges have been successfully applied in many other areas, including long-distance telephone service, airline pricing, resort services, and theaters.

Successful implementation of congestion pricing pilot projects will require a substantial effort to explain the objectives of congestion pricing, to ensure public participation in the development of projects, and to overcome legal and institutional barriers. The overall objective of the Pilot Program is to monitor, evaluate, and report on the various effects of congestion pricing. The successful implementation of pilot projects should provide the transportation community with much-needed information on the efficiency and effectiveness of congestion pricing. I intend to study these pilot projects and will work with the Committee on evaluating and expanding the congestion pricing concept.

QUESTION 7. BILLBOARD BAN ON SCENIC HIGHWAYS

ISTEA includes a provision that prohibits any new billboards on scenic highways. Now the billboard industry is saying the Federal Highway Administration is not interpreting this provision correctly because Congress really did not mean to ban bill-

boards from scenic highways in areas that are zoned commercial or industrial or in areas where there is commercial or industrial use.

The ban can only apply to commercial and industrial areas because the Highway Beautification Act already prohibits new off-premise billboards in all other areas on Interstate and what used to be Federal-aid primary highways. I can assure you that the conferees were very clear that there were to be no new billboards on scenic highways. How do you intend to protect our scenic corridors to make sure that no new billboards are permitted?

ANSWER: The Federal Highway Administration Headquarters, by memorandum to its field offices, and through them to the States, and through a *Federal Register* notice, has advised the States of the prohibition of new billboards on scenic highways. The FHWA's Office of the Chief Counsel concurs in the validity of this interpretation of the ISTEA amendment of 23 U.S.C. 131(s). The FHWA has also advised the States of the necessity for their review of their laws to determine if additional State legislation is needed to implement the prohibition of new billboards on scenic highways. I understand that further guidance is under consideration and I will see that its development will be coordinated with this Committee.

QUESTION 8. IFTA AND IRP PROGRAMS

The ISTEA requires all States to participate in the International Fuel Tax Agreement (IFTA) and the International Registration Plan (IRP). In order to assist those States who were not members of IFTA and IRP in the transition period, a grant program was authorized in ISTEA. Rhode Island is one of four States that was not a member of either IFTA or IRP. Rhode Island will experience a loss of revenues in giving up its own programs and will also experience significant start-up costs in order to participate in IFTA and IRP. The grant money available in FY 1992 was divided up among the States equally, whether or not they have been members of IFTA and IRP.

The Federal Highway Administration will be making a decision soon on how to allocate the FY 1993 grant funds. I believe the intent of the ISTEA provision was to provide a significant portion of the funds to the States who have not participated in IFTA and IRP to help them enter these programs. How do you plan to provide sufficient revenues to the States, particularly those who are not members of both IFTA and IRP, to comply with this Federal mandate?

ANSWER: Section 4008 of the ISTEA provides that by September 30, 1996, all States must join IRP and IFTA or risk the loss of revenues from trucks and buses registered in other States. In addition to this mandate, section 4008 of the ISTEA also required the establishment of a working group comprised of State officials to assist States in their efforts to join IRP and IFTA and provide recommendations on resolving disputes among the States. A representative from Rhode Island serves as a member of the working group. The FHWA has looked to the working group to provide recommendations on how the uniformity grant funds should be distributed.

In FY 1992, the uniformity grant funds were distributed equally among the States. In FY 1993, the working group has recommended that additional funding be provided to those States that are not members of the IRP or IFTA in an effort to facilitate membership. The FHWA has accepted the working group recommendation for FY 1993 and will be negotiating grant agreements with all States shortly. I would concur in that decision.

QUESTIONS FROM SENATOR SIMPSON

Question: First, while I am certain that you have had much to learn to get "up to speed" on the various programs within the Highway Administration, there is one in particular that I feel strongly about and would draw your attention to. In the statement that I will be submitting for the record, I make reference to the fine research being conducted at the Western Research Institute (WRI) at the University of Wyoming at Laramie, Wyoming. I would first ask you simply whether or not you are familiar with the breadth and the quality of research being done at WRI with the invaluable assistance of the Federal Highway Administration?

Answer: Yes, I am aware of the capabilities of the Western Research Institute (WRI) and the work they are doing.

Question: Secondly, I am aware that my colleagues on the Committee, in particular, Senator Faircloth, questioned you a great length about the durability and practicality of rubberized asphalt as a paving material. Currently, some experience with rubberized asphalts, apparently, have shown them to be unreliable and not durable while others—in Arizona, for example—have shown quite the opposite results and have been fairly successful.

There are two contracts that the FHWA has entered into with the WRI in Laramie, Wyoming, regarding research devoted to better understanding of the chemistry to improve bonding techniques and, I am informed, develop other methods of "rubberizing" asphalt through chemical, rather than physical methods. In addition, this research examines the environmental factors which affect the utility of rubberized asphalt.

I would ask you, then, in light of the experiences described by Senator Faircloth, whether you believe that research conducted at WRI will be reasonably assured of continued—and perhaps, additional—support from the FHWA on this particularly important matter?

Answer: The FHWA has a major program in place at WRI on the fundamental aspects of asphalt materials and mixtures in response to the requirements of Section 6016 of the ISTEA. It will continue for four more years. I will certainly look very seriously at the work product of WRI after the completion of the study underway to determine if further study is necessary.

QUESTIONS FROM SENATOR DAVE DURENBERGER

QUESTION: NATIONAL HIGHWAY SYSTEM

As you know, Congress passed the Intermodal Surface Transportation Efficiency Act of 1991, including provisions for a National Highway System. Are you supportive of the concept that the Federal Government must preserve the existing system and turn its attention toward preserving and improving the system and now supports 40 percent of all highway travel and 75 percent of all commerce travel? I ask this question because Congress will readdress this issue when we must approve the final designated routes. And, because as the Federal Highway Administrator you will be responsible for working with State, local and regional officials to form the final map.

ANSWER: Yes, I fully support the concept that the Federal-aid highway program should now focus Federal interest on preserving the extensive investment that has been made in the Interstate System and in improving other major routes serving interstate and interregional travel. The NHS program provides the means to achieve this objective. I believe there are many arguments for an NHS, not the least of which is the critical role that the system can play as the backbone of an intermodal transportation system that will keep the United States competitive in the global market. By focusing the Federal highway investment on this system, the citizens of this country will be assured of systemwide benefits to meet their transportation needs.

QUESTION: Secondly, my State of Minnesota has relayed some concern that there is no formal process to amend the State submitted NHS maps if necessary. As stated above, ISTEA does require the Department to work with State, local and regional officials to form the final map. Do you foresee the need to establish any guidelines for such input?

ANSWER: I understand that the FHWA is working closely with the States to develop the proposed NHS that will be submitted to Congress in December 1993. Although Minnesota has already submitted its proposed routes to the FHWA, there is still a great deal of work that remains before the proposed NHS is submitted to Congress. During the next few months, the FHWA will continue consultation with the States and will meet with the national organizations representing local and regional officials such as the National League of Cities, the National Conference of Mayors, the National Association of Regional Councils, as well as the American Association of State Highway and Transportation Officials, to discuss the NHS.

I do not believe that formal guidelines are needed in order to obtain this input. The development of the proposed NHS is an open process. The FHWA invites and has received input from many interested parties and will continue to do so until the proposed system is submitted to Congress. I am strongly committed to presenting the best possible system to Congress and that involvement will not end when the proposed system is submitted. I am planning to work closely with the various committees to provide supplemental information and any necessary revisions that may be appropriate.

QUESTION: MOTORCYCLE HELMETS AND SEAT BELTS

In passing the Intermodal Surface Transportation Efficiency Act of 1991, Congress recognized that State and local officials are best able to set transportation priorities to address their unique needs. Yet the law includes a provision that erodes the basic principle of flexibility established by the same.

Our end goal is important—to ensure that our transportation infrastructure is safe. This goal is important to the productivity of our system. However, it is not the goal that concerns me. It is the way we are trying to get there that does. The fact that Minnesota is ranked one of the safest States to ride a motorcycle in exemplifies that it is not necessarily helmet laws that achieve that goal.

I understand that you have been an advocate of personal and civil rights throughout your career. And I'm sure, like me, you would encourage individuals to wear helmets regardless of State or Federal laws. As you know, under current law, which I respect that both this committee, the full Senate and House have passed, the Federal Government will penalize States that decide not to pass such State laws.

As the members of this committee are well aware, I would prefer that the Federal Government maintain its grant incentive program to encourage the passage of and compliance with safety belt and helmet usage laws. However, I don't believe we in Congress should be telling the States where they must spend their money in the event they choose not to pass both laws. Do you agree that it is more productive and successful to provide guidance through positive incentives rather than dictating policy by micromanaging Federal dollars?

ANSWER: While I totally agree that the use of positive incentives is productive when interacting with the States on safety issues, it is the responsibility of the Executive agencies to carry out the intent of Congress when administering their programs.

However, I do want to highlight that in the case of the safety belt and motorcycle helmet use law, the law calls for a transfer of funds as opposed to a withholding penalty. Within this context, funds transferred to the Section 402 highway safety program can be used on a wide variety of highway safety initiatives and will have a significant positive impact on the traffic fatality rate of the State involved as well as the Nation as a whole.

QUESTION: CRUMB RUBBER MODIFIED ASPHALT

1. Section 1038 of ISTEA establishes minimum requirements for the use of scrap rubber tires in hot mix asphalt. AASHTO estimates that this requirement will cost \$1 billion annually. Does the FHWA agree with this estimate?

ANSWER: It is my understanding that the cost of rubber modified asphalt can range from 20 percent to 100 percent more than conventional asphalt pavement. If you estimate that 200 million tons of asphalt pavement are involved in Federal-aid funding using a 20 percent utilization requirement, at an extra \$25 per ton results in a \$1 billion extra cost. These figures could very well vary in either direction once widespread usage is underway.

QUESTION:

2. Minnesota imports and exports tires to and from North Dakota, South Dakota, Wisconsin and Iowa. The Minnesota Pollution Control Agency (PAC) anticipates that price increases of crumb rubber modified (CRM) asphalt and of other uses, especially Tire Derived Fuel, will increase as the new legislation demand is met.

MnDOT reports that 80 percent of the State's processed tires are used for fuel, 12 percent for light weight fills and 8 percent for CRM. Do you envision that this is the type of situation that would warrant a request for the Department to reduce the minimum utilization requirement?

ANSWER: A reduction in the minimum utilization requirement requires a finding that there is not a sufficient quality of scrap tires available in a State to meet the minimum utilization requirement. It is my understanding from FHWA staff that consideration would have to be given to the quantity of scrap tires in stockpiles, and the quantity of scrap tires expected to be generated during the year, from which would be subtracted the quantity of scrap tires committed to be recycled through processes, such as energy recovery. If the remaining quantity of scrap tires is less than is required to meet the minimum utilization requirement, the requirement would be lowered to equal the quantity of scrap tires available.

QUESTION:

3. I understand that some States are requesting that the use of scrap tires be broadened to include other transportation uses? Is this something that could be addressed through regulatory process?

ANSWER: Section 1038 recognizes the use of recycled rubber in asphalt pavement only to meet the minimum utilization requirements. There is no prohibition on the use of scrap tires for other transportation uses, but they would not count against the minimum utilization requirement. Such a change could not be accomplished through the regulatory process.

QUESTIONS FROM SENATOR JOHN WARNER

QUESTION: As you know, ISTEA provides a 90 percent minimum allocation to each State which is a recognition that the current formula used to apportion funds from the Highway Trust Fund is inaccurate and unfair.

The 90 percent minimum allocation was a policy that many Senators fought very hard for and whose States depend on this program.

I want to know if you are committed to this program to ensure that each State will receive no less than their 90 percent minimum allocation throughout the life of ISTEA.

ANSWER: Yes. I am committed to work with the Congress in seeing that the ISTEA is properly implemented. My commitment includes implementation of the minimum allocation provision.

As you are aware, Congress included this provision in ISTEA to achieve equity in funding levels among the States. The particular section to which you are referring increases the guaranteed amount each State is to receive of certain apportionments and prior year allocations to 90 percent of the percentage of its estimated contributions to the Highway Account of the Highway Trust Fund.

Question: While the number of highway-related fatalities has been reduced in recent years because of Federal safety belt and speed limit laws—all of which I have supported—the number of persons who lose their lives or are critically injured on our nation's highways each year is still much too high.

Recent figures released by the Department indicate that more than 40,000 persons are killed and another five million persons are injured each year in traffic accidents.

Do you have any thoughts on other initiatives that can be pursued to improve the safety of our highways and reduce this tremendous cost to our economy?

Answer: Highway safety issues require cooperative and interactive programs involving driver, vehicle, and roadway-related countermeasures. In addition to safety belt and speed compliance and control, coordinated efforts are underway or are being initiated in a number of program areas. The Safety Management System—mandated by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)—will serve as the umbrella for all future safety initiatives. I believe this will greatly increase the efficiency of State and local highway safety programs throughout the country. As the lead agency in this multi-modal effort, the FHWA must continue to seek ways to work cooperatively with the Federal Railroad Administration (FRA), the Federal Transit Administration (FTA), and the National Highway Traffic Safety Administration (NHTSA).

Additionally, I believe the FHWA must continue to broaden its working relationship with the NHTSA on coordinated safety initiatives in such areas as Pedestrian and Bicycle Safety, Corridor and Community Highway Safety Programs, Commercial Vehicle Safety, Red Light Running, Older Driver Safety, and Public Awareness/Education Programs.

I am very supportive of the intermodal safety initiatives underway and, as Federal Highway Administrator, I would be a strong advocate for continuing and broadening these initiatives.

I believe that innovative approaches are needed to implement recent legislative requirements concerning speed compliance and control, hazardous materials routing, traffic control device improvements, and work zone safety. In other areas, roadway geometrics, roadside features, and traffic operational practices are all important elements in the safe movement of vehicles, people, and goods over the Nation's highways.

Technology also must be among the solutions for highway safety, especially in the long run. Initiatives are underway through the Intelligent Vehicle-Highway System (IVHS) program to apply advanced technology to improve highway safety, solve congestion problems, and reduce damage to the environment.

I am pleased to report that the FHWA is also actively working with the FRA to improve the safety of our rail-highway grade crossings by closing unnecessary crossings, providing active warning devices at the more hazardous crossings, and assisting in correcting hazards in high-speed rail corridors. I strongly support this effort.

These and other initiatives will contribute significantly to a reduction in deaths, injuries, and property damage and will result in reduced health care costs, increased productivity, and a stronger economy. I will see that these ongoing efforts are effectively continued and enhanced.

STATEMENT OF DAVID GARDINER

Mr. Chairman, Members of the Committee, it is a great honor to be here today as President Clinton's and Administrator Browner's nominee for Assistant Administrator for Policy, Planning, and Evaluation at the Environmental Protection Agency. If confirmed, I am looking forward to the privilege of serving President Clinton, Administrator Browner, and the American people, and I look forward to the challenges which lie ahead.

I have had the chance to witness what effective, cooperative efforts for environmental protection can do for the quality of people's lives in this country. My father's family home is on the banks of the Kennebec River in the state of Maine. When I was growing up, we could not swim in it because it was too polluted. Now, as a result of the joint efforts of thousands of people and of the Clean Water Act, my father, my children, and I swim in the Kennebec River, and the salmon and sturgeon are coming back. At the Environmental Protection Agency, I hope that I can help improve the quality of peoples' lives as much as the clean up of the Kennebec River has improved the quality of my family's life.

I thought that it might be most useful if I highlighted some of the key experiences and beliefs which, if confirmed by the Senate, I would bring to the Environmental Protection Agency.

The Assistant Administrator for Policy, Planning, and Evaluation must have policy expertise. For the past fifteen years at the Sierra Club, I have gained a wide breadth of policy experience and knowledge. From clean air to ecosystem protection, from trade policy to hazardous waste, I have participated in many environmental policy debates and have a broad understanding of the complexity of these issues.

For the past twelve years, my primary responsibility has been to work with the Congress on major environmental initiatives. My work in this area has taught me that the Congress must be a full partner in the development of environmental policy, and I remain committed to working with this Committee and others in the Congress to strengthen that partnership.

During the late 1980's, I led an effort to bring together two unusual bedfellows—the natural gas industry and the environmental community. We held a series of dialogue sessions to examine the extent to which we might agree on the common goal of improving our nation's air quality. Although the dialogue did not lead to a grand agreement, it did broaden the understanding of all parties and increased support for the passage of the 1990 Clean Air Act amendments. The effort also taught me much which I hope I will bring to my work at the Environmental Protection Agency.

I learned that many in the business community are as committed to environmental protection as I am. I also learned that the barriers between people who are in disagreement can only be broken down through sustained, patient dialogue.

I am convinced that we must open, as Administrator Browner said in her confirmation hearing, "a new era in communication between EPA and America's business community, between environmentalists and business leaders". We must break down the adversarial relationship which now exists between EPA and its stakeholders. Together with Administrator Browner, I am committed to examine the real complexities of environmental and business problems so that we can achieve the common goals of a strong economy and a healthy environment.

These are challenging times for the Environmental Protection Agency. The Administrator has identified several exciting and ambitious challenges for the Agency and, if I am confirmed, I intend to offer my assistance to help her achieve them. The Administrator's goals include establishing:

First, that pollution prevention is a cornerstone of all of EPA's programs so that our industries have every incentive to minimize waste and prevent pollution before it gets started. We must lessen our reliance on end-of-pipe controls and use pollution prevention policies to stimulate the technological innovation that we need for economic growth.

Second, ecosystem protection (or the protection of entire natural systems) must be an objective of EPA's programs because of its direct connection to the protection of human health. Ecosystem protection can also shift EPA's focus to what the public really cares about—protecting the environment in their communities. Third, developing innovative environmental technologies must become a part of EPA's daily mission. Only through these new technologies can we clean up our environment at low cost and stimulate the innovation necessary to make American industry competitive in world markets.

Fourth, EPA's mission cannot succeed if it does not repair and strengthen its partnerships with all parts of government—federal, state and local. A strong federal, state and local partnership will strengthen our environmental infra-

structure, streamline decisionmaking and use federal resources to better support State programs.

And finally, environmental justice must be a guiding principle for decision making at EPA. EPA must be vigilant so that every American gets what is rightfully theirs equal protection from the hazards of pollution.

The Office of Policy, Planning, and Evaluation has an important role to play in implementing the Administrator's goals. It promotes the integration of goals such as ecosystem protection which cut across different programs within the Agency, and which do not fall neatly into the major program areas of air, water, waste and toxics. The Office has a similar responsibility to promote the coordination of EPA's policies with other parts of the federal government with major environmental responsibilities such as the Department of Transportation or Agriculture. The Office also is home to the Agency's strategic planning function, and is currently assisting the Administrator in two of her significant initiatives—a complete "base review" of the entire EPA budget as well as efforts to improve the overall manner in which the Agency develops regulations.

In conclusion, I would note that, during the past several months as I have worked as a consultant to the Agency pending Senate confirmation, I have met many of the career civil servants within OPPE and across the Agency. They have impressed me as talented, hard-working servants of the American public. If confirmed, I look forward to working with them to protect our environment' and strengthen our economy.

Thank you very much and I would be pleased to answer your questions.

UNITED STATES SENATE
 COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
 STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Gardiner David McLane
(Last) (First) (Middle)

Position to which nominated: Assistant Administrator for Policy, Date of April 2, 1993
Planning and Evaluation Nomination:

Date of birth: 25/4/55 Place of birth: Boston, Massachusetts
(Day) (Month) (Year)

Marital status: Married Full name of spouse: Elizabeth Sullivan Gardiner

Name and ages of children:

<u>Katherine Sullivan Gardiner</u>	<u>10</u>
<u>Anna McLane Gardiner</u>	<u>8</u>
<u>Robin Walters Gardiner</u>	<u>3</u>

Education:

<u>Institution</u>	<u>Dates attended</u>	<u>Degrees received</u>	<u>Dates of degrees</u>
<u>Harvard College</u>	<u>9/73-6/77</u>	<u>B.A., History</u>	<u>6/77</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Employment record:

List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

12/83-2/93, Sierra Club, Washington, D.C., Legislative Director
1/81-12/83, Sierra Club, Washington, D.C., Washington Representative
3/78-11/80, Sierra Club, San Francisco, CA, Field Coordinator
3/80-12/80, California League of Conservation Voters, Consultant
10/77-3/78, Quality Inn By-The-Bay, San Francisco, CA, Waiter

Employment record—Continued

Honors and awards:

List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

None

Memberships:

List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
League of Conservation Voters	Director	11/89 - 3/93
Americans for the Environment	Director	86 -- 12/92

Qualifications: State fully your qualifications to serve in the position to which you have been named. In various capacities with the Sierra Club in the past fifteen years,
I have worked on array of environmental policy matters, including the
Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act,
Superfund, ecosystem protection, global warming, energy policy, and
international environmental policy such as trade and the activities of
the multi-lateral development banks. In addition, I have considerable
non-profit management experience, including supervising a staff of
35 and budget of over \$2 million.

Future
 employment
 relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.
Yes. I have already severed all connection with the Sierra Club.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

I have no plans to do so.

3. Has anybody made a commitment to you for a job after you leave government?

No.

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

N/A

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No.

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

No.

Financial
Statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).
2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

None.

3. Are any assets pledged? (Add schedule).

No.

4. Are you currently a party to any legal action?

No.

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

Yes.

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

Not to my knowledge.

- Potential conflicts of interest: 1. Describe any financial or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

See attached Ethics Agreement

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

None

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

See attached Ethics Agreement

- 5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

See attached Ethics Agreement

Political affiliation and activities: List all memberships and offices held in, or financial contributions (in excess of \$1,000), and services rendered to any political party or election committee during the last 10 years.

League of Conservation Voters, Director 1/69 - 3/93

Member, Democratic National Committee

Member, Democratic Party of Virginia

Member, Steering Committee, Environmentalists for Clinton-Gore

Published writings:

List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters.)

Victory and Vacillation, Sierra magazine, January/February, 1985.

Additional Matters:

1. If there is any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

See attached

2. Do you agree to appear before all Congressional Committees which seek your testimony?

Yes.

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No.

AFFIDAVIT

DAVID McLANE GARDNER, ss, being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

David McLane Gardner

Subscribed and sworn before me this 5th day of May

1983 **MICHAEL A. KEMP**
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires September 14, 1997

Michael A. Kemp
Notary Public

In early February of this year, my wife and I first learned that we were obligated to pay Social Security taxes for various neighborhood babysitters (most frequently young teenagers) whom we have periodically hired to come into our home to care for our children, as well as for several women who came to clean our house in 1982 - 1984. Up until early February, we had been unaware of our legal obligation to pay Social Security taxes for these occasional services.

Since learning of our legal obligation to pay Social Security taxes, we have since been making every effort to comply with the law. I expect, by the time of my confirmation hearing, to be in full compliance with the law, including paying any and all back taxes and penalties. I plan to provide the Committee and the White House Counsel with an updated statement which will indicate final details of these matters.

I have attached the most recent communication from our lawyer to the White House Counsel regarding the status of our efforts to comply with the law. I would be happy to provide the Committee with any further information on this matter which it may desire.

LAW OFFICES
Hazel & Thomas
 A PROFESSIONAL CORPORATION

FAIRFAX OFFICE
 3110 FAIRVIEW PARK DRIVE, SUITE 1400
 P.O. BOX 13001
 FALLS CHURCH, VIRGINIA 22042
 (703) 641-4800

LEESBURG OFFICE
 SUITE 200
 4400A RIVERSIDE BARIMAT
 LEESBURG, VIRGINIA 22075
 (703) 720-8500

NANASAS OFFICE
 THE OLD FREDMONT BUILDING
 THIRD FLOOR
 825A WEST STREET
 NANASAS, VIRGINIA 22110
 (703) 230-7400

ALEXANDRIA OFFICE
 810 KING STREET, SUITE 200
 P.O. BOX 820
 ALEXANDRIA, VIRGINIA 22313
 (703) 636-8400
 FAX (703) 636-8082

Direct Dial (703) 636-3119

RICHMOND OFFICE
 411 EAST FRANKLIN STREET, SUITE 800
 P.O. BOX 788
 RICHMOND, VIRGINIA 23206
 (804) 344-8400

WINCHESTER OFFICE
 107 NORTH RENT STREET, FOURTH FLOOR
 P.O. BOX 2746
 WINCHESTER, VIRGINIA 22064
 (703) 889-0050

MARYLAND OFFICE
 SUITE 2100
 120 EAST BALTIMORE STREET
 BALTIMORE, MARYLAND 21202
 (410) 782-2500

WASHINGTON OFFICE
 SUITE 400
 2001 PENNSYLVANIA AVENUE, N.W.
 WASHINGTON, D.C. 20006
 (800) 889-7000

March 22, 1993

Gary Ginsburg, Esquire
 Office of the Counsel to the President
 The White House
 Old Executive Office Building
 1600 Pennsylvania Avenue, N.W.
 Washington, D.C. 20500

Re: David M. Gardiner - Nominee for Assistant EPA
 Administrator for OPPE

Dear Mr. Ginsburg:

This firm represents David M. Gardiner with respect to his appointment as Assistant EPA Administrator for Policy, Planning and Evaluation. I have been counseling Mr. Gardiner over the last several weeks with regard to that appointment, including consulting with him concerning issues relating to the payment of social security taxes and other applicable issues associated with his past hiring of household employees.

As you know from your conversations with Mr. Gardiner, and as was fully disclosed in all of Mr. Gardiner's pre-appointment documentation, Mr. Gardiner and his wife have, over the last several years, employed several household employees. I set forth below a description of each employment situation, and the current status of Mr. Gardiner's efforts to ensure his compliance with all applicable laws and regulations.

In the early 1980's, specifically late 1982 through 1983, Mr. Gardiner and his wife employed a woman to come into their home once a week to clean it. She died shortly after leaving the Gardiners' employ. The Gardiners never knew, and never inquired, whether this woman was a legal resident of this country. At the time of her employment by the Gardiners, there was no prohibition against hiring illegal aliens, and thus no reason for them to make such an inquiry.

Gary Ginsburg, Esquire
March 22, 1993
Page 2

Shortly after the Gardiners ceased employing the woman described above, a second woman came into their home to clean several times. Their knowledge of her residency status is the same as that for the first woman, and with respect to their employment of each of these women the Gardiners have been unable to reconstruct the precise amounts paid to them. In neither case did the Gardiners inquire of the social security number of the employee, nor inquire whether there even was a social security number.

The Gardiners are currently unable to locate either the second woman described or the families of either woman. Indeed, they are not even certain of the name of the second woman described. Nevertheless, my initial review of 26 C.F.R. § 31.6011(b)-2(c)(3)(iii), along with 26 C.F.R. § 31.6205-1(b)(2), suggests that the Gardiners are, or would have been at the time, required to file a supplemental return providing whatever information they can about the employees. Should that indeed be the case, I will advise the Gardiners to do so.

In addition, like so many other parents, the Gardiners have employed over the years a variety of neighborhood babysitters to come into their home to care for their children. Please note that at no time have the Gardiners employed anyone to come into their home on a regular basis for what might be colloquially described as nanny services, or child care services to enable both parents to work. Rather, the Gardiners' use of babysitters in the home has been limited to the kind of babysitting one generally associates with the neighborhood teenager -- a "mother's helper" around the home, or babysitting of children while the parents go out to a movie.

While the spirit and intent of the IRS regulations would not appear directed at the kind of child care described above, the letter of the regulations does cover such household employees. Thus, out of an abundance of caution, and in order to remove any question about Mr. Gardiner's compliance with all applicable laws and regulations, I have advised Mr. Gardiner to make a good faith effort to comply with the social security payment regulations with regard to the child care providers with whom the Gardiners have dealt since the birth of their children. The Gardiners have undertaken to attempt to reconstruct payments made to babysitters over the last ten years. That effort has included an in depth search and review of their financial records and, in those cases for which records are not available, a good faith estimate of amounts paid. The Gardiners either have or will shortly be filing the proper supplemental information with the IRS, including issuing W2 forms to babysitters for whom such forms are

Gary Ginsburg, Esquire
March 22, 1993
Page 3

required, 942 forms for employees for whom such forms are required, and 940 forms (relating to federal unemployment tax) for employees for whom such forms are required. I have been assisting the Gardiners in this effort, and will be glad to answer any questions you have about the effort.

Finally, three other points should be made. The Gardiners participate in a "babysitting cooperative" in their neighborhood, which I have advised them is not subject to any IRS reporting requirements. Second, the Gardiners have, on occasion, taken their children to child care providers outside of their home. Again, I have advised them that such services are not subject to IRS reporting guidelines, at least from the Gardiners' perspective. Third, the Gardiners have over the years employed a house cleaning service to clean their home periodically. Again, my advice to them, based on my review of applicable IRS guidelines, is that the service involved is properly classified as an independent contractor, and thus not subject to IRS reporting requirements from the perspective of the Gardiners.

In sum, the Gardiners are currently engaged in a good faith effort to comply with all applicable Internal Revenue Service guidelines with regard to their household employees. I have been working with the Gardiners in that effort, and will continue to do so until its completion. Should you have any questions about the matters described herein, please feel free to call me at the above number.

Thank you for your attention to this matter.

Very truly yours,

HAZEL & THOMAS, P.C.

By 

Richard C. Sullivan, Jr.

cc: David M. Gardiner

RCS:rkcd

Gerald H. Yamada
Acting General Counsel
Designated Agency Ethics Official
U.S. Environmental Protection Agency
Washington, D.C. 20460

APR 05 1993

Subject: Ethics Agreement

Dear Mr. Yamada:

The purpose of this letter is to describe the steps that I intend to take to avoid any actual or apparent conflict of interest if I am confirmed to serve as Assistant Administrator for Policy, Planning, and Evaluation of the Environmental Protection Agency (EPA). These steps are as follows:

1. Schedule A indicates that I (or my spouse or minor children) hold stocks or bonds in the following entities: Amoco, Merck, General Electric, and Fairfax County, Virginia. I will immediately recuse myself from participation in EPA matters, both rulemaking or policy matters (including legislative matters) and matters which involve a specific party or parties, which have a direct and predictable effect on the financial interests of any of these entities. This recusal will be in effect until these interests are disposed of pursuant to a Certificate of Divestiture. I request that you seek a Certificate of Divestiture from the Office of Government Ethics for these holdings.
2. I have resigned my employment with the Sierra Club, my directorships of the League of Conservation Voters and Americans for the Environment, Inc., and my membership on the Green Corps Advisory Board. I will also refrain from "active participation" in these organizations (or any environmental advocacy organization) within the meaning of Office of Government Ethics regulations at 5 C.F.R. §2635.502(b)(v), Personal and business relationships.
3. I will permanently recuse myself from participation in any matter which involves a specific party or parties and in which I personally and substantially participated as a Sierra Club employee.
4. For a period of one year from the date of my resignations from positions with the environmental organizations listed in Schedule D, Part 1, I will not participate in any specific party

matter in which any of these organizations is or represents a party. These organizations, and the dates of my resignations, are as follows: (1) Sierra Club (March 9, 1993), (2) League of Conservation Voters (March 8, 1993), (3) Americans for the Environment, Inc., (December 31, 1992), and (4) the Green Corps (March 8, 1993). This recusal extends to any matter involving a specific party or parties (such as a license, permit, or lawsuit). It does not extend to a rulemaking, policy, or legislative matter in which any of these organization is interested or in which they may provide comments. For purposes of this recusal, multi-party litigation challenging EPA rules will be regarded as part of the rulemaking process, and my recusal will not apply to my participation in questions involving such litigation.

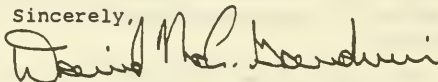
5. So long as my brother is an employee of CH2M Hill, I will recuse myself from participation in any EPA matter which specifically involves that company, unless authorized by the Administrator in consultation with the Designated Agency Ethics Official.

6. Similarly, so long as my brother-in-law is a member of the law firm of Hazel & Thomas of Alexandria, Virginia, I will recuse myself from participation in any matter which specifically involves that firm, unless authorized by the Administrator in consultation with the Designated Agency Ethics Official.

* * *

If confirmed as Assistant Administrator for Policy, Planning, and Evaluation, I will issue directions to my staff that matters covered by these recusals are not to be referred to me and are to be decided by the Deputy Assistant Administrator for Policy, Planning, and Evaluation without my participation. I will further instruct my staff to consult with the Designated Agency Ethics Official in case of uncertainty about whether a matter is covered by these recusals.

Sincerely,



David M. Gardiner

APRIL 5, 1993

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



APR 09 1993

OFFICE OF
POLICY, PLANNING AND EVALUATIONMEMORANDUM

SUBJECT: Recusal

FROM: David M. Gardiner *David Gardiner*
Assistant Administrator Designate
Office of Policy, Planning, and Evaluation

TO: Administrator
Assistant Administrators
Associate Administrators
General Counsel
Inspector General
Regional Administrators
Office Directors

To avoid actual or apparent conflict of interest, I have recused myself from participation in the following EPA matters:

1. Any "particular matter" which directly and predictably affects the financial interests of entities:

Amoco
Merck
General Electric
Fairfax County, Virginia

This recusal extends to rulemaking or policy matters which distinctively affect the industry or other class of entities of which these entities are part, as well as a matter which involves any of the entities as a specific party, such as a permit or lawsuit. This recusal will be in effect until these interests (or imputed interests) are disposed of pursuant to a Certificate of Divestiture from the Office of Government Ethics.

2. Any matter which involved a specific party or parties and in which I personally and substantially participated as an employee of the Sierra Club. This recusal is permanent.

3. Any matter involving a specific party or parties in which the Sierra Club, the League of Conservation Voters, Americans for the Environment, Inc., or the Green Corps is or represents a party. This recusal extends to any matter involving a specific party or parties (such as a license, contract, assistance agreement, permit, or lawsuit). It does not extend to a rulemaking, policy,

or legislative matter in which the Sierra Club is interested or in which the Sierra Club may provide comments. For purposes of this recusal, multi-party litigation challenging EPA rules is regarded as part of the rulemaking process, and my recusal does not extend to my participation in questions involving such litigation. This recusal will be in effect for one year from the dates of my resignations from positions in these organizations, that is: (1) the Sierra Club (through March 9, 1994), (2) the League of Conservation Voters (through March 8, 1994), (3) Americans for the Environment, Inc., (through December 31, 1993), and (4) the Green Corps (through March 8, 1994).

4. Any EPA matter which specifically involves CH2M Hill, unless authorized by the Administrator in consultation with the Designated Agency Ethics Official. This recusal will be in effect for as long as my brother is an employee of CH2M Hill.

5. Any matter which specifically involves the law firm of Hazel & Thomas in Alexandria, Virginia, unless authorized by the Administrator in consultation with the Designated Agency Ethics Official. This recusal will be in effect for as long as my brother-in-law is a member of that firm.

* * *

Matters covered by this recusal are not to be referred to me and are to be decided by the Deputy Assistant Administrator for the Office of Policy, Planning, and Evaluation without my participation. You should consult with Gerald H. Yamada, the Designated Agency Ethics Official, if you are uncertain about whether a matter is covered by this recusal.

I take the obligations described above very seriously. To assist me to fulfill the letter and spirit of this agreement, please feel free to bring any areas of concern to my attention so they can be addressed promptly.

cc: Office of Government Ethics



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

APR 6 1993

OFFICE OF
GENERAL COUNSEL

Stephen D. Potts, Director
Office of Government Ethics
Suite 500, 1201 New York Avenue, N.W.
Washington, D.C. 20005-3919

Dear Mr. Potts:

As required by 5 C.F.R. § 2634.604(c), I have reviewed the Executive Personnel Financial Disclosure Report submitted by David M. Gardiner in connection with his nomination as Assistant Administrator for Policy, Planning, and Evaluation of the Environmental Protection Agency (EPA).

I have determined that the report is complete and, subject to the agreement discussed below, discloses no likely conflict of interest under applicable statutes and regulations.

Mr. Gardiner's letter to me describing his proposed ethics agreement (copy enclosed) provides as follows:

1. Schedule A indicates that Mr. Gardiner (or his spouse or minor children) holds stocks or bonds in the following entities: Amoco, Merck, General Electric, and Fairfax County, Virginia. Mr. Gardiner will immediately recuse himself from participation in EPA matters, both rulemaking or policy matters (including legislative matters) and matters which involve a specific party or parties, which have a direct and predictable effect on the financial interests of any of these entities. This recusal will be in effect until he disposes of the interests in these entities pursuant to a Certificate of Divestiture. Mr. Gardiner has requested that I seek a Certificate of Divestiture from the Office of Government Ethics for these holdings. I have determined that divestiture of these interests is reasonably necessary to comply with 18 U.S.C. §208(a), and I request that your Office issue such a Certificate as soon as Mr. Gardiner is confirmed.

2. Mr. Gardiner has resigned his employment with the Sierra Club, his directorship of the League of Conservation Voters, his directorship of Americans for the Environment, Inc., and his membership on the Green Corps Advisory Board. In addition, he

will refrain from "active participation" in these organizations (or any environmental advocacy organization) within the meaning of Office of Government Ethics regulations at 5 C.F.R. §2635.502(b)(v), Personal and business relationships.

3. Mr. Gardiner will permanently recuse himself from participation in any matter which involves a specific party or parties and in which he personally and substantially participated as an employee of the Sierra Club.

4. For a period of one year from the date of his resignations from positions with the environmental organizations listed in Schedule D, Part 1, Mr. Gardiner will not participate in any specific party matter in which any of these organizations is or represents a party. These organizations, and the dates of Mr. Gardiner's resignations, are as follows: (1) Sierra Club (March 9, 1993), (2) League of Conservation Voters (March 8, 1993), (3) Americans for the Environment, Inc., (December 31, 1992), and (4) the Green Corps (March 8, 1993). This recusal extends to any matter involving a specific party or parties (such as a license, permit, or lawsuit). It does not extend to a rulemaking, policy, or legislative matter in which any of these organizations is interested or in which they may provide comments. For purposes of this recusal, multi-party litigation challenging EPA rules will be regarded as part of the rulemaking process, and Mr. Gardiner's recusal will not apply to his participation in questions involving such litigation.

5. So long as Mr. Gardiner's brother is an employee of CH2M Hill, Mr. Gardiner will recuse himself from participation in any EPA matter which specifically involves that company, unless authorized by the Administrator in consultation with the Designated Agency Ethics Official.

6. Similarly, so long as Mr. Gardiner's brother-in-law is a member of the law firm of Hazel & Thomas of Alexandria, Virginia, Mr. Gardiner will recuse himself from participation in any matter which specifically involves that firm, unless authorized by the Administrator in consultation with the Designated Agency Ethics Official.

* * *

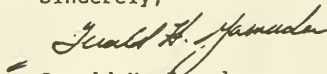
If confirmed as Assistant Administrator for Policy, Planning, and Evaluation, Mr. Gardiner will issue directions to his staff that matters covered by these recusals are not to be referred to him and are to be decided by the Deputy Assistant Administrator for Policy, Planning, and Evaluation without Mr. Gardiner's participation. He will further instruct his staff to consult with the Designated Agency Ethics Official in case of uncertainty about whether a matter is covered by these recusals.

3

Accordingly, I have signed and dated the enclosed report, and I have provided Mr. Gardiner with a briefing on the ethics statutes and regulations. A statement of the organization and functions of the Office of Policy, Planning, and Evaluation is also enclosed.

Please call me at 260-8064 if you have any questions.

Sincerely,



Gerald H. Yamada
Acting General Counsel
Designated Agency Ethics Official

Enclosures

cc: David M. Gardiner

ADDITIONAL QUESTIONS FOR MR. GARDINER FROM SENATOR CHAFEE

Cost/Benefit Analysis

1. Mr. Gardener, if confirmed, the office you will lead is charged with regulatory review. In particular, the office of Policy, Planning, and Evaluation often conducts cost/benefit analysis on agency proposed regulations. This can be very tricky, because often cost and the benefits are in the eyes of the beholder.

Let me give you a hypothetical. Lets say your office was reviewing a regulation requiring the installation of liners on certain landfills. Your staff comes to you and says that the groundwater beneath these landfills is not being used for drinking water, and probably will not be in the near future. Therefore the "benefit" of the groundwater is little or nothing, and the cost of the liners is relatively high. Your staff recommends that you should block this regulation because, according to its analysis, the costs outweigh the benefits. How would you respond to this argument?

What would you do if your staff, despite your admonitions to the contrary, persisted in pushing its cost/benefit analysis on the program office responsible for writing the regulation?

ANSWER: EPA must issue regulations in a timely manner and in accordance with the law. Cost/benefit analysis can be a valuable policy tool in evaluating regulatory and policy options. As your question suggests, however, there are issues associated with the methodology. Often, costs are easier to quantify than benefits. The Office of Policy, Planning, and Evaluation will continue to improve the usefulness of this methodology as a policy evaluation tool. In addition, the goals of timely issuance of regulations and quality economic analysis are not incompatible and I am committed to providing both.

Municipal Landfills

2. Mr. Gardener, as you may be aware, EPA is considering a proposal for a six-month extension of the October 1993 deadline for compliance with subtitle D requirements of the Resource Conservation and Recovery Act by municipal solid waste landfills. EPA is proposing the extension at least in part to complaints from localities that claim they have not had ample time, nor do they have the resources, to comply by the October deadline.

On the other hand, by extending the deadline, open dumps can continue to operate, creating the potential for increased contamination of groundwater, and even perhaps the addition of more Superfund sites in the future. In fact, your former organization, the Sierra Club, is threatening to sue EPA if the extension goes forward.

As the chief policy advisor to the Administrator, how would you advise her on this issue?

ANSWER: I am not fully aware of the details of this important issue. However, this case appears to present competing interests. The Agency must meet statutory deadlines and comply with the law. However, it is also important for EPA to consider the burdens its rules place on localities, small businesses, and the regulated community in general. If confirmed I will investigate this issue and look forward to working with you to resolve it.

STATEMENT OF STEVEN A. HERMAN

I am very honored to appear before you today as the President's nominee to be Assistant Administrator for Enforcement of the Environmental Protection Agency. President Clinton and EPA Administrator Carol Browner have made clear their strong commitment to a vision of environmental protection that will create a new constructive relationship between the government, its citizens, and the world around us all. The cornerstone of this new relationship has to be the recognition that economic growth and strong environmental safeguards are not incompatible or mutually exclusive. Rather they are mutually reinforcing. Strong and fair enforcement of our environmental laws must be a key component of such an effort. I intend to use all of my efforts to help the Administrator make this vision a reality for the benefit of the American people.

I would like to begin by discussing with you my personal and professional background. I was born in the Bronx, New York in 1944. My grandparents came to this country from Russia less than ninety years ago seeking the American dream for themselves and their children. They, and then my parents, worked very hard—much of the time seven days a week—to make the dream a reality. Indeed, it would

be an understatement to say that my presence here today is a product of their tireless efforts on behalf of their children and the values they instilled in us.

I attended primary and high schools in the Bronx and Irvington, New Jersey before attending Rutgers University and Rutgers Law School. I received my law degree in 1969. From that time on I have devoted my career to public service: first, as a VISTA lawyer and Reginald Heber Smith Fellow with the Legal Aid Bureau in Little Rock, Arkansas, then as an attorney for indigent criminal defendants in New York City at the Legal Aid Society, and most recently, as an attorney and assistant section chief in the Environment and Natural Resources Division of the U.S. Department of Justice. In my legal career, I have represented Presidents and Cabinet secretaries along with some of the poorest people in our country. I like to think that they all received the very best representation that I had to give.

Over the past fifteen years at the Department of Justice, I have gained wide familiarity with substantive environmental and land-use laws, and valuable insight into the processes by which government officials decide and implement policies. I have had to develop skills as a negotiator, conciliator, and listener, as well as an aggressive adversarial litigator. Finally, I have had the opportunity to work closely with representatives of many federal agencies, state and local communities and public interest groups of all political shades. I have travelled and worked with people in all parts of this country from Missoula to Miami and Biloxi to Anchorage. I will try to draw on all of these skills and experiences to carry out my responsibilities as Assistant Administrator for Enforcement if I am confirmed by the Senate.

Administrator Carol Browner has identified several key goals for her administration of EPA: pollution prevention; ecosystem protection; environmental justice; and building new partnerships with State and local governments. The Administrator believes that a strong, vigorous, and fair environmental enforcement program is essential if her program is to succeed. I wholeheartedly agree. Indeed, I am very fortunate to have a highly committed and qualified enforcement staff at EPA; and with their assistance I am sure we will improve on an already impressive record of accomplishments in this area.

Simply stated, the goal of strong enforcement is a cleaner environment. This means that we must move swiftly and effectively against violators of environmental laws. We must deploy our limited enforcement resources in a strategic and deliberate manner so that we target violators who most seriously threaten or citizens and our ecosystems. Moreover, we must take maximum advantage of new technologies and other pollution prevention opportunities in resolving our cases. We cannot allow polluters to profit from their violations of the law. We must maximize the resources of our federal, state, and local governments so their efforts complement and support each other—not compete with or thwart each other.

I believe in a strong and balanced environmental program. This agency has many tools available to it—administrative and Judicial, civil and criminal—to carry out its mission. We must strive to determine the most effective of those to address the too numerous pressing pollution problems of our day. Following the Administrator's instruction, we will continue our ongoing efforts to use creative and innovative solutions for environmental contamination through pollution reduction and prevention mechanisms in civil settlements. We want to expand our capability to address problems more holistically, cutting across several media and regions at the same time to maximize the Agency's impact. I also want to examine appropriate opportunities to expand administrative enforcement efforts which could result in faster more immediate enforcement in light of the crushing caseload confronting our federal court system.

Inextricably entwined in all of our efforts must be a commitment to enforce our environmental laws in a way that ensures equal protection to all from environmental degradation regardless of race, gender, ethnic background or economic status. The Administrator has made clear her commitment to environmental justice. I will work for, and support, all of the Administrator's efforts to institutionalize and integrate environmental justice considerations into all of EPA's policies and programs.

I also believe very strongly that the federal government itself must obey pollution laws. The federal government should be an example to others. I will use all of the authorities at my command to work with other federal agencies to ensure success in this area. I will also work to expedite the return of closed military bases to productive use for our communities. EPA should not become a bottleneck, but neither should it ignore its responsibilities to ensure that these bases are as safe and clean as the law requires prior to reopening them for productive use. Under Administrator Browner's committed leadership, there is a new opportunity for enhanced part-

nership in the environmental area. One vivid example, I am sure, will be the clean-up effort with regard to federal facilities.

I also believe in a strong criminal enforcement program. Environmental crimes are not white collar or victimless crimes in my book. They often result in serious harm to people and dreadful violation of our nation's natural heritage. Individual corporate officers and employees, as well as the corporate entity, must be held accountable for their actions. Stiff prison sentences and fines must be used to punish and deter environmental criminal misconduct.

More than two years ago Congress enacted the Pollution Prosecution Act which, among other things, calls for the strengthening of EPA's criminal and civil enforcement program. I will endeavor to carry out the provisions of this statute and will work to recruit top quality agents and investigators. Finally, I look forward to a cooperative and effective relationship with the Department of Justice and U.S. Attorneys offices to ensure that the criminal laws are vigorously enforced.

As this committee knows, the Administrator is committed to confronting not just these, but other critical environmental issues facing our nation. If I am confirmed I will be honored to assist her in that effort. I will also be honored to work with the Senate and the Rouse and the members of this Committee, in particular, in that effort.

I would like to end on a personal note, if I may. After the President announced my nomination, my brother sent me a book about the complicated workings of the government bureaucracy. I would like to read to you his inscription to me:

Good luck. Remember—what you do, and how you do it, matters to real people.
Be bold and make things better.

I will take these words to heart.

Again, I am very pleased and honored to be here and look forward to answering any questions you might have.

UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Herman Steven Alan
(Last) (First) (Middle)

Position to which nominated: US Environmental Protection Agency Assistant Administrator for Enforcement Date of Nomination: April 2, 1993

Date of birth: 26/9/44 Place of birth: Bronx, New York
(Day) (Month) (Year)

Marital status: married Full name of spouse: Susan Deller Ross

Name and ages of children:

<u>Michael Sean Ross</u>	<u>17</u>
<u>Rachel Cady Herman</u>	<u>12 3/4</u>

Education:

<u>Institution</u>	<u>Dates attended</u>	<u>Degrees received</u>	<u>Dates of degrees</u>
<u>Rutgers College</u>	<u>1962 - 1966</u>	<u>BA</u>	<u>1966</u>
<u>Rutgers law School</u>	<u>1967 - 1969</u>	<u>JD</u>	<u>1969</u>
<u>University of Iowa Law School</u>	<u>1966 - 1967</u>		

Employment record: List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

1984 - March 22, 1993: Assistant Section Chief, General Litigation Section, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. Responsible for supervising a major part of the Section's varied complex and often controversial environmental litigation. As one of four managers, also responsible for administrative and personnel decisions involving approximately ninety lawyers, paralegals, secretaries, and other support staff in Washington and in the Denver, Sacramento, and Anchorage field offices.

See Attachment A

Attachment A
Employment Record - continued

1979-1984: Team Leader, General Litigation Section, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. Responsible for supervising team of five lawyers and three secretaries and for conducting complex environmental and Fifth Amendment takings cases.

1978-1979: Trial Attorney, General Litigation Section, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. Responsible for litigating complex environmental and takings cases in federal district courts and the United States Claims Court.

1976-1978: Staff Counsel, Criminal Appeals Bureau, New York City Legal Aid Society, 15 Park Row, New York, New York. Briefed and argued numerous criminal appellate cases.

1972-1976: Staff Counsel, Prisoners' Rights Project, New York City Legal Aid Society, 15 Park Row, New York, New York. Responsible for federal constitutional litigation concerning conditions in state and local prisons and jails.

1970-1972: Reginald Heber Smith Fellow, Legal Aid Bureau of Pulaski County, Little Rock, AR. Served as counsel to numerous community groups and negotiated with state, county, and municipal officials concerning school problems, welfare and public housing policies, and street and sewer construction. Represented individuals in domestic relations, custody, landlord-tenant, and small estate matters. Represented inmates in suits declaring conditions unconstitutional in Pulaski County Jail and Pulaski County Penal Farm.

1969-1970: VISTA Attorney, Legal Aid Bureau of Pulaski County, Little Rock, AR. Served as counsel to community groups and represented low-income individuals in wide range of civil matters.

June 1968 - June 1969: Research Assistant, Rutgers Urban Studies Center, Rutgers University, Newark, NJ. Interviewed landlords and inspected and reported on properties for study of New York City rent control program.

June 1967 - June 1968: Law Clerk, Waldor & Hockberg, 11 Commerce Street, Newark, NJ. Performed general law clerk functions including interviewing clients, doing legal research, preparing discovery. Also appeared before Workmen's Compensation Board with firm's clients.

Employment record—Continued

Honors and awards:

List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement. Office of U.S. Attorney for

1993 - Certificate of Appreciation - Southern District of Florida

1981 - 1992 - Outstanding Performance Rating, U.S. Dept of Justice

1991, 1990, 1988, 1986 - Special Achievement Award, U.S. Dept of Justice

1983, 1980 - Meritorious Service Award, U.S. Dept of Justice

1981 - Special Commendation for Outstanding Service, U.S. Dept of Justice

1980 - Secretary of the Interior Commendation

1970 - 1972 - Recipient, Reginald Heber Smith Fellowship

1962 - 1966 New Jersey State Scholarship recipient

Memberships:

List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
<u>American Bar Association</u>		<u>1985 - present</u>
<u>Westmoreland Day Care Center</u>	<u>Board of Directors</u>	<u>1979 - 1980</u>

Qualifications: State fully your qualifications to serve in the position to which you have been named.

I have practiced law for more than twenty-three years. During that time, I have worked for large and small organizations and have had the privilege of representing a wide range of clients ranging from the poorest of the poor in Arkansas and New York to Presidents Carter, Reagan, and Bush and their respective cabinet secretaries. For the past fourteen and a half years, in the Environment and Natural Resources Division at the Justice Department, I have had extensive experience framing, developing, negotiating and litigating, environmental law issues raised in the context of significant public policy debates and decisions. (See resume attached).

See Attachment B

Future
employment
relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

yes

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

I have no such plans

3. Has anybody made a commitment to you for a job after you leave government?

no

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

n/a

Attachment B - Qualifications Continued

In addition to gaining wide familiarity with substantive environmental and land-use laws, I have gained valuable insight into the processes by which government officials decide and implement policies. Because of the unique position the Justice Department occupies as the exclusive trial counsel for the Executive branch of government, my role necessarily went beyond that usually expected of a "trial counsel." Agencies with different statutory missions and responsibilities sometimes viewed problems and proposed solutions very differently. Their priorities often conflicted and the courses of action suggested clashed. It was an essential element of my duties to attempt to create a consensus position that was consistent with the various agencies' statutory responsibilities and political goals. It was in this role that I developed skills as a negotiator, conciliator, and listener as well as adversarial litigator. The Assistant Administrator for Enforcement needs all of these skills to carry out the office's responsibilities.

Additionally, in my present position, I help supervise a section of 90 lawyers, paralegals and support staff. This entails assigning and supervising cases, hiring and evaluating personnel, preparing budget requests, and ensuring that the office functions well day to day. I have worked hard also to ensure that the working conditions and work atmosphere of the attorneys and support staff in my Section are the most positive possible given budgetary constraints.

My overall experience since graduating from law school 24 years ago has enabled me to work with and against all types of people. In Arkansas, I represented welfare recipients and working poor people. In New York, I represented jail and prison inmates, and convicted criminals. At the Justice Department, I have represented or supervised the representation of government officials and agencies in suits brought by public interest groups of different political persuasions, the private sector, and state and local governments. I have worked with cabinet and sub-cabinet level policymakers, uniformed armed services personnel, park rangers, NASA scientists, agency counsel, and other agency professionals. My academic experience and professional responsibilities have given me the opportunity to work extensively with public officials and citizens in every region of the country.

In sum, I believe my broad professional experience, including that in the environmental law field, as well as my ability to work well with people of different backgrounds has prepared me for the challenges presented by the missions of EPA.

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

no

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

n/a

Financial
Statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).
2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

none except for U.S. Government pension (Thrift Savings Plan)

3. Are any assets pledged? (Add schedule).

no

4. Are you currently a party to any legal action?

no

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

yes

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

no

Potential conflicts of interest:

1. Describe any financial or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

none

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

none

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

none

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

n/a

5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

It is my understanding from the Agency Ethics Officer that my holdings and interests are not likely to create any problems in this regard. An opinion to this effect from the Designated Ethics Officer will be forwarded with my SF278 thru the Director of the Office of Government Ethics.

Political affiliation and activities:

List all memberships and offices held in, or financial contributions (in excess of \$1,000), and services rendered to any political party or election committee during the last 10 years.

none

Published writings:

List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters.)

none

Additional Matters:

1. If there is any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

none

2. Do you agree to appear before all Congressional Committees which seek your testimony?

yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

no



AFFIDAVIT

STEVEN A. BERMAN) ss, being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Steven A. Berman

Subscribed and sworn before me this 14th day of April, 1993

James J. McCarver
Notary Public

My Commission Expires March 31, 1996

STEVEN A. HERMAN
 5315 29th Street, N.W.
 Washington, D.C. 20015
 (202) 244-2806 (home)
 (202) 272-6851 (work)

EMPLOYMENT HISTORY

1984-Present: Assistant Section Chief, General Litigation Section, Environment and Natural Resources Division, U.S. Department of Justice. Responsible for supervising a major part of the Section's varied, complex and often controversial environmental litigation (see pp.2-3). As one of four managers, also responsible for administrative and personnel decisions involving approximately ninety lawyers, paralegals, secretaries, and other support staff in Washington and in the Denver, Sacramento, and Anchorage field offices.

1979-1984: Team Leader, General Litigation Section, Environment and Natural Resources Division, U.S. Department of Justice. Responsible for supervising team of five lawyers and three secretaries and for conducting complex environmental and Fifth Amendment takings cases.

1978-1979: Trial Attorney, General Litigation Section, Environment and Natural Resources Division, U.S. Department of Justice. Responsible for litigating complex environmental and takings cases in federal district courts and the United States Claims Court.

1976-1978: Staff Counsel, Criminal Appeals Bureau, New York City Legal Aid Society. Briefed and argued criminal appellate cases.

1972-1976: Staff Counsel, Prisoners' Rights Project, New York City Legal Aid Society. Responsible for federal constitutional litigation concerning conditions in state and local prisons and jails.

1970-1972: Reginald Heber Smith Fellow, Legal Aid Bureau of Pulaski County, Little Rock, Arkansas. Served as counsel to numerous community groups and negotiated with state, county, and municipal officials concerning school problems, welfare and public housing policies, and street and sewer construction. Represented individuals in domestic relations, custody, landlord-tenant, and small estate matters. Represented inmates in suits declaring conditions unconstitutional in Pulaski County Jail and Pulaski County Penal Farm.

1969-1970: VISTA Attorney, Legal Aid Bureau of Pulaski County, Little Rock, Arkansas. Served as counsel to community groups and represented low-income individuals in wide range of civil matters.

JUSTICE DEPARTMENT WORK

Mission of General Litigation Section: This Section represents the government in environmental and natural resource cases which arise under some seventy federal statutes and the Constitution. In so doing, it represents virtually every federal department and agency, most frequently as a defendant, but sometimes as a plaintiff. Broadly defined, the Section's litigation involves conflicts over the management of the Nation's lands, waters, and minerals.

Supervision and Litigation of Significant Cases:

* United States v. South Florida Water Management District, et al. -- Lead counsel in suit brought by the federal government to halt water pollution in the Everglades National Park and Loxahatchee National Wildlife Refuge. Supervise team of eight Justice Department attorneys in Washington and Miami, scientific and technical experts, and counsel and personnel from almost a dozen federal agencies, including the Park Service, Fish and Wildlife Service, Army Corps of Engineers, Environmental Protection Agency, and the Agriculture Department. Responsible for developing the government's legal strategies, reviewing all significant legal papers, obtaining funding to support the litigation, and coordinating the efforts and policies of all the federal agencies. In 1991, negotiated a landmark settlement agreement between the federal government, the State of Florida, and the South Florida Water Management District, which was announced at a joint press conference by U.S. Attorney General Thornburgh and Florida Governor Chiles. The settlement details the ecological harm the polluted water has caused the Park and the Refuge, the steps that the state must take over the next ten years to repair, restore, and protect the Park and the Refuge, and the water quality that must be attained for the future.

* Water rights litigation -- Supervise the General Litigation Section's extensive caseload of water rights cases involving claims on behalf of various federal agencies for water rights. The United States participates in these state and federal court proceedings to ensure that it receives necessary quantities of water for its national resources and properties, such as parks, military facilities, and wildlife refuges. Almost a dozen lawyers in the Section are participating in statewide water rights adjudications in Oregon, Idaho, Montana, Nevada, Utah, Colorado, and Arizona. Additional complex litigation, much of it in California, has been brought by environmentalists, farmers, and urban interests against the Bureau of Reclamation concerning the allocation and price of water.

* Alaska v. Carter, et al. -- Lead counsel during extended litigation defending the decision of the President and the Interior Secretary to designate 110 million acres of public lands in Alaska as conservation areas (i.e. parks, refuges, monuments).

* Western Solidarity v. Reagan, et al. -- Lead counsel for the President and Secretary of Defense in a suit brought to enjoin the deployment of the MX missile system in Nebraska and Wyoming.

* Florida Coalition v. Bush, et al. -- Supervised the federal defense to the first challenge to NASA's launch of a space mission (Galileo).

* United States v. Adams, et al. -- Lead counsel in a suit brought by the United States on behalf of the Park Service against over 100 individuals to quiet title to lands on three islands in the Gulf Islands National Seashore Park.

* Wisconsin v. Weinberger, et al. -- Lead counsel defending the decision of the Defense and Navy Secretaries to employ the nuclear submarine ELF (extremely low frequency) communications system.

* Organized Fishermen of Florida v. Andrus -- Lead counsel defending the Interior Secretary's controversial decision to ban all commercial fishing in the Everglades National Park.

Justice Department Honors:

- * 1981-1992: Outstanding Performance Rating
- * 1991, 1990, 1988, 1986: Special Achievement Award
- * 1983, 1980: Meritorious Service Award
- * 1981: Special Commendation for Outstanding Service

EDUCATION

Rutgers University School of Law, J.D. (1969)

University of Iowa College of Law (1966-1967)
Law Review invitation; declined when transferred to Rutgers

Rutgers College, B.A. (1966)
Recipient, New Jersey State Scholarship (1962-1966)
News Editor, Rutgers Daily Tarqum

BAR ADMISSIONS

Arkansas (1970)
New York (1973)
Federal District Courts in Arkansas and New York
United States Court of Appeals for the Second Circuit

PERSONAL

Born September 26, 1944.
Raised in the Bronx, New York and in Irvington, New Jersey.
Married to Susan Deller Ross.
Two children: Michael, age 17; Cady, age 12.

ADDITIONAL QUESTIONS FOR MR. HERMAN

SENATOR LAUTENBERG

Proposed Penalty Question

The EPA IG says EPA collects penalties which are less than the economic benefit or savings resulting from the violations. My bill reverses this policy, hence removing the incentive to pollute. Do you support this policy change? And, what more can you do through your enforcement authority to remove incentives to pollute and to implement the "polluter pays" principle?

ANSWER: I believe that the enforcement program should work to ensure that parties do not benefit by conduct in violation of the nation's environmental laws. While the circumstances of individual cases may not always allow the government to successfully recover these amounts, the enforcement program needs to operate in accordance with the principle that polluters should not profit from non-compliance.

The legislation which has been proposed by Senator Lautenberg sets in law the baseline of recovery of the economic benefit of non-compliance. This is a goal worth pursuing. We will, of course, be happy to work with the staff of the Committee to maintain this goal while at the same time refining the paperwork and documentation requirements imposed on EPA staff and lawyers.

The "polluter pays" principle is reflected in most, but not all, of the major federal environmental statutes administered by EPA. It is most comprehensively reflected in the Superfund law, but we need to explore ways to include it more effectively in the administrative, civil judicial and criminal components of the EPA enforcement program. If confirmed, I would like to review the proposed Criminal Sentencing Guidelines for Environmental Crimes to ensure that corporations and individuals who are sentenced for criminal violations do in fact disgorge their ill gotten gains.

The Agency established the recapture of the economic benefit of noncompliance as the cornerstone of its civil penalty program in 1984. Even though the Agency acknowledged the importance of such recapture, as a policy matter, it also recognized the need to provide flexibility in the following areas:

- where the benefit might be a small amount and not justify the resources needed to pursue it;
- where there might be compelling public concerns such as creating bad precedent in another case on an issue unrelated to the penalty;
- where litigation practicalities indicate that pursuing benefit recapture is ill advised (e.g., it highly unlikely for the Agency to prevail in court on the penalty issue);
- where the violator is willing to come into compliance, but the recapture of economic benefit would likely put the violator out of business.

This policy has served the Agency well. In the eight years this policy has been applied, our penalties have risen from an average of only \$6 million per year to over \$40 million. The problem raised by the IG is largely one of documenting situations where one of the above exceptions applies. Current efforts to improve this documentation should resolve the problem.

Role of the Office of Enforcement

The Office of Enforcement has suffered in recent years from a lack of a clear role. Some view it as a third wheel to the Justice Department and Regional attorneys on individual cases. In this time of tight resources, how do you propose to define OE's role or make internal OE organizational shifts so as to avoid duplication and minimize friction within the government?

ANSWER: The Office of Enforcement has a very broad mandate to provide leadership and to ensure an effective compliance and enforcement program across all agency programs, and at all levels of government. This mandate has recently been expanded to include direct responsibility for the Federal Facilities Enforcement program, as well as federal compliance with the spirit and letter of the National Environmental Policy Act (NEPA). In addition, the Office of Enforcement has responsibility for oversight and coordination of EPA's activities designed to ensure adequate protection of human health and the environment on Indian lands.

The Assistant Administrator serves as the national program manager for enforcement. Although enforcement is a highly decentralized function, with significant authority and responsibility residing in the EPA Regions and delegated States, the national program management role is vital to the success of the mission. Only OE is positioned effectively to perform this role, which has been and remains the defining function of the office.

To carry out this function, which involves coordination activities and the assurance of policy consistency and enforceability, OE provides the key liaison for judicial enforcement with the Department of Justice, reviewing EPA case referrals and settlements; implements an Agency-wide system for planning and measuring the enforcement performance of these organizations' program offices; develops national enforcement policies and cross-cutting enforcement priorities and initiatives; reviews rulemaking and permit writing; provides training and capacity building; participates in case development, prosecution, and settlement; provides technical support and expertise; manages the criminal enforcement program; and works with other enforcement organizations at the federal, State, local and even international levels.

If confirmed, I want to examine OE's relationship with the program offices and the Department of Justice to determine where we can do better. I want to make sure that the Agency's enforcement program has the kind of organizational structure which will enable it to perform its mission most effectively. I will ask that we review how the resources in the Office of Enforcement are currently deployed and how we can achieve greater efficiencies.

I think that EPA has already taken some actions to increase the level of coordination and effectiveness of this relationship. Specifically, I refer to the EPA reorganization which transferred the primary reporting relationship of the Agency's ten Offices of Regional Counsel to the Office of Enforcement. However, I am committed to examining the roles of all the participants in environmental enforcement program operations—not only between EPA and other federal departments and agencies, but, as noted above, also between EPA's Office of Enforcement and the other EPA Program Offices which currently play a considerable role in the Agency's enforcement program as well.

Measuring Success Question

Mr. Herman, what would be a fair standard for measuring your success as Assistant Administrator for Enforcement?

ANSWER: I will consider my tenure at EPA successful if there is a cleaner environment. If confirmed, I would like to improve the enforcement mechanisms under federal environmental law to focus on the true environmental problems of our day. While enforcement is only one of the tools available to the federal government, we have an opportunity to address through enforcement a variety of the problems visited upon society as a result of environmental pollution. Priority setting and improvements in the delivery system for enforcement are key to our success.

Your question also presents complicated issues about the way in which EPA measures the success of its enforcement program. Traditionally, EPA has counted the number of referrals and orders, among other things, and tabulated the collection of penalties. We recognize, however, that this system of "bean counting" fails to fully quantify complex cases with multimedia violations or multiple sites. These cases generally require more intensive time and resource requirements and consequently yield impressive results. We need to find a better way to measure the success of these cases, as well as the entire enforcement docket.

We must recognize, too, that if an enforcement program is successful, then we must expect that enforcement numbers will go down as more people are complying with the laws and regulations. The Office of Enforcement is currently investigating more meaningful and appropriate measures of success. I will be in contact with you and your staff as we develop alternatives.

QUESTIONS FROM SENATOR CHAFEE

Superfund Questions

The President's budget for FY 1994 indicates that an overall decrease in funding for Superfund and an increase in funding for enforcement is "to continue to shift clean-up from financing from the Trust Fund to those responsible for polluting." While that goal is a worthy one, it raises a number of questions, which are as follows:

—Currently, private parties are paying over 70% of cleanup costs at Superfund sites. How do you expect to further increase that percentage?

ANSWER: The combination of settlements and administrative orders provides EPA with an array of tools to encourage performance of the remedy by private parties. EPA provides an opportunity for private parties to perform the remedy, in lieu of using the Fund, at nearly every site. Only by providing the private parties with the appropriate incentives to agree to perform the cleanups can EPA maintain, or increase, the 70% figure. The increased funding for enforcement, accordingly, will be devoted to providing the appropriate incentives. For instance, where the remedy

is being performed by a private party or a group of private parties, there are often non-settlers that EPA pursues in order to maintain an incentive for parties to settle early in the process. In addition, there is a need for a strong enforcement presence to monitor the private parties' compliance with the settlement agreement or order, and to initiate appropriate actions in instances of non-compliance.

—Won't pushing for an incremental increase in recovery from private parties cause an increase in litigation, something that there is already too much of in the Superfund program?

ANSWER: As noted above, EPA's enforcement efforts will be focused on streamlining the current enforcement process and maintaining the incentives that currently exist for private parties to opt for performing the remedy themselves. EPA's intent is to keep the incentives for private party performance of cleanup strong, thus avoiding the expense of litigation where possible. Unfortunately, although EPA seeks to provide settlement incentives, there is little EPA can do to completely eliminate litigation among private parties arising out of allocation disputes.

One of the most common complaints that we hear about the Superfund program is that you have to "hire a hall" to accommodate all of the lawyers arguing over who pays for cleanup at a site. Indeed, the President himself has raised this issue several times in recent public speeches.

This is one of the most significant issues we will grapple with during Superfund reauthorization. Drawing on your experience as a lawyer, how can we eliminate the need for the involvement of so many of your fellow members of the bar at Superfund sites?

ANSWER: Attempting to impact the private parties' decision to incur legal fees on allocation disputes is difficult, although one area that EPA should focus attention on is the allocation process and if or how the Agency can facilitate a faster resolution.

In addition, greater and more creative use of the Superfund settlement tools, could decrease the substantial numbers of attorneys involved in Superfund cases.

QUESTION: After the initial enactment of Superfund in 1980, Congress heard many complaints about the unfairness of the liability system, because it subjected parties—some of whom had contributed very little contamination at a site—to years of litigation they could not afford and potential liability for not only their own shares but the share of insolvent parties.

The 1986 amendments to the Superfund law responded to these complaints by adding a number of "enforcement tools" to encourage potentially responsible parties to settle their liability and get out. Seven years later, we are still hearing the same complaints we heard in 1986, and we find that those tools—such as mixed EPA/private party funding of clean-up and settlements for parties who are only *de minimis* contributors—have barely been used.

Why do you think that these tools have not been used? If these are not the right tools to get parties out of the Superfund system as quickly as possible, what would you recommend as an alternative?

ANSWER: With respect to *de minimis* settlements, EPA has significantly increased the use of this tool and has entered into 90 final *de minimis* settlements, providing relief to approximately 4,750 parties. Approximately half of these settlements were entered into during the past two years. *De minimis* settlements tend to be very resource intensive for Agency staff, as certain determinations must be made as to each party before a settlement offer can be extended. Unfortunately, the resources spent on *de minimis* settlements inevitably decrease the resources available to EPA to negotiate settlements for performance of cleanup at other sites. Currently, however, EPA is actively pursuing *de minimis* settlements to increase fairness in the operation of the enforcement program.

Mixed funding, on the other hand, poses a far more difficult challenge for the Agency. A decision to partially Fund a cleanup must be made very carefully, with sensitivity to the precedent that will be set for other sites similarly situated. EPA is currently reevaluating its policies on mixed funding settlements. An EPA-commissioned study has recently been completed, and EPA is currently reviewing its recommendations.

QUESTION: The "enforcement first" program, which has caused private parties to pay for approximately 70% of Superfund clean-up costs, has been cited as one of Superfund's few success stories. Will you nevertheless be considering changes in the Superfund law from an enforcement standpoint?

ANSWER: I believe a major factor in EPA being able to accomplish the notable success of 70% of cleanups being performed by private parties is the strict, joint and

several liability scheme of the current statute. It is the Administration's strong view that the principle of site-specific polluter pays liability should be preserved. The parties that contribute to the contamination should be responsible for the cleanup. However, the Administration does plan to explore ways of changing the operation of the current liability scheme in order to improve fairness and reduce transaction costs.

QUESTION: Do you plan to be significantly involved in EPA's effort to develop legislative options to reauthorize the Superfund program?

ANSWER: The Office of Enforcement will be very much involved in both EPA's effort to develop legislative options for Superfund reauthorization and EPA's effort to examine what administrative options are available to improve the efficiency of the Superfund program prior to reauthorization. In particular, the Office of Enforcement's attention will focus on: 1) providing relief to parties on the periphery of the liability scheme, such as very small waste contributors; 2) using the settlement tools authorized in the 1986 amendments to CERCLA to reduce transaction costs; and 3) addressing municipal liability.

Federal Facilities

QUESTION: Last year, Congress passed the Federal Facilities Compliance Act, which waives the federal government's sovereign immunity to fines and penalties for solid and hazardous waste laws. The law also gives EPA the authority to issue administrative orders against other federal agencies.

What progress has EPA made in implementing this law?

ANSWER: EPA has delegated the responsibility for implementing the Federal Facilities Compliance Act (FFCA) to the Office of Enforcement (OE) (Federal Facilities Program) and the Office of Solid Waste and Emergency Response (OSWER) (Office of Solid Waste—RCRA Program). These two Agency components have worked closely with the Congressional sponsors of this legislation to ensure that the implementation of the Act meets their expectations. Programmatically, OSWER will be conducting multimedia inspections at Federal facilities with OE staff assistance.

In addition, EPA has developed interim final guidance implementing the new enforcement authorities of FFCA and hopes to finalize that guidance by the end of May. This guidance establishes the regulatory procedures which will apply to EPA enforcement actions for compliance violations. EPA, in March, also finalized guidance for implementation of the inspections provisions of FFCA. Finally, the Agency has done the following to implement the Act:

- Begun conducting Compliance Monitoring Evaluations (i.e., RCRA groundwater inspections);
- Begun planning for the negotiation of Inter Agency Agreements to seek reimbursement for inspections as provided in the statute;
- Reviewing facility specific plans and providing assistance to states interpretation of plans.

QUESTION: What plans do you have to work with Departments of Defense and Energy to ensure that they are in compliance with the environmental laws?

ANSWER: EPA is working jointly with DOE to implement the mixed waste provisions of FFCA. OE will also be working with States and the National Governors Association. OE is also working with OSWER to inventory the existing Federal Facilities with RCRA violation. The Office of Solid Waste (OSW) is reviewing the DOE waste inventory and report. It is also providing technical assistance for the DOE effort and Regional/state review and interpretations of facility-specific reports.

OSW is developing regulations governing the definition of when munitions become waste and standards for the management of these waste.

QUESTION: Does the President's FY 1994 budget address the resource needs of the agency for the implementation of the Federal Facilities Compliance Act?

ANSWER: The President's FY'94 budget did not request additional FTEs above EPA's pre-FFCA resource levels but did include a request for \$900,000 in contract resources to implement the FFCA. These contract dollars will help support the mandates of the new Act. As contemplated by the Act the Agency may seek reimbursement from Federal Agencies for inspections conducted.

STATEMENT OF GEORGE T. FRAMPTON, JR.

Mr. Chairman and distinguished members of the Committee. It is an honor to appear before you today as President Clinton's nominee to be Assistant Secretary of the Interior for Fish and Wildlife and Parks.

I was brought up in Champaign-Urbana, Illinois—a Big Ten University and farm town. My father is a law professor; our family's roots are on the Eastern Shore of Maryland. My mother, until she retired, was an associate professor of library science. Her father was a mining engineer at the Department of Commerce here in Washington. My parents put great store in the importance of education, in developing core values, and in encouraging tolerance of divergent views. They taught me that only a life that contributes to making things better for others is a life well lived.

I went to high school in Urbana, Illinois, in the late 1950's. Those were the days of Sputnik. Scientists were going to lead America to a better future. So, I studied physics in college. But by then, it was the sixties. John Kennedy had called a generation. After earning a Masters Degree in economics, I went to Harvard Law School because it seemed the best training for public service. After law school I spent a year as a VISTA volunteer lawyer in New York City, and then a year as a law clerk to Justice Harry Blackmun, one of the finest, most down-to-earth people I have met in public life.

In the two decades since, I have held government positions and I have been an advocate. My advocacy roles have included private law practice and, for the past seven years, serving as President of The Wilderness Society, an organization founded in 1935 by a distinguished group of writers, foresters, and businessmen.

My government positions have included serving as an Assistant Watergate Special Prosecutor, and as Deputy Director and Chief of Staff of the Nuclear Regulatory Commission's investigation into the causes of the Three Mile Island Accident.

In private law practice, I represented clients ranging from a petroleum refiner in Tennessee, to the State of Alaska; from 21 widows whose husbands were killed in a coal mine explosion, to the Board Chair and President of Lockheed Corporation. I litigated to get Rep. John Anderson on the ballot in 1980 as an independent presidential candidate (when at least seven states had laws barring him), and I litigated to get mob-controlled union figures off the rolls of a national security guard firm.

My love affair with our national parks and public lands began when my parents took me to Mesa Verde and then to Yosemite when I was ten years old. I can still remember vividly the first morning waking up in a tent cabin in Tuolumne Meadows. Out of that first magical experience, and many subsequent ones, I developed a love for the West and a deep personal interest in our public lands, both East and West. My representation of the State of Alaska as an outside attorney in the late 1970's and 1980's also allowed me to spend more time in a place I had first discovered on a personal trip in 1975. For twenty years, my wife and I and now, our two sons aged nine and thirteen have spent as much time as we could in the West.

In 1986, I was fortunate to be offered a job that allowed me to combine my personal interest in public land issues with my profession. If confirmed, I will bring to government service not only my commitment to our national parks and wildlife heritage, but the practical experience and traits of mind gained from a diverse professional career that has stretched over nearly 25 years.

Since I've been an advocate for much of that career, let me tell you what I believe effective advocacy entails. First, it's developing a position based on facts: sound science and good economics. Second, it's bringing a sense of fairness to the table. Because only fairness and common sense enable the advocate to shape a detailed proposition, or program, that will command a broad base of support from those with differing views. And third, it's maintaining personal credibility with those on all sides.

If I am confirmed, I pledge to bring these same traits to a position of public trust; a position I fully realize involves different responsibilities, broader and more challenging than advocacy alone. At the Wilderness Society I was responsible to a board of twenty-five conservationists and 350,000 members. The Secretary of the Interior must represent more than 200 million Americans.

In forming recommendations to the Secretary, I must balance many competing interests and concerns. I will be part of a team that will be working together in support of Secretary Babbitt and President Clinton. Ultimately, the final decisions on issues will theirs. Then, as part of the team working to accomplish those objectives, I will have to listen to—and take into account—the strongly-held views of many different constituencies whose support will be important in whether those objectives can be successfully met.

I have always believed in teamwork, and as a manager I have strongly promoted it. I have always believed in consensus-building. As a professional, my instinct is to reach out, to broaden support for what needs to be done, to be practical in moving an issue to closure. If you and your colleagues report my nomination and I am confirmed by the Senate, I think you will find me to be open, fair, and—even when we do not agree—a reasonable and constructive party. Thank you.

UNITED STATES SENATE
 COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
 STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Frampton, Jr. George Thomas
(Last) (First) (Middle)

Position to which nominated: Assistant Secretary for Fish and Wildlife and Parks Date of Nomination: _____

Date of birth: 24-08-44 Place of birth: Washington, D.C.
(Day) (Month) (Year)

Marital status: Married Full name of spouse: Betsy Kimmelman Frampton

Name and ages of children: Adam Snow Frampton (age 13)
Thomas Ward Frampton (age 9)

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	<u>Harvard Law School</u>	<u>9/66-6/69</u>	<u>JD</u>	<u>6/69</u>
	<u>London School of Economics</u>	<u>9/65-6/66</u>	<u>M.Sc.</u>	<u>6/66</u>
	<u>Yale University</u>	<u>9/61-6/65</u>	<u>A.B.</u>	<u>6/65</u>
	<u>Univ. of Illinois High School</u>	<u>9/56-6/61</u>	<u>Diploma</u>	<u>6/61</u>

Employment record: List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

President, The Wilderness Society, 900 17th St., NW, DC (1986-present)

Attorney-at-Law, 1200 17th St., N.W., DC (2/85-1/86)

Partner, Rogovin, Hoge & Lenzner, 1730 Rhode Island Ave, NW (10/76-1/85)

Ass't Special Prosecutor, Watergate Special Prosecution Force, 1425 K St., N.W. (6/73-6/75)

Employment record—Continued

Fellow, Center for Law & Social Policy, N Street, N.W. (1972-1973)
Law Clerk to Hon. Harry A. Blackmun, U.S. Supreme Court (1971-1972)
Consultant & rapporteur, Middle East peace project, under auspices of
American Friends Service Committee, Harvard and NYU Law Schools (1970-1971)
Vista Volunteer Lawyer, New York City (1969-1970)

Honors and awards:

List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Memberships:

List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable, and other organizations.

<u>Organization</u>	<u>Office held (if any)</u>	<u>Dates</u>
<u>Yosemite Restoration Trust</u>	<u>Board Member</u>	<u>1991-present</u>
<u>Island Press</u>	<u>Board Member</u>	<u>1990-present</u>
<u>Glen Eagles Foundation</u>	<u>Board Member</u>	<u>1988-present</u>
<u>D.C. Bar</u>	<u>Member</u>	<u>1972-present</u>

Memberships in various organizations to which I contribute such as Arena
Stage, WETA, Sierra Club, National Audubon, Museum of Modern Art (NYC),
Storm King Art Center (NY), National Gallery of Art.

Qualifications: State fully your qualifications to serve in the position to which you have been named

Full time involvement as President of The Wilderness Society over the past seven years in advocacy and public education concerning federal policy relating to the National Park System, the National Wildlife Refuge System, Endangered Species Act issues, and other public land conservation issues; in promoting the use of sound science and credible economic analysis to shed light on the resolution of such issues; and in seeking to interest and involve broader public constituencies in attention to such issues,

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

No

3. Has anybody made a commitment to you for a job after you leave government?

No

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

Yes

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

N/A

Financial
Statement

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).
2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

None, except The Wilderness Society pension plan; IRA; Keogh

3. Are any assets pledged? (Add schedule).

No

4. Are you currently a party to any legal action?

No

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

Yes

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

Yes, one year in the late 1970's. Received a small additional refund due to deductions I had not claimed but to which I was entitled.

Potential conflicts of interest.

1. Describe any financial or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

Several stocks held by spouse or dependent children that Interior Ethics

Office says should be sold within 90 days of confirmation. They are:

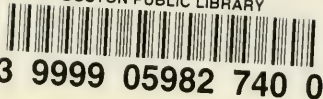
Pacific Enterprises; Anadarko Petroleum; Oryx Energy Co.; Weyerhaeuser Company; Burlington Resources; El Paso Company; and Columbia Gas System.

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

None.

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

Sale of several stocks listed in Question 2, above.



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5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

In addition to the answer above, I will comply with guidance and instructions

from Interior Ethics Office and Office of Government Ethics.

- Political affiliation and activities: List all memberships and offices held in, or financial contributions (in excess of \$1,000), and services rendered to any political party or election committee during the last 10 years.

Registered Democrat, D.C. As best I can recall, I have not made any contributions in excess of \$1,000 to any party or election committee in the past ten years.

- Published writings: List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters.)

Approximately 30 published "op-ed" pieces in various national newspapers, 1986-1992; regular editorials and occasional articles in The Wilderness Society's quarterly magazine, Wilderness.

"Bringing Racial Diversity to the Environmental Movement," in Reconstruction (1991)

Various introductions and chapters for environmentally related books, e.g., lengthy introduction to the re-publication of Gifford Pinchot's autobiography, Breaking New Ground (Island Press 1987)

Three Mile Island, A Report to the Commissioners, Vol i, Conclusions and Recommendations (1980)

"Stonewall: The Real Story of the Watergate Prosecution" (with Richard Bèn-Venistè), Simon & Schuster (1976)

Several law review articles.

Additional Matters:

1. If there is any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

N A

2. Do you agree to appear before all Congressional Committees which seek your testimony?

Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No

AFFIDAVIT

George T. Frampton, Jr.) ss, being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

George T. Frampton Jr.

Subscribed and sworn before me this 5 day of March, 1980.

Notary Public

By Commission Expires November 14, 1980



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