

**STATEMENT OF DAVID LONGLY BERNHARDT, SOLICITOR
OF THE DEPARTMENT OF THE INTERIOR OFFICE OF THE SOLICITOR
BEFORE THE HOUSE APPROPRIATIONS SUBCOMMITTEE
ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES
ON THE 2008 PRESIDENT'S BUDGET REQUEST**

March 28, 2007

Chairman Dicks, Ranking Member Tiahrt, and Members of the Committee, thank you for the opportunity to discuss the President's Fiscal Year (FY) 2008 budget for the Office of the Solicitor. I was sworn in as Solicitor on October 5, 2006, so this is my first opportunity to present a budget request to the Subcommittee. I recognize that the Office of the Solicitor budget request represents about 0.5 percent of the Department of the Interior's budget request, and I appreciate you taking time to visit with us about this Office.

The Solicitor's Office manages the Department of the Interior's Ethics Office, performs nearly all of the legal work within the Department of the Interior, and resolves Freedom of Information Act appeals. With a staff of more than three hundred attorneys and four hundred total employees we provide advice, counsel and legal representation to the Immediate Office of the Secretary, Assistant Secretaries, all of the bureaus and nearly every single office within the Department of the Interior.

The requested budget for FY 2008 is \$58.9 million, an increase of \$3.9 million above the 2007 Joint Resolution. The increase includes \$3.7 million to fully fund fixed costs, \$145,000 for information systems and services, and \$98,000 for implementation of the Department-wide Financial and Business Management System.

For the FY 2006 budget, 76 percent was devoted to salaries and associated personnel costs. 19 percent was categorized for fixed costs, which includes items such as payments of rent and the contributions to the Interior Working Capital Fund. About 5 percent of our entire budget was for discretionary functions, which cover all other items such as equipment investments, supplies, training, publication purchases, and even travel expenses. By fully funding fixed cost increases, this budget submission does not have the effect of hampering investments in training, technology, and records management, which has occurred when the Office has been required to simply absorb the fixed cost and salary increases.

Although the Office of the Solicitor budget only amounts to 0.5 percent of the Department's budget, the Office is involved in nearly every aspect of the Department of the Interior's activities. Before decisions are made, we provide legal advice and counseling. Once decisions are final, all too often, they are challenged and ultimately we spend a great deal of our time focused on defensive litigation.

Mr. Chairman, as this Committee well knows, the scope of the Department of the Interior's presence spans across twelve time zones. The legal questions the Office of the

Solicitor confronts are equally broad and varied in scope. While questions regarding the stewardship of the nation's lands managed by Interior make up a great deal of our legal work, our office is also focused on issues related to our obligations as the trustee delegate to certain individual Indians and to Indian Tribes. Additionally, we are called on to answer the general legal questions that every executive branch agency faces. Finally, we operate with a host of statutory mandates that are as broad and varied as the mission of the Department of the Interior itself.

Managing the Ethics Program

A key function of the Solicitor's Office is managing the Department of the Interior's Ethics Program. Secretary Kempthorne is committed to maintaining an ethical culture at the Department of the Interior. He set that tone both on the first day he was nominated and the day he took office by making ethics briefings his first priority. In his first written message to Interior employees and at his first all employees meeting, he emphasized ethics compliance.

We have recruited and hired an experienced ethics lawyer to be its Designated Agency Ethics Officer. Additionally, we have added two trained ethics lawyers to the Ethics Office staff. These three lawyers have 40 years of ethics compliance experience. Finally, we are implementing best ethics practices at the Department of the Interior.

Legal Services

As the Members of the Committee well know, the decisions we make at the Department of the Interior can have longstanding impacts on our Federal lands, the communities that surround them, and our country as a whole. Therefore, it is imperative that our Office strive to provide sound and timely legal advice ideally before decisions are made.

To help ensure our Office provides the quality advice that is expected, the attorneys and staff in the Office need to have the tools to help make them effective. During my first days within the Office of the Solicitor, I realized executive leadership must place a greater emphasis on legal professionalism, enhancing training opportunities for attorneys and staff, developing and improving our record management systems and protocols, and working to facilitate the reconnection of the Office to the Internet. During FY 2006 and now in FY 2007, I have moved to address these challenges facing the Office. And the FY 2008 submission allows us to continue to make progress.

Emphasizing Legal Professionalism

To place an emphasis on legal professionalism, my first official act as Solicitor on October 5, 2006 was to send an email to all employees laying out my expectations regarding (1) Reporting fraud, waste, and abuse to the Inspector General or other appropriate authorities; (2) Surnaming documents; (3) Serving the interests of conflicting clients; and (4) Dealing with disagreements on policy. One attorney replied back, *"Thank you for sending us this memo. In my 28 years of working in this office, this is the first time a Solicitor has discussed these matters with us and it is appreciated. I respect*

the approach you took in the memo... This is probably the first Solicitor's memo I have printed out and will save. Thank you again."

To also emphasize legal professionalism, I brought in the Department of Justice's Acting Director for the Office of Professional Responsibility to speak to our attorneys about the topic of professional responsibility. This was the first lecture of its kind within the Office.

Prioritizing Training

During FY 2006 and FY 2007, the Office has placed greater emphasis and priority on continuing legal education and training. We have launched new training initiatives, designated a training officer, and developed a low-cost training program. Legal training resources were secured through the DOJ Professional Responsibility Advisory Office, and certified DOJ video training was provided to us at no cost. We have also developed and initiated an in-house training program for supervisors. An electronic discovery training program has also been initiated in FY 2007. All of these efforts will continue in FY 2008.

Investing in Records Management

The Solicitor's Office has not had a centralized records management system for more than a decade. In FY 2006, we contracted with the Office of the Secretary Records Officer and the National Archives and Records Administration to help us develop a records retention schedule and system. In FY 2007, we will make additional progress on developing filing systems and protocols, and recreating a centralized docket operation.

Connecting to the Internet

Since December 2001, the Office of the Solicitor has been disconnected from the Internet. The lack of Internet access impacts the speed of review, and the timing and quality of advice this office provides for all activities conducted within the Department. The loss of connectivity has significantly impeded rapid communication with the client, and our communication with other agencies such as the Department of Justice.

During 2006, we developed and implemented a strategy focused on prioritizing and improving IT security deficiencies to ensure that adequate security systems are in place to reconnect to the Internet once the appropriate approval to reconnect is granted. Last week, the Department of Justice filed a Motion to Vacate the Consent Order Regarding Information Technology Security, which was the order requiring the Department to disconnect its computers from the Internet. The basis for the motion is that substantial changes in the law and in the facts since entry of that order render it no longer appropriate or justified as a matter of law.

Conclusion

I believe that our FY 2008 budget will make a difference in continuing the efforts we've initiated to address the challenges facing the Office of the Solicitor. We will have a well

managed Ethics Program. We will work to enhance the tools to help our attorneys and staff provide the quality legal advice that is expected of the Office. And we will work to develop an improved records management system. This concludes my overview of our FY 2008 budget proposal. Thank you for the opportunity to testify before this Subcommittee. I look forward to working with you through this process and I will be happy to answer any questions you may have.