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Dems try to bait DOJ nominee on climate, but he won't bite

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Jeffrey Bossert Clark, nominee to be an assistant attorney general for the Justice Department's Environment and Natural Resources Division, spoke on Capitol Hill yesterday.

A key Justice Department nominee's deflection of questions about climate change and his responses about the role of science in regulations infuriated Democrats at a committee hearing yesterday.

Jeffrey Bossert Clark, the White House's pick to lead DOJ's Environment and Natural Resources Division, several times declined to answer whether he believes greenhouse gases endanger public health.

He also defended past statements that ground-level ozone pollution blocks ultraviolet radiation.

"Your past work displays a disregard for science," Sen. Al Franken (D-Minn.) said in an exchange about whether there's a benefit to public health from smog.

Senate Democrats grew visibly frustrated by Clark's responses, particularly his decision to not share his personal beliefs on climate change.

"It's pretty simple: Do you believe that greenhouse gases are a threat to Americans' health and safety?" Judiciary ranking member Dianne Feinstein (D-Calif.) said, her sixth attempt at asking the question.

President Trump nominated Clark, an attorney at Kirkland & Ellis LLP, earlier this month to be his top environmental attorney.

If confirmed, Clark would oversee DOJ's representation of U.S. EPA, the Interior Department and other federal agencies in court, as well as lead the department's enforcement of environmental laws and regulations.

"He'll be the chief lawyer on these environmental questions," said Carl Tobias, a professor at the University of Richmond School of Law. "He'll play a critical role deciding the strategy, what they defend, what they don't, what they enforce."

During the George W. Bush administration, Clark was deputy assistant attorney general for ENRD, overseeing the division's Appellate and Indian Resources sections.

In his private practice, he represented BP PLC during litigation after the company's 2010 oil spill in the Gulf of Mexico.

He's also expressed doubt about climate change science and has been a fierce critic of EPA rules limiting greenhouse gases, once calling EPA's regulations reminiscent of a communist-style program (E&E Daily, June 7).

At the beginning of yesterday's hearing, Clark said he appreciated the "profound contributions that a clean and healthful environment make to all citizens' lives," recalling going to school as a child within sight of the polluted Delaware River that separates Delaware and
New Jersey.

Clark also said he would vigorously defend environmental laws, highlighting a case in which he helped prosecute a man who hired undocumented workers to remove asbestos without protection.

And he told lawmakers that the BP oil spill was "highly regrettable" and that he would abide by any ethics opinions recusing him from cases involving former clients.

But Democrats said they were concerned that Clark's past work representing BP and other industry clients would interfere with his ability to enforce environmental laws.

"It's one thing to whack an asbestos worker who sent workers into a clearly dangerous site. There's really no penalty for that," said Sen. Sheldon Whitehouse (D-R.I.). "It's another to take on Exxon Mobil. It's another thing to take on Koch Industries. And you may have to do those things."

Feinstein in particular expressed concern about Clark's past remarks on climate change.

She asked the nominee to vouch for a 2014 statement he made at a Federalist Society panel that the science behind climate change is "contested."

"I think I stand by it because there are clearly scientists and private entities who disagree with regulation in that area," he said.

But the senator slammed his answer: "I'm going to send you a recent edition of National Geographic," she said. "And in it, you're going to see a huge part of the Antarctic glacier, bigger than two states, ready to break off and dissolve."

Clark said he would read the magazine article — but then eight times refused to answer Feinstein's follow-up questions about his beliefs on the subject. He said that his beliefs were irrelevant and that he would defend whatever the administration decided to do with climate policies.

He also said his answers could endanger future litigation.

"If a lawyer at the Justice Department answers a question like that, and then there's a deviation from what the policymaking agencies decide, then they prejudice the question," Clark said. "That could be cited against the United States in litigation."

Clark's deflection of questions, though, prompted Whitehouse to object to Judiciary Chairman Chuck Grassley (R-Iowa).

"We're entitled to have our questions answered," he said.

Grassley, though, was hesitant to chide Clark over his responses, comparing asking about climate change to asking a nominee about his or her religious preferences.

"I don't know if you can expect a nominee to answer every question without getting into some really ticklish areas," he said.

As Democrats faced off with Clark at the hearing, the Sierra Club called on senators to reject the nominee. In a statement, Pat Gallagher, the club's legal director, called the nomination "unjust, dangerous and destructive."

"Trump's nomination of Jeffrey Bossert Clark continues this administration's theme of nominating nominees who have a long history of being hostile to the very agencies they have been appointed to lead," Gallagher said.

Tobias, the law professor, said Clark is likely to face continued strong opposition from Democrats during the nomination process.

He noted that the other three nominees at the hearing — including Timothy Kelly and Trevor McFadden, who were both chosen to sit on the U.S. District Court for the District of Columbia — barely faced any questions during the nearly 2 ½-hour hearing.

"There are two life-tenured judges about to be appointed, but they didn't get any questions except for soft lobs to the net," Tobias said.

Later today, the Senate Judiciary Committee is scheduled to vote on another controversial nomination: Damien Schiff to be a judge on the U.S. Court of Federal Claims.

Environmental advocates have warned that Schiff, an attorney at the conservative Pacific Legal Foundation, would seek to make it harder for federal agencies to enforce environmental regulations, including wetlands and endangered species protections (Greenwire, June 21).

Democrats on the committee have also raised concerns with past blog posts by Schiff and may seek to postpone the vote on his nomination by a week (E&E Daily, June 15).

Schedule: The meeting is Thursday, June 29, at 10 a.m. in 226 Dirksen.