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OIL AND GAS DEVELOPMENT ON PUBLIC LANDS

OVERSIGHT FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

Saturday, July 12, 2003 in Rawlins, Wyoming

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OVERSIGHT FIELD HEARING ON "OIL AND GAS DEVELOPMENT ON PUBLIC LANDS"

Saturday, July 12, 2003
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Resources
Rawlins, Wyoming

The Subcommittee met, pursuant to call, at 9:30 a.m., in the Jeffrey Memorial Community Center, Rawlins, Wyoming, Hon. Barbara Cubin [Chairman of the Subcommittee] presiding.

Mrs. CUBIN. The oversight hearing by the Subcommittee on Energy and Mineral Resources will come to order.

STATEMENT OF HON. BARBARA CUBIN, CHAIRMAN, SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

Mrs. CUBIN. The Subcommittee is meeting today to hear testimony on oil and gas development on public lands.

I'm pleased to be here in Rawlins to convene this congressional hearing on a critically important issue to the local community, the state of Wyoming, and the Nation as a whole.

Our nation is suffering from what is rapidly becoming a dangerous natural gas supply crisis. Natural gas prices reached record levels last winter. And as we reach midsummer, natural gas storage levels are once again well below historic norms, and gas prices are two to three times their historic average.

While the House Energy and Mineral Resources Subcommittee has held several hearings over the past 2 years on the supply and demand imbalance, the looming gas crisis has only recently begun to achieve national media attention.

On Thursday, the Speaker of the House of Representatives announced the formation of a special task force to address this problem. And I was very honored that he chose me to be vice—one of the vice chairs. There are two vice chairmen, Joe Barton from Texas and myself.

Over the next several weeks, we will be holding field hearings around the country. This will be the first—the kickoff, basically, of that—that requirement by the Speaker. And we'll be gathering facts and issuing findings about what caused this crisis and how we can fix it. This event today represents, as I said, the first of these hearings.

One thing I'd like to stress to my colleagues is that a great deal of the situation lies—of the solution—excuse me—lies right here in our home state of Wyoming. We're not only blessed with natural beauty, but we are also the friendliest people on earth and have a most abundant natural resource supply.

The problems we face as the result of public policies are that oftentimes public policy requires us to be at odds with one another. We have enacted policies to encourage increased utilization of clean burning natural gas, yet we continue to hinder the development of that natural gas. Our problems do not require solutions from unstable countries in the Middle East or in Africa. We have adequate natural gas and coal reserves right here to meet our demands, and we have enough oil supplies at home to reduce our dangerous reliance on foreign oil imports.

Most of the—these resources are located under Federal lands, often right here in Wyoming. They are a bedrock of our national security—or national energy security, as well as our state's economy.

About 1,400 trillion cubic feet of natural gas can be found in the United States, and another 1,000 trillion, which sounds like an odd number to use, in North America as a whole. That's enough to fuel our nation for over 100 years. Nearly 60 percent of these resources and the vast majority of new resources exist on Federal lands. However, it is growing increasingly difficult to access these resources, especially on Federal lands.

In short, we continue to shoot ourselves in the foot. We need to utilize all of our energy resources, oil, gas, coal, uranium, and renewables, in order to meet our energy needs and find our economic recovery.

The energy bill that passed out of my Subcommittee and through the full House of Representatives last April will do much to address these problems. However, it remains gridlocked in the Senate with no guarantee of passage this year. As a matter of fact, I think that the Democrats in the Senate will do everything they can do to see that the energy bill is not passed this year or next. With the high energy bills faced by consumers, our economy cannot afford to wait any longer. The American people and our economy need action now.

There is concern about the environmental consequences of energy development in our beautiful state. I share and respect those concerns. But certain groups are determined to fight responsible development anywhere it's proposed. This is a bad policy for Wyoming, and it's bad for America. New technology enables us to develop energy in an environmentally sensitive way. Producing energy and preserving the environment are not mutually exclusive.

I look forward to today's testimony and welcome all of our witnesses as we all look forward to finding ways to develop a smarter and safer natural energy policy.

[The prepared statement of Mrs. Cubin follows:]

Statement of Hon. Barbara Cubin, a Representative in Congress from the State of Wyoming

I am pleased to be here in Rawlins today to convene a congressional hearing on a critically important issue to the local community, the state of Wyoming and the nation as a whole.

Our nation is suffering from what is rapidly becoming a dangerous natural gas supply crisis. Natural gas prices reached record levels last winter, and, as we reach mid-summer, natural gas storage levels are once again well below historic norms and gas prices are two to three times their historic average.

While the House Energy and Mineral Resources Subcommittee has held several hearings over the past two years on the supply and demand imbalance, the looming gas crisis has only recently begun to receive media attention nationwide.

On Thursday, the Speaker of the House of Representatives announced the formation of a Special Task Force to address this problem, and I was very honored that he chose me to serve as a vice chair. Over the next several weeks we will hold field hearings around the country to focus on the issue, gather facts and issue findings about caused this crisis and how we can fix it. This event today represents the first of those hearings.

One thing I'll stress to my colleagues is that a great deal of the solution lies right here in our home state of Wyoming. We are not only blessed with natural beauty and the friendliest people on the planet, but also some of the most abundant natural resources on Earth, especially natural gas.

The problems we face are the result of public policies that are often at odds with one another. We have enacted policies to encourage increased utilization of clean burning natural gas, yet we continue to hinder the development of natural gas resources.

Our problems do not require solutions from unstable countries in the Middle East, Asia or Africa. We have adequate natural gas and coal resources right here to meet our demand, and we have enough oil supplies at home to reduce our dangerous reliance on foreign oil imports. Most of these resources are located under federal lands, often right here in Wyoming. They are a bedrock of our national energy security, as well as our state's economy.

About 1,400 trillion cubic feet of natural gas can be found in the United States and another 1,000 trillion in North America. That's enough to fuel our nation for over one hundred years. Nearly 60 percent of those resources—and the vast majority of the new sources—exist on federal lands. However, it is growing increasingly difficult to access those resources—especially those on federal lands.

In short, we continue to shoot ourselves in the foot. We need to utilize all of our energy resources—oil, gas, coal, uranium and renewables—in order to meet our energy needs and fuel our economic recovery.

The energy bill that passed out of my Subcommittee and through the full House of Representatives last April will do much to address these problems. However, it remains grid-locked in the Senate, with no guarantee of passage this year. With the high energy bills faced by consumers, our economy cannot afford to wait much longer. The American people and our economy need action now.

There is concern about the environmental consequences of energy development in our beautiful state. I share and respect that concern. But certain groups are determined to fight responsible development anywhere it is proposed. This is bad for Wyoming and bad for America.

New technology enables us to develop energy in an environmentally sensitive way. Producing energy and preserving the environment are not mutually exclusive goals.

I look forward to today's testimony and welcome all our witnesses, as we look for ways to develop a smarter and safer national energy policy.

Mrs. CUBIN. So I would now like to ask the first panel to come forward. Ms. Dru Bower, with the Petroleum Association of Wyoming. Mr. Dan Heilig of the Wyoming Outdoor Council. Lance Cook, Wyoming State Geologist. And Mr. Bob Bennett, Bureau of Land Management.

If you'd come and take your seats at the table.

I just said come and take your seats at the table just in time for Jack to pass this to me to tell you to stand up. And it's a new policy this year in the Resources Committee that all witnesses will—we will take testimony from witnesses under oath. So please stand and raise your right hand.

Repeat after me.

Do you solemnly swear or affirm, under the penalty of perjury, that the statements made and the responses given will be the whole truth and nothing but the truth?

[witnesses sworn.]

Mrs. CUBIN. Thank you. Please be seated.

I will call on Ms. Dru Bower with the Petroleum Association of Wyoming to begin the testimony.

STATEMENT OF DRU BOWER, VICE PRESIDENT, PETROLEUM ASSOCIATION OF WYOMING

Ms. BOWER. Thank you.

Madam Chairwoman and members of the Subcommittee. My name is Dru Bower, and I'm the vice president for the Petroleum Association of Wyoming, specializing in public land issues. I am here today not only representing the Association but also Public Lands Advocacy.

Wyoming is a uniquely rural state. Lands in the state which are owned and controlled by the Federal Government equate to approximately 49 percent of the surface and 66 percent of the mineral estate.

The Federal regulatory process is exhaustive and cumbersome. Resource management plans have been developed for all Federal lands. The plans identify what areas will be available for oil and gas leasing and the stipulations to be applied to those leases. Many land use plans are currently undergoing land planning revisions in several energy rich basins in the west. There is great concern within the industry that when the plans are completed, there will be a net loss of lands available for oil and gas leasing and the areas that are available for leasing will have stringent stipulations for access with a limited duration of operation.

It should be noted that once a lease has been issued, it becomes a contractual agreement between the lessee and the Federal Government. While the lease contract gives the lessee the exclusive right to develop that lease, it does not give the lessee the green light for exploration and development. Even proposed project—every proposed project is subject to a site specific NEPA analysis before a permit is approved by an agency. Consultations with other agencies must occur, and each agency may require new restrictions that directly impact access and the economic viability of the project. Even on lease lands subject to only standard lease terms, conditions of approval identified through project level or site specific environmental analysis may be required before the project is approved. Each condition of approval limits access to the lease to some extent, whether through added costs or delay.

Another major factor which industry must address when accessing Federal minerals is severed estates; for example, Federal mineral on private surface. Before agencies will approve permits, the lessee must negotiate in good faith with the private surface owner to reach an agreement for protection of surface resources and reclamation of disturbed areas or adequate bonds are put in place sufficient to indemnify the surface owner against reasonable and foreseeable damages. All costs negotiated in that surface use agreement are the responsibility of the operator. It is important to note

that the operator in most cases is only the lessee. They do not own the surface nor do they own the mineral.

When it comes to mineral development, the Bureau of Land Management has a statutory obligation to maximize the recovery of Federal minerals and prevent drainage from occurring while providing protection to other resources. An example of drainage that is current today exists in the Powder River Basin in northeastern Wyoming.

In 2000, the BLM decided to conduct an environmental impact statement with a revised reasonably foreseeable development scenario before further development of Federal leases could occur in the area. A drilling moratorium was imposed on the majority of those Federal leases, and they were placed in suspense. The record of decision for that Powder River Basin Oil and Gas EIS, after 3 years, was finally issued April 30 of 2003 authorizing the development of approximately 51,000 coalbed natural gas and 3,200 non-coalbed natural gas wells in Wyoming.

Environmental groups filed four separate legal challenges in Federal Court immediately after the issuance of the decision. Because of the litigation, no coalbed natural gas drilling permits have been approved to date since the record of decision was issued. The money lost through drainage that would go to the Federal treasury and the state of Wyoming is primarily due to protracted regulatory compliance and frivolous litigation.

Another—frivolous litigation is a factor to consider in the Federal regulatory process which is most often filed by environmental groups whose sole purpose is to delay or deny development of natural resources. In Wyoming, virtually all lease sales and most project level environmental assessments and impact statements have been protested, appealed, or challenged in Federal courts. It is obvious that a strategy by some groups is to inundate an agency office by filing Freedom of Information requests or legal challenges of a Federal decision, either through the internal administrative process or in Federal Court. This requires a significant portion of agency time and personnel just to prepare the administrative record to respond to the legal challenges rather than processing permits and conducting the necessary onsite inspections.

Some tout that the additional stipulations, mitigation measures, and delays in working through the public process is simply the cost of doing business on public lands. This is a flawed perception. The energy industry already pays its fair share to the Federal Government for the privilege of operating on public lands through lease bonus bids, lease rentals, and royalty payments.

It has become apparent that NEPA has become the tool that is used as the primary impediment to oil and gas development on Federal lands. The cost of NEPA abuse is high. It is safe to say that the cumulative impacts of stipulations, conditions of approval, and frivolous litigation is strangling industry's ability to develop energy resources on Federal lands and to supply much needed energy to the citizens of this country.

Madam Chairwoman and members of the Subcommittee, thank you for the opportunity to share with you our perspective.

[The prepared statement of Ms. Bower follows:]

Statement of Dru Bower, Vice President, Petroleum Association of Wyoming and on Behalf of Public Lands Advocacy

Madam Chairwoman and members of the Subcommittee, my name is Dru Bower and I am the Vice President of the Petroleum Association of Wyoming (PAW), specializing in public land issues. I am here today representing not only PAW, but also Public Lands Advocacy. We would like to thank the Subcommittee on Energy and Mineral Resources of the Committee on Energy and Commerce for the opportunity to testify at this field hearing regarding "Oil and Gas Development on Public Lands."

PAW is Wyoming's oldest and largest trade organization, the members of which account for over ninety percent of the natural gas and over eighty percent of the crude oil produced in the State. PAW is recognized as Wyoming's leading authority on petroleum industry issues and is dedicated to the betterment of the state's oil and gas industry and public welfare.

Public Lands Advocacy (PLA) is a non-profit organization whose members include major and independent petroleum companies as well as non-profit trade and professional organizations that have joined together to foster the interests of the oil and gas industry relating to responsible and environmentally sound exploration and development on federal lands.

In 1996, Wyoming supplied the nation with 3.4% of the total U.S. output of natural gas. In 2002, natural gas production for our state rose to 7.1% of the total U.S. output. Noteworthy is the fact that a significant percentage of Wyoming is managed by federal agencies.

Wyoming is a uniquely rural state comprised of 97,914 square miles and is the ninth largest state in the Union. Lands in the state, which are owned and controlled by the federal government equate to approximately forty-nine percent (49%) of the surface and sixty-six percent (66%) of the mineral estate. These federal lands are managed by agencies such as the National Park Service (NPS), United States Forest Service (USFS) and the Bureau of Land Management (BLM). The remaining 51% of the surface and 34% of the mineral estate are owned by private entities, the State of Wyoming and the Tribes.

Natural gas remains the most abundant and reliable clean burning fuel to meet national environmental objectives while enhancing the use of stable domestic fuel sources and federal lands must play a growing role in future US energy supplies. Prior to 1980, only 9% of all domestic oil and gas production came from federal land. According to the American Petroleum Institute (API), today federal lands produce about one third of domestic oil and gas, but are estimated to contain 77% of the oil and 60% of the natural gas resources to be found in the US. In the short period from 1995 to 2003, there has been an increase of at least 75% in estimates of remaining undiscovered domestic oil resources and over 23% in estimates of undiscovered natural gas on federal lands. Despite greater knowledge of the occurrence of gas resources and increased demand for energy, federal policy toward energy development has become increasingly restrictive. PAW and PLA urge members of this committee to take steps to reverse this trend as outlined in the recommendations below.

FEDERAL REGULATORY PROCESS

The federal regulatory process is exhaustive and cumbersome. To comply with requirements of the Federal Land Policy and Management Act (FLPMA), agencies are required to prepare land use plans. The National Environmental Policy Act (NEPA) requires agencies to evaluate how proposed federal actions will affect the human environment. Environmental Assessments (EA) must demonstrate that impacts associated with a proposed action can be mitigated and that the net effects are not significant. If the EA shows a project has significant impacts, an Environmental Impact Statement (EIS) must be prepared which identifies and discloses the potential effects of the project, along with identified mitigation measures to be used if the project is approved.

Resource Management Plans (BLM) or Land and Resource Management Plans (USFS) have been developed for all federal lands. Each plan is subject to an extensive EIS process; the plans identify what areas will be available for oil and gas leasing and the stipulations to be applied to those leases (i.e. No Surface Occupancy (NSO), seasonal restrictions for wildlife protection, etc.). In addition, the plans establish operating standards that must be met before proposed projects are implemented.

Many land use plans were completed in the mid-to-late 1980s and federal agencies are currently undergoing land-planning revisions in several energy rich basins in the West. There is great concern within industry that when the plans are com-

pleted, there will be a net loss of public lands available for oil and gas leasing and the areas that are available will have more stringent stipulations for access with a limited duration of operation.

Before a lease parcel is actually included in a federal lease sale, BLM conducts a "Determination of NEPA Adequacy" (DNA) to ensure that leasing is consistent with existing plans. This determination indicates whether additional analysis is necessary before leasing occurs. (Similar DNA analyses are typically prepared before a project is allowed to proceed.)

It should be noted that once a lease has been issued, it becomes a contractual agreement between the federal government and the lessee. However, while the lease contract gives the lessee the exclusive right to develop the lease, it does not give the lessee the green light to start exploration or development activities. Every proposed project is subject to a site-specific NEPA analysis before a permit is approved by the agency. In addition, consultation with other agencies must occur. For example, consultations with the US Fish and Wildlife Service (USFWS) or a State Historic Preservation Office (SHPO) may be required if listed threatened and endangered species or cultural resource issues are involved, respectively. Each agency may require new restrictions that directly impact access and the economic viability of the project.

BLM has implemented several new Instruction Memoranda designed to make the process more efficient. These include:

- Enhanced Consistencies in Conditions of Approval;
- Cultural Resources Management (block clearances of 40 acres and modeling);
- Revision of Onshore Order 1;
- Revision of the Gold Book on Operations; and
- Plans of Development (POD) Requirements (master POD addressing two or more proposed wells in close geographic proximity to one another that share common Drilling and Surface Use Plans).

These IMs are a positive step in the right direction and industry looks forward to their immediate implementation and enforcement in the field. In fact, industry hopes to work closely with BLM in its revisions of the Onshore Order No. 1 and the Gold Book on Operations. However, there are additional measures that must be taken to ensure timely and cost effective "access" to federal lands. We recommend that new Instruction Memoranda be issued to address the following:

- In order to eliminate costly and time-consuming redundant NEPA analyses, the agencies must utilize existing NEPA documentation by either tiering or incorporating by reference all existing NEPA analyses to avoid reanalyzing issues that have already been addressed and for which decisions have already been made. In other words, in areas where expanded development is proposed, no new resource data collection is necessary; simply a new cumulative effects analysis is required; and
- No new cumulative effects analysis is necessary if a project proponent wishes to increase recovery of the resource by directionally drilling new wells from existing locations that were already approved and drilled under a previous decision document. Since no new surface disturbance will result, no further NEPA analysis is necessary.

In addition to addressing leased lands, their associated stipulations and lands unavailable for lease, other important factors must be considered. For example, even on leased lands subject to only standard lease terms, conditions of approval (COA) are imposed in accordance with land use decisions made by the agencies. In other words, while a lease may not be subject to additional stipulations, conditions of approval identified through project level or site-specific environmental analysis may be required for proposed projects. Each condition of approval limits access to the lease to some extent whether through added cost or delay. Therefore, in reality, it is safe to say that all leases issued under standard lease terms are still subject to the same constraints imposed on stipulated leases. Further, some conditions of approval may be more of an impediment to exploration or development than lease stipulations.

While the Petroleum Industry uses the word "Access" as a catchall term, the term is not limited to the availability of federal lands for leasing. Clearly, leasing is an important aspect of access to federal lands for purposes of exploration and development; however, access also encompasses the industry's ability to develop new wells in existing fields and can limit the duration of operations based on overlapping seasonal restrictions. As such, expansion of existing production often faces numerous impediments including:

- High cost to industry and long delays for NEPA compliance;
- Delays in land use plan revisions;
- A wide variety of surveys and inventories on most projects for cultural, wildlife and other resource values that may or may not be present in a project area;

- Delays in obtaining drilling and rights-of-way permits due to a lack of adequate federal staffing and funding in high volume leasing and development areas;
- Financial burdens placed upon industry who may have to pay for contract personnel to work on permits in field offices;
- The same restrictive management imposed to protect species listed as threatened or endangered under the Endangered Species Act are applied to unlisted species (i.e. sensitive, proposed and candidate species);
- Endless petitions to the US Fish and Wildlife Service (FWS) to list plant and animal species without supporting scientific data; but, which cause federal agencies to change their management objectives from multiple-use to restricted use; and
- Further, environmental groups are not only filing petitions with FWS to list a particular species with limited supporting scientific data; petitions are concurrently being filed by the same parties with BLM to manage the species' habitat as an Area of Critical and Environmental Concern (ACEC). An area with an ACEC designation carries additional restrictions for mineral development.

ROADLESS CONSERVATION RULE

The Roadless Conservation Rule prevents road building on more than 58 million acres of the National Forest System C a move that will place 11.3 TCF of economically recoverable natural gas off limits to exploration and development. Ironically, this decision coincides with Administration warnings of shrinking gas supplies. The Bush Administration sees only "limited opportunities" to increase dwindling natural gas supplies over the next 12 to 18 months, calling for conservation to head off a summer shortage. Moreover, Federal Reserve Chairman Alan Greenspan has publicly stated that dwindling supplies could add serious pressure to the US economy.

According to the Department of Energy Report, Undiscovered Natural Gas and Petroleum Resources beneath Inventoried Roadless and Special Designated Areas on Forest Service Lands, November 2000, 83 percent of the natural gas resource found in the Rocky Mountain Region is located in slightly less than 5 percent of the total proposed Inventoried Roadless Areas (IRA) nationwide. PAW and PLA urge Congress to support modification of the Roadless Conservation Rule. Removal of the 5% IRAs that overlie these important natural gas resources would still allow for the majority of the IRAs to be set aside while providing for development of the critically important natural gas resource base.

SPLIT ESTATE & DRAINAGE

Another major factor which industry must address when accessing federal minerals is severed estates (i.e. federal minerals / private surface). Before agencies will approve permits, the lessee must negotiate in "good faith" with the private surface owner to reach an agreement for protection of surface resources and reclamation of disturbed areas. Further, if an agreement cannot be reached, the agency requires adequate bonds to be in place sufficient to indemnify the surface owner against reasonable and foreseeable damages.

All costs negotiated in the Surface Use Agreement are the responsibility of the operator. It is important to note that the operator in most cases is only the lessee. They do not own the surface nor do they own the minerals. Operators contract for the exclusive right to develop a federal mineral lease at their own investment and associated risks.

When it comes to mineral development, the BLM has a statutory obligation to maximize the recovery of federal minerals and prevent "drainage" from occurring while providing protection to other resources. "Drainage" is defined as the "migration of oil or gas in a reservoir due to a pressure reduction caused by production from wells bottomed in the reservoir" (Manual of Oil and Gas Terms, Williams and Meyers, third edition). Not only can drainage occur from adjacent federal leases held by different lessees, drainage of federal minerals may occur when the lease is adjacent to producing private or state leases.

The permitting process for non-federal lands is more timely and predictable and, therefore, the most appealing for operators. It is possible that due to the permitting and regulatory process and potential legal challenges, it will be virtually impossible for lessees to develop domestic oil and gas resources; thereby, choosing to divert investments from development of federal minerals to other areas either domestically or over seas.

An example of drainage occurring today exists in the Powder River Basin in northeastern Wyoming. The Wyodak Coal Bed Methane Project Environmental Impact Statement Record of Decision (Wyodak EIS) was completed in 1999, which authorized the development of 5000 new wells. This cumulative analysis included wells to be developed on federal, private and state minerals. Due to the timeliness

and predictability of acquiring state and private permits, many initial permits were sought on those lands instead of federal lands. The BLM recognized that this created a significant drainage situation and immediately conducted another environmental assessment to analyze an additional 2500 federal drainage wells (Wyodak Drainage Environmental Assessment). The importance of the Wyodak EIS and the Wyodak Drainage EA were to gather significant information regarding coal bed natural gas development and its associated impacts on other resources.

In 2000, BLM decided to conduct an additional EIS with a revised reasonably foreseeable development scenario before further development of federal leases outside of the Wyodak area would be authorized. A drilling moratorium was imposed on the majority of federal leases (again outside of the Wyodak area) and the leases were placed in suspense. While a detailed cumulative analysis was being conducted, development continued on private and state minerals creating significant drainage of federal minerals. The Record of Decision for the Powder River Basin Oil and Gas EIS was finally issued April 30, 2003 authorizing the development of approximately 51,000 coal bed natural gas and 3,200 non-coal bed natural gas wells in Wyoming.

"Environmental groups" filed four separate legal challenges in federal court immediately after the issuance of the decision. Because of the litigation, the Administration has instructed BLM to continue to refrain from approving permits while the lawsuits are being reviewed internally. As a consequence, no coal bed natural gas drilling permits have been approved to date since the Record of Decision was issued. As a matter of information, currently there is a backlog of approximately 2000 permits in the BLM Buffalo Field Office of which 90% or more would prevent drainage from occurring on federal minerals. The money lost through drainage that would go to the federal treasury and the state of Wyoming is primarily due to protracted regulatory compliance with FLPMA, NEPA and frivolous litigation.

FRIVOLOUS LITIGATION

Another important factor to consider in the federal regulatory process is litigation by "environmentalist groups" whose sole purpose is to delay or deny development of natural resources. In Wyoming, virtually all lease sales, and most project level EAs or EISs, including geophysical projects, have been protested, appealed, or challenged in federal court. The same is true for the other Rocky Mountain States.

A strategy by some groups is to inundate an agency office by filing Freedom of Information Act requests (FOIA) or legal challenges of a federal decision either through the internal administrative process (State Director Reviews or Interior Board of Land Appeals) or in federal court. This requires a significant portion of agency time and personnel just to prepare the administrative record to respond to legal challenges rather than processing permits and conducting the necessary onsite inspections.

Some tout that the additional stipulations, mitigation measures, and delays in working through the public process is simply the cost of doing business on public lands: This is a flawed perception. As an example, the energy industry in Wyoming already pays its fair share to the federal government for the privilege of operating on public lands—between $500 million to nearly one billion dollars annually to the federal treasury through lease bonus bids, lease rentals and royalty payments.

It has become apparent that NEPA has become a "tool" that is used as the primary impediment to oil and gas development on federal lands. PAW and PLA support without qualification the Act's provisions for public comment, identification of alternatives to the proposed action, and consideration of impacts and mitigation measures to be used. However, these same provisions are being used by some groups as opportunities to stop proposed projects without regard for cost and delay of impacts on land management agencies, the US taxpayer, or multiple users of the public lands.

The cost of "NEPA abuse" is high. For example, the burden of agencies' management responsibilities frequently shifts to operators; such as preparation of NEPA documentation, resource inventories and species surveys, monitoring activities and ensuring adequate staff is available to process permits. All of these new obligations put a tremendous burden on industry's ability to economically develop the resource for the benefit of the country. It is safe to say that the cumulative impacts of stipulations, conditions of approval and litigation is strangling industry's ability to develop energy resources on federal lands and to supply much needed energy to the citizens of this country.

RECOMMENDATIONS

In conclusion, PAW and PLA appreciate Congress' recognition of the important role access to federal lands plays in meeting the energy needs of the nation through its efforts to pass an energy bill. However, many of the additional measures dis-

cussed in this testimony can also be easily addressed through the regulatory process.

PAW and PLA recommend the following:

- Reiterate the importance of federal lands in meeting the nation's energy needs;
- Provide adequate funding for BLM staffing to specifically address APD and Rights-of–Way backlogs;
- Require timely issuance of leases in areas determined to be available for oil and gas leasing;
- Require timely issuance of APD and Rights-of–Way;
- Eliminate the 5% of Inventoried Roadless Areas in the Rocky Mountain Region that encompass 83% of the natural gas resources found within the areas covered by the Roadless Conservation Rule;
- Encourage aggressive implementation and enforcement of recently issued BLM Instruction Memoranda (IM) that provide field guidance for improving processing of APDs and Rights-of–Way;
- Recommend issuance of new IMs that eliminate redundant NEPA analyses; and
- Require reimbursement to the prevailing party for reasonable attorney's fees, actual court costs incurred, or any other relief, which may be granted through a legal challenge of an agency decision.

Madam Chairwoman and members of the Subcommittee, thank you again for the opportunity to share with you our perspective regarding the "Oil and Gas Development on Public Lands".

Mrs. CUBIN. Thank you.

I would now like to recognize Mr. Dan Heilig of the Wyoming Outdoor Council.

STATEMENT OF DAN HEILIG, EXECUTIVE DIRECTOR, WYOMING OUTDOOR COUNCIL

Mr. HEILIG. Thank you very much.

It would indeed be easier for industry to develop its resources if the citizens and private surface owners who are being affected by development were to simply move away and vacate the lands for industry. I do not doubt that that would be beneficial, but I don't think that is a reasonable approach for any person to be advocating.

Madam Chairwoman and members of the Subcommittee, my name is Dan Heilig. I'm the executive director of the Wyoming Outdoor Council.

Established in 1967, WOC is the state's oldest and largest independent environmental organization. Our mission is to protect and enhance Wyoming's environment by educating, involving citizens, and advocating environmentally sound public policies and decisions.

I appreciate the opportunity to present my organization's views on this important subject of oil and gas development on our public lands.

As you well know, Wyoming is also blessed with abundant supplies of mineral and energy resources. While our solar and wind power potential is enormous, it remains virtually untapped. At the same time, activity in Wyoming to develop fossil fuel resources is at an unprecedented level. It is our responsibility, we believe, both as a state and a nation, to ensure that the exploitation of our mineral riches does not permanently impair the natural values that make Wyoming unique.

Before I address the subject of impediments, the subject of this hearing, I want to use this opportunity to briefly respond to claims made by those in the industry that environmentalist groups have

appealed most project level EAs or EISs prepared for oil and gas development projects. The following is a list of just a few of the dozens of major energy projects that have been approved recently without appeals or litigation from the environmental community. The Continental Divide project, 3,000 wells. Jonah II, 450 wells. Pinedale Anticline, 700 wells. Wyodak CBM project, 5,000 wells. Wyodak CBM Drainage project, which I might note was authorized under EA FONZI, 2,500 wells. And then Gillette North, South, Marquiss, and Lighthouse. And I want to correct an error here. Lighthouse was, in fact, appealed by the Powder River Basin Resource Council. I apologize for that error.

Mrs. CUBIN. Thank you.

Mr. HEILIG. Annually Wyoming BLM issues dozens, if not hundreds, of project level authorizations for oil and gas activities without public comment, much less an appeal being received.

In addition to a number of other large oil and gas projects—excuse me. In addition, a number of other large oil and gas projects are moving through the process toward approval. I list them here. I'll quickly go through them. South Piney, 210 wells. Jonah Infill by EnCana, Inc., 1,250 wells. Seminoe Road, 1,240 wells. Atlantic Rim CBM, 3,880 wells. Wind River Natural Gas Development project, 325 wells. Big Porcupine, 453 wells. There are others listed. I won't take the Committee's time to cover this list. That's in the testimony.

In my view, whether these projects will be the subject of appeals or litigation will frankly depend largely on whether BLM decides to follow the law, properly disclose and mitigate the environmental effects, and protect the rights of property owners whose lives and livelihoods are being adversely affected by increased development.

The point I wish to make now is that the public lands are, in fact, that exactly. They're public lands. We all have a stake. We all have an interest in these lands. They do not belong to one particular group. We all must share.

I, in my testimony, have a written excerpt from FLPMA, the Federal Land Policy and Management Act, the provision describing multiple use. And I think it's important to highlight that. FLPMA's definition does not mean all uses on all lands. What it means is rather a combination of balance and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific, and historic values and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and a quality of the environment with consideration being given to the relative values of resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

I see that I'm just about out of time. I apologize for that.

I think the most important part of the testimony of mine has to do with the recommendations. And most of that focuses on future—a future world where nonfossil fuels are the primary source of energy, wind, solar, hydrogen, and so forth. I'm happy to discuss with

the Committee short-term solutions and recommendations that may address the immediate near-term future.

Thank you very much.

Mrs. CUBIN. If you'd like to do that—if you—hello. If you would like to go ahead and do that, I'm not going to stick real tightly to the time limit if it won't take more than a minute.

Mr. HEILIG. No. I just—I have a few recommendations that I could certainly share with the Committee. Can you hear me OK?

Mrs. CUBIN. Uh-huh. Do I have a blank look on my face?

Mr. HEILIG. No, not at all. You're very engaging, in fact.

There are those voices that claim that delays are due primarily to red tape, procedural requirements of NEPA, and other laws and frivolous appeal and litigation. Fundamentally, we believe the problem is traced to conflict and competition over diminishing resources. Everyone, as I mentioned at the outset, has a stake in our public lands. And they feel very strongly and emotionally about their particular ideas of how the public lands should be managed.

In Wyoming, we have a large amount of surface—private surface estate overlying Federal minerals, as well. And the Federal Government is making decisions that have a direct impact on the lives of the people who occupy the surface, who were invited by this Federal Government 100 years ago to settle that land and to build communities and businesses there. And now they're being asked to step aside and make way for this newest government initiative to develop natural gas.

I think fundamentally there are deep ingrained conflicts between the users of lands that need to be addressed. I don't think a streamlined NEPA or removing certain regulatory groups is the answer. The problem is much deeper. And it requires, I think, hearings like this followed by dialog and communications so we can begin to understand better the basic views of each of the public land users.

Mrs. CUBIN. Thank you.

Mr. HEILIG. Thank you.

[The prepared statement of Mr. Heilig follows:]

Statement of Dan Heilig, Executive Director, Wyoming Outdoor Council

My name is Dan Heilig, and I am the executive director of the Wyoming Outdoor Council (WOC). Established in 1967, WOC is the state's oldest and largest independent environmental organization. Our mission is to protect and enhance Wyoming's environment by educating and involving citizens and advocating environmentally sound public policies and decisions.

I appreciate the opportunity to present my organization's views on the important subject of oil and gas development on our public lands.

Wyoming is blessed with extraordinary and unique natural treasures including Yellowstone National Park, the nation's first; Grand Teton National Park; Devils Tower, the nation's first national monument; and the Shoshone National Forest, also the nation's first. We are the nation's headwaters state: the Colorado, Columbia and Missouri Rivers all have their origins in western Wyoming's remote high country. Our congressionally-designated wilderness areas that surround Yellowstone, besides offering some of the best backcountry recreational experiences in the country, comprise the largest pristine Class I airshed in the contiguous United States. Nationally-significant historic trails like the Oregon, California and Mormon trails traverse the state. Our clear skies, stunning panoramas and abundant wildlife are the envy of the nation.

Equally important, particularly for Wyoming's residents, are the 18 million acres of public lands in Wyoming managed by the Bureau of Land Management. Wyoming's Red Desert, the Upper Green River Valley, Powder River Breaks, Split Rock,

and Adobe Town are just a few of the dozens of special places that Wyoming's residents cherish, use and enjoy for a variety of pursuits.

As you well know, Wyoming is also blessed with abundant supplies of mineral and energy resources. While our solar and wind power potential is enormous, it remains virtually untapped. At the same time, activity in Wyoming to develop fossil fuel resources is at unprecedented levels. It is our responsibility, both as a state and nation, to ensure that the exploitation of our mineral riches does not permanently impair the natural values that make Wyoming unique.

Before I address the subject of impediments, I want to use this opportunity to briefly respond to claims made by those in the industry that "environmentalist groups" have appealed "most project level EAs or EISs" prepared for oil and gas development projects.

Following is a list of just a few of the dozens of major energy projects that have been approved recently without appeals or litigation from the environmental community:

- Continental Divide—3,000 wells;
- Jonah II—450 wells;
- Pinedale Anticline—700 wells;
- Wyodak CBM project—5,000 wells; Wyodak CBM Drainage project—2500 wells;
- Gillette North, Gillette South, Marquiss, and Lighthouse CBM projects.

Annually, Wyoming BLM issues dozens, if not hundreds, of project-level authorizations for oil and gas activities without public comment, much less an appeal, being received.

In addition, a number of other large oil and gas projects have either recently been approved or are moving through the process towards approval:

- South Piney Natural Gas Development Project, 210 wells, Sublette County;
- EnCana, Inc's Jonah Field Infill Drilling Project, 1,250 wells, Sublette County;
- Seminoe Road CBM Project, 1,240 wells, Carbon County;
- Atlantic Rim CBM Project, 3,880 wells, Carbon County;
- Wind River Natural Gas Development Project, 325 wells, Fremont County:
- Big Porcupine, 453 CBM wells, Thunder Basin National Grasslands;
- Kennedy Oil Pilot Exploratory CBM Project, 20 wells, Sweetwater County;
- Copper Ridge Shallow Gas Project, 89 wells, Sweetwater County;
- Little Monument Unit Natural Gas Project, 31 wells, Sweetwater County.

In my view, whether these projects will be the subject of appeals or litigation will frankly depend largely on whether the BLM decides to follow the law, properly disclose and mitigate the impacts, and protect the rights of property owners whose lives and livelihoods are being adversely affected by increased development.

EPCA and "Impediments"

I will focus my comments on public lands managed by the BLM, since that is where the majority of natural gas bearing formations are located.

As noted earlier, the BLM in Wyoming administers approximately 18 million acres of public lands and an additional 29 million acres of federal mineral estate, most of which is overlain by privately owned lands. Under the applicable Resource Management Plans required by federal law, the vast majority of public lands under BLM's jurisdiction - 90% or more - are open to oil and gas leasing and development. For the most part, the only lands off-limits to oil and gas development activities are the wilderness study areas established by BLM pursuant to congressional directive, totaling approximately 577,000 acres.

Under the Federal Land Policy and Management Act, 43 USC §§ 1701–1785, the BLM is required to manage the public's lands for multiple uses. This does not mean all uses on all lands, but rather "... a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output."

Recently, industry representatives have provided a misleading portrayal concerning perceived "impediments" to their access to public lands oil and gas. I hope to clarify a few of these misconceptions. First, the 2003 Energy Policy and Conservation Act (EPCA) report makes it clear that for 60 million acres of federal lands in five major western basins, 85 to 88% of oil and gas reserves are available for leasing with standard and other resource-protection stipulations. The EPCA report was firm in its conclusion as universally reported in the press that there are indeed few re-

strictions on public land oil and gas. Indeed, Assistant Interior Secretary Rebecca Watson called these findings "unexpected."

Closer to home, for the Montana and Wyoming Powder River Basin, the EPCA report found that for 10.7 million acres of federal lands, 91 to 96% of oil and gas reserves are likewise available for leasing. The Wyoming Powder River Basin is 99% open to leasing and over 95% under lease. For the Greater Green River Basin in Colorado, Utah and Wyoming, encompassing 11.6 million acres of federal lands, 88 to 90% of oil and gas reserves are likewise available for leasing. The BLM lands within the Wyoming BLM Pinedale Field Office area in the Upper Green River Valley are approximately 85% open to leasing, and very nearly all of those lands are leased.

Industry trade groups and drilling companies have tried to undermine the EPCA findings. The Petroleum Association of Wyoming, for example, in recent testimony before this Subcommittee, complained of "conditions of approval" on drilling operations as an impediment to their access to these reserves. These drilling requirements, however, are developed in land use plans and other environmental documents as part of the public comment process, in which industry participates, to help select reasonable mitigation measures to preserve multiple use, protect other resources, and allow BLM to manage public lands in accordance with federal law in order "to prevent undue or unnecessary degradation.

The treasured public lands within Wyoming are bearing a disproportionate amount of the impacts from the drilling-biased National Energy Policy and underscore how truly few restrictions and delays there are to public lands oil and gas drilling. Two figures highlight this fact: nationally there are about 35–40 million acres committed to federal oil and gas leases—and Wyoming has 15 to 20 million acres of them, or approximately one-half. Second, there are 52,000 producing oil and gas wells in the United States on federal lands—nearly 22,000 of them, or over 40%, are on Wyoming BLM lands.

While we certainly recognize the "downstream" environmental benefits of natural gas as a substitute for coal and oil in electricity production and as a heat source, the development, production and transmission of natural gas has significant environmental implications. In Wyoming the effects are most noticeable in terms of habitat destruction, air quality degradation, and industrialization of open spaces. In the Powder River Basin, for example, BLM has just approved the largest federal oil and gas project in the nation's history—over 77,000 coalbed methane wells in Wyoming and Montana. The project will result in over 17,000 miles of new roads, 25,000 miles of new pipelines and powerlines—enough to circle the planet—thousands of noisy and polluting compressor stations, and hundreds of thousands of acres of destroyed soils, vegetation, ranch lands and wildlife habitat. Moreover, the unique water impacts associated with coalbed methane development will result in between 1 and 2 trillion gallons of water depleted from near-surface aquifers and dumped into thousands of discharge points on dry, erosion-prone soils and into 4,000 or more excavated surface contamination pits. Finally, as disclosed in the FEIS, impacts to air quality in the project area as well as in nearby Class I areas, will be significant.

In the Pinedale area, growing concerns about the negative effects of development prompted public support for preservation. In response to the call for "scoping" comments in conjunction with the revision of the Pinedale RMP, the BLM found that "almost all [of the over 17,000] comments expressed a desire for preservation over continued development." In addition, a recent editorial published in the local Pinedale paper, the Pinedale Roundup, illustrates the public's growing concerns. The paper's editor, Rob Shaul, calls for a halt to oil and gas development on public lands in Sublette County to protect the valley's unique natural values for future generations.

The prospects of expanding oil and gas development in Wyoming's Red Desert prompted hundreds of Wyoming citizens (who know quite well the deleterious effects of development) to turn out at public hearings in Lander and Rock Springs to voice support for protection of the Jack Morrow Hills area. Nationally, the BLM received over 60,000 comments urging protection of this unique area.

In addition to the push to develop oil and gas resources throughout the Rocky Mountain West the BLM often eliminates what few environmental protections exist. Each decision approving a major oil and gas development, as well as each oil and gas permit, contain terms, conditions and promises that are made part of the lease to ensure other resources such as wildlife are protected where oil and gas development occurs. As these stipulations sometime limit drilling periods (e.g., drilling may be prohibited in crucial winter range during winter months to protect wintering wildlife) industry constantly asks for exceptions to these stipulations. A quick review of such requests for exceptions indicates that BLM field offices in the Rocky Mountain Region are approving approximately 85% of the requests thereby elimi-

nating the minimal environmental protection efforts currently protecting our other valuable natural resources.

Recommendations

Rather than removing the few and minimal environmental protection measures for public lands, the laudatory goals of energy independence can be accomplished much more wisely, and without devastating effects on the environment, by emphasizing a transition to renewable energy sources within the United States, and ultimately promoting the transition to a hydrogen economy, as President Bush has advocated.

Windpower is just as cost effective as natural gas at today's prices. Rapid expansion of the nation's wind turbine fleet could sharply boost wind generation over the next four years, increasing its output to the equivalent of 3 billion cubic feet per day—about as much natural gas as the states of Colorado and Alaska produce today.

According to the American Wind Energy Association (AWEA), wind energy is already helping to reduce the current natural gas supply shortage in the U.S., and could be deployed rapidly over the next few years to bring it under control. The current supply shortage amounts to 3–4 billion cubic feet of natural gas per day (Bcf/day), according to energy experts, and the increasing use of gas for electricity generation is one of the major causes of the shortfall. But in many areas of the country where wind farms are generating electricity, they are directly helping to conserve vital natural gas supplies.

In a recent release, AWEA executive director Randall Swisher stated, "We estimate that the wind farms already in place, and those that will be installed by the end of this year, will be saving about 0.5 Bcf/day in 2004. "That means the natural gas shortage would be 10–15% worse if it were not for the relatively small amount of wind generation we have today."

The potential for windpower, just in Wyoming, is enormous. Wyoming ranks 7th in potential windpower in the United States. The windpower potential that exists just in North Dakota and South Dakota, for instance, could make enough hydrogen to power 100% of all U. S. highway vehicles. Wind energy companies pay royalties for the use of an owner's ranch land. Here in Wyoming, an average wind generator will pay $4000 to $6000 per wind generator per year, and yet not interrupt a private owner's ranching and farming activities.

If a renewable portfolio standard (RPS) were put into place, nationally, requiring every power company to produce at least 20% of their energy portfolio from renewable (non-hydro) sources by 2020, it could greatly spur wind and solar energy development nationwide. A RPS, if adopted today, that provided 10 percent of U.S. electricity from wind, solar, geothermal, and bioenergy would have virtually no impact on electricity prices and could save consumers as much as $13.2 billion, according to the results of two studies by the U.S. Department of Energy's Energy Information Administration (EIA).

This will have the salutary effect of diversifying the nation's energy mix, decreasing global warming, and promoting sources of energy that are stable and not subject to the wilder fluctuations of oil and gas prices, based upon global events that Americans cannot control. Solar and wind energy sources also have the advantage of being much less vulnerable to attack. They are not concentrated, and there is no vulnerable fuel source that could be made to explode or otherwise be destroyed.

Conserving our energy resources is also a very viable solution. Simply raising the Corporate Average Fuel Economy (CAFE) standards that govern automobile fuel efficiency, using off-the shelf technologies, could boost fuel economy by nearly 75 percent, with no compromise in safety. An average new vehicle could get 40 miles per gallon by 2012, if such standards were enacted now. An added benefit, since fuel-efficient vehicles cost less at the gas pump, is that the average driver can save more than $2,000 over the lifetime of the car—something Wyoming drivers could definitely appreciate.

Increasing energy efficiency standards for appliances, buildings, and industry as well as increased incentives for utility efficiency programs can also go a long way to alleviate our nation's energy needs. We know efficiency works. In 1970, 38 million homes in the U. S. were heated using natural gas, using about 5 trillion cubic feet of gas. In 2001, 59 million homes were heated with the same amount of gas. The reason: newer homes and the heating systems used in them have been made more energy-efficient.

Conclusion

Wyoming's public lands have made and will continue to make a substantial contribution toward meeting this country's energy needs. But our public lands are valu-

able for more than just oil and gas. They generate hundreds of million of dollars annually in economic benefits, harbor sensitive and rare species, provide opportunities for a variety of commercial and recreational activities, serve as clear air repositories, honor our proud heritage of bold pioneers, and provide the spiritual solace of open spaces.

We must recognize and honor our obligation to future generations to be responsible stewards of our natural heritage, and not allow a short-sighted crisis mentality to dictate the fate of these precious lands. It is a great nation that can plan for the long-term future and exercise the self-control to save, rather than squander, its treasures.

Madam Chairwoman and members of the Subcommittee, thank you again for the opportunity to share with you our views on this important and timely matter.

Mrs. CUBIN. Mr. Cook, would you please grace us with your testimony.

STATEMENT OF LANCE COOK, WYOMING STATE GEOLOGIST

Mr. COOK. Thank you, Madam Chairman, for the opportunity to speak before you today. Your topic, oil and gas development on public lands, is most important to our state since the Federal Government is by far the largest landowner in Wyoming.

The United States has spent the past 15 years creating the energy problem that we face today. During these years, oil and gas producers have been enticed by high prices into making substantial capital investments only to suffer through subsequent spells of low prices which make their capital investments at best marginally economic. This pattern has been repeated several times during the 1990's. As a result, we now find ourselves in a difficult situation, one where the current round of high prices seems to be failing to stimulate a large investment in drilling activity.

As an aside, I can tell you that in looking at the number of state permits that have been issued for oil and gas wells during 19—or during 2003, we are lagging behind last year's drilling pace. And that's despite the fact that gas prices are twice what they were a year ago.

As a result of these past price oscillations, we now have an oil and gas industry that is risk averse, and operators are not willing to respond to the—to the promises of a new gas spike. They want to see, I believe, a more sustainable and long-term gas price.

Unfortunately, the risk-averse mentality on the supply side has come at a time when the supply problems that have created the recent price spike are both profound and serious. It appears that our energy supply problem is now a fundamental problem in the supply and transportation segments of the energy industry, and the crossing curves of supply and demand may have moved into an area where we cannot quickly and easily drill our way out of a supply crisis. There may be no quick fix this time.

The chart that I have included in my testimony suggests that gas prices are moving in response to more fundamental forces than a simple temporary shortage.

The United States is the world's largest gas consumer. We consume roughly 22 trillion cubic feet of gas annually. A trillion cubic feet of gas is an abstract concept. A trillion cubic feet is a cube two miles on an edge filled with natural gas. We consume 22 of those in a year. That's a lot of gas. As that rate of consumption grows as a result of an orchestrated Federal policy that encourages the

use of natural gas as the fuel of choice, we're faced with the difficulty of meeting that increased demand, much less maintaining the supply at the current rate of production. There is already talk of a 30 TCF gas economy in our future. In the meantime, our nation's historic production base is depleting due to natural declines in the giant fields of Texas, Oklahoma, and Louisiana, where the easy to find, easy to produce natural gas has been largely depleted.

Canadian gas imports are likely to decline in the future due to declines in the Alberta Basin, which is their primary producing area, and increased gas demand for domestic Canadian use in the Canadian oil sands industry. Canada cannot come to our rescue. Due to the severity of the problem, supplying gas at elevated rates to satisfy increasing demand will require multiple solutions. No single solution can deliver us from this problem. We need to conserve our hydrocarbon resources, undoubtedly. Conservation is part of the near-term solution. But in the short term, we should make our economy more efficient, producing more gross domestic product with less energy. But we also need to look at other solutions. We do need increased supplies in the near term. We're going to need increased supplies in the long term. We need to invest in infrastructure to secure gas from the North Slope. But that's a long-term solution. We will need to import LNG. It's not a very acceptable solution, but it's going to become necessary to secure the supplies that we need. But that's a 10-year-out solution. We need something to get us out of that 10-year timeframe. We need a bridge to the future. Wyoming gas could be part of this near-term and midterm solution while we try to implement those longer term solutions.

Wyoming's gas reserves at the end of the year were pegged at a little over 18 trillion cubic feet, conservatively. This does not take into account the gas in the Powder River Basin, which is estimated at 25 trillion cubic feet of gas. Clearly, Wyoming has the resources necessary to be part of that near-term and midterm solution. But we need to address those problems in three particular areas. We need to improve the access to Federal lands. We need to improve the Federal permitting process. And we need to invest and facilitate the installation of infrastructure to move our resource to market.

There are additional details on these three areas that I'm recommending changes, Madam Chairman, but in the name of brevity, I'll cut my testimony short at this point.

Thank you very much.

[The prepared statement of Mr. Cook follows:]

Statement of Lance Cook, Wyoming State Geologist

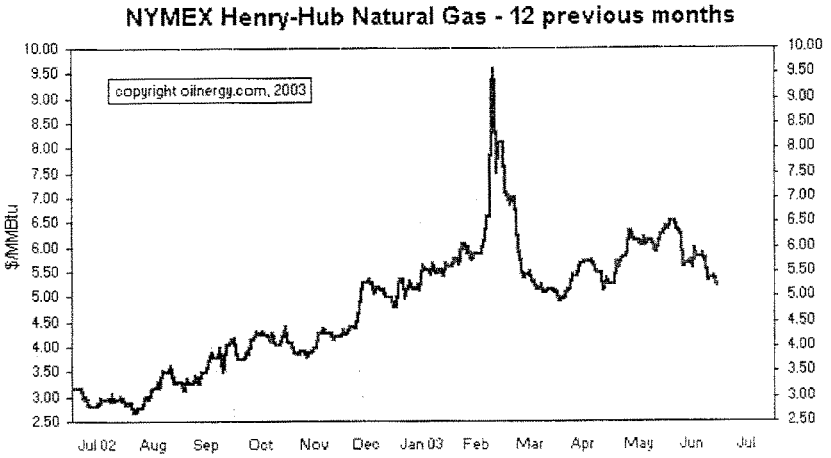
Thank you for the opportunity to address you today. My name is Lance Cook, and I am the State Geologist of Wyoming and Executive Director of the Wyoming Geological Survey. I also serve as a member of the Wyoming Oil and Gas Conservation Commission. I am a Registered Professional Geologist in the State of Wyoming. I have a Bachelor of Science degree in Geology from Texas Christian University and a Masters Degree in Geology from the University of New Mexico. Prior to my service as State Geologist, I spent over 20 years working in the petroleum industry for Shell Oil Company and Union Pacific Resources. Many of those years were spent exploring for oil and gas here in Wyoming.

Your topic today, Oil and Gas Development on Public Lands, is most important to our state since the Federal Government is by far the largest land owner in Wyo-

ming. The United States has spent the past 15 years creating the energy problem that we face today. During these past years, oil and gas producers have been enticed by high prices into making substantial capital investments, only to suffer through subsequent spells of low prices which have made their capital investments marginally economic. This pattern has been repeated several times in the 1990 s. As a result, we now find ourselves in a difficult situation, one where the current round of high prices seems to be failing to stimulate a large investment in drilling activity. I believe that as a result of these past price oscillations, we now have an oil and gas industry that is risk averse, and operators are not yet willing to respond to the siren song of a new price spike.

Unfortunately, this risk-averse mentality on the supply side comes at a time when the supply problems creating the recent price spike are profound and serious. It appears that our energy supply problem is now a fundamental problem in the supply and transportation segments of the energy industry, and the crossing curves of supply and demand may have moved into an area where we cannot quickly and easily drill our way out of a supply crisis. There may very well be no quick fix this time. The chart below suggests gas prices may be moving in response to more fundamental forces than a temporary shortage.

The United States consumes roughly 22 TCF of natural gas annually, and that rate of consumption is growing, to a large degree as a result of an orchestrated federal policy that encourages the use of natural gas as the fuel of choice. Already, there is talk of a 30 TCF gas economy in our future. At the same time, our nation s historic production base is depleting due to natural declines in the giant oil and gas fields of Texas, Oklahoma and Louisiana where the low-hanging fruit has already been picked. Additionally, Canadian gas imports are likely to decline due to declining production in the Alberta Basin and increased gas demand from the Canadian oil sands industry.



Due to the severity of the problem, supplying gas at elevated rates to satisfy increasing demand will require multiple solutions. No single solution can deliver us from this problem. Undoubtedly, we need to conserve our hydrocarbon resources. In the short term, we should make our economy more efficient and produce more GDP value with less energy. In the longer term, we need to invest in infrastructure to secure new sources of supply from non-traditional areas, such as the Beaufort Sea, Grand Banks of the North Atlantic and the Alaskan North Slope. We will need to build new ports to receive shipments of liquefied natural gas from other countries that have excess gas for export. However, conservation alone cannot free up the volumes of gas needed to fix this problem. Importation of LNG is part of a long-term solution, and cannot stand alone as our solution. North Slope and Beaufort Sea gas cannot get into our marketplace in less than 10 years. We need to bridge this problem in the short term, and part of that solution can be the development of gas from Lower–48 sources. Wyoming gas can be part of this near-term and mid-term solution while we try to implement the longer-term solutions that are also necessary.

Officially, at the end of 2001, Wyoming s gas reserves were pegged at 18.4 TCF. This is a very conservative number. It does not fully include recoverable coalbed methane resources in the Powder River Basin, which I have estimated to be 25 TCF.

It does not include the growing reserve base from the Pinedale Anticline, which may exceed 5 TCF when fully developed. It does not include new information from the Jonah Field, where down-spacing may eventually supply several additional TCF s of gas. Additional gas may come from other coalbed methane projects in the Hanna Basin, the Washakie Basin, the Green River Basin, and others. We have tight gas resources in areas that represent hundreds of TCF s of potential future gas supplies. Wyoming is a gas-rich state, and it is only logical that our country would look to us for near-term and long-term relief.

The largest mineral owner in our gas-rich state is the federal government, which controls roughly 60% of our gas-prospective lands. Can the federal gas resource make a difference in domestic energy supply? In 1996, Wyoming supplied 3.4% of the domestic gas output, and by last year, that number had grown to 7.1%, or more than doubled. We estimate that if our producers could receive a stable gas price of $3.50/mcf, a price that is actually less than today s gas price, Wyoming can add another 50% to our gas deliverability within 5 years. That would put our production rate at roughly 5.8 BCF per day, or 11 percent of total U.S. output. As the largest landowner in the state, we must expect the federal land management agencies to facilitate recovery of the gas resources from federal lands within our state. There are three areas the federal government needs to address in order to make this happen:

First, we need to improve access to the federal lands. The recent EPCA study of access to federal lands understated the difficulties associated with exploration and production activities on federal lands. Several recent NEPA documents illustrate the protracted delays in gaining access. The recent Powder River Basin Oil and Gas EIS required 3 years to prepare, and the first permit has yet to be issued while litigation continues. The Continental Divide/Wamsutter II Natural Gas Project EIS took approximately 3 years to complete, and this delayed the infill drilling of natural gas wells within a known, producing giant gas field. More recently, the Jonah Gas Field is nearing the limits of allowed gas wells under a previous EIS, and infill development drilling in that field will probably come to a standstill while a new EIS is prepared. I suggest that at a time of natural gas supply problems, the federal government needs to streamline NEPA implementation and find ways to complete these documents in a time frame closer to the 18 months outlined in the regulations. I believe that this can be done without compromise to the environment or at the expense of other natural resources. Three year delays in drilling infill gas wells because of delays in required NEPA analyses do not appear to serve our national interests. Additionally, the fragmentation of federal lands into special administrative classifications creates impediments to exploration, which is the most basic of activities necessary to grow our gas supply. Wilderness study areas that remain in limbo for years or decades are off-limits to exploration, while new Wilderness Study Areas are being created. Research Natural Areas, Areas of Critical Environmental Concern, Roadless Areas, Historic Trails designations and others all provide important protections for valuable resources, but these special designations have eliminated many of the large, contiguous blocks of land necessary for access to conduct exploratory activities and left only a patchwork of available lands. While federal agencies should continue to protect important competing interests where appropriate, federal land managers must be more cognizant of the cumulative negative effects of their decisions on energy supply and the economy and seek alternate means to achieve true multiple use.

Second, we need to improve the federal permitting process. While some federal offices are able to process permits within the time frame of 45 days as required by statute, other offices within the same agency require 6 months or more to issue permits. I have been told by operators that some offices have unofficial quotas , and that no individual company can expect to receive more than 25 well permits in a twelve month period. As a result, operators cannot plan multi-million dollar drilling programs with the degree of certainty required for such capital expenditures. While our economy s gas supply strategy seems to have moved to a just-in-time inventory strategy, our federal permitting process seems to have moved to a multi-year planning process. We believe that improved federal permitting processes that are consistent between agencies and offices within the federal agencies will help facilitate efforts to rebalance our gas supply. Consistency, clarity and efficiency should be achievable without sacrificing permitting requirements and appropriate safeguards for other important resources.

Third, during the past few years, as Wyoming s productive resource base has grown, our gas producers have encountered increasing difficulties in receiving a fair price for their produced gas. The difference between Wyoming gas prices and the national market has at times been greater than $2.00/mcf, and currently is in the neighborhood of $1.00/mcf. Our gas must receive a fair price in the marketplace if

adequate capital investment is to occur. We suggest that FERC should review the regulatory scheme surrounding pipeline permitting and financing and move aggressively to facilitate the construction of new take-away capacity from the Rocky Mountain region. Until the critical link of transportation is addressed, additional gas production in the market will depress regional gas prices and discourage necessary investment.

In conclusion, I would encourage you to look to Wyoming for part of the solution to our energy supply problems. We have large resources that the nation can draw upon. However, without facilitation by federal agencies and Congress, our role in solving the nation s problems will be diminished at the expense of all Americans.

Mrs. CUBIN. Thank you. I'm afraid to leave it on that I might say something embarrassing.

I'd now like to recognize the BLM director for Wyoming, Mr. Bennett.

STATEMENT OF BOB BENNETT, DIRECTOR, BUREAU OF LAND MANAGEMENT, WYOMING STATE OFFICE

Mr. BENNETT. How is that? Is that—this isn't working.

Mrs. CUBIN. Yeah, it is. Do I still have that blank look?

Mr. BENNETT. No, ma'am.

Madam Chairman, I'm pleased to appear before you this morning to discuss oil and natural gas development on public lands and the impediments to accessing those resources. I will discuss the Energy Policy and Conservation Act, or EPCA, inventory, which provides us with a scientific inventory of these very issues.

Madam Chairman, I will summarize my written remarks that I have been submitted—that have been submitted for the record.

In order to provide for our nation's growing energy needs, President Bush's National Energy Policy established a comprehensive, long-term energy strategy. Part of that strategy focuses on providing for more of our energy needs with domestic supplies. I'm pleased to report that BLM Wyoming is actively working to implement the president's energy policy.

Federal lands in Wyoming play a significant role in providing energy for our nation. There are currently over 21,000 Federal oil and gas leases in the state, covering 15 million acres. Now, those are not all actively producing, but that's the total lease package. And including over 13,000 producing oil and gas wells.

Last year, BLM Wyoming approved over 1,700 drilling permits. The Federal minerals in Wyoming contribute nearly 61 percent, or 33 million barrels, of the state's total oil production and approximately 41 percent, or 723 billion cubic feet, of the state's total natural gas production. Royalties from these productions totaled nearly 73 million oil and nearly 193 million for gas. Of course, the state of Wyoming receives half of these royalties as required by law.

The President's National Energy Policy recognized the important role that the congressionally mandated EPCA inventory plays in solving some of our energy problems. The policy directed that EPCA be expedited and constraints to Federal oil and gas leases be reassessed and modified where opportunities exist consistent with the law, good environmental practice, and balanced use of other—of other resources. The policy further directed that any reassessment—that any reassessment of constraints be conducted with full public consultation, especially with people in the region.

The EPCA inventory was released in January. It identifies the technically recoverable oil and natural gas resources on Federal lands in five energy rich western basins and analyzes the constraints from various existing lease stipulations to accessing those resources. Two of the five EPCA basins—the Powder River Basin and the Greater Green River Basin—lie predominantly in the state of Wyoming.

EPCA found that in the Green River Basin, an estimated 57 percent of the technically recoverable oil and 61 percent of the natural gas in the basins are available under standard leasing stipulations while 13 percent of the oil and 10 percent of the gas are totally unavailable.

In the Powder River Basin, meanwhile, EPCA found that an estimated 63 percent of the technically recoverable oil and 59 percent of the natural gas are available under standard leasing stips and only 4 percent of the oil and 9 percent of the gas are totally unavailable. The remaining resources in these basins are available with various restrictions.

It is our goal in the Bureau of Land Management to provide optimal access to the resources from public lands consistent with sound land stewardship principles and full public involvement. The information developed in the EPCA inventory played an important role in advancing this strategy. The Bureau is taking steps to ensure the report's integration into its land use planning process, drilling permit process, and other land use authorizations. The Bureau is currently in the process of finalizing guidance related to these efforts.

The Bureau in Wyoming also is looking to new sources to provide for additional energy supplies. For example, it's well known that a great deal of natural gas may be recoverable from the coal beds of Wyoming's portion of the Powder River Basin. As most folks here know, on April 1, I signed a record of decision that authorized the effects of drilling up to 51,000 coalbed natural gas wells in the area over the next 10 years. This analysis represents the cumulation of a comprehensive 3-year planning process. The record of decision itself does not authorize the drilling of wells, but it provides a framework for development. Before specific drilling proposals are approved, the Bureau will conduct additional environmental reviews to identify site specific environmental impacts and appropriate mitigation measures. Some of that work is being completed now. We are about to approve several drilling permit applications in basins as soon as next week.

The Bureau of Land Management is continuing to work to make our drilling permit process more efficient. We process more drilling permits on Federal lands than any other Bureau of Land Management state. As I mentioned, over 1,700 last year. We are looking to make improvements, find deficiencies within the requirements of existing laws and regulations rather than to take shortcuts.

In that spirit, Director Clarke has issued new policy memoranda that examined ways to expedite permitting. We are encouraging, for example, block cultural surveys where appropriate to cover entire project areas at once. We are also encouraging multiple drilling permit submittals to look at projects as a whole under NEPA and to improve efficiency. For instance, our Buffalo field office has had

great success in working with operators to group permits into plans and developments of 30 or more proposed wells. We are also partnering with the State to provide for electronic permit submittals by operators that satisfy both state and Federal requirements.

Madam Chairman, I wish to thank you for the opportunity to testify today. And I would certainly welcome any questions that the Subcommittee has.

[The prepared statement of Mr. Bennett follows:]

Statement of Robert A. Bennett, State Director, Wyoming State Office, Bureau of Land Management, U.S. Department of the Interior

Madam Chairman and members of the Subcommittee, I am pleased to appear before you this morning to discuss oil and natural gas development on public lands and the impediments to accessing those resources. As you know, the Energy Policy and Conservation Act (EPCA) Inventory, completed earlier this year, provides us with a comprehensive scientific inventory of these very issues. The Bureau of Land Management (BLM) is working to integrate the EPCA inventory's findings into its efforts to develop oil and natural gas and to protect natural resources on Federal lands. As BLM State Director in Wyoming, I will focus my remarks on BLM's oil and gas development activities on Federal lands here in Wyoming, and the EPCA inventory as it relates to Federal lands in Wyoming.

On June 24th, Rebecca Watson, Assistant Secretary for Land and Minerals Management testified before your Subcommittee about the many challenges our nation faces in meeting our energy needs. She discussed how energy is the cornerstone of the nation's economy, and the value of strengthening our nation's ability to meet these needs with domestic sources of supply. According to the Department of Energy's Energy Information Administration (EIA), we currently import about 55% of our oil from foreign sources—a percentage that is expected to increase to 68% by 2025. The natural gas picture has headed in a similar direction, as demand for clean-burning natural gas to produce electricity continues to accelerate, gas production from mature basins declines, and access to new basins fails to keep pace with demand. According to the EIA, over the next 20 years, U.S. natural gas consumption is projected to grow by more than 50 percent, while domestic production, if it grows at the rate of the last 10 years, will increase by only 14 percent.

In order to provide for our Nation's expanding energy needs, President Bush's National Energy Policy established a comprehensive, long-term energy strategy. Part of that strategy focuses on strengthening our nation's ability to produce oil and gas domestically. I am pleased to report that BLM Wyoming is actively working to implement the President's National Energy Policy and is contributing to the solution to some of these problems.

Oil & Gas Development on Federal Lands in Wyoming

Federal lands in Wyoming play a significant role in providing energy to our Nation. Currently there are over 21,000 Federal oil and gas leases in the State, covering approximately 15 million acres of Federal land. In fiscal year 2002, the Federal mineral estate in Wyoming contributed nearly 61%—33 million barrels—of the State's total oil production and approximately 41%—723 billion cubic feet—of the State's total natural gas production. In fiscal year 2002, BLM Wyoming approved 1,764 Applications for Permit to Drill (APDs). As of May of this year, there were 13,407 producing Federal oil and gas wells in the State of Wyoming. Meanwhile, in fiscal year 2002, royalty income produced from Federal wells in Wyoming totaled nearly $73 million for oil and nearly $193 million for natural gas. The State of Wyoming received half of this royalty income, as required by law.

EPCA Inventory / Wyoming

The President's National Energy Policy recognized the important role that the Congressionally-mandated EPCA inventory plays in solving some of our energy problems. The National Energy Policy directed that the EPCA inventory be expedited and constraints to Federal oil and gas leasing be reassessed and modified "where opportunities exist (consistent with the law, good environmental practice, and balanced use of other resources)." The National Energy Policy further directed that any reassessment of constraints be conducted "with full public consultation, especially with people in the region."

The Departments of the Interior, Energy, and Agriculture released the EPCA inventory in January, 2003. The inventory identifies the technically recoverable oil and natural gas resources on Federal lands in five energy-rich basins of the western

United States and analyzes the constraints from various existing lease stipulations to accessing those resources. Some 1000 lease stipulations were classified into 10 broad categories in the EPCA inventory. It is important to note, however, that the inventory only addresses the leasing stage and whether lands containing oil and natural gas resources are open or closed to leasing, and the degree of constraint on development resulting from lease stipulations on open lands.

Two of the five basins—the Powder River Basin and the Greater Green River Basin—examined in the EPCA inventory lie predominantly in the State of Wyoming. The key findings of the EPCA inventory for the Greater Green River Basin and the Powder River Basin are as follows:

- Greater Green River Basin—In the Greater Green River Basin, an estimated 57 percent of the technically recoverable oil (1,162 million barrels) and 61 percent (43.6 trillion cubic feet) of the technically recoverable natural gas are available under standard leasing stipulations, while 13 percent of the oil (258 million barrels) and 10 percent of the natural gas (7.35 trillion cubic feet) are totally unavailable. The remaining oil and natural gas are available with varying restrictions on development. Generally, land that is completely closed to development throughout the EPCA inventory contains comparatively little oil and natural gas potential. Among the five basins examined in the EPCA inventory, the Greater Green River Basin has the greatest total volume of oil (2.1 billion barrels) and natural gas (72 trillion cubic feet).
- Powder River Basin—In the Powder River Basin, an estimated 63 percent of the technically recoverable oil (620 million barrels) and 59 percent of the technically recoverable natural gas (4.82 trillion cubic feet) are available under standard leasing stipulations, and only four percent of the oil (35 million barrels) and nine percent of the natural gas (0.76 trillion cubic feet) are totally unavailable. The remaining oil and natural gas are available with varying restrictions on development.

Use of EPCA Information

In accordance with the President's National Energy Policy, it is BLM's goal to provide optimal access to the resources from the public lands consistent with sound land stewardship principles and full public involvement. The information developed in the EPCA inventory will play an important role in advancing this strategy. With the EPCA inventory now completed, the BLM is taking several steps to ensure the report's integration into the land use planning process, approvals of Applications for a Permit to Drill (APDs), and other use authorizations.

One of our Bureau's first tasks has been to conduct a review of possible conflicting management practices for similar resources in similar settings. Sound science has to be the critical factor in the design of operating restrictions. Operators should have a consistent requirement for resources, regardless of how many state or management unit boundaries they cross. Requirements should not change at invisible boundaries. As a result of the EPCA inventory, BLM is asking field managers to look beyond the boundaries of their units to ensure that the restrictions they impose on oil and gas operators for a specific resource are similar, if not identical, to those imposed in neighboring units with the same setting.

It is important to note that any reassessment of these restrictions on oil and gas activities will occur in the public land-use planning or regulatory processes, both of which are fully open to public participation and debate over the appropriate balance between resource protection and resource development.

On April 3, 2003, BLM Director Kathleen Clarke issued guidance to BLM State Directors and field offices regarding the Bureau's principles for integrating the EPCA inventory results into land use planning and energy development authorizations. Those principles are:

1. Environmental protection and energy production are both desirable and necessary objectives of sound land management practices and are not to be considered mutually exclusive priorities;
2. The BLM must ensure appropriate accessibility to the energy resources necessary for the nation's security and quality of life while recognizing that special and unique non-energy resources can be preserved;
3. Consistent with the BLM's multiple-use mandate, sound planning will weigh relative resource values in accordance with the Federal Land Policy and Management Act;
4. All resource impacts, including those associated with energy development and transmission, will be mitigated to prevent unnecessary or undue degradation of the environment.

The BLM established two national teams led by State Directors to develop strategies to integrate the EPCA inventory into the land use planning and use authoriza-

tions processes. The Land Use Planning Team is responsible for developing guidance that will guide the BLM in integrating EPCA into land use plans (especially those designated as time-sensitive). In the long term, the team will be responsible for recommending ways to improve the planning process and allow for flexibility in making decisions that take into account current land conditions and scientific knowledge. Additionally, the process developed by the team will ensure Bureau-wide consistency in the application of stipulations.

The other team, the Resource Use Authorization Team, is responsible for developing guidance that will address (1) how the EPCA results can provide flexibility and consistency in the use of stipulation waivers and exceptions to facilitate oil and gas development, where appropriate, and (2) use of the EPCA results to improve communications with operators, particularly with respect to APD processing. The teams are proposing to incorporate adaptive management principles using the most current science and information available. This means that the desired results would be stated and various approaches could be utilized to accomplish resource protection. Stipulations would be more outcome-based instead of prescriptive. We anticipate guidance developed by both teams will be approved in the near future.

Coalbed Natural Gas Development in Wyoming

BLM Wyoming also is looking to new mineral sources to provide for additional energy supplies. A relatively new area of significant interest has been the development of natural gas from coalbeds in the Powder River Basin in Wyoming and Montana. On April 30, 2003, I signed a Record of Decision (ROD) and Resource Management Plan (RMP) Amendments for the Powder River Basin Oil and Gas Project that analyzed the effects of drilling up to 51,000 coalbed natural gas wells (both federal and non-federal) over a 10-year period, along with the continued drilling of an estimated 3,200 "conventional" oil or gas wells in the Wyoming portion of the Powder River Basin.

This analysis represented the culmination of a comprehensive three-year planning process. The alternative selected includes an emphasis on water infiltration to handle the water produced from coalbed natural gas wells, and it describes the management goals, objectives, and conditions of use that will guide future management of Federal oil and gas operations in the Powder River Basin. The Record of Decision itself does not authorize the drilling of wells, but it provides a framework for coalbed natural gas and conventional resource development. Before any specific drilling proposals are approved, the BLM will conduct an additional round of environmental review to identify site-specific environmental impacts and appropriate mitigation measures. In addition, other permits, such as those issued by the State's Department of Environmental Quality, will be necessary for most actions.

Improving Drilling Permit Processing

BLM Wyoming also is continuing to work to make our drilling permit processes more efficient. BLM Wyoming processes more APDs on Federal lands than any other State. As noted earlier, we processed 1,764 APDs in 2002. The BLM is working hard to shorten processing times by examining the causes of delays.

While we are working to improve our APD processes, our efforts are not designed to take shortcuts. They are designed to make improvements and find efficiencies within the requirements of existing laws and regulations. In that spirit, Director Clarke has issued new policy memoranda that examine ways to expedite permitting. These include, for example, encouraging block cultural surveys where appropriate, to cover entire project areas at once. Also, the BLM has a policy to encourage multiple APD submittals by operators for projects whenever it makes sense, enhancing our ability to look at projects as a whole under NEPA and to improve efficiency. For instance, BLM Wyoming's Buffalo Field Office has had great success in working with operators to group APDs into Plans of Development (PODs) of 30 or more proposed wells.

We are also working to improve the way we handle cultural clearances required under the National Historic Preservation Act. To that end, in partnership with BLM, the Wyoming State Historic Preservation Office has recently posted on its website a template cultural clearance report format to expedite State and Federal review of such reports. In another partnership with the State, BLM Wyoming is working with the Wyoming Oil and Gas Conservation Commission to provide for electronic permit submittals by operators which satisfy both State and Federal requirements. Electronic permitting can greatly enhance our ability to process APDs more expeditiously.

Conclusion

Madam Chairman, as we continue to work to improve our oil and gas development processes and implement the President's National Energy Policy in order to

contribute to solving some of our Nation's energy problems, we are working within the framework of the BLM's multiple-use mandate. We also are committed to continuing to work within the guiding principles of Secretary Norton's 4 C's—Communication, Consultation, and Cooperation, all in the service of Conservation—as we pursue our mission to be good stewards of all of the resources of our Nation's public lands.

Thank you for the opportunity to testify before you today. I welcome any questions the Subcommittee may have.

Mrs. CUBIN. Thank you very much, Mr. Bennett.

And I would like to remind the panel that your full testimony will be entered into the record.

And I'd like to start the questioning with Ms. Bower.

What is the most important thing that the government can do to create a process that better facilitates responsible oil and gas development on Federal lands, in your opinion? And what can Congress do, as well?

Ms. BOWER. Madam Chairwoman, that's a—is a great question, and it's one that we're struggling with and we're looking into right now.

One of the issues that I know is being talked about in Washington, as well as out here, is trying to stick to—under the current regulation for the BLM, there is a certain timeframe with which they are supposed to process applications for permits to drill and issue a decision.

They're looking—one of the rumors that we've heard is possibly looking at legislation that would provide for a timeframe to get a decision to the operator on APDs. One of the things that we find troubling is indefinite delays. We cannot protest or appeal a decision if there is no decision. A judge will look at us and say, That's not ripe; you haven't exhausted your administrative remedies; therefore, you have to wait for a decision. There are all sorts of ways in which that decision can be delayed, particularly consultation with other agencies.

So while we think that that—that to put legislatively a timeframe with which to issue a decision has merit, we would like to look into that further. We are concerned particularly about contingent rights, meaning that the agency cannot approve it—an agency will approve a decision to make sure that it's issued in a timely manner to comply with the law; however, they reserve the right later to apply more stipulations, and we're in the same position that we were before. So that is an issue that is hard.

And the other issue is just trying to get the agencies to consult on projects as early in the process as possible so that we don't have a situation where late in the process an agency comes in which causes further delay.

Mrs. CUBIN. And do you have recommendations for what Congress can do?

Ms. BOWER. I think that we would like to think about that and probably provide you with some written recommendations at a later date.

Mrs. CUBIN. I would appreciate that.

And by the way, please accept my apology for calling you Mr. Heilig. I knew your name was Mr. Heilig.

Mr. HEILIG. It's not a problem. I've been called worse.

Mrs. CUBIN. Not by me.

Mr. Bennett, you—you referred to—I guess I should just go—go down the aisle. It would be easier for passing the microphone.

Mr. Heilig, I've heard it said—and I have to tell you that there are times when I believe it—that there is an extreme radical environmental left just like there is an extreme radical right. And most people fall in between those areas. And what it seems to me is that there are people who simply don't want a human footprint on most public lands. They—the grazers in southern Wyoming were forced to get permits for every lease rather than a permit for the resource management area. And as Ms. Bower testified to, lawsuits and that sort of thing. Where does Wyoming Outdoor Council come down on those sort of issues?

Mr. HEILIG. I would have to say that Wyoming Outdoor Council, because of its base here in Wyoming, it's all Wyoming. It incorporated into the state in 1967. It's squarely somewhere in the middle. If—if clean air, healthy fisheries, abundant wildlife is an extreme notion, then I suppose Wyoming Outdoor Council could be called extreme. But we feel that those are mainstream ideas, mainstream values that residents in Wyoming and outside the state hold very dearly. And I think we're nowhere near that left extreme edge. I certainly do not deny that those elements exist, but my view is in Wyoming, the established groups are very reasonable and by no means extreme and always willing to sit down and talk with anyone who will listen, including industry and trade associations and so forth. That's certainly been the position of my group throughout its history, and it will remain so in the future.

Mrs. CUBIN. Something that I have picked up at a personal level is that different stakeholders accuse the others of things that are really not true. Industry, for example, will say environmentalists don't want us to do anything. Environmentalists will say, well, oil and gas wants to cover the whole state. We all know none of those things are true. And one of the things I'd like to do is to get away from those sort of statements and accusations, because we have an energy crisis. Do you believe that there are any opportunities to streamline the permitting process in terms of overlapping environmental requirements?

Mr. HEILIG. I do. And I also—before I provide that specific response to your question, I want to say that we agree at the Wyoming Outdoor Council that we need to get past the rhetoric and begin to focus our attention fully on resolving problems concerning the conflicts with multiple use management on the public lands.

As you may know, I participated on a Federal advisory committee based here in Wyoming several years ago called GRBAC, the Green River Basin Advisory Committee. And that committee produced a number of recommendations that would streamline and expedite the NEPA review process. It's my view that there are many opportunities to move through that process more quickly; however, they're not, for unknown reasons, being explored or implemented. One of the most important being the ability to get together with the stakeholders and agencies that have authority and special expertise at the very beginning of a project, long before a draft EIS is published, to help identify the significant issues and

explore various mitigation techniques that could be employed to reduce the significant impacts.

Too much paper and environmental documents are spent addressing issues that, in my view, are not the most important issues. These EISs need to focus on significant issues and—and not waste words on matters that aren't relevant to anything, that haven't been raised in scoping comments and so forth. That's one, I think, very significant change that could be made to—to move the process, the NEPA process, forward more expeditiously.

I have to say one of the reasons, perhaps the primary reason, Jonah did not draw any appeals from us was that we were operating in the spirit of GRBAC. You may recall that authorization was made shortly after the termination of the committee. And we made a sincere effort to demonstrate our good faith by allowing, without any scrutiny on our part, that project to go forward. It is—it is a significant project, and it has a very obvious impact on the land. And the same could be said about the Anticline project, as well. That record of decision contained what the BLM referred to as an adaptive environmental management component, a very important element of the decision. Yet a lawsuit brought by Yates Petroleum resulted in the BLM setting aside that portion of the decision and moving ahead with the development aspects.

The adaptive environmental management was the reason why we—why our concerns were addressed at the time, and yet it was removed as an aspect of the project and because of BOCA (phonetic) claims and others.

So I just want to make a commitment on behalf of my organization that we stand ready to work with industry, regulatory agencies, and others to—to facilitate the NEPA process and to ensure that it operates in a way that Congress intended, which is a full, complete, and accurate, scientifically sound disclosure of impacts and a very thorough exploration of mitigation measures that might be put into place to minimize the impacts.

I want to note one other thing.

Mrs. CUBIN. Go ahead.

Mr. HEILIG. I'm beating a dead horse here. Uncertainty among public land users, I think, is a very significant issue here, as well. I know it's certainly an issue for the industry. The public is uncertain of the future of Wyoming's public lands because—

Mrs. CUBIN. You know, I don't want this to turn into an argument.

Mr. HEILIG. No, no, no. Not at all. I'm trying to offer—

Mrs. CUBIN. You get to rebut.

Mr. HEILIG. I'm trying to offer a solution. If the resource management plans could make specific allocations along the lines of—I hate to say it, the Z word—zoning. But if the public had some assurance that not every single acre was going to be developed, perhaps the concerns wouldn't be as acute as they are. I think it's the uncertainty, not knowing what the next five or 10 years of development will bring, that is really, I think, exacerbating the problem.

Thank you.

Mrs. CUBIN. I think that's reasonable.

One last question. In your written testimony, you recommended developing hydrogen as one of the major fuels. Where do you sug-

gest we get the hydrogen? How are we going to do that? I'm a chemist by training, and I'm pretty familiar with hydrogen and its availability and its, you know, good points and bad points. I don't know how we can do that.

Mr. HEILIG. Well, I'm not a chemist, so I might come away with my tail between my legs at the end of this. But my understanding is that the hydrogen can be produced from a variety of different power sources. Power is required, of course, to produce power. In this instance, I understand the oil and gas interests have developed ways in which hydrogen can be produced from their activities. It's naturally occurring and can be drilled for. But I think the approach we would prefer to see taken is one where hydrogen is produced by less environmentally evasive means; for example, wind and solar power. But there certainly is an—an important role for industry to play here in producing the hydrogen that will be necessary to power the fuel cells.

Mrs. CUBIN. Thank you very much. Hydrogen comes from hydrocarbons. That's where you get it. So you have to produce the hydrocarbons to get the hydrogen out. And that's why I—I can't see a technical way to economically be—to be able to develop that. Plus the infrastructure that's needed for it, as well. I'm not saying I don't think we should do it. I think we have to do it. But we—we have to be reasonable in what we can achieve in the short term and medium term, as well.

Mr. Cook, does Wyoming have the gas resources to make a significant contribution to our nation's energy needs, and how—for the record, how does energy production help the state of Wyoming?

Mr. COOK. Wyoming has abundant gas resources that can be used in meeting the nation's needs. We estimate that at a stable price of $3.50 per thousand cubic feet, that in the relatively short timeframe of 5 years, we could increase production within the state by 50 percent.

Mrs. CUBIN. Would you repeat that for me, please.

Mr. COOK. At a price of $3.50 per thousand cubic feet, in a timeframe of 5 years, we could increase our production capacity in the state by roughly 50 percent.

Mrs. CUBIN. How can we do that?

Mr. COOK. By finding a mechanism of assuring the producers of a relatively stable gas supply. By building adequate infrastructure so that our producers are not subjected to a negative transportation premium.

And as a side note, you know, within the previous year, while gas prices were 4 and 5 and 6 dollars around many parts of the country, our producers in Wyoming were receiving somewhere between a dollar and a $1.25 per MCF. So it's interesting that in the heart of gas supply country, we had this tremendous disincentive to produce gas. That certainly does not encourage the capital investment necessary to increase production. So we need the improvement in the infrastructure to help stabilize that gas price.

And then, finally, we do need to improve Federal permitting processes. And when I talk about Federal permitting processes, I'm really not talking so much about leasing. I'm talking about drilling permits. EPCA just looked at leasing. EPCA did not look at the ease of obtaining a drilling permit.

Mrs. CUBIN. Now be careful here, because I was the author of the amendment that required EPCA to take place. And I really did want—what I asked for was the inventory plus impediments to production, but USGS decided not to do that.

So just—just for you to know.

Mr. COOK. OK. Thank you. As—as I have read EPCA, it appears to me that it underestimates the impediments to efficient production, because it does not address drilling permit delays. And while lands are, in many cases in EPCA, classified as available for leasing and producible, it doesn't look at the real world experience of can you physically get a permit and access the land to drill a well. And if the answer is you can lease it but you can't drill it, then why are we even—

Mrs. CUBIN. Then I've got a bridge to sell you somewhere. Right?

Mr. COOK. That's right. And we certainly have that situation in many places across the state where there are leases. There are prospects. There are companies that want to drill wells. They cannot get access.

Mrs. CUBIN. I certainly agree with you that—that the report underestimated the effects of the impediments to getting the—I have to have somebody tell me what to do. We just want to make sure we get certain questions answered for the record, because this will—there will be a report drafted from this Committee, from this hearing, and it will go to the task force to be included in hopefully recommendations to do something about this. And, also, we—with your permis-—not with your permission. I would ask you to kindly answer written questions that we aren't able to ask.

And we'll get those questions to all of you in writing at a later date. We'll keep the record open, I think it's ten days. And so we'll get those to you soon. And so now I've got to go back to the guy who knows it all.

Oh, right. We wanted to talk about the drainage problem.

Mr. COOK. Oh, OK.

Mrs. CUBIN. And Ms. Bower referred to this in her testimony. It's our understanding that drainage of Federal minerals is occurring in the Powder River Basin. We know that to be true. Can you explain the situation to us and how it is affecting operators and the Federal Government?

Mr. COOK. Well, drainage occurs when adjacent tracts have wells on one tract and no wells on the other tract resulting in the movement in the subsurface of minerals from the undrilled tract to the tract that is producing.

Mrs. CUBIN. Because gas—

Mr. COOK. Gas is highly mobile.

Mrs. CUBIN. Yeah. It fills up the space that surrounds it. So if there's a hole, it's going to find its way out.

Mr. COOK. That's correct. In the Powder River Basin in particular, where the coal seams are intensively fractured and highly permeable, allowing the—the easy movement of fluids in the subsurface, drainage quickly becomes an issue when adjacent tracts are at a competitive disadvantage to tracts that have been drilled. And that's what we have with the Federal estate, where we have a checkerboarded pattern of private and state lands versus Federal

lands, and the private and state lands have been drilled. Those Federal lands are very definitely being drained.

It affects the operators in a rather negative sense in that those operators that have leased Federal tracts are beginning to find that enough Federal gas has been drained that it's no longer economically viable to drill those Federal leases. We've had some operators that just recently appeared before the Oil and Gas Conversation Commission asking for upspacing; that is, going from 80-acre spacing to 160-acre spacing, because they no longer believe that enough gas remains to justify drilling an 80-acre location. So certainly that is a negative incentive toward developing the Federal mineral estate in the basin if you can't get a timely permit.

Mrs. CUBIN. Thank you very much.

Mr. Bennett, I've heard reports that different field offices interpret the same criteria several different ways. This has been a complaint that I have heard about the BLM in Wyoming and across the country since I've been in Congress. What can trigger an environmental impact statement or an environmental assessment in one area won't trigger an action in another. What actions will the state office take to ensure that the law is being implemented fairly across the board?

Mr. BENNETT. Thank you. I think your depiction is accurate. What we try to do is try to develop instructions that cover the whole state, leastwise at the state level.

And, clearly, environmental conditions and social conditions vary across the state. So in some cases, an action in, say, the Powder River Basin would trigger an impact statement while in another location, it may not. Primarily it's because maybe the level of controversy may not be as high or the resources at risk may not be as significant. So in some cases, you're absolutely right. It is, but it's actually an assessment of what the—the consequences of an action are in trying to assess those relative to the resources at risk.

So if you're talking specifically about what triggers an EA versus an impact statement, it is—it is a conscious decision that we try to go through in terms of one versus the other. And it's really a balancing of what's at risk and what the—what the level of controversy and those kinds of things are.

You have to forgive me. You had a compound question. I forgot—

Mrs. CUBIN. And what the state office can do.

Mr. BENNETT. Sure.

Mrs. CUBIN. Because I wasn't necessarily referring to, you know, an area that requires an EA versus an EIS, but different offices just having different policy. I just wonder what—what the state office can do to resolve those kind of disputes.

Mr. BENNETT. We have—you know, clearly we have the responsibility for uniforming the program. At the state office level, part of our task is to do evaluations of programs between field offices and try to look at what's been done and what their record is. Do they, in fact, look at things the way that the instruction memoranda or the policy was intended? We have the opportunity to correct those things. And certainly—and people are unafraid to do this. If they're—if they feel they're getting a conflicting set of instructions between one office and another, they're certainly free to elevate that, as well.

We do have the responsibility at the state office level to try and look at each of those field offices and see if, in fact, they are interpreting within the policy. And, you know, policies—we try to give latitude to field managers, again, based on the resources and the proposal. So there is going to be differences, but we want to be sure that those differences are logical, make sense, and frankly they pass the red face test. And we do have that responsibility. Yes, ma'am.

Mrs. CUBIN. Do the recently issued instruction memoranda regarding processing APDs provide all of the policy guidance necessary to eliminate the processing backlog and prevent it from reoccurring?

Mr. BENNETT. You know, actually, I think they go a long way to help. They—you know, they're driven by inconsistencies and the opportunity to streamline. I think they're very, very helpful.

I believe that probably our biggest problem here is, to some degree, the resources to be able to do it. We're in the process of wrapping up to meet the need that's really been talked about here this morning. And I—much of what everybody has said, I can certainly agree with. I think that, to answer your question fairly, there are other things that we can do. And we are, indeed, looking at those. They help very much, but there are additional things to do. But, again, you know, we have constraints in terms of processing that aren't our obstacles now. We have—some of those obstacles are in land use planning. It's going to take us time to get that land use—those land use planning documents in those energy rich areas up to snuff. And, again, that's really a function of doing that while, at the same time, trying to process the APDs and do the operational kinds of things. And it's—they do help. There are more things we can do. And we are—we are trying to do some of those things right now, in fact.

Mrs. CUBIN. Is there anything Congress can do to help with those APDs? Not no, but hell no?

Mr. BENNETT. No, ma'am. As a matter of fact, what I need to do is I need to thank you and your colleagues in Wyoming, because you have dramatically helped BLM Wyoming. If you look at our budget—and that's where most people look—we have had a significant addition to our budget in oil and gas. I've got some figures that would reflect that at the time that we started to get the budget help, we were at around 700 APDs a year. And we're now at two and a half times that. Well, I would say that our budget hasn't gone up two and half times. And the—the APDs and the permitting, that's the leading edge of our workload. The rest of our workload is to manage the leases after they're in place, to do the—you know, to stay abreast of it. So there's—when we take on an APD, that's a lifelong project obligation for us. We've got to stay with it.

So, you know, I know that the help we've got, a lot of it has been focused on the Powder River Basin. But as was suggested by Lance, Wyoming has a much broader contribution to make to the energy picture than the Powder River Basin. So we need to have the flexibility to be able to shift oil and gas dollars from the basin to other areas. And quite frankly, the demands on us are going to continue to grow. So I don't know if I was able to dance around that well enough or not, but—

Mrs. CUBIN. You need more money.

Mr. BENNETT. And—yes.

Mrs. CUBIN. We always do what we can.

Are there any policies instituted by the BLM in the past 10 years that, in your view, unnecessarily impede the BLM's ability to conduct lease sales and process APDs?

Mr. BENNETT. You know, we've had some—I remember as—and I'm talking generally now. When I was associate state director in Utah, we had actually a confusing handbook that came out relative to wilderness special areas. And that, I think, caused a lot more confusion. That has since been rescinded.

You know, nothing immediately comes to mind. However, if you could—you know, if you would allow me the opportunity, I would certainly work with the staff and give you some—you know, some other ideas of things that may very well be out there.

Mrs. CUBIN. I would appreciate that.

As I said, I do have further questions, but the time requires me to allow the next panel to come forward. But first I would like to invite any of you to make any remarks or answer any questions that weren't asked of you.

Ms. Bower, did you have—

Ms. BOWER. I would, Madam Chairman.

Mrs. CUBIN. Uh-huh.

Ms. BOWER. Thank you, Madam Chairman.

There's been a few things that I would like to address that have come up this morning. One is we are not asking—there are, in some instances, four different levels of NEPA analysis that take place before we get a decision on an application for a permit to drill. Each stage of that has the opportunity to put more restrictions on us. We are not asking to weaken environmental law. We are also not asking to weaken environmental policies. What we are saying, though, is somewhere in there we're overlapping a lot of different analyses. And we can certainly work on that. What I'd like to say is more is not better; sometimes it's just more.

Another issue that has come up a couple times this morning is Jonah and that Jonah was never legally challenged. Jonah was not legally challenged. However, there are groups using Jonah as an example—because it is a highly intensive area, as an example of habitat destruction and the destruction that can be caused by oil and gas development and using that as an example to prevent further development in other areas. Jonah is very unique in its situation, and so it's certainly not an example.

Another thing when you asked what can Congress do. I think if there is any way you can have language that would help prevent frivolous lawsuits from being filed that delay the process or allow any lawsuits where if the plaintiff does not prevail, that they reimburse the other party in those costs, particularly if it's a Federal agency, because they spend a lot of money trying to reply to all of these administrative costs and these legal challenges that are taken out of their budget that are never reimbursed.

And the last thing I would like to say is that we also believe that there can be a balance between oil and gas development and environmental protection. And the industry is, more and more, assuming responsibilities that have historically been the financial respon-

sibilities of the agencies. We now pay for monitoring. We pay for studies. We pay for surveys to be conducted, where that historically was the agencies' responsibility. So we believe there can be a balance, but that balance does not have to come at the exclusion of development.

Thank you.

Mrs. CUBIN. Thank you.

Anyone else?

Mr. HEILIG. If I may address two areas of interest.

First, drainage from Federal leases. It's my understanding that in many instances, the lessee that occupies a state or private surface also owns the adjacent Federal lease. So in effect, he is draining or she is draining his or her own Federal lease. Without the—

Mrs. CUBIN. But the Federal Government isn't getting its share.

Mr. HEILIG. And we have asked BLM countless times to explain why it is not possible in those circumstances to collect compensatory royalties from the lessee, the operator, that is, in fact, draining the Federal gas estate.

Mrs. CUBIN. But you wouldn't go so far as to say that there's—that they always have the adjoining—

Mr. HEILIG. No.

Mrs. CUBIN. —Federal lease?

Mr. HEILIG. In that circumstance, I—I think the idea of compensatory royalty, or that opportunity, would apply in both circumstances. BLM is in a position to accurately estimate the amount of gas that is being drained and then to charge the lessee the appropriate amount. It also offers the advantage of removing Federal gas without associated surface disturbance. So I see it has significant environmental benefits.

One point with regard to hydrogen. I'm remembering back to a high school chemistry class where we put a charge to water, and that released the hydrogen atom from the water.

Mrs. CUBIN. It exploded, didn't it?

Mr. HEILIG. That's why we—we enjoyed it very much. It was something very exciting.

Mrs. CUBIN. We don't want explosions.

Mr. HEILIG. Thank you.

Mrs. CUBIN. Thank you for your testimony. And once again, we will be sending questions and hope that you can answer—oh, Lance. Excuse me.

Mr. COOK. Yes. Thank you, Madam Chairman.

I have one final comment that I would like to make that really I think you should be aware of in terms of Wyoming's position within the greater picture of gas supply.

Wyoming is the only state in the union that has managed to increase the production of gas every year for the past 18 years. Our—our track record of growth in production is unparalleled. Because of delays both on the permitting as well as the regulatory side for NEPA, the three largest fields in the state, Jonah, Pinedale, and Powder River Basin coalbed methane play, those fields which contribute the bulk of growth in our production, are going to experience declines. In fact, the Powder River Basin coalbed methane production is in decline right now, even though we've produced less than 3 percent of the in-place resource. Pinedale only has a 105

day per year drilling window. Jonah Field is getting ready to stop drilling while a new environmental impact statement is prepared. Our growth has been coming from those three fields.

When the CREG committee, which is the Consensus Revenue Estimating Group for the state of Wyoming—when we meet in the fall, it is very possible that we will be forecasting a decline in overall state production for the year 2004. And that is all due to Federal processes that are impeding production.

Mrs. CUBIN. Thank you.

Bob, did you have any closing remarks?

Mr. BENNETT. Yes, ma'am. Let me—let me offer a couple of additional thoughts.

I'd like to go back to the drainage issue. And I have to tell you that is of significant concern to me personally. I think there's a fiduciary responsibility of the 1920 Act. However, in addition to that, we also have the responsibility of adequate environmental assessment, as well. Drainage is not easily answered by compensatory royalty. Drainage is most easily answered by offsetting drilling. To make the argument for compensating royalty, you have to make an engineering assessment of that. That's not only time-consuming, but you have to have good data. And we can certainly make it, but it also goes into a contest.

The easiest thing for us to do is to clearly ask for offsetting drilling. In order to do that, we've got to have—again, we've got to have the planning documents done and the environmental assessment. So it's not—it's not an easy answer. But drainage is real. And in terms of the priority of the task that we've got in the basin, we're going to be—you know, drainage is the biggest thing for us, in our—in our minds.

The other thing, of course, alluding to what Lance is saying—and, clearly, we're very concerned about Wyoming's position. But, again, we also have these competing requirements that we have to meet in terms of being fit for drilling and to authorize the drilling. So, again, it's not an easy, straightforward kind of thing. But I guess I certainly want to commit our agency to do the very best we can to continue Wyoming's rules and continue Wyoming's position.

Again, I thought I better expand a little bit on the drainage, because it's—compensatory royalty is certainly an answer, but it's not necessarily the easiest answer. And whether you are successful or not is also arguable.

Thank you.

Mrs. CUBIN. And, feasibly, people could be paying royalties on gas they didn't produce with compensatory payments.

So with that, I thank this panel for their testimony and would like to call the next panel forward.

Mr. Jeff Strange, who's the senior account representative for Halliburton Services Company. Steve Degenfelder, vice president for land at the Double Eagle Petroleum Company.

Rick Robitaille, manager of public affairs of the western states of Anadarko Petroleum Corporation. Shaun Andrikopoulos. And Mr. Jim Magagna of Wyoming Stockgrowers.

Don't sit down yet. If you would please stand to take the oath.

Do you solemnly swear or affirm that, under the penalty of perjury, the statements that are made and the responses given will be the whole truth and nothing but the truth?

[witnesses sworn.]

Mrs. CUBIN. I would like to begin this panel testimony recognizing Mr. Jim Magagna, Wyoming Stockgrowers Association. Oh, I could have started down there.

STATEMENT OF JIM MAGAGNA, PRIVATE RANCHER, EXECUTIVE DIRECTOR OF WYOMING STOCKGROWERS ASSOCIATION

Mr. MAGAGNA. Thank you, Madam Chairwoman.

I very much appreciate the opportunity to appear before your Subcommittee today and particularly want to acknowledge our appreciation for your recognition that another important industry in the state, the agricultural industry, is intimately involved and both affected by and has the ability to affect the timely development of our oil and gas resources in the state. Sometimes I think that we feel like we are—we've become a stepchild in this fast pace to develop the minerals. We consider ourselves supporters of the mineral industry, partners with that industry, but at certain times adversaries of the industry. And I believe that this is an excellent opportunity to explore some ways in which that partnership can be strengthened.

In my written testimony that I'll simply summarize for you today, I focused in three areas. And one had to do with that very issue of communication and partnership. As you're well aware, we've been working with the mineral industry over the past year developing a set of protocols to address split estate issues that have caused some significant concerns in the state of Wyoming. But I think this hearing provides an added opportunity to look at how the BLM can make landowners in the state of Wyoming and even grazing permittees in the state better partners in the process of expediting the development of our mineral resources. And it really comes down to the simple term communication and information.

And as I've pointed out in my written testimony, I think there are some time specific opportunities for BLM in the leasing process, in the issuance of APDs, in field development plans to keep the private landowner in the split estate areas where there's Federal minerals, private surface and even the grazing permittees on Federal lands more involved in the process, more knowledgeable so that they can make timely decisions, they can establish timely communications with the mineral operators, all in the name of making the process work more smoothly both for the surface user and for the mineral developer. So that—that's an area that I think the Wyoming BLM certainly has an opportunity, and we would welcome the chance to sit down with them and work on expediting that communication that we feel is so necessary. And often we believe that our landowners, our members, become obstacles to the pace of mineral development simply because they have not been a part of the process. And that's just the typical human nature and their efforts to protect their private property rights which can be infringed upon if they're not properly involved.

The second area that I've addressed in my written testimony somewhat more specifically is the issue of the perceived need by BLM to access private surface either for purposes of Endangered Species Act surveys or for the purpose of cultural resource surveys. And that authority, as I understand it in Wyoming, is based on the instruction memoranda that was issued by the previous Wyoming BLM director in 1999, which, although it's technically expired, to my knowledge, it still provides the guiding direction for activities that affect Federal actions but are located on private lands.

And we recognize that we have, as private landowners, responsibilities under the Endangered Species Act. And I believe most of our landowners very much adhere to those responsibilities. But at the same time, we feel that it is not correct. It's an infringement on our private property rights to have a Federal agency say we have to physically access your land to do a survey in order to authorize a mineral company to conduct an activity. And this probably most often applies to roads, pipelines, power lines, those types of activities that cross both Federal and state land. That's not only an infringement on our private property rights, but more importantly to the purpose of your hearing today, Madam Chairwoman, is that it results unnecessarily often in significant delays. In many cases, our landowners have simply said no, that's not something that we're going to grant authority for.

The instruction memoranda to which I refer in that scenario then puts the burden on the mineral operator to, if necessary, go to court to obtain for the BLM access onto the private land. And we don't believe that a private citizen, a private company, should ever be put in that position of having to take on in a litigation another private entity in order to provide an opportunity for a public body to conduct an activity that they have deemed to be necessary. We are hopeful that if the Wyoming BLM, in fact, has the authority to address that and make some needed changes, that they will do so; that if they do not, that this is something we would urge you and your Committee to take a look at and see how you might be able to change that process.

Finally, the third area that I've addressed in my testimony has to do with access stipulations, which I know are a major concern of the mineral industry. And many of these are seasonal stipulations brought on by the needs to protect wildlife habitat. And here I'm not talking about endangered species, per se. I'm talking about wildlife in general. Our observation has been that the BLM has far too willingly accepted the Wyoming Game and Fish Department's determinations of critical habitat.

And the specific experience that I've had just in the past several months that I'll briefly relate to you—I see my time is up, but I know you're very tolerant. There is a situation in the Rock Springs field office where a seasonal stipulation that was created for the purpose of mineral development, which was questionable in itself, but nevertheless, the office attempted to apply that to access or grazing on public lands where that grazing had taken place during that time period and in that given area for well over 100 years. And we think that is inappropriate, and we're very concerned of seeing expansion of that.

Finally, in closing, one more area that I don't mention in my written testimony but has come up here today. And that is the planning process itself. Because of mineral development and the complexities involved and the public concern that's often expressed, the planning process in Wyoming has become increasingly lengthy and increasingly complex. We in the agricultural industry who depend on these lands for grazing have, to a great degree, become the victims of that. And the best example I can think of very briefly is the Jack Morrow Hills coordinated activity plan that's now been going on for, I believe, five or 6 years. It's focused on what level of mineral development is going to be permitted in the Jack Morrow Hills area. But as a result of that, we have activities, very proactive, resource friendly activities regarding grazing that have been on hold for that entire length of time, because the Bureau has been unwilling to act under existing planning regulations until that process is completed. That's an economic burden. It's a burden on families in the ranching industry. And it's something that very much needs to be addressed.

So in closing, Madam Chairwoman, again, I appreciate the opportunity, the recognition that you have given to the role that we can play. And that's our desire, to be able to be a proactive contributor toward expediting the environmentally appropriate development of our mineral resources in the state. I believe our landowners, our Federal grazing permittees are all committed to that. And the practices that recognize us as full partners in that process and don't put up obstacles for us are the ones that will allow us to make that contribution.

Thank you.

[The prepared statement of Mr. Magagna follows:]

Statement of Jim Magagna, Executive Vice President, Wyoming Stock Growers Association

I appreciate this opportunity to provide testimony on behalf of the Wyoming Stock Growers Association (WSGA). A significant number of our over 1000 members are users of the public lands for livestock grazing and/or owners of private lands overlying federal minerals. They are often directly impacted by oil and gas development and, in particular, the manner in which access for such development is granted by the federal land agencies.

My testimony today will be focused in three areas. First, I will address the general failure of the current public land agency practices to include the private surface landowner as a full partner in the process of leasing and developing federal oil and gas resources underlying private surface (split-estate). I will then focus on restraints being placed on oil and gas producers by the Bureau of Land Management (BLM) that constitute an infringement on the private property rights of landowners. Finally, I will offer observations on the expansion of access stipulations intended for mineral development to grazing on public lands.

The Wyoming Stock Growers Association supports full development of the mineral resources within the state. We recognize the tremendous benefits that this mineral wealth continues to provide to Wyoming in jobs, education and infrastructure. In doing so, it removes a tax burden that might otherwise become destructive of Wyoming agriculture. Livestock grazing constitutes the primary use of most of the land, public and private, in Wyoming. The vast majority of agricultural operators want to be partners in fostering development of oil and gas resources. However, the failure to make us partners in this process often forces individual landowners to become perceived obstacles to development.

WSGA recommends several actions that should be taken by BLM to enhance the opportunity for cooperation by landowners and grazing permittees, thereby facilitating timely industry access to federal mineral resources. Where split estate lands are involved, the BLM leasing process should provide for notice to the landowner when an oil and gas lease has been issued. This notice should include the name and

contact information for the lessee. As field development plans and APDs are filed with BLM, all non-proprietary information should be copied to the surface owner. This process will encourage early communication among the parties and avoid the distrust that often results from time-driven pressures to execute surface use agreements. While surface damage agreements are and must remain a matter of private sector negotiation, the BLM should assume a more proactive role in facilitating timely communication between the parties.

On public lands, while the direct legal relationship between the oil and gas developer and the grazing permittee is lacking, the need for timely communication is not lessened. Unanticipated development activities can significantly impact livestock operations on public lands. The public opportunity to comment on Environmental Impact Statements and Environmental Analysis is inadequate to assure coordination between development and grazing activities. The BLM should assume a proactive role in keeping both parties informed so that, where appropriate, reasonable changes can be made in livestock management or oil and gas development operations to minimize adverse impacts.

WSGA's concerns regarding infringement on private property rights stem to a large degree from policy enunciated by the Wyoming BLM in Instruction Memorandum No. WY–99–24 (Appendix I). This IM addresses the extent of federal authority over actions occurring on private lands affecting plants and wildlife. While the IM carried a scheduled expiration date of September 30, 2000, it appears to continue to guide BLM policy in Wyoming. This IM recognizes as a basic rule that "the BLM has no direct authority over resource information gathering or land management activities taking place on non–Federally owned lands". It then, in our opinion, proceeds to violate this rule in providing specific direction to Wyoming Field Offices. Under the authority of the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA) this IM authorizes the gathering of information from private lands without permission using any "legal" means of inventorying short of actual on-the-ground trespass. Under the "interrelated and interdependent" requirement of Section 7 of the Endangered Species Act the BLM will deny an application for a right-of-way based on a potential impact on a listed species or its habitat located on private land.

The application of this IM to split estate mineral development has had a significant impact on access to federal minerals. It has also been a major contributor to conflict between surface owners and oil and gas operators. According to the IM, if the landowner does not grant the BLM permission to conduct the inventory work deemed necessary, "then the responsibility is placed on the operator wanting to conduct the mineral activity to acquire permission for the BLM specialist." This provision has been extended to plant and wildlife data beyond listed species. It has also been made applicable to the protection of cultural resources under the Antiquities Act. WSGA strongly objects to these provisions. We find them to be both a direct infringement on private property rights and an attempt to shift the burden for enforcement of a federal policy to the mineral operators. These requirements have resulted in significant delays in access to federal minerals. We urge Congress, if necessary, to take appropriate actions to remove this infringement and burden.

Many of the seasonal stipulations which limit access to oil and gas resource development appear to be based on an unquestioned acceptance by federal land agencies of critical habitat designations by the Wyoming Game and Fish Department. WSGA recognizes that there are appropriate and necessary seasonal restrictions that should be imposed both for protection of wildlife and, occasionally, protection of domestic livestock operations. BLM resource specialists should exercise independent judgment in imposing these restrictions. We have become increasingly concerned by attempts to apply these same seasonal stipulations and areas of avoidance to livestock grazing. Potential conflicts between livestock grazing and wildlife needs bear little resemblance to conflicts between wildlife needs and mineral development.

As members of this Subcommittee proceed with your analysis of impediments to oil and gas production on public lands, we urge you to broaden your analysis to include the effects that agency actions have on private landowners and public land grazing permittees. Policies and practices that recognize agricultural land users as full partners in successful mineral development will minimize conflicts that negatively impact timely development of federal mineral resources. I have attached for your information an editorial (Appendix II) that I recently wrote for our association magazine, Cow Country. I have outlined proactive steps that I believe can enhance relationships and foster oil and gas development in Wyoming. WSGA welcomes the opportunity to work with federal land agencies and the oil and gas industry in addressing the impediments that we have defined today.

Mrs. CUBIN. Thank you.

I'd now like to recognize Shaun Andrikopoulos. I hope I got that name right.

Mr. ANDRIKOPOULOS. Yes. It's one way to say it.

Mrs. CUBIN. Tell me the right way.

Mr. ANDRIKOPOULOS. Andrikopoulos.

Mrs. CUBIN. Andrikopoulos. Thank you.

Mr. ANDRIKOPOULOS. Thank you.

Mrs. CUBIN. And your big fat Greek wedding.

Mr. ANDRIKOPOULOS. In my case, it was a Cuban wedding.

STATEMENT OF SHAUN ANDRIKOPOULOS, RANCHER

Mr. ANDRIKOPOULOS. Madam Chairwoman and members of the Subcommittee, thank you for allowing me to testify today. I'm here today representing myself and my family. We are ranchers in Sublette County, Wyoming, and are owners of surface lands that are affected by federally owned minerals. Our family has also long been participants and a part of the Wyoming oil and gas industry, as you may know.

The United States' need for natural gas production today is greater than it has ever been. This is undeniable. According to the Cambridge Energy Associates, production will need to increase 40 to 60 percent over the next 5 years. This has been substantiated with the previous comments today. Categorized as a clean, inexpensive energy alternative to coal or fuel oil energy, the demand for natural gas by the American public is certain to remain strong for the foreseeable future. Coupled with the need for energy independence, it stands to reason that the United States should expeditiously develop its proprietary energy resources. Fortunately, dramatic advancements in technology are enabling us to exploit our reserves at an increasing rate and at a decreasing cost. It is the combination of these factors that has led us to the current natural gas gold rush in Wyoming.

This gold rush, however, comes with inevitable costs not only to the environment but also to private property owners impacted by oil and gas development. There are few legal protections today for the landowners controlling the .6 million acres of fee surface that sits on top of federally owned minerals in the state of Wyoming. The way in which minerals will be developed and the way in which property rights of these landowners will be protected are public policy issues that transcend the boundaries of this state or this region and should be addressed by the Congress directly. It seems inequitable that the American society as a whole should benefit from inexpensive, clean energy at the expense of a few.

In 2002, Wyoming produced 7.1 percent of the nation's natural gas output. At the same time, according to the USGS, Wyoming basins held 19 percent of the total recoverable reserves and 55 percent of the priority reserves in the nation. It is clear from these estimates that regardless of what we do as citizens or what you do as the Congress, the industry will be here to stay. This is where the resource is. We are at the beginning of this gold rush.

Another economic trend that cannot be ignored is that of increased demand and the decreasing supply of open spaces across the west. According to the USDA, the average dollar value of agri-

cultural land in Wyoming has increased nearly 50 percent over the past 10 years. This increase in surface value is reflective of a recent and tectonic market shift in highest and best uses for the surface estate. The desire of the public to own large open spaces with important amenities such as hunting, fishing, and solitude is driving land value in our state to levels that far exceed agricultural production. Yet Federal current laws fall short, because they only require that surface owners be compensated for growing crops and agricultural improvements in the case of oil and gas development.

If we place this region's modern day wealth in resources and American societal values in the context of current Federal statute, we find that there is an asymmetry in thinking. The concept that the mineral estate is dominant to all others dates back to 13th century English common law. This relic of the legal past has been perpetuated in the U.S. Statutes with such acts as the 1916 Stock Raising Homestead Act which severed all mineral rights from the surface homestead claims. At that time, it was impossible for the Congress to foresee the potential—the potential and the impacts that we are experiencing in the 21st century. It is time that this imperial thinking be modernized to reflect the 21st society—21st century societal values of private property right protection and capitalistic balance.

One can only stop and ask why such a large portion of the American public is opposed to oil and gas development in the largely unpopulated Arctic National Wildlife Reserve, yet it seems that few are aware of the impacts on private property owned by American citizens here in Wyoming. According to the Energy Information Administration, Wyoming is ranked 45th in petroleum consumption, yet we're ranked second in natural gas production. With 43 percent of Wyoming's private surface sitting on top of Federal minerals, it is clear that the whole of the country will benefit as a few of us incur the cost.

The petroleum industry has lived in relative harmony with the largely agricultural land base in Wyoming for many years. The custom and culture of the industry has been to accommodate other uses of the surface and to fairly and adequately compensate surface owners for their lost productivity, lost privacy, and lost land values. Recently, however, three key factors have driven dramatic change in the custom and culture of the local industry: Technological advancement, industry consolidation, and increased demand for natural gas. Under these conditions, the old custom and culture of working with surface owners has had little chance of survival. In the case of our family ranch, we are attempting to negotiate with a multinational company that has little, if any, long-term stake in our community or local environment.

The Petroleum Association of Wyoming has collaborated with the agricultural industry associations in the state to establish voluntary protocols that can help alleviate some of the conflicts that exist between industry and landowners in Wyoming. While these are very positive steps, they are far from binding and reflect what the good players in the industry are already practicing. Voluntary measures do nothing to hold the bad actors in the industry accountable. Moreover, in a gold rush environment, voluntary accommodation will usually take a back seat to speed. This is especially

true when the decisionmaking authority of these companies is located in another state or, worse yet, another country. In sum, the old rules simply don't work in today's environment.

If this were an issue that affected only 10 percent of the split estate surface owners, we would not be here today discussing this issue. Anecdotally, we will discuss—as we discuss the interplay of the petroleum industry with our fellow ranchers, we are hard pressed to find split estate landowners that feel they have been kept whole by the industry today. Conversely—pardon me. Conversely, we do not hear about legal battles ensuing from the issue, either. This is because the legal gate swings decidedly one way, in favor of the petroleum industry. And few ranchers have time or legal resources to challenge unfair damage settlements.

So what can be done to solve the inevitable conflict between mineral developers and surface owners? The mining industry is held accountable in Federal statute to give ample notice and to negotiate surface use agreements prior to being permitted for development. The oil and gas industry is specifically exempted from these requirements that were established in the early 1970's. Technology, demand, and economic factors have now created an environment where the petroleum industry needs to be held to the same standards as the mining industry. A double standard simply should not exist.

The three components, in our opinion, necessary to solve the issues surrounding the split estate conflicts and to protect the existing property rights of surface owners are, No. 1, to require detailed notice of operations to be provided to surface owners well in advance of operations.

No. 2, to require mineral developers to compensate surface owners for their real losses, including the diminution in their lost real estate value.

And, three, to provide a mechanism for solving conflicts in an equitable manner through arbitration or through the courts. These measures, appropriately drafted and implemented, will have limited impact on the timing or the magnitude of the extraction of our valuable Federal resources.

In summary, it is time for legislative action now. The inequity that exists between Federal mineral leaseholders and the owners of private surface property can only be solved through Federal legislative action. Volunteer actions will do little to solve the problem in the face of accelerating development. Abdicating the responsibility to the bureaucracy of the BLM is not a solution. Congress should address the issue.

In the early 20th century, our Congress did not have the benefit of knowing how much energy we would need as a nation of the 21st century, nor could they foresee the conflicts that would arise from the split estate situation. Fortunately, in 2003, we can forecast the future and we can put in place the necessary protections for our private landowners so that the current gold rush does not come at the expense of the private property rights of the surface owners in the United States.

Thank you.

[The prepared statement of Mr. Andrikopoulos follows:]

Statement of Shaun Andrikopoulos, Rimfire Ranch, LLC

I am here today representing my family and myself. We are ranchers in Sublette County, Wyoming and are owners of surface lands that are affected by Federally owned minerals. Our family has also long been a part of the Wyoming oil and gas industry.

The United States' need for natural gas production today is greater than it has ever been. According to Cambridge Energy Associates production will need to increase 40–60% over the next five years in order to keep up with increasing demand. Categorized as a clean, inexpensive energy alternative to coal or fuel oil energy, the demand for natural gas by the American public is certain to remain strong for the foreseeable future. Coupled with the need for energy independence, it stands to reason that the United States should expeditiously develop its proprietary energy resources. Fortunately, dramatic advancements in technology are enabling us to exploit our reserves at an increasing rate and at a decreasing cost. It is the combination of these factors that has led us to the current natural gas "gold rush" in Wyoming.

This gas gold rush, however, comes with an inevitable cost not only to the environment but also to private property owners impacted by gas development. There are few legal protections for the land owners controlling the 11.6 million acres of fee surface that sits on top of Federally owned minerals in Wyoming. The way in which the minerals will be developed and the way in which the property rights of these land owners will be protected are public policy issues that transcend the boundaries of this state or region and must be addressed by our Congress. It seems inequitable that the American society as a whole should benefit from inexpensive, clean energy at the sole expense of a few.

In 2002 Wyoming produced 7.1 percent of the nation's natural gas output. At the same time, according to the USGS, Wyoming basins held 19% of the total recoverable reserves and 55% of the priority reserves in the nation. It is clear from these estimates that regardless of what we do as citizens and what the Congress does to put in place important checks and balances the industry is here to stay. We are at the beginning of the gold rush.

Another economic trend that cannot be ignored is that of increasing demand and decreasing supply of open spaces across the West. According to the USDA the average dollar value of agricultural land in Wyoming has increased nearly 50% over the past ten years. This increase in surface value is reflective of a recent and tectonic market shift in highest and best uses for the surface estate. The desire of the public to own large open spaces with important amenities such as hunting, fishing, and solitude is driving land value in our state to levels that far exceed those supported by agricultural production. Yet current Federal laws fall short because they only require that surface owners be compensated for growing crops and agricultural improvements in the case of oil and gas development.

If we place this region's modern-day wealth in resources and American societal values in the context of current Federal statute we find that there is an asymmetry in thinking. The concept that the mineral estate is dominant to all others dates back to 13th century English common law. This relic of the legal past has been perpetuated in U.S. statutes with such acts as the 1916 Stock raising Homestead Act, which severed all mineral rights from surface homestead claims. At that time it was impossible for the Congress to foresee the potential and the impacts that we are experiencing in the 21st century. It is time that this imperial thinking be modernized to reflect the 21st century societal values of private property right protection and of capitalistic balance.

One can only stop and ask why such a large portion of the American public is opposed to oil and gas development in the largely unpopulated Artic National Wildlife Reserve, yet it seems that few are aware of the impacts on private property owned by American citizens. According to the Energy Information Administration Wyoming is ranked 45th in petroleum consumption, yet we are ranked second in natural gas production. With 43% of Wyoming's private surface sitting on top of Federal minerals it is clear that the whole of the country will benefit as a few incur the cost.

The petroleum industry has lived in relative harmony with the largely agricultural land base in Wyoming for many years. The custom and culture of the industry has been to accommodate other uses of the surface and to fairly and adequately compensate surface owners for their lost productivity, lost privacy, and lost land values. Recently, however, three key factors have driven a dramatic change in the custom and culture of the local oil and gas economy: technological advancement, industry consolidation, and increased demand for natural gas. Under these conditions the

old custom and culture of working with surface owners has had little chance of survival. In the case of our family ranch we are attempting to negotiate with a multinational company that has little, if any, long-term stake in our community or local environment.

The Petroleum Association of Wyoming has collaborated with agricultural industry associations in the state to establish "voluntary" protocols that can help alleviate some of the conflicts that exist between industry and landowners in Wyoming. While these are positive steps, they are far from binding and reflect what "good players" are already practicing. Voluntary measures do nothing to hold the "bad actors" in the industry accountable. Moreover, in a gold rush environment "voluntary" accommodation will usually take a back seat to speed. This is especially true when the decision-making authority of these companies is located in another state or another country. In sum, the old rules simply don't work in today's environment.

If this were an issue that affected only ten percent of the split estate surface owners we would not be here today discussing this issue. Anecdotally, as we discuss the interplay of the petroleum industry with our fellow ranchers we are hard pressed to find split-estate land owners that feel that they have been kept whole by the industry. Conversely we do not hear about legal battles ensuing from the issue. This is because the legal gate swings decidedly one way in favor of the petroleum industry and few ranchers have the time or legal resources to challenge unfair damage settlements.

So what can be done to solve the inevitable conflict between mineral developers and surface owners? The mining industry is held accountable in Federal statute to give ample notice and to negotiate surface use agreements prior to being permitted to mineral development. The oil and gas industry is specifically exempted from the requirements that were established in the early 1970's, a time when the surface impact from petroleum exploration was minimal relative to mining. Technology, demand, and economic factors have now created an environment where the petroleum industry needs to be held to the same standards as the mining industry. A double standard should not exist. Despite these more rigorous legal standards the mining industry has thrived over the past 30 years in Wyoming, one can only assume that so will the petroleum industry when held to the same standards.

The three key components necessary to solve the issues surrounding split estate conflicts and to protect the existing property rights of surface owners are: (1) to require that detailed notice of operations be provided to surface owners well in advance of operations, (2) to require mineral developers to compensate surface owners for their "real" losses including the diminution in the real-estate value, and (3) to provide a mechanism for solving conflicts in an equitable manner through binding arbitration or through the courts. These measures, appropriately drafted and implemented, will have little impact on the timing or magnitude of the extraction of our valuable Federal resources.

In summary, the time for legislative action is now. The inequity that exists between Federal mineral leaseholders and owners of private surface property can only be solved through Federal legislative action. Voluntary actions will do little to solve the problem in the face of accelerating development. Abdicating the responsibility to the bureaucracy of the Bureau of Land Management is not a solution; the Congress must address the issue.

In the early 20th century our Congress did not have the benefit of knowing how much energy we would need as a nation in the 21st century. Nor could they foresee the conflicts that would arise from the split estate situation. Fortunately, in 2003, we can forecast the future and we can put in place the necessary protections for our private landowners so that the current gold rush does not come at the expense of the private property rights of surface owners in the United States.

Mrs. CUBIN. Thank you.

I'd now like to recognize Rick Robitaille, Anadarko Petroleum Corporation.

STATEMENT OF RICHARD ROBITAILLE, WESTERN DIVISION MANAGER OF PUBLIC AFFAIRS, ANADARKO PETROLEUM CORPORATION

Mr. ROBITAILLE. Thank you, Madam Chairman. As you indicated, my name is Rick Robitaille, with Anadarko Petroleum. My office and my home are in Casper, Wyoming.

Anadarko is an independent oil and gas producing company with operations that are not only domestic but worldwide. We have a major presence in Wyoming and a major stake in Wyoming and a major interest in what's going to happen in Wyoming. We directly employ roughly 165 people. We account for several hundred contract jobs. We help support many of the service industries that are viable to our economy. We have offices in Rock Springs, Gillette, Rawlins—I'm pleased to say Rawlins—Midwest, Powell, Casper, and some other smaller field offices around the state. We are very active in crude oil, natural gas production, coal production, trona production, and we also have an agricultural operation. So we are a very diversified company in our state.

Our presence in Wyoming was magnified significantly in the mid—in mid 2000 when Anadarko merged with Union Pacific Resources, not to be confused with the railroad, but the resource company. In so doing, that transferred ownership of the original 1862 Railroad Land Grant to Anadarko Petroleum.

As a result, we are now the largest private mineral owner in the state of Wyoming and one of the largest surface owners in the state of Wyoming. We made that investment as part of our company's future, because we believed that they had tremendous potential for energy development and other development, as you heard Mr. Cook and Mr. Bennett say earlier in the day.

With approximately 4 million acres of minerals and a million acres of surface intermingled in a checkerboard pattern with the BLM or the Federal Government's lands, we have a very keen appreciation for the rules and the regulations and policies that you've been discussing today, including the split estate policy. The checkerboard land pattern—and it is simply that. If you visualize a checkerboard and you look at the red blocks, that belongs to Anadarko. And if you look at the black blocks, that belongs to the Federal Government. It is just that. It is a Federal section surrounded by private property and a private section surrounded by Federal property. And that in itself presents some really unique management challenges for both the private owner and the Federal Government. We understand those, and we appreciate those.

We are in a situation where we have to work closely with the BLM, the beneficiaries of which work will be, as mentioned, the Federal, state, and local treasuries, the citizens of the United States, local businesses, and so forth, high on our priority list. Our primary challenges are twofold. One is access to our own land and the adjacent Federal leases. And the other priority is to do so in a reliable, predictable timeframe that does not discount the present value of money and cause us to look elsewhere.

We agree with some of the statements previously made. The RNPs in this area are in dire need of update. We are concerned with some of the mitigation measures the BLM places on—necessary in response to their laws and regulations that by default become actually placed on the private lands in the region. Effectively and unfortunately, we have become subject to some regulations that Mr. Magagna mentioned that we don't think are really appropriate.

We are very concerned about the NEPA process. Some of the documents you've discussed today that govern our business and affect

us on our private land holdings can take up to 5 years. That is very detrimental. We believe that that may, in fact, cause projects to be shelved and looked at investments to go elsewhere.

We are interested in the debate now before Congress on trails and the current activity that is taking place with recognition and utilization of scenic and historic trails. We believe that there's got to be careful review of those policies to ensure that the trail concepts and the practices employed recognize the rights and protect the rights of private surface and private mineral owners in the vicinity of the trails. We think Congress needs to take some action so as to do that to ensure those protections.

Predictability. You talked with Mr. Bennett earlier about some of the inconsistencies. I was very pleased to hear his answer. The timing of the drilling permits, the timing of the planning—to give you an example in this area, in order for us to access our own private surface and private minerals, we typically need a right-of-way across Federal Government land. That right-of-way can take several months, barring any unforeseen problems, just to get to our own piece of property. Then, of course, we, being naturally surrounded by the Federal lands, are very cognizant of the requirements and the stipulations and the regulations that are in place, some of which, as Mr. Magagna mentioned, narrow the window of opportunity appreciably.

I'm thinking about a project we have going in the central part of the state where we're building a pipeline from Jeffrey City to Midwest, Wyoming, which isn't exactly Yellowstone Park or Grand Teton National Park, but it is indeed good Wyoming ground. Our window of opportunity in there is a very narrow band throughout the entire year due to the stipulations and regulations that are in place. Our concern is that planning in this area does not inhibit access to our own private land by opposing those same stipulations and requirements.

In summary, Madam Chairman, let me say that we believe that these resource plans need to be looked at. Resources need to be provided to update those plans immediately. Those plans need to recognize private property rights. Revisions—and Mr. Bennett mentioned the staffing problems. Revisions should be based on areas of most activity or potential activity so that we can get the work done where the work will eventually be proposed. They need to be comprehensive. Those plans and their development and other plans and other documents somehow need to recognize the need for concurrent activity while they're in the stage of development.

I liked the answers I heard on the earlier panel. I think we need to investigate how we can ensure and enforce predictable, reliable timeframes in the NEPA process and the FLPMA process so that investors have a definitive window in which they know they're going to get an answer to a proposed action.

I concur entirely with Mr. Bennett. I think that Congress needs to look at BLM staffing in this area. I think they need to provide not only sufficient funds for staffing, but I think they need to provide sufficient funds to have qualified staff working and making the decisions upon which our business is based.

The Federal Government in this planning process also has to recognize that while they have the authority to analyze an area, they

don't necessarily, as Mr. Magagna says, have the authority to manage private lands. And we hope that the desires of the private landowners to manage their own property will be recognized and appreciated by the Federal Government.

Thank you, Madam Chairwoman.

[The prepared statement of Mr. Robitaille follows:]

Statement of Richard T. Robitaille, Western Division Manager of Public Affairs, Anadarko Petroleum Corporation

Madam Chairwoman, members of the Subcommittee, I am Rick Robitaille, Western Division manager of public affairs for Houston-based Anadarko Petroleum Corporation. My office and my home are in Casper, Wyoming.

Anadarko is an independent oil and gas exploration and production company with operations in the United States, Canada, Gulf of Mexico and several other countries. In the United States, we are the seventh-largest producer of natural gas and one of the most active drilling companies.

In Wyoming, Anadarko and its subsidiaries directly employ 165 individuals and provide additional employment opportunities for approximately 475 contractors. We have offices in Rock Springs, Gillette, Rawlins, Midwest, Powell and Casper and are active in crude oil, natural gas, coal, trona and agriculture operations. Anadarko is one of the state's largest mineral producers and taxpayers.

In mid–2000, Anadarko merged with Union Pacific Resources. That transaction transferred to Anadarko the original land grant awarded to the Union Pacific Railroad in 1862. That land grant included every other section of land for twenty miles either side of the main tracks across southern Wyoming. With the addition of these holdings, Anadarko is now the largest private mineral owner and one of the largest private surface owners in the state.

With approximately four million acres of mineral estate and one million acres of surface estate intermingled in a checkerboard pattern with lands owned and controlled by the federal government, we are keenly aware of the management role and regulations of the federal government.

This checkerboard land ownership pattern, which results in private lands being surrounded by federal lands and federal lands being surrounded by private lands, presents many unique challenges for us as well as the primary federal agency, the Bureau of Land Management (BLM). In much of southwest Wyoming, private land owners and the federal government must work together to facilitate mineral development. The beneficiaries of a successful relationship include; federal, state and local treasuries; private enterprise; education; local employers; and, most important, domestic energy consumers.

Anadarko's objective is to explore for and produce minerals in harmony with our private and government neighbors while preserving and protecting rights to our private property.

Primary challenges we have identified in the area include: (1) access to our private property as well as federal oil and gas leases; and (2) reliable timelines for approval of proposed operations and required permits.

Access to federal lands and leases for oil and gas development has become increasingly difficult with more stringent regulations, increased study requirements, expanded permit approval times, greater challenges from anti-development groups and antiquated limitations. Private surface and mineral owners are also directly impacted by these conditions.

One of the governing documents influencing activities on federal lands and, as a result, the private lands located within the checkerboard pattern in southwest Wyoming, is the Resource Management Plan (RMP), which is required by the Federal Land Policy and Management Act (FLPMA). These RMPs are in dire need of updating before larger exploration and production projects can begin. We believe these plans must be written with increased consideration and recognition of local land ownership patterns and allow more timely access to private property rights adjacent to federal lands. To access much of our own land for exploration and transportation of production, we must obtain access rights-of-way (ROW) from the BLM. Obtaining these ROWs can take several months, barring any unforeseen complications.

Many mitigation measures enforced by BLM essentially apply to private lands as well. When federal lands are restricted from winter seismic or drilling activity, by wildlife stipulations or threatened and endangered species, by default so too are the adjacent private lands. Furthermore, federal land management agencies use the pretext of "cumulative impacts" of proposed activities on both federal and private lands and minerals as a tool to urge a commitment to "voluntary" measures regard-

less of land ownership. Should the developer oppose application to private property, delays in the permitting process are all but assured to occur. These measures can reduce the window of opportunity for activity on private property to a few months each year. Many private owners do not want to provide access to conduct required surveys which may ultimately impede development and reduce land values. We recognize that federal agencies have the mandate through NEPA to assess for cumulative impacts regardless of landownership; however, the Act does not give the agencies the authority to regulate private property. Effectively and unfortunately, private property owners have been subjected to the same time frames, conditions and stipulations as those imposed on the management of neighboring federal lands and leases.

The National Environmental Policy Act (NEPA) is a well-intended law. Over the years it has been converted from simple language to volumes of regulations, legal decisions and policy interpretations which serve to stifle exploration for and production of this country's needed energy resources. It appears some federal land managers have opted to insulate their agency from unfounded criticism and potential litigation by resorting to massive environmental assessments (EA) that resemble environmental impact statements (EIS) in extent. Furthermore, decisions are often made to prepare the more extensive EIS where heretofore they were not routinely required. This cumbersome process takes enormous amounts of time, often times up to five (5) years, and casts doubts on project timing and planning. It is also becoming routine for federal land management agencies to shift the financial burden of preparing these voluminous documents to the developer. Because of land ownership patterns in southern Wyoming, private property rights can be significantly affected by this burdensome process through lost opportunity. We believe there may be several projects that will not come to fruition because time delays discount the present value to unacceptable levels.

Additionally, BLM, as a result of the EISs, appears to be shifting the responsibility to industry to provide all relative wildlife, other resource and cultural studies at the time of permitting. In an ever increasing fashion, BLM as a land management agency is unable or unwilling to provide resource information from which developers can plan activities to minimize environmental impacts. Year by year, BLM grows its reliance on industry to conduct this data gathering and resource inventories. This shift in responsibilities is evident when examining language contained in BLM's Onshore Order 1 which provides industry with direction on filing applications for permits to drill (APD). When originally drafted in 1983, the Order stated, "the involved SMA (surface management agency) shall identify any threatened and endangered species and/or critical habitat problems or other environmental concerns . . . to minimize the possibility of drill site relocation." In recent years, documents which required assessments for wildlife have increased the study group from thirteen (13) species to seventy-two (72). Some studies are seasonally sensitive, which if missed, can delay permit issuance for up to a year. For an owner who would like to develop private minerals, these and similar requirements can have a chilling effect.

As recognition of national scenic and historical trails increases, so too must the realization that every other mile of some trails in Wyoming crosses private property. While private owners with trails on their land have generally worked to protect this portion of our national heritage, most remain troubled over imposition of federal stipulations for certain uses around the trails. For example, while there do not appear to be any regulatory requirements for use of the trails by recreational enthusiasts, private mineral development proposed adjacent to a trail may be restricted or denied.

Suggestions of land purchases by the federal government or creation of protective trail "view sheds" have the potential to severely limit private property rights and the development of associated resources. Visual resource restrictions for temporary structures appear overly restrictive in some areas. Further complicating the issue is the fact that management of "view sheds" is an inexact art replete with subjectivity whereby decisions for resource protection can be left to the whim of individual managers.

We believe where Congress grants the federal government authority to acquire private land for trails, it should make clear that the government should do so by acceptance of an easement if the landowner prefers that form of conveyance. The grant of an easement—as opposed to a fee interest—allows the landowner to reserve the right to continue existing or to undertake future endeavors on the surface as well as the subsurface of his land adjacent to and upon which the trail is located.

Predictability and consistency from the BLM is paramount. Whether it is in stipulations identified in an EA or EIS or in the timing of drilling permits and pipeline ROWs, owners and developers have to know what to expect so that they can plan

effectively. Predictability and consistency should also apply across field office areas and within the agency's internal groups.

Some federal agencies appear motivated to try to speed up the permit process, but are still hampered by lack of staff. Timing problems are likely to increase as much of BLM's senior staff qualifies for retirement within the next several years.

As petroleum production technology and methodologies advance, the federal government should revisit existing requirements. For example, the federal chargeable acreage limitations do have merit and should be in place for protection of a monopoly on federal lands. However, the rules need to be updated to reflect current development practices. Chargeable limits need to be increased from 246,080 to 500,000 acres to reflect the need for larger land positions required for coal seam and fractured shale natural gas production. Larger land positions are required for economies of scale to make these projects economical. Producing acres should not count towards chargeable acres.

Anadarko Petroleum is proud of its record and will continue to stress the importance of developing energy resources in a manner compatible with the environmental. We are not seeking to circumvent the laws designed to protect the environment. Anadarko is, however, very aware of the need to provide energy to the American public, and we remain concerned about the impact of federal actions on private property rights.

We offer the following recommendations:

National Environmental Policy Act-

- To reduce excessive analyses, agencies must comply with the CEQ regulations at 40 CFR 1500 to 1508 (e.g., scope of environmental analysis, public participation and documentation) and relevant executive orders (e.g., energy impact assessments).

Resource Management Plans-

- Must recognize the need to protect private property rights and be updated as quickly as possible.
- Revisions should be prioritized based on most active or potentially most active areas.
- Need to be comprehensive plans that are flexible and timely.
- Should provide for concurrent activity while being revised and the fact that they are undergoing revision should not be the basis for delaying or denying access to private lands.

Improve Predictability-

- Ensure and enforce time specific agency action on NEPA required studies, oil and gas lease issuance, applications for permits to drill, rights-of-ways, cultural clearances, etc.
- Establish measurable performance standards and accountable deadlines for land management agencies and personnel and provide reports to the public.

Personnel-

- Federal land management offices should be sufficiently funded and staffed with knowledgeable professionals to meet increasing activities to develop natural resources.

Private Property Development-

- Federal management agencies should not dictate activities on private surface.
- Decisions by landowners for development on private property must be respected and not denied by federal agency actions.

Anadarko Petroleum appreciates the opportunity to appear before you today and looks forward to working with you to address the issues contained in our comments.

Mrs. CUBIN. Thank you.

I'd now like to recognize Steve—tell me how to say your last name.

Mr. DEGENFELDER. Degenfelder.

Mrs. CUBIN. —Degenfelder. Thank you.

STATEMENT OF STEVEN DEGENFELDER, VICE PRESIDENT FOR LAND, DOUBLE EAGLE PETROLEUM COMPANY

Mr. DEGENFELDER. Thank you, Madam Chairman.

Madam Chairman, my name is Steve Degenfelder. I'd like to thank you—is this on?

Mrs. CUBIN. I think you just have to pull that closer.

Mr. DEGENFELDER. My name is Steve Degenfelder. I'm the vice president of land for Double Eagle Petroleum Company. We are headquartered in Casper, Wyoming. We employ six full-time employees. I'd like to thank the Committee for the opportunity to testify today.

The foundation of this hearing should be to stress to other Members of Congress, whether they're from energy producing states or energy consuming states, that all the studies concerning natural gas—and there's been a lot of them. Mr. Cook could tell you the exact ones. But where new reserves are being found in the United States are in the Rocky Mountain area. Since the offshore east coast, offshore west coast is off limits, all the energy producing states down in the south and the gulf coast are merely keeping up with depletion. Where new reserves are being added is the Rocky Mountain region and Wyoming particularly.

I'd also like to thank you for traveling all the way to Rawlins to hold this meeting. It's nice that you get out in the small towns. But more particularly, in my point of view, Rawlins is also the BLM's Rawlins field office. And so many of my peers get very disgusted that when a new president is elected or we see a new secretary of interior or a new state director, they're disappointed at times that they don't see a lot of change. And I think that where a lot of emphasis needs to be made is in these district offices, because the district offices are the place where policies are interpreted and implemented on a day-to-day basis.

Basically—well, to let you know more about my company, our two main plays are the CBM play about 25 miles south of here and also on the Pinedale Anticline, which is in southwest Wyoming. We also have some exploratory projects.

My comments throughout this testimony are based on comments on Federal lands, BLM lands, and US Forest Service lands. To boil down a business decision, I feel, comes down to time and money. And if something costs too much or takes too much time, you naturally look to an alternative to satisfy that investment of capital.

With respect to Federal lands, I was thinking of five main areas that I'd like to touch on in my testimony. The NEPA analysis. The duplication of permitting and reporting. The lands that are available for leasing and conditions of approval or, rather, reporting to Congress of those—those two items. Drilling permits and right-of-way permits and just overall increased costs that we incur operating on Federal lands.

The NEPA analysis is probably the biggest impediment to operations on Federal lands not because we don't want to adhere to the NEPA principles, but I feel like the intent of the legislation has gone far beyond its intended purposes by those implementing the various Acts. No one wants to not comply with NEPA. However, I believe that the BLM and the Forest Service have become so hopeful that by increasing the scope of the study of these documents, they will lessen opposition to a project. This isn't the case. There's a lot of groups that are very opposed to any activity that we want to do. They're never pleased, because they don't want the develop-

ment to occur. And they use NEPA to their own benefit by creating a quagmire of studies to serve their purpose of at least delaying and increasing the cost of a project. An operation on Federal lands has one of three outcomes, either approval, denial, or continual study. Two out of three of those outcomes negatively impact me.

To further demonstrate this process, on the small play that we have south of Rawlins here, the first four wells, the NEPA document was this size. On the next eight wells, I paid for the NEPA document, and it was this size. And this is the document that Mr. Heilig's group appealed. This is very costly to us, because it takes capital money that we could be spending to drill wells and puts it into legal actions, including Mr. Heilig's appeal, which initiated another round of attorneys' fees that we have to pay for in addition to BLM having to pay some of those costs for their own legal representation.

I'll try to skip forward here some. Another interesting situation is that we have an exploratory project out in northeastern Utah on US Forest Service lands which we've been waiting for our—us and our predecessors have been waiting for NEPA documents to clear the way for leasing a 400-acre tract that is surrounded by 20,000 acres that we have under lease. The little white spot is the open tract. We've been waiting for 20 years to get this issued, and it looks like it's going to happen here in probably the next 12 months. But I would draw your attention to something that happened just recently. And that was that the US Forest Service granted a categoric exemption to a group of individuals that wanted to occupy some land out—the same Forest Service lands, not close to this drilling prospect but on the same forest. And they were granted a permit very quickly to occupy that land with up to 20,000 individuals. My company has asked for a no surface occupancy lease. And that's what we fight about today.

I see my time has been all taken up by the first comment. I would like to emphasize to you, though, in closing that my statements and my written testimony are not unique to my own company. I can bring in so many of my peers you wouldn't believe it, and they'd have a list as long as their arm of situations like this that have occurred. It's very difficult dealing with these because of the process. And I hope that you and other representatives from other states can enact some legislation that will alleviate and streamline some of those processes.

Thank you.

[The prepared statement of Mr. Degenfelder follows:]

Statement of D. Steven Degenfelder, Vice President of Land, Double Eagle Petroleum Company

Madam Chairwoman and members of the Subcommittee, my name is D. Steven Degenfelder and I am the Vice President of Land for Double Eagle Petroleum Company, an independent oil and gas exploration company located in Casper, Wyoming and with primary operations in the State of Wyoming. I would like to thank the Subcommittee on Energy and Mineral Resources of the Committee on Energy and Commerce for the opportunity to testify at this field hearing regarding "Oil and Gas Development on Federal Lands.

The foundation of this hearing should be to stress to members of Congress, whether they be from energy producing states or energy consuming states, that all studies concerning natural gas reserves point to Wyoming as the focal point of new reserves will be developed. With more than 60% of the minerals in the state being owned by the federal government, it is obvious that impediments to any production on fed-

eral lands is going to adversely affect the nation's ability to utilize its own natural resources and have a greater dependence on foreign countries resulting in greater costs and less stability. Basically, if we produce our own natural gas, we control our own destiny.

I would also like to thank the Committee for traveling to Rawlins, Wyoming, and the site of BLM's Rawlins Field Office. It is extremely important for members of Congress to know these field offices are the most critical part of the Department of the Interior. People are disappointed because they don't see much change when a new BLM State Director or Secretary of the Interior is appointed or even when a new President is elected in Washington, D.C. This is because, the Field Office is where policies are interpreted and implemented, not at high management levels.

My company is currently developing a coal bed methane play approximately 25 miles south of Rawlins as well as participating in many wells on the Pinedale Anticline in southwest Wyoming. I would like to emphasize that these two areas primarily produce natural gas and consist of development drilling, not exploratory. We also have one large exploratory project on United States Forest Service (USFS) lands in Utah, which I will address in my testimony.

In every business, the issues basically come down to time and money. If something costs too much or takes too much time, it is replaced by another investment that is better. Today, I would like to focus my comments on five main areas of concern that I feel create or contribute to impediments to oil and gas production on federal lands.

1) NEPA Analysis
2) Duplication of Permitting and Reporting
3) Land Available for Leasing/ Conditions of Approval
4) Drilling Permits and Right-of–Way Permits
5) Increased Costs

NEPA Analysis:

The biggest impediment to operations on federal lands is the adherence to the National Environmental Policy Act (NEPA). The principles of the Act have been extended beyond their original intent. This process takes an incredible amount of time and is the single reason why more wells are not drilled and consuming states pay more for their energy. The two biggest plays in Wyoming are development in nature versus exploratory. In other words, the location of the gas is known, you just have to drill, produce and ship it to the consumer. However, these areas are where industry is encountering their greatest challenges.

I am not implying I do not want to comply with NEPA. However, I believe BLM and the USFS has become hopeful that by increasing the scope of study in a NEPA document, they will in some way lessen opposition to a project. In most instances, the Agencies do not achieve their goal. Groups opposed to these projects are opposed to any activity. They will never be pleased because they do not want any development to occur. They now use NEPA for their own benefit by creating a quagmire of studies that serves their purpose of at least delaying and increasing costs of a project. An operation on federal land has one of three outcomes, approval, denial or continual study. Industry loses in two out of three of these outcomes. Environmental groups know that to prolong a study by creating endless possibilities and shadows of doubt, they increase the possibility of discouraging an operator and seeing the project cancelled. That's bad for energy consuming states.

To further demonstrate the NEPA process, I would use our small play south of Rawlins as a good example. BLM prepared the NEPA document for our first four wells at the Cow Creek Field and the document was ten pages long. Double Eagle paid for the next NEPA document covering eight wells and that EA was over 150 pages and a bargain at $30,000. That EA is being appealed by environmental groups so we had to hire an attorney to intervene for another $10,000 to ensure that BLM would defend the EA with all their resources and protect our rights as well as their own. It is ironic how the same environmental groups did not appeal an EA for 10 wells completed 1 mile east of my project.

A similar situation, which demonstrates that the public process is used to delay a project, occurred when the Wyoming Department of Environmental Quality (DEQ) went through the public hearing process for my NPDES permit to dispose CBM water on the surface. Despite the fact that the same amount and quality of water had been discharged for four years prior to the public hearing of which no one commented. As soon as DEQ said this permit would now include CBM water, these groups including BLM expressed grave concerns. Where were their concerns 4 years prior when the water initially flowed and BLM, Game & Fish and others built a reservoir to catch this well water?

Another problem encountered by oil and gas companies is, having to pay for the NEPA documents, which BLM is actually supposed to do. BLM advises industry that because of time and budget constraints, if we want a decision any time soon we should pay a BLM approved third party contractor to prepare the document. This has been hard for me to explain to my superiors why BLM can't afford to do the NEPA documents in a timely manner, but do have enough staff to send, in some cases, up to 14 people to conduct an on-site inspection when in the past usually 2–4 people have done the inspection.

Since I have serious doubts that any efforts will result in a decrease of NEPA analysis from our present situation, I would simply suggest that Congress strictly order all federal agencies to require and document that all persons and companies using any federal lands operate under exactly the same NEPA process. I am convinced that if everyone in this country had to do what oil and gas companies are required to do, the public would be outraged and a change would finally occur. I can give you several situations, which we see where NEPA analysis is not being fairly implemented. One situation occurred recently on USFS lands in southwest Wyoming where a group was given a use permit through a "categorical exemption" to avoid a lengthy NEPA analysis. The permit would allow up to 20,000 people to camp, drive on and otherwise occupy USFS land. My company and its predecessors have been fighting with the same USFS personnel for 20 years to get a lease issued which carries a No–Surface–Occupancy stipulation, on a 400 acre tract surrounded by 20,000 acres of existing leases. Our NEPA document has been 10 years in the making. A detail I learned just days ago is that the USFS intends to "take over" the reclamation of these lands after an initial period of restoration by this 20,000-person group. Oil and Gas companies are required to complete restoration at their own cost regardless of how long it takes before their bond is released.

I would also like you to require that BLM be a cooperating agency in the preparation of any NEPA document for the USFS since BLM will always be the agency charged with offering an oil and gas lease on USFS lands. This will help to prevent delays we are experiencing right now.

Duplication of Permits and Reporting:

We currently submit applications for permit to drill, which includes information such as surveys, electric logs, completion reports, perforating intervals, pressure testing and other down hole information on wells drilled on BLM lands to both the respective BLM Field Office and the Wyoming Oil and Gas Conservation Commission (OGCC). On private and state wells we only submit this information to the OGCC. Once the information is received by the OGCC, it is kept in paper form and also digitized and available on the Internet. BLM Field Offices have expressed difficulty in having space to store all these paper file copies. I would suggest you designate the OGCC as the central depository for all well information and other records. The OGCC already administers spacing of wells in the state including those on federal land and is greatly respected throughout the nation for its Internet access of well file information.

Land Available for Leasing / Conditions of Approval:

First, you should know that the information and testimony you have received in the past hearings about lands "available for leasing" and "lease stipulations" is very inaccurate. This information is usually taken out of context and in a practical manner, does not represent reality.

For example, when you hear testimony saying that only a small percentage of lands are unavailable for leasing, you take the percentages at face value and probably have a hard time arguing in public based solely on the percentages. I encourage you to pay close attention to where these lands may be located with respect to other lands. For example, the attached map of the Table Top Unit shows where we have 98% of the land under lease and a 400-acre tract offsetting our drill site, representing 2% of the lands, has been unavailable for lease. This unavailable tract renders the entire project of 20,000+ acres of leases unavailable for development. This was the determination of the Interior Board of Land Appeals. However, you would just be told that 98% of the lands in this particular area are leased and only 2% are unavailable. Naturally you would question my complaints.

Lease stipulations are another area, which can be manipulated. My company's activities in the Baggs and Pinedale area in Wyoming are taking place on leases which were issued in 1948 and 1951 and mentioned little about timing stipulations or other conditions for operations. These leases would be reported to you as lease with no stipulations or as "standard stipulations". However, once we apply for a drilling permit, the stipulations imposed do not distinguish between a lease that was issued 50 years ago or 5 months ago. Basically, when you buy a lease at the

auction, the stipulations on the lease you purchased can and will change depending on what is going on and when you decide to drill. It makes me wonder why BLM spends so much staff time and money determining what stipulations to put on a lease before a tract is offered for sale if the stipulations are bound to increase once someone submits an application to drill. These stipulations are non-negotiable and are supported by an old solicitor's opinion.

Considering the above comments, I would suggest that you direct BLM and USFS personnel, when testifying before Congress about availability of lands for leasing and special leasing stipulations, they also include lands within a five mile "buffer" zone around these lands since those leasing areas within the "buffer" would also be questionable for leasing knowing the circumstances of neighboring lands. This analogy has been used to protect wildlife and historical resources for many years and should give Congress a better prospective on the real figures.

Stipulations are nothing compared to the "conditions of approval" (COA's), which are attached to your drilling permit. The process begins by filing an application for permit to drill with BLM. The application is accompanied by a 4-page drilling plan and 11-page surface use plan. We have a registered surveyor stake the location and have an archeologist conduct a cultural inventory. When BLM approves the drilling permit, in some cases one year later, attached is what is called "conditions of approval", which are additions to the plans you have already submitted. These COA's are non-negotiable and can be appealed only to the State Director and to IBLA. Considering an appeal to IBLA can take up to 3 years for an answer. A company usually just accepts the COA's and goes on with their operation because of the time and money involved with an appeal, which most often doesn't make the decision worth contesting.

Drilling Permits and Right-of–Way Permits:

The state OGCC will approve a well permit in 1–2 weeks. BLM can take up to one year depending on the NEPA analysis required. Couple that with the fact that many leases have wildlife stipulations that allow no construction, in some cases, from November 15 to July 31, with a very short window in which to conduct your operation. Couple that with the fact that everyone else is under the same stipulations, it is no wonder we have a rig shortage each summer. Then, the drilling companies have trouble-finding employees to operate the rigs because they laid those people off last November when things went dead.

Right-of-way permits for access over BLM lands, especially to access a private drill site, has created a great concern because these requests have almost the same NEPA considerations as a well site on federal lands despite its being simply a 30 foot wide roadway. The requirement to conduct cultural and wildlife studies on the private land we are accessing federal lands to get to, stress our relationships with the private landowners, who are not too thrilled to find out we have to do cultural and wildlife studies on their land in order to get our BLM right-of-way.

Authorization for surface water disposal and machinery involving air emissions has been under greater scrutiny. We are required to obtain permits from the Wyoming Department of Environmental Quality (DEQ) for air and water. Despite the DEQ having been given primacy by the Environmental Protection Agency (EPA) to implement the Clean Water Act and Clean Air Act in Wyoming, BLM makes it clear that having a NPDES permit or an air quality waiver does not entitle you to dispose of water on their surface or construct a compressor or generator station site. This is can only be authorized by the Agency through a right-of-way permit or sundry permit, which examines not only the use of the surface but also re-examines some of the environmental basis analyzed by DEQ. I would encourage you to let DEQ authorize these permits and not make a company go through another environmental process with BLM.

Increased Costs:

I was amused recently at a conference I attended where an attorney said, "fight 'em" by filling your own lawsuit. What a bunch of baloney. Where is the justification for fighting a 3-year battle at the Interior Board of Land Appeals (IBLA) about wildlife stipulations on my 1948 vintage leases? I am much farther ahead if I take the COA's and get on with my drilling program. I know this perpetuates the problem but companies run on the bottom line. If you don't drill wells you can't produce the product, and if you don't have sales you don't get any money back.

Basically, every time federal agencies increase their requirements it costs more in time and money both for industry and the federal agencies. A few instances, which stand out in my recent operations are:

- NEPA documents are now prepared by industry because BLM says they do not have the staff or budget to prepare them in-house. A small EA cost $50,000+.

Large environmental impact studies cost several hundred thousand dollars to over a million dollars before a well is even drilled.

- Not receiving drilling permits until late in the year increases costs because days grow shorter and the temperatures drop.
- Requiring the graveling of access roads and locations prior to knowing if the well is productive. This has greater impacts to the surface and requires extensive restoration in the event of a dry hole not to mention the additional $13,000 per mile in costs (Rawlins). One the other hand, BLM's Buffalo Field Office directs operators to use existing two-tract roads and does not require even flat-blade roads.
- Requiring right-of-way permits instead of sundries in a federal unit. Federal Units were originally designed to give greater flexibility to the operator. This has not been the case.
- Conducting cultural and wildlife surveys on private land drill sites because access is gained across federal lands. A cultural survey for a one-acre drill site and access road typically runs about $1,500. A three-day black-footed ferret study costs $10,000. A complete wildlife study on a 100,000+/acre area can run several hundred thousand dollars.
- COA's that includes an on-site cultural observer during construction activities to ensure cultural resources are not "buried" even though the cultural survey conducted on the surface on the 40-acre surrounding our one-acre drill site showed no evidence of significant cultural resources on the surface. This costs about $1,000 per day for each occurrence.
- Surface inspection of drill sites by 14 BLM staffers. These wells are permitted to a depth of 1,500 feet and each well will only take 5 days to drill and complete. This is at a time when BLM tells us that they don't have the staff time or budget to do large NEPA analysis in-house. BLM incurs most of the costs associated with the inspections, but we reimburse BLM for costs of right-of-way inspections because of their cost recovery program.
- Strongly encouraging the use of injection wells for disposing of coal bed methane water, destroying its future usefulness as opposed to encouraging surface containment and surface application which is the desire of the grazing lessee and the local conservation districts. Drilling costs of an injection well can exceed $500,000+. Equipping the well with pumps and tankage can cost another $250,000. Construction of reservoirs would be much less expensive and a valuable use of the water resource for livestock and wildlife in a region that receives 6–9" of rainfall per year. (Rawlins)
- Denying a two and one-half mile pipeline right-of-way to get gas to a sales line because, in BLM's opinion, there was sufficient capacity in existing competing lines, regardless of the transportation costs (Pinedale).
- Obtaining an air quality permit for a generator from DEQ and then receiving a COA's that would requires housing around the machine to make the noise level of the generator be similar to a vacuum cleaner at the location and not heard 1,600 feet away. BLM later withdrew this COA after we filed a complaint.

Conclusion:

Many of my peers and I have lamented that this is not the business we got into 25 years ago. We do it because it's our profession not because we are having loads of fun. Our industry is also having problems sustaining itself where the attendees at luncheon meetings of landmen, geologists, geophysists or engineers are all over 40 years old. This is the group Congress and the Federal Reserve Chairman are looking at to solve energy needs and speed the nation's economic recovery. One bright spot for us however, is that as these impediments grow, we will realize a greater value for our existing reserves. The opposite is true for consuming states where their costs will continue to grow. We can have good jobs, profitable companies and a reliable source of oil and gas for consumers. I hope you will share my comments with your counterparts from other states, especially the energy consuming states. Thank you again for the opportunity to make these comments.

Mrs. CUBIN. Thank you.

I'd now like to recognize Mr. Jeff Sarge of Halliburton Services. Oh, excuse me. I said—Jeff Sarge is my nephew's name. It really is.

Mr. STRANGE. I thought that would be an easy one for you.

STATEMENT OF JEFF STRANGE, SENIOR ACCOUNT REPRESENTATIVE, HALLIBURTON SERVICES COMPANY

Mr. STRANGE. Good morning, Madam Chairwoman. My name is Jeff Strange, and I am employed by Halliburton Energy Services based out of Rock Springs, Wyoming. We provide services to five counties of southwest Wyoming and also northern Colorado. Currently we employ 480 full-time employees out of the facility of Rock Springs, plus many subcontractors. I want to thank you for letting me bring my testimony to you today and appreciate the opportunity.

In my 18 years in the oil and gas industry, I've seen the boom and bust cycles. And companies such as the one—the major service companies I've worked for are able to survive these by layoffs, transfers, moving equipment in and out of areas. But it's the—it's the small, private, and family owned businesses and the local communities that suffer the most from these—from these boom and bust cycles.

Without efficient and timely permitting and access to these natural resources, the effects to a community such as Rock Springs and to the entire state of Wyoming will be devastating not only to our economy but to our custom and culture. People leave, don't come back. People move on.

You know, as an avid sportsman and outdoorsman, I fully understand the responsibility we have to protect our air, our water, our habitat and wildlife. I've seen firsthand the processes—I'm a field person. I go to the field every day. I've seen firsthand the processes and commitments not only my company but the other major service companies and these operators have brought forth to protect the environment that we live, work, and recreate in. We spend millions of dollars every year to ensure that that environment is protected.

To achieve the level of production that our nation is currently demanding and will demand in the future, we've got to speed up the processes. We've got to put an end to the frivolous lawsuits, abuse of NEPA and the Endangered Species Act, and the tremendous time and economic burden that is placed on the operator before a permit to drill is issued. Drilling delays administered without proper scientific and factual evidence has got to stop. Federal land access and natural resource extraction is currently and will in the future play a vital role in oil and gas companies meeting the demand for natural gas for this nation.

In closing, I want to commend this Committee and you, Subcommittee Chairwoman Cubin, for hearing the concerns of the grass roots and for taking not only our voices back to Washington but also by putting a face on the thousands of constituents that will be affected by your decisions.

Thanks.

[The prepared statement of Mr. Strange follows:]

Statement of Jeff Strange, Senior Account Representative, Halliburton Services Co.

Natural resources, primarily oil and gas are the lifeblood of the state of Wyoming and the Nation.

The service/supply companies are the backbone of the oil and gas industry. There are over 100 companies located in southwest Wyoming, representing thousands of employees that receive high-end wages. In light of the fact that a single paycheck

changes hands 7 times throughout a community, literally every faction of our society and economy is affected by the extraction and production of natural resources.

As one of the major service companies in southwest Wyoming, Halliburton Energy Services (HES) currently maintains a workforce of 480 employees, operating 250 tractor-trailer combinations and 120 light vehicles. Due to a downturn in activity in the mid 90's this same company reduced its workforce to 75 employees and considered closing their doors in Rock Springs. When you consider that their annual payroll exceeds $18M—the impacts to a small western community are irretrievable.

Currently, HES is anticipating two major projects, Desolation Flats and Jonah Infill, will complete the NEPA process in a timely manner. The only way that the service/supply sector of oil & gas can effectively contribute to a continuous and adequate supply of natural gas is through uninterrupted exploration and production.

A project the size of Desolation Flats (385 wells) would generate approximately 200 million dollars in revenue to a service company like Halliburton. This figure does not include the dirt work for locations, drilling rigs, pipelines, etc. Sales tax on this amount would be approximately 11 million dollars.

Jonah Infill Project (1,250 wells) would generate approximately 550 million in service company revenue. This also does not include dirt work for locations, drilling rigs, pipelines, etc. Sales tax on this amount would be approximately 30.2 million dollars.

Many service/supply companies have felt the devastation of the boom and bust cycles of oil & gas development. The long-term effects to local businesses, schools, available work force, etc are possibly the most serious cumulative impact that should be addressed during the process of environmental studies. Down turn and prolonged interruption of production causes serious impact to the workforce—thousands of former oil and gas employees have left the industry to seek more stable employment elsewhere. Consequently, we are seeing many out-of-state workers coming into Wyoming to work a rotation and going back home to Texas, Oklahoma or other areas and are not moving their families to Wyoming. We have witnessed the loss of 2,000 school children over the passed 10 years and have seen the closure of 8 elementary schools in Sweetwater County.

Just as rural America has suffered the total devastation of small communities that were dependent on timber harvest and sawmills, we too depend on guaranteed, uninterrupted production to ensure the stability and general health, safety and welfare of our Wyoming citizens. Without assurance that exploration and production will continue through timely and consistent permitting, we loose the confidence of investors that provide the capitol for the takeaway infrastructure. A disruption in supply and demand causes a domino effect that ripples from the service company to the grocery store, to the gas station, to the hospital, to municipalities and local governments, etc. etc.

From the 1999 land management report submitted by GAO, I quote the following statement, "In carrying out it's mission, BLM aims to provide the public with a wide variety of products and services including healthy productive lands; opportunities for a variety of commercial activities such as sales of materials, timber, or leasing mineral rights; opportunities for recreation and leisure activities; the preservation of significant cultural and natural features; the provision of land resource and title information; and the protection of public health, safety and natural resources.

I submit to you that it should be the role of BLM and all federal agencies to provide integrated local leadership in partnership with stakeholders of the region. The oil & gas industry has proven time and time again that any and all concerns can be and have been mitigated to the point of the extreme. Industry is held to extremely high environmental standards as pertains to air, water, wildlife and habitat. The entire economy of Wyoming, and in fact America, is dependent on a firm commitment from federal agencies that common sense and fairness will once again take precedence over conflict and unsubstantiated hyperbole and rhetoric. I.e. - Drilling delays administered without proper scientific and factual evidence, "I thought I saw a mountain plover, and if I did, it was probably nesting", has got to stop. (Statement made by BLM personnel)

There have been numerous complaints among industry personnel that agency staff is using arbitrary and erratic standards during permitting and generally throughout the course of the entire drilling process. It would be beneficial to industry if BLM personnel would communicate and cooperate with industry experts concerning proper operating standards. It is extremely difficult to manage drilling operations when agency personnel change methods of operation because of personal preference. E.g.: Onshore order 2 setting minimum standards for Plug and Abandonment of Oil and Gas wells it does not clearly define cement type (class G, H, A, etc.) weight or yield, yet the Pinedale office will accept one slurry, the Kemmerer office another and the Rawlins office another. I think if the BLM would use the industry

standard, API testing procedures for oil well cementing, a lot of confusion could be eliminated.

In summary there is a simple equation operating here: The citizens of the USA demand energy, Wyoming has numerous forms of energy reserves, Wyoming also has people who are willing to risk their capital and devote their own working energy to responsibly meet the national demand. Leadership and cooperation from federal agencies, based upon fairness and facts are urgently needed to respond to this demand. We, the service men and women for this industry are ready, willing and able. We urge the Congress to assist and encourage the federal agencies.

Mrs. CUBIN. Thank you.

I want to announce that Wyoming State Treasurer Cynthia Lummis was invited to testify here today, but she did have a prior engagement and wasn't able to come. But she did stress the important role that minerals development plays in Wyoming. She emphasized that Wyoming's permanent mineral trust fund has now reached the 2 billion dollar mark.

Revenues from minerals and production in the state keep our tax burden low and support education, health and family services, corrections, communities, and other vital services.

I think a lot of times the energy industries don't get the credit that they actually deserve in terms of the actual taxes we would be forced to pay were it not for the energy industries. Treasurer Lummis warned that the way in which resource management plans are updated in future years and the way in which NEPA is interpreted could have a major effect on Wyoming's future. I think we all would agree with that.

I would like to start the questioning with Mr. Magagna. You mentioned that—you mentioned seasonal stipulations based on unquestioned critical habitat designations. Can you elaborate on how these designations are unquestioned?

Mr. MAGAGNA. Thank you, Madam Chairman.

Yes. These are seasonal stipulations developed by the Wyoming Game and Fish Commission, very broad-based area overlays on a map that say, well, this area, we view to be critical to winter elk herd, this area is critical to elk calving, et cetera, et cetera. Those are presented to the BLM. And at least as an outside observer, it's been my experience that in virtually every case, they are accepted as a legitimate need of that particular wildlife species and then become a seasonal stipulation for mineral development. And as I indicated, we're very concerned that they are increasingly becoming or being attempted to be used as seasonal stipulations for other uses of the public lands.

Mrs. CUBIN. Are you aware of any ranchers who choose to put produced water from coalbed methane production toward beneficial agricultural uses?

Mr. MAGAGNA. Very much so. In the eastern part of the Powder River Basin, where the quality of the water is unquestionable, a number of ranchers have developed a rather extensive system of water storage working with the mineral companies to meet their needs and to improve their ranches.

In fact, one of the fears there is what's the negative impact going to be when the CBM production stops and the water no longer flows. So there are those opportunities.

I would hasten to say that I think there are a number of those opportunities that are being missed because the private landowner or the rancher and the mineral operator are not sitting down together early in the process. And for this to work right, not only does the mineral company need a development plan for the gas, but the rancher needs to be encouraged and provided assistance to develop a long-term development plan for the ranch. And then those two can be appropriately merged so that to the greatest extent possible, it's not just a matter of mitigating negative impacts with this water; it's a matter of creating positive impacts from the presence of the water.

Mrs. CUBIN. So it's fair for me to paraphrase what you said, at least one part of what you said, that early communication is very important.

Mr. MAGAGNA. Yes.

Mrs. CUBIN. Does that require Federal action, in your opinion?

Mr. MAGAGNA. I think it can be helped by Federal action. And there's a careful line that has to be drawn here, because part of the process in the split—and I'm talking about the split estate scenario right now primarily—is negotiation of the surface use agreement. We do not feel that there should be a Federal role in that negotiation. That's a private sector negotiation. But I think that the Federal Government, BLM in particular, can be very helpful in the process of promoting the communication prior to that by giving the—among other things, giving the surface landowner as much notice and information up front about what's taking place. Typically when mineral leases are granted on split estate, the landowner had no knowledge of that. They become knowledgeable—unless they go down and search the records. They become knowledgeable that—of that at the point in time when an operator shows up and says, you know, we're wanting to come in here and stake locations and begin drilling. By then there isn't time to build those communication lines to do that advance planning.

So one thing that I think would be very helpful and perhaps not too much of a burden on anyone would be if the BLM could develop a system so that when a mineral lease is issued on split estate lands, a notice of that leasing is automatically sent to the surface owner providing information as to who leased the land. And that may well not be the developer, of course, but at least it gives them some advance notice that there is a potential for some activity in the next few years on that piece of land.

I think there are several steps there where we're just providing information. And from discussions I've had with mineral industry operators, it's my understanding that most of the information they file with the BLM throughout that predrilling point is not proprietary information. It's public information. So it would just be a matter of setting up a system that would generate a copy of that information to be forwarded to a surface landowner.

Mrs. CUBIN. So you're not calling for Federal legislation to do this, are you? Or are you?

Mr. MAGAGNA. Madam Chairman, in that area, I don't believe that Federal legislation should be necessary. What I'm calling for, I think, are processes that would fully be within the scope of the

authority of the agency. Now, whether funding, additional funding, might be necessary to assume that burden, that's another matter.

Mrs. CUBIN. Mr. Andrikopoulos, what is your impression of the Wyoming state legislature—the effort that the Wyoming state legislature did to—or has done or hasn't done to study the split surface issue, and do you feel that legislation is necessary? I think you said you thought legislation was necessary. Federal? State?

Mr. ANDRIKOPOULOS. Well, I think in both cases we have the same situation. And that is, No. 1, landowners are not given notice. In the case of Federal minerals, as Mr. Magagna just pointed out, unless you've got a landman on staff or want to become a landman, you don't know who the—the mineral holders are, the lessees, or even the operator in the case of a unit formation. That's one thing that I think should be legislated.

The second thing is the notion of updating what are considered to be damages. If you look at Onshore Order Number 1, the 1916 Act, you will find that today developers are only required to compensate landowners for growing crops. For those of us that graze cattle, grass does not constitute a growing crop, so we do not get compensated for that. We do get compensate based on some very arbitrary payments that the industry comes up with, but we do not get paid market value for other improvements that we've done to our property. Or in some cases, ranchers are planning to subdivide. The fact that the developer may come in and put in a system of roads, pipelines, well pads, this sort of thing would prevent that landowner from seeing the value of his real estate exploited.

And then, finally, at the state level—and then I also feel that this is important at the Federal level—there have been a couple efforts, as I'm sure you're aware, to amend the energy bill. There needs to be an equitable means for dispute resolution. There are very few ranchers that have the resources to hire the attorneys and to, frankly, spend the time necessary for defending themselves in light of a large company coming in and wanting to develop resources very quickly. So it all, in my opinion, hinges around those three elements.

Mrs. CUBIN. I don't disagree with what you say.

I—on the other side of the issue, however, I am aware of situations where basically a landowner or landowners are more or less extorting the energy companies. I use that word, and it's probably not right, but demanding far more than the value or—not based on crops, but the value of the mineral and so on. And I've seen that happen in different industries, in coal and coalbed methane, oil and gas, where private property owners really can demand and just become rich overnight.

Mr. ANDRIKOPOULOS. Well, I think—pardon me. May I respond to that?

Mrs. CUBIN. Sure.

Mr. ANDRIKOPOULOS. I think that—you know, I've definitely heard of those instances, as well. And the way in which a landowner may view his or her surface and what that landowner perceives the impact of oil and gas development to be on that surface probably differs greatly from what the mineral developer views as the value of that surface.

In our experience, mineral developers have come to us with offers. And we ask them where they get their numbers for damages, and they say, well, this is an average payment that we've paid across the state. Well, I can assure you that an acre of ranch land in the upper Green River valley is worth far more than an acre of ranch land somewhere in far eastern Wyoming. So those old paradigms don't necessarily play.

The second thing is you can look at good players in the industry, such as an Anadarko and UP Resources previously.

You know, they've been very generous with their surface owners and have had a policy of compensating through a means of overriding royalties where if they're successful, then that landowner will be successful. I don't think that the form of payment should be legislated. I do think that the actual damages that are incurred do need to be broadened out from where they are today relative to Onshore Order Number 1.

Thank you.

Mrs. CUBIN. Thank you.

Mr. Robitaille, can you give me some examples of projects you say will not come to fruition because of time delays associated with preparation of EAs or EISs?

Mr. ROBITAILLE. Yes, Madam Chairwoman. If I said that, let me correct it. I said I believe that there may be projects that will not come to fruition.

Mrs. CUBIN. Thank you.

Mr. ROBITAILLE. Let me give you a couple of examples real quick. We are investigating a project very close to here that we believe has some potential, although the production from the wells may not be as good as we want. We are looking at the potential of needing 600 wells to develop this project. We believe that that will trigger an environmental impact statement. We then calculate the approximate 3 years or so it's going to take to complete this statement, evaluate that against the time value of the money. And I can tell you that in today's economy, that project will probably not likely happen.

I can also tell you that we have been analyzing properties in the northern part of the state which, due to the ROD, the resource requirements, the time delays that were associated with the NEPA documents—and, you know, that issue is still not over. Those—those properties in the northeast part of the state, some of them have no longer any interest to us, and we will not pursue those. So there is a time value of money associated with this, and that's very critical. If, for example, we looked at this project down here and we based it on the 3-year study process. If that 3 years were condensed to 12 months or 14 months or even 16 months, that project would be economical and we could perhaps proceed.

We did an analysis of a very, very similar project. Same production, same reserves potential. And I've got the numbers here somewhere. In a state that didn't have the Federal requirements and the NEPA requirements and the study requirements, let me give you a couple of real quick indicators. The rate of return—and let's be honest about this. We made a sizable investment in Wyoming. We anticipate to get a return out of those investments. The rate of return in the other state was four times that for the investment

in Wyoming. The cost of finding and producing the gas in the other state was one half of what it was in Wyoming. And the payout, which is extremely important. We are a publicly owned company. It's extremely important for our stockholders. The payout for that investment in the other state was one half of the time it would have taken in Wyoming. So those studies—those delays are not just the cost of the study and delay in themselves. It's also the time value of money which an investor has to be particularly cognizant of how he invests.

Mrs. CUBIN. Well, let's go into those delays and deadlines a little bit. Your statement recommends that while a resource management plan is undergoing revision, that the BLM should not delay or deny access to private lands within the planning area. Can you provide us with examples of what—of where access to private lands was delayed or denied on the basis of the plan that was undergoing revision?

Mr. ROBITAILLE. Let me—Madam Chairman—Madam Chairwoman, I guess the—what really triggers our fear there—again, visualize that checkerboard with the red and the black boxes and the studies that we know are coming and the land plans that have to be revised. I believe it was May 2001 when there was an instructional memorandum issued by BLM that said we're not going to do any more leasing while we're undertaking this NEPA analysis.

Now, to my knowledge, that instructional memorandum was eventually rescinded. But it raised a flag for us of great concern in that if we're in the planning process—and remember we're the little red box there surrounded by all the black boxes. If we're in the planning process where BLM has to, because of their law and their regulations, evaluate the proposed action on those black boxes and I need a right-of-way across one of them to drill a location on my own private property, I just think that we ought to be cognizant of the fact and be very aware of the fact and prevent any action that would delay or encumber my access to my private property rights while the NEPA process is pursuing.

Mrs. CUBIN. Thank you.

Mr. ROBITAILLE. Thank you.

Mrs. CUBIN. Mr. Degenfelder?

Mr. DEGENFELDER. Yes, Madam Chairman.

Mrs. CUBIN. You showed me two different environmental—either environmental impact statements or EAs. I'm not sure which.

Mr. DEGENFELDER. It was an EA.

Mrs. CUBIN. EA. Can you explain how the cost of having to pay for NEPA work affects small, independent producers? And I want to go on with that a little bit. How would reimbursement for NEPA expenses through royalty credits affect your business? We have a provision in the energy bill that would allow recovery for your expenses because, as was stated in the earlier panel, that is traditionally how expenses were apportioned.

Mr. DEGENFELDER. Madam Chairman, initially I'd like to say that the oil and gas industry has somewhat become accustomed to paying for the NEPA documents now, because we've been told if you want a timely decision, you better pay a third party contractor that BLM has approved to do it for BLM. So basically we're funding the subcontractor of BLM's. And it goes right down to the bot-

tom line. What is spent on the environmental documents cannot be put into the ground to drill more wells. We're not saving up a bank account where once we hit that limit, we're out of here and vacationing on some desert—or ocean island. We're continually drilling wells to keep our production up, because every bit of production always declines. And so anything that we spend is money that we would be able to use somewhere else.

You mentioned the royalty credit. Initially I think that's a very good idea. I would put in, I guess, two things that I thought of just quickly, words of caution. How that is implemented with respect to does it—if there is—if it's a dry hole, then there's no—there's no way to recover any—

Mrs. CUBIN. It's still more than you're getting now.

Mr. DEGENFELDER. That's correct. And for development allowance, of course, you would be able to receive some sort of credit.

The other point of concern I'd raise is that I would not want something that would be done by you in an attempt to alleviate some of the burden on the small operators and have that translate into an even larger document that everybody thinks, well, now we've got somebody paying the bill. And I think that relates back to the taxpayer, too, you know, the—everybody in the United States.

So those are just two concerns that I have about that. But the general idea is very well warranted.

Mrs. CUBIN. I think those concerns are also well warranted.

Could you give me an idea of how often your projects face litigation? Because you referred to that quite a bit in your testimony.

Mr. DEGENFELDER. Well, I can only refer to our individual projects. And because we're a very small company, we own interests in about 350 wells in Wyoming, but our company operates, I'd say, about 20 wells. And being the operator consumes a lot of time. The operator is the one that takes the lead on the environmental documents.

The documents that we had on this project south of here that included this eight additional wells that was appealed, that I mentioned in my initial response, cost us right in the ballpark of about $30,000 to pay for the—the EA. And when it is appealed, it's costing us another 10,000 or so to have legal representation in addition to BLM's legal representation, because we want to assure that the EA is defended properly, because our interests are at stake, not only BLM's. So I can only comment on that one.

We're also involved with another project, the one that I mentioned in northeastern Utah, which has, I've been told, 11 appeals filed on it. And that appeal process just ended July 4. So there is a lot of them. I'm such a small operator that maybe someone like Mr. Robitaille or a bigger operator in the state that has interests—or is operating in many, many areas can address that more precisely, because I'm about batting a thousand. I don't know if I'm entirely accurate.

Mrs. CUBIN. Given the current bonding situation, which is also a problem, it's been suggested by some people that an independent producer puts up a $20,000 per well bond. Is that in any way feasible?

Mr. DEGENFELDER. I think that that would have a big detriment to any drilling. I've read where—especially in the CBM play, where, let's say, if an operator has 100 wells, which is not out of the question in the Powder River Basin, 100 times 20,000 is—what?—2 million bucks that's sitting in an account drawing no interest and could be drilling new wells with.

We do bond. We have to have—carry a statewide Federal bond. Or if it's on private land, the Oil and Gas Commission requires us to carry a statewide bond with them that's different than the Federal statewide bond. I would really look to the Oil and Gas Commission, because they do deal with, in some cases, some orphan well problems that they have a fund that is set up to deal with those. And they keep a very close perspective. But overall I think the $20,000 would be a great hindrance to a lot of independent producers.

Mrs. CUBIN. Thank you.

Mr. Strange, can you explain to me how the Desolation Flats and Jonah Infill projects will impact local economies?

Mr. STRANGE. There are 385 proposed wells in the Desolation Flats area. And, Madam Chairwoman, I can only speak on behalf of my services and what we will provide to those. But it would roughly equate to 200 million dollars to energy services companies. I'm talking about drill bits, drilling fluids, directional drilling, motors, open hole, cased hole logs, cementing service, fracturing service, and so on and so forth. Those 385 wells would provide roughly 2 years of net income for a service company such as Halliburton Energy Services, BJ Services, Schlumberger, and so and so forth.

1,250 proposed wells in the Jonah Infill would be somewhere around the neighborhood of 550 to 600 million dollars of net revenue for a company such as ours. So you can see the impact that it has on a community the size of Rock Springs, Pinedale, Rawlins.

Mrs. CUBIN. I don't—I thank you for your answers. I'd like now to ask anyone to—for any statements that they would like to conclude with.

Mr. Magagna?

Mr. MAGAGNA. If I might, Madam Chairwoman.

As you've listened to the various scenarios that have been explained today, perhaps a little bit of an oversimplification, but it occurs to me that what we have is two extremes. We have the scenario of Federal minerals, private service, where the mineral interest is dominant and the operator can bond on with little delay, can come onto the land, develop the well, and the surface owner stands to be, in some instances, damaged by that.

In the case of Federal minerals, Federal surface, where the Bureau of Land Management is the manager of that surface, we have just the opposite. They have the ability to indefinitely delay the operator's access to those lands through various planning and environmental processes.

And what we ought to be seeking in reality is a ground somewhere in the middle where we can put some limits on the ability to delay access to Federal surface lands for development and, at the same time, grant some appropriate additional ability to the private landowner to assure that their interests are properly addressed before development takes place on the private lands. There

should not be the tremendous chasm of difference between those two scenarios that we've heard here in the testimony today.

Mr. ANDRIKOPOULOS. This is Shaun Andrikopoulos.

I think that, as I've said before, a legislative solution is necessary to close this chasm, if you will. In the case of the Federal Government wanting to put a highway through our ranch, the laws of eminent domain apply. And I don't see this as really any different. If the Federal Government wants to extract its minerals, the same and similar concepts should also apply. They don't today. And, you know, ultimately it's going to take legislative action to level the playing field so that we feel as though we are kept whole as landowners.

Thank you.

Mrs. CUBIN. Thank you.

Mr. ROBITAILLE. Rick Robitaille, Madam Chairwoman.

I'll not belabor the discussion anymore. I just want to say that as one who has watched your political career, I want to commend you for the respect your colleagues have given you for elevating you to this position and your role.

Mrs. CUBIN. Thank you.

Mr. ROBITAILLE. And I especially want to commend you for allowing us to create this record in beautiful Rawlins, Wyoming, as opposed to being in Washington, D.C. So thank you very much.

Mrs. CUBIN. I would much rather be in Rawlins, Wyoming, myself.

Mr. DEGENFELDER. Madam Chairman, Steve Degenfelder.

My final comments just would be a general plea to you to take back this testimony, and you're very, very aware of the issues that are at stake in this state, and to continue to convey those thoughts to those states that are highly populated, that are—that do not have many public lands but do have all the—the lights—in the photograph of the United States at night, where all the lights are. In those states. And please push these issues to them, because they are the group that is ultimately affected by what happens here.

Thank you.

Mrs. CUBIN. Thank you.

Mr. STRANGE. Madam Chairwoman, Jeff Strange.

I do want to thank you for showing up here today and for allowing us to let our opinions, our voices be heard. And we do hope that you take that back to Washington, expedite this procedure so we can do away with the boom and bust cycles.

You know, it's not fun worrying about what you're going to be doing the next day. We appreciate it.

Thank you very much.

Mrs. CUBIN. Well, I thank all of you for your testimony. And let me assure all of you that I will go back to Washington and represent what we have heard here today.

When the Speaker established the task force, he requested that we provide a report to him by September the 30th. So that will be done. And you can expect that your input will be in that report.

So I would like to thank the witnesses for their valuable testimony. As I stated earlier, there will be some questions that we'd like to submit to you in writing. And if you would respond before the record closes in 10 days, that would be appreciated.

I want to thank everyone who came to the hearing today.

It is very—it's such an important issue to the whole country but particularly Wyoming.

And I want to thank the staff. Jack Belcher is the Committee staffer, my Subcommittee staffer. Kyra Hageman, my state director. Katie Legerski, in the back, a state field representative.

Mr. FRANCES. Lucas Frances.

Mrs. CUBIN. I know. Lucas Frances. I was trying to—I knew it wasn't Luke. I didn't want to call you Luke. Lucas Frances, also from the Subcommittee.

So thank you for everything. And if there's no more business before the Subcommittee, we are now adjourned.

[Whereupon, at 11:48 a.m., the Committee was adjourned.]

[Additional statements submitted for the record follow:]

Statement of Cynthia Lummis, Wyoming State Treasurer

Introduction

In 2002, Wyoming ranked first in the nation in the production of coal; first in the production of trona; third in coalbed methane production; fifth in natural gas production; and, seventh in crude oil production. And yet, Wyoming has some of the cleanest air in the nation. We are one of the few states without a fish advisory on our waters. The majority of the North American antelope population is within 400 miles of Casper.

Technology

Just over two years ago on May 16, 2001, President Bush unveiled his National Energy Plan. This plan is serving as the catalyst in promoting technologically advanced and environmentally sensitive exploration and development. A prime example of the vision expressed in the National Energy Plan deals with the emerging opportunities of carbon sequestration. The Plan established the "President's Clean Power Initiative" which recommends $2 billion over a ten year period to perform research and development and testing of new technologies to reduce power plant emissions and improve efficiency. The energy bill being debated by Congress contains this authorization. A portion of this initiative has a component that I feel will ensure the vitality of Wyoming's energy industry for years to come - research and support for carbon sequestration. Industry and the government have come together in promoting research to develop technology for sequestering carbon. This could very well be, value-added-research-and-development to energy rich states like Wyoming. In fact, the University of Wyoming is taking the lead in carbon dioxide sequestration research. Dr. Dag Nummedal is heading the recently formed Rocky Mountain Carbon Utilization and Storage Partnership (RM–CUSP). We have the coal resources to conduct the research here in Wyoming and we have the geological formations and depleted oil and gas fields to do the sequestration. Sequestration of carbon in depleted oil fields has great potential in revitalizing these fields. In addition, when we master sequestration, the demand for use of Wyoming coal will increase.

Another component of the plan that could be very exciting for Wyoming is the creation of FutureGen. FutureGen is planned as a $1 billion dollar investment by the federal government and a consortium of private companies to build a zero emission fuel power plant. This prototype plant will burn coal to generate hydrogen gas and electricity, and sequester the produced carbon dioxide. Again, Wyoming stands to benefit from this initiative. While site selection is many months off, Wyoming's coal fields, as well as sequestration sites, could make Wyoming a competitor for all or part of the FutureGen project. In any event, Wyoming coal stands to benefit regardless of where FutureGen is sited.

Mineral Revenues

For the first time in its nearly thirty year history, the Permanent Mineral Trust Fund (PMTF) has hit the $2 billion mark - $2,023,000,000. The income from the PMTF is deposited in the State's general fund, thereby keeping Wyoming's tax burden low, and supporting education, health, family services, corrections, communities and other vital state programs.

Minerals produced from federal lands generate federal mineral royalties, an important source of income in a state that is comprised of almost half of its surface in federal ownership. Wyoming's share of Federal Mineral Royalties totaled almost

$350,000,000 in fiscal year 2002 and almost $450,000,000 in fiscal year 2001. These revenues are shared with Wyoming schools, colleges and its university, local governments and highways, to name a few.

Public Land Planning Processes

The Bureau of Land Management has just begun the process of updating all of its land use management plans. Twelve land use plans, called Resource Management Plans cover all of the BLM lands in Wyoming, approximately 18.4 million surface acres as well as all federal minerals and split estate minerals. Currently the Great Divide or Rawlins and the Pinedale RMPs are in the early stages of evaluation. This analysis will address 4,43 1,000 surface acres and 5,885,000 mineral acres. An RMP is done under NEPA and will not only allocate what the uses of the surface and subsurface will be, but also the level of that use. Once an RMP is finished and a Record of Decision is reached, the RMP will serve as the over riding land use document for fifteen years, or until the identified level of use is reached. According to the BLM, several emerging issues over the last five years have required them to embark on this unprecedented effort. It cited examples such as increased .endangered species listings, increased rates of energy and mineral development, and changing population priorities putting increased demand on recreational values such as off-highway vehicle use, landscape preservation and public use. BLM will also incorporate new policies such as the National Energy and National Fire Plans, Migratory Bird Treaty Executive Order and the Roadless Inventories into the revised RMPs. Additional issues that the BLM has already identified for analysis range from historical trails designation to air and water management decisions, to set back requirements. Wyoming will be involved in the RMP revisions. We have grave concerns over the endangered species and wildlife seasonal closures, for projects. We are concerned that mining operations, except for oil/gas development, would be so impacted that they could never expand or locate on the BLM lands. I'm assuming that current mines would be grandfathered. This would adversely affect our State's economy and education' s funding and for that matter, federal government income. I hope that you and BLM will be able to come up with a plan that allows for continued hard and soft rock mining while protecting wildlife and endangered species.

The Great Divide and Pinedale RMPs are scheduled to be completed in about two years. The balance of the RMPs will be phased in through 2010. Concurrent with this effort, the U.S. Forest Service is in the midst of revising its forest plans. The process is similar to the BLM's and the plans are in effect for a fifteen-year period after the Record of Decision. As I mentioned - this is unprecedented. Except for our national parks, monuments and refuges, all federal surface and subsurface acres will be evaluated over the next seven years, and the allocation of use as a result of that analysis, will last fifteen years after they are completed. To a large degree, Wyoming's future economic agenda will be formulated by these two federal processes.

NEPA

I have one observation about the National Environmental Policy Act. Since the NEPA passage in 1969, subsequent regulations, policies and inconsistent application by overlapping federal agencies have burdened the process to the point that the courts have become the environmental decision-makers and managers. I believe that the remedies to NEPA begin with requiring agencies of the federal government follow the regulations and guidelines of the Council of Environmental Quality. Just begin with the length of the documents - if it's too much to tackle at once. The CEQ guidelines call for fifteen-page EAs, and not to exceed 150 pages for EISs, not the encyclopedic volumes produced today. I also believe in the importance of involving al l levels of local and state government as Cooperating Agencies as required by the Act and by subsequent CEQ directives to federal agencies. Although Cooperating Agencies cannot make the final decision, which is reserved to the lead federal agency, they can certainly influence the outcome. NEPA should be administered with substantive roles for cooperating agencies, goal-based flexibility, certainty, elimination of duplicative NEPA requirements, reduction of multiple agency oversight, recognizing the differences in the scale of economic, cultural and social impact and adjust accordingly, proactive management and finally use of sound social and natural science.

Conclusion

Oil and gas producers operating in Wyoming today are at the leading edge of new technologies and processes - some driven by government regulations, but all driven by the need to look to the future and meet the emerging market demands. We must

all continue to think our way to the future so that Wyoming minerals have a prosperous tomorrow.

Thank you for permitting me the opportunity to present this testimony today.

Statement of D. G. Mickey Steward, Ph.D., on behalf of the CBMC Coalition

Considerations for Representative Cubin

BACKGROUND—THE ROLE OF LOCAL GOVERNMENT.

Services—One job of local government is to provide services. While services may seem to be something that only residents need, services are also needed by the extractive and productive industries, and by visitors. The kinds of services that must be provided by counties to industrial producers, as well as to residents include: roads and bridges, law enforcement, emergency response, administration (records and licenses), waste removal, and social services.

Good services depend on funding, scheduling, and continuity.—Most government funding comes from taxes, so full enumeration of taxable items, proper valuation of taxable items, timely notification of taxation, and complete collection of taxes are essential. Scheduling depends on knowing in advance when and where things are going to be happening. And continuity means that once a development project begins, it continues as long as possible in as predictable a way as possible. Booms and busts do not make for continuity or prosperity in the long-term.

Health and safety—In addition to providing services, local governments are responsible for protecting the health and safety of residents, workers, and visitors. Health and safety are best protected using the tools of foreknowledge and training. Knowing what is going to be happening, as well as when and where will help to protect both heath and safety.

SUGGESTIONS FOR IMPROVING LOCAL GOVERNMENT SERVICES TO DEVELOPMENT AND RATIONALIZING REVENUE COLLECTION

- County government should notified of when, where, and by whom O/G resources are leased so they can forecast potential revenue streams; of when, where, and by whom permits are applied for, so a dialogue on service needs and timing can be initiated with the producer; and to be notified at least 10 days before drilling commences of the exact location of drilling, so that special attention can be focused on the collection of sales and use taxes, and equipment licensing, as well as on road condition and emergency response.
- Using electronic communications for information sharing is an alternative to conventional means of communication between stakeholders. It has the benefit of being rapid and inexpensive. Alternatives for the presentation and submittal of information and data encompass include electronic alternatives such as GIS format. Electronically available information can lead to more accurate and rapid information transfer between affected parties.

SUGGESTIONS FOR DEVELOPMENT OF RESOURCE MANAGEMENT PLANS

Considerations for Funding of Services

- Identify alternatives that will optimize revenue return to local government in terms of both amount and period of collection.
- Identify alternatives that will stabilize annual cash flow. For example, a strategy for sequencing of development to maximize long-term return may help in this area and thus should be discussed as part of the alternatives development.
- Identify alternatives that will help to maximize collection of all the taxes and licenses there are to be collected. For example, and as suggested above, notification of drilling will help in the collection of sales and use taxes, as well as equipment licensing. In addition, an accurate and full identification of the equipment and facilities associated with various O/G development alternatives will assist in forecasting the effort required for enumeration of taxable items.
- Identify alternatives that will maximize the period of revenue return. A clear plan for the sequencing of leasing and permitting forecast using the best available knowledge would be helpful in elaborating alternatives.
- Identify alternatives that will protect collateral revenue-generating activities. As an example, Carbon County in southwest Wyoming depends on O/G for a good deal of its revenues. However, because it considers fishing, snowmobiling, hot spring use, hiking, rafting, hunting, cross-country skiing, camping, scenic drives, rodeo, and cowboy poetry (that is, Western Heritage) fundamental to tourist in-

come, these collateral resources should be protected and enhanced contemporaneously with mineral development. Equally important is the preservation of property value during and after the development phase. Optimum facilities siting and means to minimize the visual and audible effects of development should be considered as part of the alternative selection.

Other resources that are important to development areas are agricultural production (primarily livestock and hay production), and water production, both in terms of protection of the rivers such as the North Platte and the Powder and their contributing drainages, and reservoirs such as Lake DeSmet, Seminoe, and Pathfinder, and in terms of taking all feasible opportunities for the utilization of produced CBM water. As an example, beneficial use of CBM produced water should be carefully considered as an alternative to disposal. Alternatives for consideration in the management of water resources could compare site-specific water management plans contrasted with a regional water management plan, up to and including a conceptual water management plan for the development area as a whole, not just for subdrainages.

As well as the protection of revenue generated from the above sources, county infrastructure (roads and bridges) must be considered a collateral resource and must also be protected. Replacement, enhancement, and maintenance of county roads and bridges are expensive. Protection and enhancement of these collateral resources must be considered as part of any alternative. This means planning for ongoing resource utilization following the completion of O/G extraction as part of the alternative identification and selection process.

Considerations for Scheduling and Continuity

- Some form sequencing or timing should be evaluated in the selection of alternatives. For example, leasing and permitting actions could be allocated between areas not yet developed to look for promising prospects and areas that are proving to be productive. Whatever strategy is employed, even the strategy of "first come, first served" should be selected from a range of alternatives.

Considerations for Health and Safety

- Dust control has proven to be an important concern for widespread yet closely spaced O/G development. Alternative approaches to regional and local control of fugitive dust should be considered and identified in the RMP.
- Various scenarios of employment levels and the means for addressing their impacts should be considered in the selection of alternatives, as employment levels have considerable effect on community development and environmental impact. Particularly important are the effects of the "boom and bust" economy and the interpretation of those resource development alternatives that would increase or diminish those effects.

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