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REPORTS, AUDITS AND INVESTIGATIONS BY THE GOVERNMENT ACCOUNTABILITY OFFICE (GAO) AND THE OFFICE OF INSPECTOR GENERAL (OIG) REGARDING THE DEPARTMENT OF THE INTERIOR

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

February 16, 2007

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OVERSIGHT HEARING ON "REPORTS, AUDITS AND INVESTIGATIONS BY THE GOVERNMENT ACCOUNTABILITY OFFICE (GAO) AND THE OFFICE OF INSPECTOR GENERAL (OIG) REGARDING THE DEPARTMENT OF THE INTERIOR"

February 16, 2007
U.S. House of Representatives
Committee on Natural Resources
Washington, D.C.

The Committee met, pursuant to call, at 10:01 a.m. in Room 1324, Longworth House Office Building, Hon. Nick J. Rahall, II [Chairman of the Committee] presiding.

Present: Representatives Rahall, Kildee, Christensen, Napolitano, Grijalva, Costa, Sarbanes, Miller, Markey, Hinchey, Kind, Capps, Herseth, Duncan, Pearce, Brown, McMorris Rodgers, Gohmert, Shuster, Heller and Sali.

STATEMENT OF THE HONORABLE NICK J. RAHALL, II, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

The CHAIRMAN. The Committee on Natural Resources is meeting today to receive testimony from the Interior Department's Office of Inspector General and the Government Accountability Office on reports, audits and investigations regarding the Interior Department.

I would say to the Members of the Committee that there are some very pressing and compelling matters relating to the management of the agency which deserve our attention. That is why I have asked the IG and the GAO to be our first witnesses at our first hearing this Congress.

I believe the time for opening statements on this issue is past and so I have no further comments.

I am going to recognize Mr. Pearce for whatever opening statements he wishes to make.

STATEMENT OF STEVAN PEARCE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. PEARCE. Thank you, Mr. Chairman. I appreciate the hearing.

I would indicate to the IG that my wife and I had an oil field service company, and we operated during the period of time here.

There were some things that did not ring and match my experience and so the presentation and the questions that come are heartfelt, watching an industry in deep distress.

Competitors of ours laid off 68 to 70 percent of their employees. My wife and I elected not to do that, but it was surely an outflow of cash that caused us not to. Companies were stopping investing in west Texas, east New Mexico, and they are moving offshore because of the Deepwater Royalty Relief Act.

Those decisions people are relaying to me, and so there are things that obviously I perceive from my background in a different way. If you would be gracious enough to answer those questions.

Mr. Chairman, again I appreciate the opportunity to discuss these issues and would yield back.

The CHAIRMAN. Thank you.

I now recognize Mr. Earl Devaney, the Inspector General, U.S. Department of the Interior, and Ms. Robin Nazzaro, Director, Natural Resources and Environment, U.S. Government Accountability Office, to proceed as they wish for 15 minutes each.

STATEMENT OF EARL E. DEVANEY, OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF THE INTERIOR

Mr. DEVANEY. Thank you, Mr. Chairman. With your permission I would like to submit my full statement for the record and then make some abbreviated remarks right now if I could.

The CHAIRMAN. Without objection. That will be the case for both of you.

Mr. DEVANEY. Thank you very much.

Mr. Chairman and members of the Committee, I want to thank you for this unusual opportunity for me to comment and share my views concerning the wide array of ongoing challenges faced by the Department of Interior and impart to you some success stories as well.

In thinking about how to frame my testimony today, I concluded that it would be most useful to the Committee if I were to discuss with you the Department's successes and continuing challenges in the context of our audits, evaluations and investigative work over the last several years.

Let me begin by telling you about some of the changes that have taken place in the Office of Inspector General since I last testified before this committee in July of 2000. Historically our office had done little to change its approach to auditing and investigating, tending to focus solely on problems rather than identify and propose possible solutions.

For years a standard audit recommendation included seeking additional funding to correct a deficiency or shortcoming. Today, with shrinking budgets and increasing demands on every component in the Department, we realize that this recommendation had to be augmented with creative suggestions on ways to redistribute, share or leverage existing resources.

For example, in an evaluation requested by the Department of its Equal Opportunity Office, we asked our team to identify best practices, shared resources and consolidation of functions as they looked for ways to fix a poorly managed program. Although this was a new approach, the Department received our final report en-

thusiastically and adopted the key recommendations emanating from this report, which involved little or no new personnel.

We also endeavor whenever possible to focus our efforts on high-risk or high-impact issues that touch upon multiple bureaus. Naturally such an effort is more labor intensive and takes longer to complete. Thus, we see a logical decrease in our raw numbers. On the other hand, when we issue one of these reports we are providing the Secretary with the unique opportunity to implement recommendations that have a much greater impact on the Department as a whole.

For instance, we recently issued our report on the Department's Radio Communication Program, which impacts multiple DOI bureaus. We presented findings that touched on the overall Radio Communications Program and provided recommendations that should, if implemented, address health and safety issues, correct infrastructure shortcoming and save money throughout the entire Department.

Within the last couple of years we have conducted similarly structured audits and evaluations on such diverse issues as grants, cooperative agreements, competitive sourcing, land acquisitions, hazardous materials on public lands, fleet management and workers' compensation. All of these reports are available on our website.

In addition, we have changed the way we measure our success, moving away from the traditional IG approach of measuring success by statistics, such as the number of audits or the number of arrests. Although it is more of a challenge, I prefer to measure our success by articulating how our recommendations have improved the Department's overall operations or caused a real change in behavior.

Having said all this, however, I am not here to say that all is well at the Department of Interior. In fact, the Department faces some enormous challenges in several areas. I would like to highlight one of those matters specifically and discuss several more general issues of concern that I have.

I am sure that this committee is well aware of our recent audit and investigation into the royalty-related matters at the Minerals Management Service. Ironically, in 1993, 14 years ago this month, one of my predecessor IGs testified before this very committee, also identified MMS' royalty collections and the audit coverage of royalties as having significant deficiencies.

In short, our audit of MMS' compliance review process found that compliance reviews play a useful role and can provide a broader coverage of royalties using fewer resources than traditional audits. They do not, however, provide the same level of detail or assurance that a traditional audit provides.

As a result, we concluded that compliance reviews should only be used in conjunction in audits in the context of a well-designed risk-based compliance strategy. We also identified two principal weaknesses that prevent MMS from maximizing the benefits of compliance reviews.

First, we discovered that very few full audits were ever triggered by anomalies discovered in the compliance review process. We also learned that because the program's performance measures were tied to dollar figures, only the big companies and leases were being

reviewed, leaving hundreds of smaller companies that MMS never looked at.

With few exceptions, MMS agreed with our commendations; most notably, MMS agreed to revise its performance measures and to develop and pilot a risk-based compliance strategy and, as promised, MMS has now provided us with an action plan for implementing all of these changes.

At the same time as our audit we conducted an investigation into the failure of MMS to include price thresholds in the terms of deepwater leases issued in 1998 and 1999. We have determined that MMS intended to include price thresholds in leases issued pursuant to the Deepwater Royalty Relief Act as evidenced in the first leases issued in 1996 and 1997, as well as in 2000, but while MMS was developing new regulations related to the Deepwater Royalty Relief Act there was significant confusion among MMS operational components and the Office of Solicitor as to whether or not the regulations would address price thresholds.

In the end, the regulations did not, and the price thresholds were left out of the leases. Although we find massive finger pointing and blame enough to go around, we did not find a smoking gun or any evidence that the omission of price thresholds was deliberate. This was, however, a very costly mistake.

Although featured most prominently in recent headlines, MMS does not have a corner on issues of concern. As an example, my office has been active in assessing the Department's IT security program. Like most IGs, each year we conduct an annual FISMA evaluation, along with several evaluations and investigations of specific program components related to IT security.

In fact, last year we issued 14 reports to the Department with recommendations for improvement. Overall while we are seeing continued progress in IT security, significant weaknesses still exist. Although we have credited the Department with making that progress, we have concluded that Interior is not yet in full compliance with FISMA.

Other security concerns of the Department lie in the protection of our national icons and dams. More than three years have elapsed since we issued the results of our last assessment in 2003 of the Department's efforts to develop and enhance security at our national icon parks, such as the Statue of Liberty or the monuments on the mall.

At that time the Park Service lacked commitment, continuity and consistency in the planning and execution of security at these parks. While we believe that they have since made great strides in security implementation, the results of a recent survey of Park Police offices who help secure most of the icons indicate otherwise. We will soon do a follow-up assessment to determine the present state of security at the icons.

With respect to the protection of our critical dams, we found in 2005 that the Bureau of Reclamation had made significant progress in developing a coordinated, comprehensive program to secure its dam facilities, although we found the law enforcement component within BOR to be the weakest link in the overall program. Since that time, BOR has committed to strengthening its law enforcement program and has addressed many of our concerns.

This presents a natural segue to the state of all law enforcement at the Department of Interior. Last year we completed our second progress report on the Secretary's Directives for Implementing Law Enforcement Reform resulting from a major assessment we finished in 2002.

After nearly four years of effort, we found that the Department and the bureaus continued to struggle with the implementation of the Secretary's directives with only 10 of 25 directives fully implemented.

As a result, we have committed to conduct future assessments focusing on the effectiveness of specific Departmental law enforcement programs. For instance, we are about to issue our first report on the Fish and Wildlife law enforcement program, which will describe mixed results.

Law enforcement in Indian Country gives us great concern, but it is only one of many concerns that plague the Bureau of Indian Affairs and the American Indians who rely on its services. In 2004 we issued a report with alarming findings about the state of Indian detention facilities.

As we were conducting our assessment of Indian detention facilities, the death of a 16-year-old Indian girl at a boarding school detention facility prompted us to conduct a separate investigation that uncovered dual failure by the BIA Office of Indian Education Programs and the Office of Law Enforcement Programs to address safety and security issues surrounding the boarding school detention facility.

BIA has made some progress in addressing these deplorable conditions we found in Indian Country detention facilities, but it has much left to do particularly in the areas of adequate staffing, which also translates to officer safety and medical care for prisoners.

Moving to another area of concern, I have well-grounded continuing concerns about the management and oversight conducted over the insular affairs governments by the Office of Insular Affairs. U.S. monies provided to the insular affairs islands are not insubstantial. The latest annual audited financial reports show the receipt and use of at least $683 million of Federal funds.

The accountability issues related to these funds have been well documented in our reports over the years and are well known by Federal grantor agency officials, including the Office of Insular Affairs officials who are charged with monitoring awards made to the insular areas. Over the years, however, Federal oversight and corrective action enforcement has been primary performed through periodic visits and/or long-distance efforts, which have not proved to be particularly effective.

Although we have had longstanding concerns about the lax practices of the Department's fee for service entities where the Department for a fee will award and manage contracts for other Federal agencies, concerns which were borne out when the Department found itself embroiled in the acquisition scandal related to interrogation service at Abu Ghraib prison in Iraq, we have been unable to express a definite critique until recently.

In a just released joint audit with the OIG for the Department of Defense done of the Department's two primary fee-for-service entities, we found that in providing acquisition services to DOD DOI

did not always follow appropriation or procurement laws, regulations and rules. As a result, Interior left DOD vulnerable to fraud, waste and abuse and made itself vulnerable to potential sanctions, loss of acquisition business and, most importantly, a loss of public trust.

Throughout the Department the appearance of preferential treatment in awarding contacts and procurements has come to our attention far too frequently, and the failure of Department officials to remain at arm's length from prohibited sources is pervasive.

In the last two years alone, we have uncovered golf outings, dinners, hunting trips, concert tickets and box seats at sporting events as being accepted by DOI officials from prohibited sources. We have also chronicled exclusive access and special favors provided by DOI employees to select outside entities, all of which at a minimum are violations of the standards of ethical conduct for employees of the Executive Branch. Many of these DOI officials were Senior Executive Service employees or political appointees.

In the end, the offending employees were primarily scolded or counseled and directed to take ethics training. For others no disciplinary action was taken whatsoever, which leads me to the root of my greatest frustration as the IG at Interior—a culture replete with a lack of accountability.

In 2004, we issued our report on conduct and discipline in the Department. Among our findings was a clear perception by employees that there is a significant amount of misconduct that goes unreported and that discipline is administered inconsistently. We also found that supervisors receive less sanctions for the same misconduct than nonsupervisors.

Our own statistics bear this out. For the years of 2003 to 2006, 71 employees were identified as potentially subject to administrative action. However, action was taken against less than half of those employees. The percentage of actions taken against SES and GS-15s was markedly lower than for every other GS level below them.

Moreover, the SESs were remarkably immune to any adverse action greater than a reprimand. Of 21 SES employees subject to administrative action, more than half received no discipline at all. The remainder received a reprimand, a transfer or allowed to resign.

I have testified before about this frustration in the House as recently as September of 2006 when I described ethical failures on the part of senior Department officials, both political and career. I would like to be clear about one thing. I have gone on the record recently to say that I believe that 99.9 percent of Interior employees are hard working, ethical and well intentioned. Unfortunately, it only takes a few people to cast a shadow of impropriety over the entire Department and erode the public trust.

From my office's perspective, I would point to the Abramoff scandal as an example of how the conduct of one or two people can cause enormous diversion of resources best evidenced by the commitment we have made to that investigation with 10 agents dedicated to the case now three years running. Since my office has had no increase in staffing levels in the seven years I have been the IG, we have little capacity to adjust for such diversions of staff.

Mr. Chairman, I also want to make it clear that Secretary Kempthorne has inherited these cultural problems. In fairness to him, I have discerned a dramatic shift in attitude since his arrival. The Secretary has clearly signaled, both in terms of his messages to Interior employees and in discussions with me personally, his clear intention to create and sustain a culture of ethics and accountability during his tenure as Secretary of Interior.

He has now hired an experienced professional chief ethics officer for the Department and has recently created an accountability board to advise him on disciplinary matters. Therefore, I am hopefully optimistic that this culture will soon become a thing of the past.

This concludes my formal testimony. Thank you for the opportunity to appear before you here today. I will be happy to answer any questions you have.

[The prepared statement of Mr. Devaney follows:]

Statement of The Honorable Earl E. Devaney,
Inspector General for the Department of the Interior

Mr. Chairman and members of the Committee, I want to thank you for the unusual opportunity for me to comment and share my views concerning the wide array of ongoing challenges faced by the Department of the Interior (Department or DOI) and impart to you some success stories, as well.

In thinking about how to frame my testimony today, I concluded that it may be most useful to the Committee if I were to discuss with you the Department's successes and its continuing challenges in the context of our audit/evaluation and investigative work over the last several years.

Let me begin by telling you about some of the changes that have taken place in the Office of Inspector General (OIG) since I last testified before this Committee in July of 2000. At that time, I was less than a year into my tenure as Inspector General (IG), but had already begun my effort to transform the OIG. Utilizing a philosophy that blends cooperation with strong oversight and enforcement, I believe that my office has now evolved into a high-performing, results-oriented oversight entity dedicated not only to detecting and preventing fraud, waste and mismanagement, but also to assisting the Department in identifying and implementing new and better ways of conducting business.

Historically, the OIG for DOI had done little to change its approach to auditing and investigating, tending to focus solely on problems, rather than identify and propose possible solutions. We have since developed a number of new tools to accomplish our mission. For instance, we often conduct evaluations, rather than audits, to quickly examine programs, determine the conditions, and provide the Department with the information it needs to implement change. In our investigations, we supplement our reports with products such as management advisories and assessment reports, in which we describe underlying conditions that allow or contribute to a specific problem or crime, and provide the Department with suggested actions it might take to correct the condition.

For years, a standard audit recommendation included seeking additional funding to correct a deficiency or shortcoming. With shrinking budgets and increasing demands on every component in the Department, we realized that this recommendation had to be augmented with creative suggestions on ways to redistribute, share, or leverage existing resources. For example, in an evaluation requested by the Department of its Equal Employment Opportunity Office, we asked our team to identify best practices, shared resources, and consolidation of functions as they looked for ways to fix a poorly managed program. Although this was a new approach, the Department received our final report enthusiastically and adopted the key recommendations emanating from the report, which involved little or no money or personnel. I would like to think that such creative, cost-saving recommendations can become our norm.

We also endeavor, whenever possible, to focus our efforts on high-risk or high-impact issues that touch upon multiple bureaus. Naturally, such an effort is far more labor intensive and takes longer to complete; thus, we see a logical decrease in our raw numbers. On the other hand, we are providing the Secretary with the opportunity to implement recommendations that have a much greater impact on the De-

partment as a whole. For instance, we recently issued our report on the Department's Radio Communication Program, which impacts multiple DOI bureaus. We presented findings that touched on the overall Radio Communication Program and provided and recommendations that should, if implemented, address health and safety issues, correct infrastructure shortcomings, and save money throughout the Department. Within the last couple of years, we have conducted similarly structured audits and evaluations on such diverse issues as grants, cooperative agreements, competitive sourcing, land acquisitions, hazardous materials on public lands, fleet management, and worker's compensation.

In addition, we have changed the way we measure our success, moving away from the traditional IG approach of measuring success by statistics—such as the number of audits or the number of arrests. Although it is more of a challenge, I prefer to measure our success by articulating how our recommendations and suggestions have improved the Department's mission and overall operations or effected a real change in behavior. For instance, when we issued a Report of Investigation in 2003 that was highly critical of the conduct of certain Departmental officials who had circumvented valuation requirements in a proposed land exchange, the Department, to its credit, promptly undertook a wholesale restructuring of its appraisal program and policies.

Having said all this, however, I am not here to say that all is well at the Department of the Interior. In fact, the Department faces some enormous challenges in several areas. I would like to highlight one of those matters specifically and discuss several more general issues of concern that I have.

I am sure that this Committee is well aware of our recent audit and investigation into royalty-related matters at the Minerals Management Service (MMS). Ironically, in 1993—14 years ago this month—one of my predecessor IGs, testifying before this very committee, also identified MMS' royalty collections and audit coverage of royalty collections as having significant deficiencies.

In short, our audit of MMS' compliance review process found that compliance reviews play a useful role in MMS' greater Compliance and Asset Management Program. Compliance reviews can provide a broader coverage of royalties, using fewer resources than traditional audits. They do not, however, provide the same level of detail or assurance that a traditional audit provides. As a result, we concluded that compliance reviews should only be used in conjunction with audits, in the context of a well-designed, risk-based compliance strategy. We also identified two principal weaknesses that prevent MMS from maximizing the benefits of compliance reviews. First, we discovered that very few full audits were ever triggered by anomalies discovered in the compliance review process. We also learned that because the program's performance measures were tied to dollar figures, only the big companies and leases were being reviewed, leaving hundreds of smaller companies that MMS never looked at.

With few exceptions, MMS agreed with our recommendations; most notably, MMS agreed to revise its performance measures and to develop and pilot a risk-based compliance strategy for its compliance review process; and, as promised, MMS has now provided us with an Action Plan for implementing all of these changes.

Contemporaneous with this audit, we conducted an investigation into the failure of MMS to include price thresholds in the terms of deepwater leases issued in 1998 and 1999. We have determined that MMS intended to include price thresholds in leases issued pursuant to the Deepwater Royalty Relief Act, as evidenced in the first leases issued in 1996 and 1997, as well as in 2000; but while MMS was developing new regulations relating to the Deepwater Royalty Relief Act, there was significant confusion among MMS operational components and the Office of Solicitor as to whether or not the regulations would address price thresholds. In the end, the regulations did not, and the price thresholds were left out of the leases. Although we found massive finger-pointing and blame enough to go around, we did not find a "smoking gun" or any evidence that the omission of price thresholds was deliberate; this was, however, a very costly mistake.

Although featured most prominently in recent headlines, MMS does not have a corner on issues of concern. As an example, my office has been active in assessing the Department's Information Technology (IT) security program. Like most other OIGs, we conduct an annual Federal Management Security Management Act (FISMA) evaluation, along with several evaluations and investigations of specific program components related to IT security each year. In fact, last year we issued 14 reports to the Department with recommendations for improvement. Our work includes technical assessments of both internal and external threats and actual penetration testing to determine the effectiveness of security provisions for DOI's networks.

Our work has provided the Department with detailed assessments of the state of IT security and numerous recommendations to address security vulnerabilities. Overall, while we are seeing continued progress in IT security, significant weaknesses still exist. Although we have credited the Department with making that progress, we have concluded that DOI is not yet in full compliance with FISMA. Specifically, we continue to see weaknesses in the quality of DOI's Certification and Accreditation practices and problems regarding implementation of security configuration standards for computers and networks.

A significant impediment to improving cyber security and gaining full compliance with FISMA is DOI's decentralized IT management structure. My office supports the concept of reorganizing and centralizing key IT security functions. This concept would probably not enjoy widespread support from the various bureaus of the Department, each of which maintains an autonomous Chief Information Officer (CIO). However, a stronger centralized CIO function with adequate resources for technical efforts such as computerized asset management and continuous monitoring would materially improve cyber security at DOI.

Other security concerns lie in the protection of our national icons and dams. More than 3 years have elapsed since we issued the results of our last assessment in 2003 of the Department's efforts to develop and enhance security at our national icon parks. At that time, the National Park Service (NPS) lacked commitment, continuity, and consistency in the planning and execution of protections of the national icon parks. While we believe that they have since made strides in security implementation, the results of a recent survey of the Park Police officers who help secure the icons indicate otherwise. We intend to undertake a follow-up assessment to determine the present state of security over our national icons.

With respect to the protection of our critical dams, we found in 2005 that the Bureau of Reclamation (BOR) had made significant progress in developing a coordinated, comprehensive program to secure its dam facilities, although we found the law enforcement component within BOR to be the weakest link in the overall program. Since that time, however, BOR has committed to strengthening its law enforcement and has addressed many of our concerns.

This presents a natural segue to the state of law enforcement at DOI. Last year, we completed our second Progress Report on the Secretary's Directives for Implementing Law Enforcement Reform resulting from a major assessment we finished in 2002.. After nearly 4 years of effort, we found that the Department and bureaus continued to struggle with the implementation of the Secretary's Directives, with only 10 of 25 fully implemented. As a result, we have committed to conduct future assessments focusing on the effectiveness of specific Departmental law enforcement programs. For instance, we are about to issue our first report on the Fish and Wildlife law enforcement program, which will describe mixed results.

Law enforcement in Indian Country is also of great concern, but it is only one of many problems that plague the Bureau of Indian Affairs (BIA) and the American Indians who rely on its services. In 2004, we issued a report with alarming findings about the state of Indian detention facilities. As we were conducting our assessment of Indian detention facilities, the death of a 16-year-old Indian girl at a boarding school detention facility prompted us to conduct a separate investigation that uncovered dual failure by the BIA Office of Indian Education Programs and Office of Law Enforcement Programs to address safety and security issues surrounding the boarding school detention facility. BIA has made some progress in addressing the deplorable conditions we found in Indian detention facilities, but it has much left to do, particularly in the areas of adequate staffing, which also translates to officer safety, and medical care for prisoners.

I also have well-grounded, continuing concerns about the management and oversight conducted over the Insular Area Governments by the Office of Insular Affairs. U.S. monies provided to the Insular Areas are not insubstantial—the latest annual audited financial reports showed the receipt and use of at least $683 million of federal funds. The accountability issues related to these funds have been well documented in our reports over the years, and are well known by Federal grantor agency officials, including Office of Insular Affairs officials, who are charged with monitoring awards made to the Insular Areas. Over the years, however, federal oversight and corrective action enforcement has been primarily performed through periodic visits and/or long-distance efforts, which have not necessarily proved to be particularly effective. It may be time for all federal grantor agencies to critically evaluate their oversight responsibilities and processes for the purpose of identifying and implementing much-needed reforms. Such an evaluation should include implementing a comprehensive program to regularly emphasize to Insular Area government officials the need for and benefits of improved accountability. In addition, annual government ethics training should be emphasized because accountability issues

have occurred as a result of questionable and/or weak ethical practices, as well as the ignoring and/or circumventing of established policies and procedures. My office maintains a permanent presence in the U.S. Virgin Islands and Pacific islands, providing independent audit coverage, and in the Pacific helping to develop the capacity of the Public Auditors. Sadly, because our findings repeat themselves over and over again, we could almost report our audit results without even conducting the audit work. As for our capacity-building efforts in the Pacific, while they are enthusiastically embraced by the Public Auditors, their respective governments do not necessarily welcome the enhanced oversight, and do not extend appropriate support for their own Public Auditors or OIGs. Recently, DOI's Office of Insular Affairs has also inexplicably eliminated the grants that the Public Auditors desperately relied upon for travel and training related to our capacity building activities.

Although we have had long-standing concerns about the lax practices of DOI's fee-for-service entities—DOI procurement functions authorized to charge fees to award and manage contracts for other federal agencies—concerns which were borne out, to some degree, in the acquisition scandal related to interrogation services at Abu Ghraib prison in Iraq, we have been unable to express a definitive critique until recently. In a recently released report, emanating from a joint audit with the OIG for the Department of Defense (DOD) of DOI's two primary fee-for-service entities, we found that in providing acquisition services to DOD, DOI did not always follow appropriation and procurement laws, regulations, and rules. As a result, DOI left DOD vulnerable to fraud, waste, and abuse, and made itself vulnerable to potential sanctions, loss of acquisition center business, and a loss of public trust.

Throughout the Department, the appearance of preferential treatment in awarding contracts and procurements has come to our attention far too frequently, and the failure of Department officials to remain at arms length from prohibited sources is pervasive. In the last 2 years alone, we have uncovered golf outings, dinners, hunting trips, concert tickets, and box seats at sporting events being accepted by DOI officials from prohibited sources; we have also chronicled exclusive access and special favors provided by DOI employees to select outside entities, all of which are, at a minimum, violations of the Standards of Ethical Conduct for Employees of the Executive Branch. Many of these DOI officials were Senior Executive Service or political appointees.

In the end, the offending officials were primarily scolded and directed to take ethics training; for others, no action was taken whatsoever, which leads me to the root of my greatest frustration as the IG for Interior—a culture replete with a lack of accountability.

In 2004, we issued our report on Conduct and Discipline in the Department. Among our findings was a clear perception by employees that there is a significant amount of misconduct that goes unreported and that discipline is administered inconsistently. We also found that supervisors received lesser sanctions for the same misconduct than non-supervisors.

Our own statistics bear this out: For the years 2003—2006, 71 employees were identified as potentially subject to administrative action; however, action was taken against less than half of those employees. Fifty-five percent of these employees were GS-14s and below, yet 71 percent of the actions taken were against this group. SESers and GS-15s comprised 45 percent of these employees, but action was taken in only 31 percent of their cases.

More simply stated, the percentage of actions taken against SES and GS-15s is markedly lower than for every GS-level below them. Moreover, the SES is remarkably immune to any adverse action greater than a reprimand—of 21 employees subject to administrative action, more than half received no discipline at all; the remainder received a reprimand, a transfer, or were allowed to resign. I have testified before about this frustration as recently as September 2006, when I described ethics failures on the part of senior Department officials, both political and career—taking the form of appearances of impropriety, favoritism, and bias—that have been routinely dismissed with a promise that they will "not do it again."

In this regard, I would like to be clear on one thing: I have gone on record to say that I believe that 99.9 percent of DOI employees are hard-working, ethical, and well-intentioned. Unfortunately, it only takes a few people to cast a shadow of impropriety over the entire Department and erode the public trust. From my office's perspective, I would point to the Abramoff scandal as an example of how the conduct of one or two people can cause an enormous diversion of resources, best evidenced by the commitment we have made to that investigation, with 10 agents dedicated to the case, now 3 years running. Since my office has had no increase in staffing levels in the 7 years I have been the IG at Interior, we have little capacity to adjust for such diversions of staff.

Mr. Chairman, I also want to make it clear that Secretary Kempthorne has inherited these cultural problems. In fairness to him, I have discerned a dramatic shift in attitude since his arrival. The Secretary has clearly signaled, both in terms of his messages to Interior employees and in discussions with me, his clear intention to create and sustain a culture of ethics and accountability during his tenure as Secretary of the Interior. He has now hired an experienced, professional chief ethics officer for the Department and has recently created a Conduct Accountability Board to advise him on disciplinary matters. Therefore, I am hopefully optimistic that this culture will soon become a thing of the past.

This concludes my formal testimony. Thank you for the opportunity to appear here before the Committee today. I will be happy to answer any questions you may have.

STATEMENT OF ROBIN M. NAZZARO, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. NAZZARO. Thank you, Mr. Chairman and Members of the Committee. I am pleased to be here today to discuss our work at the Department of the Interior.

As the stewards for more than 500 million acres of Federal land and 1.8 billion acres of subsurface oil, gas and mineral rights, the Department is responsible for a wide array of programs to ensure that our nation's natural resources are adequately protected and that access to and use of those resources is appropriately managed.

Difficult challenges face this Congress and Administration in fulfilling these responsibilities as a steward of the nation's natural resources under increasing budgetary constraints. While our recent reports indicate that Interior agencies have improved the management of some of the programs that we have reported on over the years, some issues remain problematic. Moreover, recent work has identified new problems that need to be addressed.

My testimony today focuses on management challenges in six key areas: Resource protection, Indian and insular affairs, land appraisal, deferred maintenance, revenue collection and contracts and grants.

The first area that I will discuss is the need to strengthen resource protection efforts. The average number of acres burned by wildland fires annually from 2000 to 2005 was 70 percent greater than the average number burned during the 1990s, while appropriations for these activities tripled to $3 billion.

Despite concurrence with our recommendations, Interior, working with USDA, has yet to complete a cohesive national strategy that identifies long-term options and associated funding needs for responding to wildland fire issues.

Nor have the Departments developed a tactical plan to inform the Congress about steps and timeframes they need to develop in such a strategy. While they have undertaken steps to improve upon the information that they use to assess and allocate resources for addressing wildland fire threats, it remains unclear whether the agencies will successfully complete any of these efforts.

In addition, the Bureau of Land Management and the Fish and Wildlife Service have not been effectively carrying out their important responsibilities for ensuring that hardrock mining, oil and gas operations occurring on their lands do not cause unnecessary environmental harm.

Specifically we found that BLM was not ensuring that hardrock mining operations had sufficient financial assurances to provide for proper reclamation of disturbed lands. When operators with insufficient financial assurances fail to reclaim BLM land disturbed by hardrock mining operations, BLM is left with public land that poses risks to the environment and public health and safety and requires millions of dollars to reclaim.

Further, BLM has struggled to deal with the dramatic increase in oil and gas operations on Federal and private lands for which the Federal government retains mineral rights and are permitted by BLM. This increased workload has lessened BLM's ability to meet environmental mitigation responsibilities for oil and gas operations. BLM has the authority to cover its expenses for processing oil and gas permits. However, the Energy Policy Act of 2005 prohibited Interior from initiating the new fee.

Similar to the concerns we have about BLM's protection of environmental resources from oil and gas activities, Fish and Wildlife Service was not consistently inspecting oil and gas operations in national wildlife refuges to ensure that environmental standards were being met. While the agency has implemented training for staff overseeing these activities and has begun to collect better data, Fish and Wildlife Service has not formally clarified its authority to oversee these activities.

A second area of concern is the persistent management problem in the Indian and island community programs. While Interior has taken significant steps in the last 10 years to address weaknesses in certain Indian programs, including establishing the Office of the Special Trustee to oversee and coordinate the Department's implementation of trust fund management reforms, it is still in the process of implementing key reforms to effectively manage over 300,000 trust fund accounts with assets over $3 billion. OST has not prepared a timetable for completing the remaining Trust Fund Reform Act activities and OST's termination.

Further, although the Department's consolidated financial statements for the fiscal year ending September 30, 2006, received an unqualified audit opinion, the management of Indian trust funds continue to be reported as a material internal control weakness, and information security was reported as an internal control weakness.

We have also reported on serious delays in BIA's program for determining whether the Department will accept land in trust. Many Indians believe that having their land placed in trust status is fundamental to safeguarding it against future loss and ensuring sovereignty.

In 1980, the Department established a regulatory process intended to provided a uniform approach for taking land in trust. While we found that BIA is generally following its regulations, it has no deadlines for making decisions. Over 1,000 land in trust applications from tribes and individual Indians are currently pending.

In addition, the Department could be doing more to assist the island communities of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands and three sovereign island nations with longstanding financial and program management difficulties in accurately accounting for expendi-

tures, collecting taxes and other revenues, controlling the level of expenditures and delivering program services. These problems have resulted in numerous Federal agencies designating some of the governments as high risk grantees.

Despite management improvements, a third area of concern is land appraisal. Over the years we and Interior's IG have reported on the difficulties BLM and other Federal land management agencies have had in managing land exchanges and the associated land appraisals. Thus, the Federal government has lost millions of dollars because of inadequate appraisals.

While major program changes have been made, significant problems continue. Specifically to remedy decades of problems with objectivity of its land appraisals, Interior removed the land appraisal function from its land management agencies and consolidated it into a departmental office, the Appraisal Services Directorate.

This was a substantial move in the right direction to help ensure the independence of the appraisal function. However, appraisals we reviewed still do not adhere to appraisal standards in large part because appraisers appeared not to apply the specialized skills needed to perform their duties for certain appraisals. Thus, the Federal government continues to risk losing millions of dollars if land is undervalued.

Also the Directorate does not have a system for ensuring that it sets and meets realistic timeframes for appraisal services which can impact the ability of land management agencies to carry out land acquisitions. We continue to monitor the agency efforts in this area.

The fourth area that needs to be addressed is the deferred maintenance backlog. The Department owns, builds, purchases and contracts services for assets such as visitor centers, schools, office buildings, roads, bridges, dams, irrigation systems and reservoirs. The deterioration of these facilities can adversely impact the visitor experience and public health and safety, reduce employee morale and productivity and increase the need for costly major repairs or early replacement of structures and equipment.

While the Department has made progress addressing major recommendations, prior recommendations to improve information as far as deferred maintenance needs of the Park Service facilities and BIA schools, its maintenance backlog continues to grow substantially. The Department's estimate increased from between $8 billion and $11 billion in 2003 to between $9 and $17 billion in 2006, an increase of up to 51 percent.

We also recently reported on the estimated $850 million in deferred maintenance backlog for 16 BIA irrigation projects. It is not clear how the Department will secure needed funding to reduce this daunting backlog to a manageable level.

Thus, the fifth area needing management attention is revenue collection. The Federal government may not be collecting all revenue that it could be, and some programs that receive revenue do not have needed controls.

For example, Minerals Management Service, as we have heard from the IG, may have foregone billions of dollars in oil and gas royalties because it issued lease contracts in 1998 and 1999 that failed to include important price thresholds above which royalty re-

lief would no longer be applicable. At least $1 billion in royalties has already been lost.

Moreover, MMS estimates that foregone royalties from leases issued between 1996 and 2000 could be as high as $80 billion. Currently we are assessing MMS' estimate of these royalties in light of changing oil and gas prices, revised estimates of future oil and gas production and other factors.

We also reported that while required by law to ensure that the Department continues to collect a certain level of revenue from geothermal leases, it is not collecting the necessary information to do so. One of the factors that can most affect the geothermal royalty revenue, the price of electricity, is outside the control of the managing agencies.

Although it is impossible to predict with reasonable assurance how these prices will change in the future, Interior must make its best effort to mitigate the impact of changing prices if Federal royalty revenue is to remain the same. This mitigation can only be achieved if MMS routinely collects revenue data from electricity sales.

In addition, the National Park Service is authorized to collect fees from a number of different types of uses of its lands and waters, but has not done so in all cases. For example, the Park Service was not collecting all required fees from companies conducting air tours in and around three highly visited national parks because of an inability to verify the number of air tours conducted and confusion resulting from different geographic applicability governing air tours.

Interior has also been slow to implement authorities for charging fees for recreational uses in part because of a lack of internal controls and accounting procedures for collecting fees.

In addition, should the Congress choose to authorize it to do so, BLM could collect more in grazing fees, thereby bringing its fees more in line with the fees charged by other Federal agencies which employ market-based approaches to setting fees.

For example, in 2004 BLM charged $1.43 per animal unit month, while other Federal agencies charged up to $112 per animal unit month. BLM collected about $12 million in receipts, while its costs for implementing the grazing program, including range improvements, were about $58 million.

The last area that I would like to highlight is the need for controls over contracts and grant management. Our recent work echoes some of the IG's concerns in particular with regard to interagency contracting and grant management.

For example, DOD has relied on Interior's contracting services, including support for the war in Iraq. Interior did not always ensure that contracts received fair and reasonable prices and may have missed opportunities to achieve savings for millions of dollars in purchases. In addition, substantial work, as much as 20 times above the original value of a particular contract, was added to existing contracts without determining that prices were fair and reasonable.

Regarding grants, the National Park Service provides grants to nonFederal entities for activities related to the Chesapeake Bay. From 2000 to 2005, the agency awarded 189 grants, over $6 mil-

lion, yet we found a backlog of uncompleted grants and continued awards to nonperforming grantees.

To conclude, Mr. Chairman, I would like to note that, like the IG, in 1993 GAO testified at a broad oversight hearing on Interior before this committee similar to today's hearing. At the time we testified that Interior faced serious challenges to addressing the declining condition of the nation's natural resources and the related infrastructure under its responsibility.

Unfortunately, almost 15 years later our testimony is very similar. While some of the programs have improved, evaluations of additional programs reveal that many of the same persistent management problems—a lack of adequate data to understand the condition of its natural resources and infrastructure and the actions necessary to improve them, a lack of adequate controls and accountability to ensure Federal resources are properly used and accounted for and a lack of adequate strategic planning and guidance for program implementation.

Clearly the Department needs to address management and control gaps in its programs and assure its activities are carried out in the most cost effective and efficient manner, but difficult choices remain for improving the condition of the nation's natural resources and the Department's infrastructure in light of the Federal deficit and long-term fiscal challenges facing the nation.

Either new sources of funding need to be identified and pursued or the Department must determine the services it can continue and the standards it will use for maintaining its facilities and lands.

As we stated in our testimony almost 15 years ago, we believe that in reaching these decisions policymakers should know the full extent of the resource shortfalls facing Federal natural resource management agencies. In addition, it is essential for the Department to identify the impacts on services and infrastructure that would occur should serious cutbacks be necessary.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions that you or Members of the Committee may have at this time.

[The prepared statement of Ms. Nazzaro follows:]

Statement of Robin M. Nazzaro, Director, Natural Resources and Environment, U.S. Government Accountability Office

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss our work at the Department of the Interior. As the stewards for more than 500 million acres of federal land and 1.8 billion acres of the Outer Continental Shelf, Interior agencies are responsible for a wide array of programs to ensure that our nation's natural resources are adequately protected and that access to and use of those resources is appropriately managed. Difficult choices face this Congress and administration in fulfilling the federal government's responsibilities as a steward of these resources under increasing budgetary constraints. My testimony today includes findings from a number of reports we have issued over the past few years on some of Interior's natural resource management programs. Specifically, I will discuss management challenges in six key areas: (1) resource protection, (2) Indian and insular affairs, (3) land appraisals, (4) deferred maintenance, (5) revenue collection, and (6) contracts and grants.

Summary

In summary, our reports indicate that while Interior agencies have improved the management of some of the programs we have reported on over the years, some issues remain problematic. Moreover, more recent work has identified new problems that need to be addressed. In many cases, Interior agencies have work underway

or planned to address our recommendations, but we have not evaluated these efforts.

- Management of resource protection efforts needs to be strengthened. Our work on the challenges that Interior, working with the U.S. Department of Agriculture (USDA), faces in protecting the nation against the threat of wildland fires has revealed a continued need for several improvements. Despite concurrence with our previous recommendations, Interior and USDA have yet to complete a cohesive national strategy that identifies long-term options and associated funding needs for responding to wildland fire issues. Nor have the departments developed a tactical plan to inform the Congress about the steps and time frames needed to develop such a strategy. And while they have undertaken steps to improve upon the information they use to assess and allocate resources for addressing wildland fire threats, it remains unclear whether the agencies will successfully complete these efforts. In addition, the Bureau of Land Management (BLM) and the Fish and Wildlife Service (FWS) have not been effectively carrying out their important responsibilities for ensuring that hardrock mining, oil, and gas operations occurring on their lands do not cause unnecessary environmental harm. Specifically, we found that BLM was not ensuring that hardrock mining operations had sufficient financial assurances to provide for proper reclamation of disturbed lands and was not effectively carrying out its environmental mitigation responsibilities for oil and gas operations. Similarly, we reported that FWS was not consistently inspecting oil and gas operations in national wildlife refuges to ensure that environmental standards were being met.
- Management problems in Indian and island community programs persist. While Interior has taken significant steps in the last 10 years to address weaknesses in certain Indian programs, it is still in the process of implementing key trust fund reforms, and several concerns exist about the completion of these reforms. We have also reported on serious delays in the Bureau of Indian Affairs' (BIA) program for determining whether the department will accept land in trust: over 1,000 land in trust applications from tribes and individual Indians are currently pending. In addition, the department could be doing more to assist seven island communities—four U.S. territories and three sovereign island nations—with long-standing financial and program management deficiencies.
- Land appraisals continue to fall short of standards. Over the years, we and Interior's Inspector General (IG) have reported on the difficulties BLM and other federal land management agencies have had in managing land appraisals and the loss of millions of federal dollars resulting from inadequate appraisals. While major program changes have been made, significant problems continue. Specifically, we found that appraisals still do not adhere to appraisal standards and, thus, the federal government risks losing millions of dollars more if land is undervalued. In addition, Interior does not have a process for setting and meeting realistic deadlines for completing appraisals, which can be particularly important for transactions in areas with changing land values.
- Deferred maintenance backlog needs to be addressed. While Interior has made progress addressing prior recommendations to improve information on the deferred maintenance needs of National Park Service facilities and BIA schools, its maintenance backlog continues to grow substantially—the department's estimate increased from between $8.1 billion and $11.4 billion in 2003, to between $9.6 billion and $17.3 billion in 2006. It is not clear how the department will secure needed funding to reduce this daunting backlog to a manageable level. In addition, we recently reported that better information was needed on 16 BIA irrigation projects with an estimated $850 million in deferred maintenance. Specifically, we found that some of the irrigation projects classified items as deferred maintenance when they were actually new construction, and some had incomplete information on their deferred maintenance needs.
- Revenue collection needs more management attention. Recent work indicates that the federal government may not be collecting all the revenue that it could be and that some programs that receive revenue do not have needed controls. For example, we reported that billions of dollars in oil and gas royalties may be forgone because of a failure to include important price limitations in leases during 1998 and 1999. We also reported that while the department is required by law to continue to collect a certain level of revenue from geothermal leases, it is not collecting the necessary information to do so. Furthermore, the National Park Service is authorized to collect fees from a number of different types of uses of its lands, but has not done so in all cases. Finally, should the Congress choose to authorize it to do so, BLM could be collecting more in grazing

revenue, thereby bringing its fees more in line with the fees charged by other federal agencies.

- Contract and grant management lack needed controls. Interior's management of contracts and grants has been identified as a management challenge by Interior's IG for a number of years. Recent work we have conducted echoes some of the IG's concerns, in particular with regard to a lack of management controls. Specifically, we reported on weaknesses in (1) management of two Interior interagency contracting mechanisms that the Department of Defense (DOD) has used to obtain services and (2) a program that provides grants to nonfederal entities for activities related to the Chesapeake Bay.

Background

The Department of the Interior has jurisdiction over more than 500 million acres of land—about one-fifth of the total U.S. landmass—and over 1.8 billion acres of the Outer Continental Shelf. As the guardian of these resources, the department is entrusted to preserve the nation's most awe-inspiring landscapes, such as the wild beauty of the Grand Canyon, Yosemite, and Denali national parks; our most historic places, like Independence Hall and the Gettysburg battlefield; and such revered national icons as the Statue of Liberty and the Washington Monument. At the same time, Interior is to provide for the environmentally sound production of oil, gas, minerals, and other resources found on the nation's public lands; honor the nation's obligations to American Indians and Alaskan Natives; protect habitat to sustain fish and wildlife; help manage water resources in western states; and provide scientific and technical information to allow for sound decision-making about resources. In recent years, the Congress has appropriated about $10 billion annually to meet these responsibilities. With these resources, Interior employs about 73,000 people in eight major agencies and bureaus at over 2,400 locations around the country to carry out its mission.

Interior's management of this vast federal estate is largely characterized by the struggle to balance the demand for greater use of its resources with the need to conserve and protect them for the benefit of future generations. GAO, among others, have identified management problems facing the department and have made many recommendations to improve its agencies and programs. In some cases, Interior has made significant improvements; in others, progress has been slow. As a result, several major management challenges remain.

Management of Resource Protection Efforts Needs to Be Improved

Although Interior, working with USDA's Forest Service, has taken steps to help manage perhaps the most daunting challenge to its resource protection mission—protecting lives, private property, and federal resources from the threats of wildland fire—concerns remain. In addition, Interior's programs for managing hardrock mining, oil, and gas operations have not adequately protected federal resources from the environmental effects of these activities.

Wildland Fire Management Challenges Persist

The wildland fire problems facing our nation continue to grow. The average number of acres burned by wildland fires annually from 2000 to 2005 was 70 percent greater than the average number burned annually during the 1990s, and appropriations for the federal government's wildland fire management activities tripled from about $1 billion in Fiscal Year 1999 to nearly $3 billion in Fiscal Year 2005. Experts believe that catastrophic damage from wildland fire will continue to increase until an adequate long-term federal response is implemented and has had time to take effect. While USDA's Forest Service receives the majority of fire management resources, Interior agencies—the National Park Service, BIA, FWS, and, particularly, BLM—are key partners in responding to the threats of wildland fire. Consequently, most of our work and recommendations on wildland fire management address both departments.

The Interior agencies and the Forest Service have not yet developed a cohesive strategy that identifies long-term options and associated funding estimates for addressing wildland fire threats, as we first recommended in 1999;[1] nor have they developed a tactical plan that outlines the critical steps and time frames needed to complete such a strategy, as we recommended in 2005.[2] While the agencies together issued a document in February 2006 titled Protecting People and Natural Resources: A Cohesive Fuels Treatment Strategy, it does not identify long-term options

[1] GAO, Western National Forests: A Cohesive Strategy Is Needed to Address Catastrophic Wildfire Threats, GAO/RCED†99†65 (Washington, D.C.: Apr. 2, 1999).

[2] GAO, Wildland Fire Management: Important Progress Has Been Made, but Challenges Remain to Completing a Cohesive Strategy, GAO†05†147 (Washington, D.C.: Jan. 14, 2005).

or associated funding estimates.[3] Also, although the agencies have undertaken some tasks over the past 7 years that they stated are important to developing the cohesive strategy that we recommended, we have concerns about when and whether such tasks will be completed as planned.[4] For example, the agencies began developing two modeling systems to help them (1) allocate resources to respond to wildland fires and (2) identify the extent, severity, and location of wildland fire threats to our nation's communities and ecosystems; these systems are slated for completion in 2008 and 2009, respectively. We are concerned, however, that the agencies' recent endorsement of significant, mid-course design changes to the resource allocation model may not fulfill key project goals, including determining the most cost-effective allocation of resources. In addition, the agencies currently have no plans to routinely update data in the threat modeling system—this would be necessary, for example, after major fires, hurricanes, or other factors have significantly altered the landscape. Such updated data are necessary to accurately capture the nature of wildland fire threats and to optimize allocation of resources over time. For these reasons, we continue to believe that a cohesive strategy and tactical plan would be helpful to the Congress and the agencies in making informed decisions about effective and affordable long-term approaches to addressing the nation's wildland fire problems.

In addition, in 2006, we reported that the agencies needed to develop better guidance on sharing the costs of suppressing fires among federal and nonfederal entities.[5] In some cases, these entities used different cost-sharing methodologies for fires with similar characteristics, which resulted in inconsistent sharing of costs among federal and nonfederal entities. The cost-sharing method used can have consequences in the millions of dollars for the entities involved. As of January 2007, the agencies were updating their guidance on possible cost-sharing methods and when each typically would be used, but it is unclear how the agencies will ensure that the guidance is followed.

Finally, as we testified last month, preliminary findings from our ongoing work indicate that the effectiveness of the agencies' efforts to contain wildfire suppression costs may be limited because the agencies have not clearly defined their cost-containment goals, developed a strategy for achieving those goals, or developed related performance measures.[6] In addition, for efforts to contain wildfire suppression costs to be effective, once the agencies have defined their cost-containment goals, they need to integrate them with other goals of the wildland fire program—such as protecting life and property—and to recognize that trade-offs will be needed to meet desired goals within the context of fiscal constraints.

Hardrock Mining Operations Lack Needed Financial Assurances

Under BLM regulations, hardrock mining operators who extract gold, silver, copper, and other valuable mineral deposits from land belonging to the United States are required to provide financial assurances, before they begin exploration or mining, to guarantee that the costs to reclaim land disturbed by their operations are paid.[7] However, we reported in June 2005 that BLM did not have a process for ensuring that adequate assurances were in place.[8] As a result, some assurances may not fully cover all future reclamation costs, some operators do not have financial assurances, and some have either outdated reclamation plans and cost estimates or none at all. When operators with insufficient financial assurances fail to reclaim BLM land disturbed by hardrock mining operations, BLM is left with public land that poses risks to the environment and public health and safety, and requires millions of federal dollars to reclaim. For example, we reported that 48 hardrock operations had ceased to operate and had not been reclaimed since the financial assurance requirement began in 1981; for 43 of these sites, BLM identified a total of about $56 million in unfunded reclamation costs. We also reported that BLM's system for managing financial assurances did not have current information or track certain information critical to managing the program.

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[3] GAO, Wildland Fire Management: Update on Federal Agency Efforts to Develop a Cohesive Strategy to Address Wildland Fire Threats, GAO†06†671R (Washington, D.C.: May 1, 2006).

[4] GAO, Wildland Fire Management: Lack of a Cohesive Strategy Hinders Agencies' Cost Containment Efforts, GAO†07†427T (Washington, D.C.: Jan. 30, 2007).

[5] GAO, Wildland Fire Suppression: Lack of Clear Guidance Raises Concerns about Cost Sharing between Federal and Nonfederal Entities, GAO†06†570 (Washington, D.C.: May 30, 2006).

[6] GAO†07†427T.

[7] Unlike operations that extract oil and gas from federal lands, hardrock mining operations are not required to pay royalties on the minerals they extract.

[8] GAO, Hardrock Mining: BLM Needs to Better Manage Financial Assurances to Guarantee Coverage of Reclamation Costs, GAO†05†377 (Washington, D.C.: June 20, 2005).

In response to our 2005 recommendations, BLM has taken substantial steps to correct these problems. In 2006, the agency modified its system for managing financial assurances to track key data. BLM also began requiring its state office directors to use a newly created report available from the system to ensure that adequate financial assurances are in place, and to (1) develop corrective action plans to address any financial assurance deficiencies with operators and (2) certify that reclamation cost estimates are adequate. If implemented properly, these efforts should ensure that appropriate financial assurances are in place to pay for necessary reclamation of federal lands.

Increases in Oil and Gas Permitting Activities Lessen BLM's Ability to Meet Its Environmental Protection Responsibilities

The number of oil and gas operations occurring on or under federal lands and private lands for which the federal government retains mineral rights that are permitted by BLM, has increased dramatically—more than tripling from Fiscal Year 1999 to Fiscal Year 2004—in part as a result of the desire to reduce the country's dependence on foreign sources of oil and gas. In June 2005, we reported that BLM has struggled to deal with this permitting workload increase while also carrying out its responsibility to mitigate the impacts of oil and gas development on land that it manages.[9] Overall, BLM officials told us that staff had to devote increasing amounts of time to processing drilling permits, leaving less time to ensure mitigation of the environmental impacts of oil and gas development. For example, two field offices we visited that had the largest increases in permitting activity were each able to meet their annual environmental inspection goals only once in the past 6 years. BLM has authority to assess and charge fees to cover its expenses for processing oil and gas permits, which would enable it to supplement its program resources. While the agency had not exercised this authority at the time of our report, it had begun taking steps to develop a fee structure for these permits. To help BLM better respond to its increased workload, we recommended that the agency finalize and implement this fee structure to recover its costs for processing applications for oil and gas drilling permits.

In response to our recommendation, BLM issued a proposed regulation in July 2005 that included a $1,600 fee for processing oil and gas permits.[10] However, the next month, the Congress prohibited Interior from initiating the new fee in the Energy Policy Act of 2005, and the final regulation did not include the proposed fee.[11] Nevertheless, the department has continued to express interest in initiating such a fee and has proposed that the Energy Policy Act be amended to allow the fee to move forward.

FWS Oversight of Oil and Gas Activities in Wildlife Refuges Needs Improvement

Similar to the concerns we have about BLM's protection of environmental resources from oil and gas activities, we reported in 2003 that FWS's oversight of oil and gas operations on wildlife refuge lands was not adequate.[12] For example, we found that some refuge managers took extensive measures to oversee operations and enforce environmental standards, while others exercised little or no control. We found that such disparities occurred for two primary reasons. First, FWS had not officially determined its authority to require permits—which would include environmental conditions to protect refuge resources—of all oil and gas operations in refuges; we believe the agency has such authority. Second, refuge managers lacked guidance, adequate staffing levels, and training to properly oversee oil and gas activities. We also found that FWS was not collecting complete and accurate information on damage to refuge lands as a result of oil and gas operations and what steps were needed to address that damage.

FWS has taken some steps to address recommendations we made to resolve these problems. For example, the agency has implemented training for staff overseeing oil and gas activities and has begun collecting better data on the nature and extent of oil and gas activities. However, FWS has not implemented two key recommendations that would strengthen its ability to protect refuge resources.

- First, because FWS had not formally clarified its authority to oversee all types of oil and gas operations on refuges, we recommended that the agency (1) deter-

[9] GAO, Oil and Gas Development: Increased Permitting Activity Has Lessened BLM's Ability to Meet Its Environmental Protection Responsibilities, GAO†05†418 (Washington, D.C.: June 17, 2005).

[10] 70 Fed. Reg. 41532, 41542 (July 19, 2005).

[11] Pub. L. No. 109-58, title III, subtitle F, § 365(i), 119 Stat. 594, 725 (2005) and 70 Fed. Reg. 58854 (Oct. 7, 2005).

[12] GAO, National Wildlife Refuges: Opportunities to Improve the Management and Oversight of Oil and Gas Activities on Federal Lands, GAO†03†517 (Washington, D.C.: Aug. 28, 2003).

mine its authority to oversee such operations and report that determination to the Congress and (2) seek from the Congress any additional authority that might be needed to apply a consistent and reasonable set of controls over all oil and gas activities occurring on national wildlife refuges. To date, FWS has not finalized its determination, but it has indicated that it does not believe it has the authority to require permits of all oil and gas operations that would include steps that must be taken to protect refuge resources. Further, FWS has indicated that it does not believe it needs additional authority to effectively manage oil and gas operations on refuges. We continue to believe, however, that FWS does have the authority to require such permits of all operators. Moreover, because of the effects of oil and gas activities on refuge resources that we previously reported, we also continue to believe that if FWS ultimately determines that it does not have the authority to require permits, it should seek this authority from the Congress in order to adequately protect refuges.

- Second, although FWS has taken steps to identify the level of staffing it needs to adequately oversee oil and gas activities occurring on national wildlife refuges, it has not—as we recommended—sought the funding to meet those needs through appropriations, its authority to assess fees, or other means.

Management Problems in Indian and Island Community Programs Persist

GAO has reported on management weaknesses in Indian programs for a number of years. While the department has taken significant steps in the last 10 years to address these weaknesses, it is still in the process of implementing key trust fund reforms, and several concerns exist about the completion of these reforms. We have also reported on serious delays in BIA's program for determining whether the department will accept land in trust. In addition, the department could be doing more to assist seven island communities—four U.S. territories and three sovereign island nations—with long-standing financial and program management deficiencies.

Indian Trust Funds and Assets Need to Be More Effectively Managed

The Secretary of the Interior administers the government's trust responsibilities to tribes and individual Indians, including maintaining about 1,450 trust fund accounts for more than 250 tribal entities with assets of about $2.9 billion and about 300,000 individual Indian trust fund accounts with assets of about $400 million. Management of Indian trust funds and assets has long been plagued by inadequate financial management, such as poor accounting and information systems; untrained and inexperienced staff; backlogs in appraisals, determinations of ownership, and record-keeping; lack of a master lease file or accounts-receivable system; inadequate written policies and procedures; and poor internal controls.

In response to these problems, the Congress enacted the American Indian Trust Fund Management Reform Act of 1994, which among other things, established the Office of the Special Trustee (OST) to oversee and coordinate the department's implementation of trust fund management reforms.[13] In December 2006, we reported that OST had made progress implementing reforms, and it estimated that almost all key reforms needed to develop an integrated trust management system and to provide improved trust services would be completed by November 2007.[14] However, OST also estimated that data verification for leasing activities would not be completed for all Indian lands until December 2009. Furthermore, OST's most recent strategic plan, issued in 2003, did not include a timetable for implementing trust reforms or a date for OST's termination, as required by the reform act. As a result, we recommended, among other things, that the department provide the Congress with a timetable for completing the trust fund management reforms. The department agreed with our recommendation and stated that it expects to have a timetable for implementing the remaining trust reforms by late June 2007, including a date for the proposed termination or eventual deposition of OST. Although the department's consolidated financial statements for the fiscal year ending September 30, 2006, received an unqualified audit opinion, the management of Indian trust funds continued to be reported as a material internal control weaknesses, and information security was reported as an internal control weakness.

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[13] Pub. L. No. 103-412, 108 Stat. 4239 (1994). Also, in 1996, a class action lawsuit was filed by Elouise Cobell, a member of the Blackfeet Tribe, and others against the federal government concerning the department's management of Indian trust fund accounts (Cobell v. Kempthorne). The lawsuit is still ongoing and the recent attempts during the 109th Congress for a legislative settlement were not enacted.

[14] GAO, Indian Issues: The Office of the Special Trustee Has Implemented Several Key Trust Reforms Required by the 1994 Act, but Important Decisions about Its Future Remain, GAO†07†104 (Washington, D.C.: Dec. 8, 2006).

Improvements Needed in BIA's Processing of Land in Trust Applications

BIA is the primary federal agency charged with implementing federal Indian policy and administering the federal trust responsibility for 1.9 million American Indians and Alaska Natives. BIA provides basic services to 561 federally recognized Indian tribes throughout the United States, including social services, child welfare services, and natural resources management on about 54 million acres of Indian trust lands. Trust status means that the federal government holds title to the land in trust for tribes or individual Indians; land taken in trust is no longer subject to state and local property taxes and zoning ordinances. Many Indians believe that having their land placed in trust status is fundamental to safeguarding it against future loss and ensuring their sovereignty. In 1980, the department established a regulatory process intended to provide a uniform approach for taking land in trust.[15] While some state and local governments support the federal government's taking additional land in trust for tribes or individual Indians, others strongly oppose it because of concerns about the impacts on their tax base and jurisdictional control.

We reported in July 2006 that while BIA generally followed its regulations for processing land in trust applications, it had no deadlines for making decisions on them.[16] Specifically, the median processing time for the 87 land in trust applications with decisions in Fiscal Year 2005 was 1.2 years—ranging from 58 days to almost 19 years. We also found that while there was little opposition to applications with decisions in Fiscal Year 2005 from state and local governments, some state and local governments we contacted said (1) they did not have access to sufficient information about the land in trust applications and (2) the 30-day comment period was not sufficient. We recommended, among other things, that the department move forward with adopting revisions to the land in trust regulations that include (1) specific time frames for BIA to make a decision once an application is complete and (2) guidelines for providing state and local governments more information on the applications and a longer period of time to provide meaningful comments on the applications. The department agreed with our recommendations, and BIA has developed a corrective action plan to implement them by June 30, 2007.

Improve Effectiveness and Accountability for Island Programs

The Secretary of the Interior has varying responsibilities to the island communities of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, all of which are U.S. territories—as well as to the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, which are sovereign nations linked with the United States through Compacts of Free Association. The Office of Insular Affairs (OIA) carries out the department's responsibilities for the island communities. OIA's mission is to assist the island communities in developing more efficient and effective government by providing financial and technical assistance and to help manage relations between the federal government and the island governments by promoting appropriate federal policies. The island governments have had long-standing financial and program management deficiencies. Specifically, island governments experience difficulties in accurately accounting for expenditures, collecting taxes and other revenues, controlling the level of expenditures, and delivering program services.

In December 2006, we reported on serious economic, fiscal, and financial accountability challenges facing the U.S. insular areas of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.[17] The economic challenges stem from dependence on a few key industries, scarce natural resources, small domestic markets, limited infrastructure, shortages of skilled labor, and reliance on federal grants to fund basic services. To help diversify and strengthen their economies, OIA sponsors conferences and business opportunities missions to the areas to attract U.S. businesses; however, there has been little formal evaluation of these efforts. In addition, efforts to meet formidable fiscal challenges and build strong economies are hindered by financial reporting that does not provide timely and complete information to management and oversight officials for decision making. The insular area governments have also submitted required audits late, received disclaimer or qualified audit opinions, and had many serious internal control weaknesses identified. As a result of these problems, numerous federal agencies

[15] 25 C.F.R. pt. 151.

[16] GAO, Indian Issues: BIA's Efforts to Impose Time Frames and Collect Better Data Should Improve the Processing of Land in Trust Applications, GAO†06†781 (Washington, D.C.: July 28, 2006).

[17] GAO, U.S. Insular Areas: Economic, Fiscal, and Financial Accountability Challenges, GAO†07†119 (Washington, D.C.: Dec. 12, 2006).

have designated these governments as "high-risk" grantees. Interior and other federal agencies are working to help these governments improve their financial accountability, but more should be done.

To increase the effectiveness of the federal government's assistance to the U.S. insular areas, we recommended, among other things, that the department (1) increase coordination activities with officials from other federal grant-making agencies on issues of common concern relating to the insular area governments, such as single audit reports, high-risk designations, and deficiencies in financial management systems and practices and (2) conduct formal periodic evaluations of OIA's conferences and business opportunities missions, assessing their impact on creating private sector jobs and increasing insular area income. The department agreed with our recommendations, stating that they were consistent with OIA's top priorities and ongoing activities. We will continue to monitor OIA's actions on our recommendations.

Also in December 2006, we reported on challenges facing the Federated States of Micronesia and the Republic of the Marshall Islands.[18] In 2003, the United States amended a 1986 compact with the countries by signing Compacts of Free Association with the two governments. The amended compacts provide the countries with a combined total of $3.6 billion from 2004 to 2023, with the annual grants declining gradually. We found that for 2004 through 2006, compact assistance to the respective governments was allocated largely to the education, infrastructure, and health sectors, but that neither country has planned for long-term sustainability of the grant programs, taking into account the annual decreases in grant funding. In addition, both countries' single audit reports for 2004 and 2005 indicated (1) weaknesses in their ability to account for the use of compact funds and (2) noncompliance with requirements for major federal programs. For example, the Federated States of Micronesia's audit report for 2005 contained 57 findings of material weaknesses and reportable conditions in the national and state governments' financial statements for sector grants and 45 findings of noncompliance. We recommended, among other things, that the department work with the countries to establish plans to minimize the impact of declining assistance and to fully develop a reliable mechanism for measuring progress towards program goals. The department concurred with our recommendations.

Land Appraisals Continue to Fall Short of Standards

Over the years, we and Interior's IG have reported on the difficulties BLM and other federal land management agencies have had in managing land appraisals. Conducting appraisals is an important function—between November 2003 and May 2006, for example, Interior appraised more than 6.5 million acres of land that was valued at over $7 billion. Land appraisals are needed when Interior agencies are buying, exchanging, or leasing land. Such transactions are an integral part of Interior's land management in order to achieve specific purposes, such as consolidating existing holdings, acquiring land deemed important for wildlife habitat or recreational opportunities, and opening land to the development of energy and mineral resources. Interior generally requires land acquisitions to be based on market value and, thus, objective land appraisals are essential. Past reports, however, have identified serious problems with Interior agencies' appraisal programs, particularly with regard to appraisal independence, and have identified millions of dollars that the federal government had lost because of inadequate appraisals.

While Interior has made major program changes, significant problems continue. Specifically, to remedy decades of problems with the quality and objectivity of its land appraisals, Interior removed the land appraisal function from its land management agencies and consolidated it into a departmental office—the Appraisal Services Directorate—in November 2003. This was a substantial move in the right direction to help ensure the independence of the appraisal function, and we reported in September 2006 that the objectivity of appraisals has improved since the directorate's inception.[19] However, we also identified two major remaining challenges.

- First, there is still wide variation in the quality of appraisals for land transactions involving potentially billions of dollars. For example, about 40 percent of Interior's appraisals for land transactions that we reviewed did not comply with recognized appraisal standards. This lack of compliance occurred, in large part, because appraisers appeared not to apply the specialized skills needed to

[18] GAO, Compacts of Free Association: Micronesia and the Marshall Islands Face Challenges in Planning for Sustainability, Measuring Progress, and Ensuring Accountability, GAO†07†163 (Washington, D.C.: Dec. 15, 2006).

[19] GAO, Interior's Land Appraisal Services: Actions Needed to Improve Compliance with Appraisal Standards, Increase Efficiency, and Broaden Oversight, GAO†06†1050 (Washington, D.C.: Sept. 28, 2006).

perform their duties for certain appraisals. In addition, peer reviews of appraisals were cursory, with reviewers approving appraisals without considering property characteristics that can impact the value of land, such as the presence of roads.

- Second, the directorate does not have a system for ensuring that it sets and meets realistic time frames for appraisal delivery. Of the 3,500 appraisals completed since the directorate was created, over 70 percent missed their deadlines, with an average delay of 4 months. Delays in delivery of appraisals can impact the ability of land management agencies to carry out land acquisition missions, and some land deals have been scuttled as a result.

Since our report last fall, Interior has taken encouraging steps to address our recommendations. For example, Interior has stated that it has implemented a compliance inspection program for appraisals that are considered "high risk" to help ensure that such appraisals comply with recognized appraisal standards. We will continue to monitor the department's progress in this area. In addition, we currently we have a review under way to evaluate Interior's management of land exchanges.

Deferred Maintenance Backlog Needs to Be Addressed

In addition to the challenges the department faces in adequately maintaining the natural resources under its stewardship, it also faces a challenge in adequately maintaining its facilities and infrastructure. The department owns, builds, purchases, and contracts services for assets such as visitor centers, schools, office buildings, roads, bridges, dams, irrigation systems, and reservoirs; however, repairs and maintenance on these facilities have not been adequately funded. The deterioration of facilities can adversely impact public health and safety, reduce employees' morale and productivity, and increase the need for costly major repairs or early replacement of structures and equipment. In 2003, we reported that the department estimated that the deferred maintenance backlog was between $8.1 billion and $11.4 billion. In November 2006, the department estimated that the deferred maintenance backlog for Fiscal Year 2006 was between $9.6 billion and $17.3 billion, an increase of between 18 to 51 percent (see table 1).

Table 1: Department of the Interior's Estimate of Deferred Maintenance for Fiscal Year 2006

Dollars in billions

Type of structures	Estimated range of deferred maintenance	
	Low estimate	High estimate
Roads, bridges, and trails	$4.80	$9.18
Irrigation, dams, and other water structures	1.39	1.85
Buildings (e.g., administration, education, housing, historic buildings)	2.12	3.70
Other structures (e.g., recreation sites and fish hatcheries)	1.29	2.57
Total	**$9.60**	**$17.30**

Source: Department of the Interior.

Interior is not alone in facing daunting maintenance challenges. In fact, we have identified the management of federal real property, including deferred maintenance issues, as a governmentwide high-risk area since 2003.[20] While Interior has made progress addressing prior recommendations to improve information on the maintenance needs of Park Service facilities and BIA schools, the challenge of how the department will secure the significant funding needed to reduce this maintenance backlog to a manageable level remains.

While some programs have improved information on their deferred maintenance needs, in February 2006, we reported that similar information is still needed for 16

[20] GAO, High-Risk Series: An Update, GAO†03†119 (Washington, D.C.: Jan. 2003); GAO, High-Risk Series: Federal Real Property, GAO†03†122 (Washington, D.C.: Jan. 2003); GAO, High-Risk Series: An Update, GAO†05†207 (Washington, D.C.: Jan. 2005); GAO, High-Risk Series: An Update, GAO†07†310 (Washington, D.C.: Jan. 2007).

BIA irrigation projects with an estimated $850 million in deferred maintenance.[21] For example, we found that some of the irrigation projects classified items as deferred maintenance when they were actually new construction, and some had incomplete information on their deferred maintenance needs. To further refine the deferred maintenance estimate for the 16 irrigation projects, BIA plans to hire experts in engineering and irrigation to conduct thorough condition assessments of all 16 irrigation projects every 5 years. The first such assessment was completed in July 2005, with all 16 assessments expected to be completed by 2010.

Revenue Collection Needs More Management Attention

For many years, Interior's IG has identified revenue collection as a top management challenge for the department because of the significant potential for underpayments given that it collects, on average, over $10 billion annually. Work we have conducted in the past 2 years also raises questions about how and when Interior is collecting authorized revenues from oil and gas leases, geothermal leases, recreational uses, and grazing and whether funds are properly controlled and accounted for.

Substantial Revenue May Be Forgone Because of Royalty Relief

We testified in January 2007 on ongoing work investigating the Minerals Management Service's (MMS) implementation of the Outer Continental Shelf Deep Water Royalty Relief Act of 1995 and other authorities for granting royalty relief for oil and gas leases.[22] We reported that MMS had issued lease contracts in 1998 and 1999 that failed to include price thresholds above which royalty relief would no longer be applicable. As a result, large volumes of oil and natural gas are exempt from royalties, which significantly reduces the amount of royalty revenues that the federal government can collect. At least $1 billion in royalties has already been lost because of this failure to include price thresholds. MMS has estimated that forgone royalties from leases issued between 1996 and 2000 under the act could be as high as $80 billion. However, there is much uncertainty in MMS's estimate as a result of, for example, the inherent difficulties in estimating future production and prices, as well as ongoing litigation addressing MMS's authority to set price thresholds for some leases. Other authorities for granting royalty relief may also affect future royalty revenues. Specifically, under discretionary authority, the Secretary of the Interior administers programs granting relief for certain deep water leases issued after 2000, certain deep gas wells drilled in shallow waters, and wells nearing the end of their productive lives. In addition, the Energy Policy Act of 2005 mandates relief for leases issued in the Gulf of Mexico during the 5 years following the act's passage, provides relief for some gas wells that would not have previously qualified for royalty relief, and would provide relief in certain areas of Alaska where there currently is little or no production.

The U.S. Comptroller General has highlighted royalty relief as an area needing additional oversight by the 110th Congress.[23] Currently, we are assessing MMS's estimate of forgone royalties in light of changing oil and gas prices, revised estimates of future oil and gas production, and other factors. We are also seeking to identify comprehensive studies that quantify the potential benefits of royalty relief. We intend to issue a report on these issues later this year.

Revenue from Geothermal Leases May Change

In May 2006, we reported that a change in how royalties on geothermal leases are disbursed may result in a change in the amount of royalties collected by the federal government.[24] Specifically, while the Energy Policy Act of 2005 included provisions to encourage geothermal development, it also reduced the royalty percentage the federal government receives. Despite this, the act directs the Secretary of the Interior to seek, for most leases, to maintain the same level of royalty revenues as before the act. This could be accomplished by negotiating different royalty rates based on past royalty history, provided that electricity prices remain constant. Al-

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[21] GAO, Indian Irrigation Projects: Numerous Issues Need to Be Addressed to Improve Project Management and Financial Sustainability, GAO†06†314 (Washington, D.C.: Feb. 24, 2006).

[22] In order to promote oil and gas production, the federal government has at times and in specific cases provided "royalty relief"—the waiver or reduction of royalties that companies would otherwise be obligated to pay. See GAO, Oil and Gas Royalties: Royalty Relief Will Likely Cost the Government Billions, but the Final Costs Have Yet to Be Determined, GAO†07†369T (Washington, D.C.: Jan. 18, 2007).

[23] GAO, Suggested Areas for Oversight for the 110th Congress, GAO†07†235R (Washington, D.C.: Nov. 17, 2006).

[24] GAO, Renewable Energy: Increased Geothermal Development Will Depend on Overcoming Many Challenges, GAO†06†629 (Washington, D.C.: May 24, 2006).

though it is impossible to predict with reasonable assurance how these prices will change in the future, Interior must make its best effort to mitigate the impact of changing prices if federal royalty revenue is to remain the same. This mitigation can only be achieved if there is timely and accurate knowledge of the revenues that lessees collect when they sell electricity. However, we reported that MMS does not routinely collect revenue data from electricity sales. Without such knowledge, MMS will have difficulty collecting the same level of royalties from lessees under the new royalty process. To demonstrate its commitment to collect the same level of royalty revenues as prior to passage of the act, we recommended that MMS routinely collect future sales revenues for electricity when royalty payments are due. MMS has plans to address these issues, and we will continue to monitor their efforts.

Interior Has Not Maximized Revenue Collections from Recreational and Other Uses

Interior agencies are authorized—and in some cases required—to collect fees for a variety of uses. For example, the Park Service collects fees from air tour operators at selected national parks and from individuals and companies conducting commercial filming. However, we found that the agencies were not collecting such fees in the following cases:

- In May 2006, we reported that the Park Service was not collecting all required fees from companies conducting air tours in or around three highly visited national parks because of (1) an inability to verify the number of air tours conducted over the three national parks and, therefore, to enforce compliance and (2) confusion resulting from differing geographic applicability of legislation governing air tours in national parks.[25]
- In May 2005, we reported that the Park Service could be collecting more revenue through the permits it issues for special park uses, such as special events, but was not doing so because park units were not consistently applying criteria for charging permit fees.[26] In addition, the Park Service had not implemented a May 2000 law that required the collection of location fees for commercial filming and still photography, resulting in significant annual forgone revenues. In response to our recommendation, the Park Service began collecting location fees in May 2006.
- In September 2006, we reported that Interior agencies have been slow to implement authorities for charging fees for recreational uses of federal lands and waters.[27] We also reported that some agencies lacked adequate controls and accounting procedures for collecting fees.

Additional Revenue Could be Generated Through an Adjustment to BLM Grazing Fees

Ten federal agencies manage grazing on over 22 million acres, with BLM and the Forest Service managing the vast majority of this activity.[28] In total, federal grazing revenue amounted to about $21 million in Fiscal Year 2004, although grazing fees differ by agency. For example, in 2004, BLM and the Forest Service charged $1.43 per animal unit month, while other federal agencies charged between $0.29 and $112 per animal unit month.[29] We reported in 2005 that while BLM and the Forest Service charged generally much lower fees than other federal agencies and private entities, these fees reflect legislative and executive branch policies to support local economies and ranching communities.[30] Specifically, BLM fees are set by a formula that was originally established by a law that expired, but use of the formula has been extended indefinitely by Executive Order since 1986. This formula takes into account a rancher's ability to pay and, therefore, the purpose is not primarily to recover the agencies' costs or capture the fair market value of forage. Instead, the formula is designed to set a fee that helps support ranchers and the western livestock

[25] GAO, National Park Air Tour Fees: Effective Verification and Enforcement Are Needed to Improve Compliance, GAO†06†468 (Washington, D.C.: May 11, 2006).

[26] GAO, National Park Service: Revenues Could Increase by Charging Allowed Fees for Some Special Uses Permits, GAO†05†410 (Washington, D.C.: May 6, 2005).

[27] Total fee collections in Fiscal Year 2004 were about $192 million. See GAO, Recreation Fees: Agencies Can Better Implement the Federal Lands Recreation Enhancement Act and Account for Fee Revenues, GAO†06†1016 (Washington, D.C.: Sept. 22, 2006).

[28] The 10 agencies are the BLM, FWS, Park Service, Bureau of Reclamation, Forest Service, Department of Energy, Army Corps of Engineers, Army, Air Force, and Navy. In addition, a number of other federal agencies manage some minor grazing-related activities.

[29] An animal unit month is the amount of forage (vegetation such as grass and shrubs) that a cow and her calf eat in a month (or one bull, one steer, one horse, or five sheep).

[30] GAO, Livestock Grazing: Federal Expenditures and Receipts Vary, Depending on the Agency and the Purpose of the Fee Charged, GAO†05†869 (Washington, D.C.: Sept. 30, 2005).

industry. Other federal agencies employ market-based approaches to setting grazing fees.

Using this formula, BLM collected about $12 million in receipts in Fiscal Year 2004, while its costs for implementing its grazing program, including range improvement activities, were about $58 million. Were BLM to implement approaches used by other agencies to set grazing fees, it could help to close the gap between expenditures and receipts and more closely align its fees with market prices. We recognize, however, that the purpose and size of BLM's grazing fee are ultimately for the Congress to decide.

Contract and Grant Management Lack Needed Controls

Interior's management of contracts and grants has been identified as a management challenge by Interior's IG for a number of years. Our recent work echoes some of the department's IG's concerns, in particular with regard to interagency contracting and grant management for the Chesapeake Bay Gateways grant program.

Interior's Management of Interagency Contracting Activities Needs Improvement

The Department of Defense (DOD) has used interagency contracting to help support the war in Iraq, including contracting with Interior. Governmentwide, the use of interagency contracts to procure goods and services has continued to increase over the past several years. Because of this continued growth, limited expertise in using these contracts, and unclear lines of responsibility, GAO has designated interagency contracting as a governmentwide high-risk area.[31] In our review of 11 task orders Interior issued on behalf of DOD—amounting to about $66 million—we found numerous breakdowns in management controls.[32]

Specifically, we found that Interior:

- issued task orders that were beyond the scope of the contract, in violation of federal competition rules;
- did not comply with additional DOD competition requirements when issuing task orders for services on existing contracts;
- did not comply with ordering procedures meant to ensure the best value for the government; and
- inadequately monitored contractor performance.

Moreover, we found that the contractor was allowed to play a role in the procurement process normally performed by the government because the officials at Interior and DOD responsible for the orders did not fully carry out their roles and responsibilities. In response to the concerns identified, Interior and DOD initiated actions to strengthen management controls. In our report, we made recommendations to further refine their efforts.

In 2005, we also reported on weaknesses in Interior's GovWorks. GovWorks is a government-run, fee-for-service organization that provides various services, including contracting services, on which DOD has relied.[33] Specifically, Interior did not always ensure that GovWorks contracts received fair and reasonable prices and may have missed opportunities to achieve savings from millions of dollars in purchases. In addition, GovWorks added substantial work—as much as 20 times above the original value of a particular order—without determining that prices were fair and reasonable. We made recommendations to Interior to improve the manner in which GovWorks funds are used to ensure value and compliance with procurement regulations. Interior concurred with our recommendations and identified actions to take to address them. We will continue to monitor their implementation of these actions.

Chesapeake Bay Gateways Grant Program Lacks Needed Controls

In September 2006, we reported on weaknesses in the Park Service's management of grants provided to nonfederal entities under its Chesapeake Bay Gateways Program.[34] In 1998, Congress passed the Chesapeake Bay Initiative Act to establish (1) a network of locations where the public can access and experience the bay and (2) a grant program to accomplish this objective. From 2000 through 2005, the Park Service awarded 189 grants totaling over $6 million to support the network. However, our review revealed several accountability and oversight weaknesses in the

[31] GAO, High-Risk Series: An Update, GAO†07†310 (Washington, D.C.: Jan. 31, 2007).

[32] GAO, Interagency Contracting: Problems with DOD's and Interior's Orders to Support Military Operations, GAO†05†201 (Washington, D.C.: Apr. 29, 2005).

[33] Such organizations are referred to as "franchise funds." See GAO, Interagency Contracting: Franchise Funds Provide Convenience, but Value to DOD Is Not Demonstrated, GAO†05†456 (Washington, D.C.: July 29, 2005.)

[34] GAO, Chesapeake Bay Gateways Program: National Park Service Needs Better Accountability and Oversight of Grantees and Gateways, GAO†06†1049 (Washington, D.C.: Sept. 14, 2006).

Park Service's management of these grants, including (1) inadequate training of Park Service staff, (2) a lack of timely grantee reporting on progress and finances, (3) continuing awards to nonperforming grantees, and (4) a backlog of uncompleted grants. To enhance accountability and oversight, we recommended that the department

- develop and implement a process to determine the extent to which grants are effectively meeting program goals;
- ensure that staff responsible for grant management are adequately trained;
- ensure that grantees submit progress and financial reports in a timely manner; and
- ensure that grants are awarded only to applicants who completed any previous grants they received or to applicants who have demonstrated the capacity for completing a grant on schedule.

Interior concurred with our recommendations and has plans to implement them.

Concluding Observations

To conclude, Mr. Chairman, I would like to note that in 1993, GAO testified at a broad oversight hearing on Interior before this Committee, similar to today's hearing. At that time, we testified that Interior faced serious challenges to addressing the declining condition of the nation's natural resources and related infrastructure under its responsibility. Unfortunately, almost 15 years later, the message in my testimony today is very similar. While some of the programs we evaluated in the past have improved, evaluations of additional programs reveal many of the same persistent management problems—a lack of adequate data to understand the condition of its natural resources and infrastructure and the actions necessary to improve them, a lack of adequate controls and accountability to ensure federal resources are properly used and accounted for, and a lack of adequate strategic planning and guidance for program implementation. Clearly the department needs to address management and control gaps in its programs and ensure its activities are carried out in the most cost-effective and efficient manner, but difficult choices remain for improving the condition of the nation's natural resources and the department's infrastructure in light of the federal deficit and long-term fiscal challenges facing the nation. Either new sources of funding need to be identified and pursued, or the department must determine the services it can continue and the standards it will use for maintaining its facilities and lands. As we stated in our testimony nearly 15 years ago, we believe that in reaching these decisions, policy makers should know the full extent of the resource shortfalls facing federal natural resource management agencies. In addition, it is essential for the department to identify the impacts on services and infrastructure that would occur should serious cutbacks be necessary in order to maintain a certain standard of quality.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions that you or other Members of the Committee may have at this time.

GAO Contact

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RELATED GAO PRODUCTS

Performance and Accountability Series

High-Risk Series: An Update. GAO-07-310. Washington, D.C.: January 2007.

Major Management Challenges at the Department of the Interior (2005 Web-based Update—http://www.gao.gov/pas/2005/doi.htm).

High-Risk Series: An Update. GAO-05-207. Washington, D.C.: January 2005.

Major Management Challenges and Program Risks: Department of the Interior. GAO-03-104. Washington, D.C.: January 2003.

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Resource Protection Efforts

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Highlights

Highlights of GAO-07-502T, testimony before the Committee on Natural Resources, House of Representatives

February 14, 2007

DEPARTMENT OF THE INTERIOR

Major Management Challenges

Why GAO Did This Study

The Department of the Interior is responsible for managing much of the nation's vast natural resources. Its agencies implement an array of programs intended to protect these precious resources for future generations while also allowing certain uses of them, such as oil and gas development and recreation. In some cases, Interior is authorized to collect royalties and fees for these uses. Over the years, GAO has reported on challenges facing Interior as it implements its programs. In addition to basic program management issues, the department faces difficult choices in balancing its many responsibilities, and in improving the condition of the nation's natural resources and the department's infrastructure, in light of the federal deficit and long-term fiscal challenges facing the nation.

This testimony highlights some of the major management challenges facing Interior today.

What GAO Recommends

GAO has made a number of recommendations intended to improve Interior's programs by enhancing the information it uses to manage its programs, strengthening internal controls, and providing clearer guidance. Interior has agreed with most of the recommendations and taken some steps to implement them. However, the department has been slow to implement other recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-07-502T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robin Nazzaro at (202) 512-3841 or nazzaror@gao.gov.

What GAO Found

The Department of the Interior has made progress in addressing challenges that GAO has identified in such areas as developing and maintaining better data to manage the department's programs and strengthening internal controls. However, numerous important problems remain, as discussed below.

- **Management of resource protection efforts needs to be strengthened.** Interior has undertaken steps to improve some of its resource protection efforts, but it has yet to develop a cohesive national strategy to address wildland fire issues, as GAO has recommended. In addition, Interior agencies that manage hardrock mining and oil and gas production on their lands have not effectively carried out their environmental protection responsibilities.

- **Management problems in Indian and island community programs persist.** While Interior has implemented major reforms to address weaknesses in managing Indian trust funds and other assets, concerns remain about finalizing organizational changes and delays in decisions about land that the department will take into trust status. In addition, island community programs continue to lack accountability measures.

- **Land appraisals continue to fall short of standards.** While Interior has consolidated the land appraisal function into a departmental office to address serious problems with the quality of its appraisals and the millions of dollars that had been lost as a result, a large portion of appraisals that GAO reviewed still did not comply with recognized appraisal standards.

- **Deferred maintenance backlog needs to be addressed.** Interior has implemented improved inventory and asset management systems for some programs, but it is not clear how it will address the estimated $17 billion in deferred maintenance. Other programs continue to lack information required to accurately estimate needs.

- **Revenue collection needs more management attention.** Interior may not be collecting billions of dollars of revenue from oil and gas royalties; geothermal royalties; and fees from individual recreational uses, air tour operations in and around national parks, and commercial filming and still photography in national parks.

- **Contract and grant management lack needed controls.** Because it lacks adequate controls over management of grants and contracts, Interior cannot ensure that millions of dollars in grant and contract funding were used appropriately.

United States Government Accountability Office

The CHAIRMAN. Thank you. I want to thank both of you for being here with us today and for your service in each of your capacities.

You, Mr. Devaney, I understand have now over seven years as IG and a very commendable law enforcement background prior to that. I certainly commend you for your service and appreciate your testimony today. It is pretty scathing, and I do agree with you that I believe there is a new attitude, a new spirit with the new Secretary Kempthorne now in charge. Time will only tell, of course,

but I am very confident that the whole attitude and culture at the Department of Interior will face a new beginning.

My first question is for you, Mr. Devaney. It has come to my attention that the MMS official who was charged with overseeing the OCS oil and gas leases issued during 1998 and 1999 without price thresholds was recently promoted to be in charge of that agency's entire offshore program.

Considering the GAO has noted that the failure to include price thresholds in those leases will cost the American taxpayers $10 billion in lost revenue, to say the least it is quite stunning that this person has been promoted.

In your testimony this morning you stated that your greatest frustration as the IG at the Interior Department is that it has "a culture replete with a lack of accountability." With that noted, I think one of the most fundamental problems with the MMS is that while it is charged with promoting energy production, it is also charged with auditing the same companies it closely works with, and the check and balance of that system is that MMS then audits itself.

Do you think, for example, that audits and compliance reviews of royalty payments should be handled by your office rather than the MMS so that we can, to use your words, break this culture replete with a lack of accountability?

Mr. DEVANEY. Mr. Chairman, I think that recent events probably suggest that we should take another look at this issue where that auditing takes place in the Department.

A little bit of history. I think in the mid-1980's originally that function was in the IG's office and then some years later it was given over to MMS, so at one time it was within the IG's office. It was much smaller at the time.

I have asked my staff to prepare a white paper on that subject, which I would be glad to deliver to you and other members of the Committee when we have it finished, but I think the potential for a conflict of interest or at least the appearance of a conflict exists.

I think audit organizations have an obligation to remain independent. I think there is a need to examine the oil companies' books occasionally and a need to track the recommendations that are made to MMS and the companies.

I think on the plus side of having it in the IG's office, I think that the Department would be less prone to criticism, quite frankly, so I think there are some very good arguments to be made that it should be in the IG's office. On the other hand, I am not particularly anxious to inherit some of the issues going on there right now and take on that program. It would be an enormous challenge.

I think we need to think about this a little bit. We are doing this white paper. I will get it up to you as soon as we are done, and then I need to have some discussions within the Department as well.

The CHAIRMAN. You just made an interesting statement that perhaps examining the books of the oil companies would be appropriate. I assume that is not being done then under MMS?

Mr. DEVANEY. Well, to be fair there is a combination of auditing and compliance reviews going on. As I said earlier, compliance re-

views are more of a checklist type of activity that can be done from a desk, principally done in Denver I understand.

They are doing actual audits. There are less audits being done today than there were in the past. There are less auditors in MMS today than there were in the past. In theory that is probably the way it should be if they are doing more compliance reviews, but compliance reviews depend almost totally on the oil companies telling MMS what they are producing.

My main problem with compliance reviews is when there is an anomaly identified in a compliance review from my perspective that should trigger a real audit where someone goes out, knocks on the door and asks for the books. We didn't find any evidence of that when we looked at this program.

The CHAIRMAN. How long ago was the IG in charge of MMS?

Mr. DEVANEY. In charge of the auditing?

The CHAIRMAN. In charge of the auditing I meant, yes.

Mr. DEVANEY. Actually, I think what happened and I am told what happened—I certainly wasn't there—is that one of my predecessors got in a tiff with a chairman like yourself, and the program was taken away from the IG's office and given back over to MMS I want to say in the late 1980's, so it has been quite a while.

The CHAIRMAN. Quite a while. All right. Let me ask you one further question.

You testified that your office still has 10 agents dedicated to the Abramoff scandal alone and that you have little capacity to adjust for such diversions of staff because you have received no increase in staff levels for the seven years you have been the IG. Have you requested increased staff? If so, what has been the response?

Mr. DEVANEY. I have asked for an increase in both auditors and investigators each and every year.

To be fair, I get a fairly good reception at the Secretary level and over at OMB, but when it comes over here something happens. I am not sure what it is, but the bottom line is that I have just about the exact same number of people I had when I started seven years ago.

Now, within the Cabinet we are probably the seventh largest Department in the Cabinet, and we are probably third from the bottom in terms of IG staff so there is an inequity there I think that we need to have an adjustment on. I don't think I am talking about a huge increase in staff. I think we might be talking about 20 or 30 people might give me a much greater capacity to do more things or to do the things I am doing now better.

The CHAIRMAN. So you have requested about 20 additional staff?

Mr. DEVANEY. I haven't requested numbers like that, no.

The CHAIRMAN. OK.

Mr. DEVANEY. I have been asking for small increases every year and don't seem to get them. I would love to be in a position to ask for 20 to 30 people. I understand. I am also a realist. I understand the budget situation.

The bottom line here is that I think the premise of your question was I don't have the resources to get tangled up in an investigation like Abramoff. We have been the codirector of that investigation along with the FBI now for three years. That is an enormous un-

dertaking, as you can imagine, and has just burned up all kinds of staff folks that I could be using in other places.

The CHAIRMAN. Thank you. I appreciate it.

I recognize Mr. Pearce.

Mr. PEARCE. Thank you, Mr. Chairman.

I don't consider, Mr. Devaney, Democrats to be the enemy nor Republicans to be the enemy. Frankly, I find almost every single one of us are up here trying to make the decisions.

All of us rely on reports like yours. Your report is going to be quoted and it is going to be used in the context of pitched battles. If you have questions about your report or if you don't have questions about the report, it significantly affects the discussion.

I find deep flaws in this report. I will walk through those, and then we will begin to deconstruct them through the following questions as through the Committee members.

You state that the price thresholds were left out as a mistake. That at the end of the day is the core of the discussion. Was it a mistake, or was it an intentional policy? You state that there was no smoking gun on page 5, yet the smoking gun of the letter from Carolita Kallaur, which I have here, was left out.

Now, you could draw your conclusion, but if my friends on the other side of the aisle saw a letter saying these decisions not to put this royalty on this land was deliberate, you say there is no smoking gun, but you left her out of your report. It is not here.

You said that it was a mistake. You said that it was a policy, that they should have been there. Not once do you give one thing in here that declares a policy. You instead form an opinion when you leave key things out.

I think my friends on the other side of the aisle would form a different idea if you said I am giving you both. Read both. My conclusion. That would be significantly different than your saying that there is no smoking gun.

You in your Senate testimony answered a question there. You said there is significant confusion by lease writers. Someone in the Senate asked you well, what about this question that came and said no, the omissions were deliberate? That was a statement that is exact. You said it was a low level official.

Your answer in the Senate was it was a low level official, and yet when we take a look at it, it was instead the supervisor of all the sales of that region under the Clinton Administration who says no, this was deliberate. We left these price thresholds out deliberately.

You do not point in this continuum of time that there were four times when there were prior thresholds included, and then there were nine consecutive times where they weren't included. You don't say in your report that the readers of my report should hear that I feel like it is not there.

You don't make that clear, and it is a great disservice, sir, because there are going to be pitched battles on the outcome of your words, and I really sincerely wonder.

You talk about the preferential treatment of high level DOI officials, and you went six times to this Johnnie Burton, who is the Bush administrator. She is simply doing what is written into the contracts. You did not go once to Clinton administrators, neither

Secretary Babbitt nor Assistant Secretary Armstrong. They were the ones who took the action.

It was imperative in my reading as a legislator sitting up here trying to deconstruct. If you declared a mistake, you should go back to the people who did it because there is a letter from a lady who says no, the omissions were deliberate. She has died, and now you put words in her mouth that she didn't really mean that. We are going to leave it out.

Aye-yi-yi, my friend. You have unleashed the devils inside people who want the case to be one of fracture and one of partisanship, and I wonder why you did that, sir? I am not out of time if you want to address it. We are going to have plenty of time to talk about every single issue.

Thank you, Mr. Chairman. He can answer if he would like, but the omissions are extreme and disconcerting.

Mr. DEVANEY. Congressman, first let me say I stand behind our investigation, and the agents that conducted that investigation are very experienced agents. As you pointed out, the individual you are talking about is deceased, and we don't have an opportunity to talk to her.

Getting to your continuum, the timeline if you will, I think we state rather clearly that we think the mistake was made after the leases had addendums attached to them later on when the Royalty Relief Act was being thought about in the Department. There was a terrible breakdown in communication between the various components of MMS and also almost a total disconnect from the Solicitor's Office.

Now, in 2000 she found out, and I don't know what email you are referring to there, but she found out that those addendums had been left off, and the new Royalty Relief Act did not cover the price thresholds. She made a decision not to bring that up the chain of command to the Directorate, the previous directors of MMS.

We did talk to both of those directors that were there at the time, and they say that she never brought that to their attention. We can't talk to her.

Mr. PEARCE. If I might?

Mr. DEVANEY. Go ahead.

Mr. PEARCE. If I could, sir, reclaim my time? The supervisor in the Gulf of Mexico, the one that you have declared to be low ranking and I don't declare him to be low ranking, he took a lie detector and said no, that the highest levels called me to instruct me.

But if I could go through, you are talking about significant confusion. First of all, we had the advanced notice to proposed rulemaking. No mention of price controls in that. Then we had the interim rule. That was in 1996. That was about a month later. Then almost two years later you have the final rule.

None of those mentioned price controls, so you have three steps in the process. None mention price controls. Then you have one, two, three, four, five lease sales that occur after the final rulemaking. Not one of them included in the period of time, this five months to the first sale.

This is all under the Clinton Administration. This is all Secretary Babbitt and those people. This is not a Bush cronyism deal. This is President Clinton, Secretary Babbitt, and you have five

months from the final rule to the first sale, and then you have subsequent sales. Never did they include price thresholds until one thing happened, and that is what I was referring to in my opening statement.

The price of oil during this period for west Texas crude was $6. It was $10 for the stuff they are selling out there. The nation believed—this is the economist dated back in that period of time said we are awash in oil. It is more apparent to me that the Clinton Administration did not feel like we needed any price caps because the world belief was that we were never going to get to the $28 threshold.

Those things were left out, and yet you never once in this entire voluminous report mention all of the other side of the testimony for people who are trying to reasonably come up with conclusions that support their viewpoint. We both do it up here, and for you not to mention some balancing on the other side, sir, is a travesty.

Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. Mr. Devaney, do you wish to respond?

Mr. DEVANEY. Only that the mistake that we speak to from our perspective was that there was an assumption made by the folks who were working this issue within the Department of Interior that the Royalty Relief Act would include the price threshold language that had been addendums to prior leases.

It didn't include that language at the end of the day, and therefore they were left out. We felt like that was a mistake made, a costly mistake made. It was caught later on by some MMS employees, and when it was brought to her attention she decided not to bring it to the attention of the folks in Washington, D.C., a deliberate not to bring it to the attention of the folks in Washington, D.C.

Only on one other occasion in 2004 did it come to the attention of anybody, and at that particular time they based their opinion at that time on the solicitor's previous opinion that this couldn't be corrected. Quite frankly, that may be true, but I think they should have reexamined that issue in 2004 as well.

When I talked about, for instance, in my Senate testimony about a cavalier attitude, I wasn't speaking about Johnnie Burton per se. I was talking about the whole range of people ranging from the Clinton Administration to the Republican Administration that when they found this error to have been made, this mistake was made, they didn't look at it in the robust way that we all looking back now probably would say they should have; at least I feel that way.

The CHAIRMAN. Thank you, Mr. Devaney. That is one of the purposes of these hearings is to ask questions and to exercise our oversight. Many of these questions perhaps have not been asked over the last six years, so that is what we are in the process of doing here.

The Chair recognizes the gentleman from California, Mr. Miller.

Mr. MILLER. Thank you very much, Mr. Chairman, and thank you for calling this hearing.

I guess I am honored that both of you referred to my first oversight hearing when I was Chairman of this committee where GAO and the IG testified. I must say I am horrified that you are back

here today almost recounting the same set of circumstances within this Department. That is a tragedy for the stewardship of this Department and certainly for the taxpayer of this nation. Is this a question of competency?

Mr. DEVANEY. Congressman, I don't think we are talking about competency. I think we are talking about an issue will come up, there is a whole lot of attention paid to it, but six months later we are on to another issue, both the IG's office, perhaps GAO. We are looking at other things.

We have made recommendations, and it is not until we come back maybe three or four years later and take a look at this issue again that we find, much to at least our dismay, that these recommendations haven't been implemented. People have just stopped caring about that particular issue.

Mr. MILLER. Ms. Nazzaro?

Ms. NAZZARO. We have never really tried to determine I guess why some of these things are happening from the standpoint that you are taking of are the people incompetent other than, you know, in some cases we have talked about a lack of training, and typically the agency does take action and implement training.

I think the other thing we see is that policies and procedures are put in place that a lot of times address our recommendations, but then it is the implementation of those, and I think, as Mr. Devaney said, priorities change and then the agency goes on to something else.

They are continuously being asked to do more with less. Priorities change, and they move their attention to something else. Too often we are seeing——

Mr. MILLER. Who moves their attention to something else?

Ms. NAZZARO. The agency.

Mr. MILLER. The Department of Interior?

Ms. NAZZARO. The Department of the Interior clearly.

Mr. MILLER. Both of you have given us wholesale testimony here department by department—Minerals Management, the National Park Service, the BLM. It appears that every issue has been resolved against the taxpayer of this country. I mean, is this policy then if it is not competency?

Ms. NAZZARO. Let me give you one example.

Mr. MILLER. The leakage that you have outlined in both of your testimonies is just horrifying. I mean, if it is not competency it starts to look like policy or starts to look like criminal activity.

Ms. NAZZARO. Let me give you an example. A year ago I was up before a number of committees testifying on what the Interior, working with USDA, was doing on wildland fire management. We identified that they were developing some key information systems that we thought were critical to developing a strategic plan.

These key data and modeling systems would give them information on the existing situation and what they were going to need to do. A budget allocation tool was one of them. This was the fire program analyses.

Now this year we come back, and we find out that while the agency started all of these activities nothing is nearing completion, and we are even wondering whether any of them are going to be completed because they have just changed their focus, and now

they say well, situations change and so now we are going to take a different tactic.

So they are still trying to address some of the same problems, but the solutions that we felt were near at hand, you know, are no longer being pursued.

Mr. MILLER. Mr. Devaney, in your testimony you talked about the question of political appointees and GS-15s and above and this problem.

What has been done? You know, in the military you do lessons learned. We have had from Jack Abramoff to Steven Griles to a whole host of people in this Department. What are the lessons learned? How do you prevent this from happening?

I know there is a disciplinary board that you talked about. That is kind of after the fact. The cow or the money is gone.

Mr. DEVANEY. Right. That is a shift I have tried to make. In all of our investigations, for instance, we now look for what we call an opportunity to issue a management advisory.

A management advisory at the end of an investigation tries and tells a bureau or the Department how can you prevent this mischief from happening again. How can you prevent this crime from happening again? It is a form of crime prevention.

Mr. MILLER. Do you have any idea what the loss has been when you look across the resources that we lease, we sell, what the loss has been to the taxpayer?

Mr. DEVANEY. No, I don't. I mean, you could certainly roll up all of our—both GAO's and IG's—reports and look at the numbers we have attached to those reports, but it is certainly a lot of money.

Mr. MILLER. It is how much?

Mr. DEVANEY. Well, if you were to add in, for instance, not collecting appropriate royalties it could be in the billions.

Mr. MILLER. Tens of billions.

Mr. DEVANEY. Tens of billions.

Mr. MILLER. A hundred billion. Well, let me stop at tens of billions.

Mr. DEVANEY. Tens of billions.

Mr. MILLER. You know, I really thank you both for your service and your offices for the service because apparently you are all that stand between us and a wholesale criminal conspiracy here.

This agency is really the steward of our culture, our heritage, our history, our natural assets, be they of value for sale or lease or to be admired as among the wonders of the world.

To continue to receive these reports year after year after year raises I think the most serious questions. I have great respect for public servants. I do not use the word criminal lightly, but you cannot have this much leakage going on and this many issues resolved against the taxpayer without some intent, without doing somebody a favor.

Something is very, very wrong in this Department. It is tens of billions, and it may be in excess of $100 billion. Maybe we should add up all of your reports because you just don't get to operate on behalf of the public in the manner in which this Department has been operating.

Thank you, Mr. Chairman.

The CHAIRMAN. The Chair recognizes the gentleman from Tennessee, Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman.

Ms. Nazzaro, I want to ask about something else for just a moment. I remember in 2000 in front of the Forests Subcommittee of this Committee we were told that if we did not have more thinning of the forests, more cutting of trees in our national forests, that there were 40 million acres in imminent danger of catastrophic forest fires.

I listened with great interest when you said that the percentage of acres burned has gone up by 70 percent from 2000 to 2005 as opposed to or compared to the 1990s and that the appropriations for Federal fire fighting has gone from $1 billion to $3 billion. It has tripled.

We got that warning. We get that warning almost every year, yet there are these extremist groups that don't want you to cut any trees. It is hard for me to understand, but how many acres have been burned since 2000? Do you know? You said it has gone up 70 percent. I just wondered.

Ms. NAZZARO. I don't have readily available the exact number. If you would like it, we could certainly get back with you and tell you exactly.

Mr. DUNCAN. I understand.

Ms. NAZZARO. I know we have had a couple years that have been record seasons, so certainly the acreage is pretty significant.

You are right. You know, overaccumulation of vegetation is a primary cause.

Mr. DUNCAN. I understand several million acres, but I didn't know exactly how many. It is sort of sad really.

Mr. Devaney, this activity has been called bureaucratic bumbling under Secretary Babbitt or worse names. Now, I have understood that it amounted to or I have seen estimates of $10 billion, but you are saying that it could be in the many tens of billions?

Mr. DEVANEY. Well, it could be if nothing changes from now and the leases continue to be issued without the price thresholds in them. That is a GAO estimate.

Mr. DUNCAN. You know, in the last Congress we passed out of this committee a bill and passed it in the House that required renegotiation of these leases or mandated the payment of fees.

I do understand that six of those leases have been renegotiated and that others are in the process of being renegotiated. Is that correct?

Mr. DEVANEY. That is my understanding. That is what Assistant Secretary Allred tells me the situation is.

Mr. DUNCAN. So the Department is trying to do something about that problem that this Administration didn't create, but they are trying to fix it even prior to final legislative activity?

Mr. DEVANEY. Yes, they are.

Mr. DUNCAN. Ms. Nazzaro, you said that there has been no payment or a great underpayment of air tour fees in three heavily visited national parks. Which parks were you talking about?

Ms. NAZZARO. The three parks that we were referring to are Haleakala, Grand Canyon and Hawaii Volcanoes National Park. Those are three that have high use of air tour operations.

Mr. DUNCAN. OK. I want to yield the balance of my time to Mr. Pearce.

Mr. PEARCE. Thank you.

Mr. Devaney, my colleague mentioned that you are the only thing that stands between us and wholesale criminal activity. Now, if I get this right, the final rule was made in January of 1998 saying that it did not include price threshold.

Now, this criminal activity we are talking about, there was a sale on February 13, 1998, there was a sale on 7-24-98, there was a sale on 2-12-99, there was a sale on 7-1-99, a sale on 7-14-00.

Who was the Secretary at the time of those sales, and were price thresholds included in those? I am trying to get clear who are the culprits in this criminal activity. Who was the Secretary, and who was the Minerals Management director?

Mr. DEVANEY. I know you understand that I didn't say criminal.

Mr. PEARCE. No, no. You nodded in consent though. You liked the term as a valiant warrior. It felt good.

Mr. MILLER. You shouldn't interpret the actions of the witness.

Mr. PEARCE. I will withdraw those words. I thank you.

Mr. DEVANEY. During that time period, Secretary Babbitt was the Secretary of Interior.

Mr. PEARCE. So am I to understand that it appears wholesale criminal activity occurred and the sales did not have any price thresholds in Sale Nos. 169, 171, 172, 173 and 175?

The last sale occurred then in 2000, and it did have a price threshold, but we have five instances of significant malfeasance when the final view is set. Is that correct? Am I reading that correctly?

Mr. DEVANEY. What I would say is that mistakes were made in both Administrations.

Mr. PEARCE. Thanks. I yield back the time.

The CHAIRMAN. The gentleman from Massachusetts, Mr. Markey?

Mr. MARKEY. Thank you, Mr. Chairman, very much.

Mr. Devaney, your testimony today sheds new and substantial light on one particular area of Interior's mismanagement. The Interior Department has an upside-down system that punishes junior employees while rewarding or giving a pass to senior officials who have been responsible for horrendous errors in judgment and potentially criminal activities and the loss of billions in taxpayers' revenues.

In your testimony today you say you discovered the failure of the Interior Department official to remain at arm's length from prohibited sources is pervasive. Without compromising any ongoing criminal activities, could you please give the Committee more specifics of the most pervasive activities that you would consider to be the worst that you have encountered?

Mr. DEVANEY. Well, I think that list that I mentioned includes some of my answer. I mean, seemingly we are talking about the lack of recognition of what a prohibited source is and then followed by a feeling that it is OK to take gratuities from contractors, prohibited sources, vendors doing business before the Department of Interior.

Some of those gratuities have included the things I mentioned—sporting events, meals, hunting trips, fishing trips, football games, you name it.

Mr. MARKEY. Was this sort of behavior isolated to MMS, or did you find similar practices at other Interior Department agencies?

Mr. DEVANEY. No. I would say this goes across the board.

Mr. MARKEY. Across the board. How were these violations at MMS initially uncovered?

Mr. DEVANEY. Well, quite frankly through doing one investigation you uncover matters that, you know, need separate investigations, and now we are up to half a dozen investigations, so it is talking to witnesses. It is talking to whistleblowers that have come forward.

A lot of the things that have come to our attention we didn't open cases on. On some of these more flagrant violations we have.

Mr. MARKEY. Were any of the individuals who committed these violations given above average performance ratings, bonuses or other preferential meritorious treatment during the same period as the violations occurred? If so, how many?

Mr. DEVANEY. Well, I can't speak to the MMS folks that may be involved in some of that behavior, but in the past it has not been unusual for us to find folks that are behaving badly that have gotten awards and bonuses during that period of time.

Mr. MARKEY. Could you check on those numbers and provide them to the Committee, please?

Mr. DEVANEY. Yes, I will.

Mr. MARKEY. Were any of the individuals who committed these violations given bonus pay during the same periods as the violations which occurred?

Mr. DEVANEY. If you are talking about MMS employees, we are not done with that investigation so I don't have the answer to that.

Mr. MARKEY. When you have that number could you please provide that to the Committee?

Mr. DEVANEY. Certainly.

Mr. MARKEY. You state in your testimony that disciplinary action was taken against fewer than half of the employees engaging in this type of behavior. That statement is shocking and probably is reason enough for the Committee to question Interior officials directly at some point soon.

In addition, you note that the majority of enforcement actions for misconduct were taken against less senior employees, GS-14s and below, and supervisors received less severe punishment for the same misconduct. The double standard reinforces the upside-down system of punishments and rewards that is pervasive at the Department of Interior.

To what do you attribute that in your now investigation of the agency?

Mr. DEVANEY. First of all, there is a decentralization in Interior that I think helps contribute to this. Some of these matters are decided in the western states and out of Washington, D.C., so there is certainly no consistency about punishment.

You can find inconsistent punishments within the same bureau for the same offense sometimes in the same region simply because a different solicitor and a different human resource person was pro-

viding the advice. We have made recommendations to the Department as to how to strengthen that process. I think they have made some improvements in that area.

Secretary Kempthorne and I have talked about this very issue. He is as concerned about it as I am, and he has I think given the appropriate direction to folks to start working full speed in this area, so we will see.

Mr. MARKEY. Well, your report is a blistering, scalding indictment of the way business is conducted at the Department of Interior. It identifies a cozy cooperation between Department of Interior officials and oil and gas and other industries that are supposed to be supervised by the Department of Interior for the benefit of the American taxpayer.

I thank you and I thank the GAO for your reports to us. I congratulate the Chairman of the Committee, Mr. Rahall. This is a hearing which we should have had last year, the year before, the year before. It is long overdue in this committee.

I think that the last Chairman of this committee really let down the American people in not having a hearing of this nature, given the fact that there were so many serious allegations that were out there, and I congratulate you, Mr. Chairman, for making this your first hearing because I think there is a lot more for us to uncover. I yield back the balance.

The CHAIRMAN. The gentleman from South Carolina, Mr. Brown, is recognized.

Mr. BROWN. Thank you very much, Mr. Chairman, and I thank the witnesses for being here today.

I know there has been a lot of grilling you on who was at fault, who did this, who did that. After this hearing, I mean, what action do we plan to take if there has been some wrongdoings? You know, who are we going to charge? How are we going to correct the problem? Do you have a thought on that, either one of you?

Mr. DEVANEY. Congressman, I would say that to date we have issued an audit, and we have issued one investigation.

We have several other investigations ongoing, so leaving those aside for a moment with respect to the audit, as I testified, MMS produced for us in almost record time an action plan to implement our recommendations. They are well underway in trying to address the concerns that we raised in our audit report.

Just yesterday the Secretary delivered to me a letter that outlines the corrective actions he is taking as a result of the investigative report that we issued some time ago, so in both of those instances the Secretary and Assistant Secretary have acted very promptly, and I am delighted with this new approach.

Mr. BROWN. I would just like to add, you know, all the rumors we see going around is we are importing some 60 percent of our petroleum from offshore, and the enemy that wants to really do us in is starting to focus now on the supply lines coming into America.

I am telling you, we have to put political issues aside and get serious about trying to improve our resources on the American soil, whether it is petroleum or nuclear power or whatever. We have to put the political issues aside and get basically back to the real problem that faces this nation.

With that, I would like to yield the balance of my time to Mr. Gohmert.

Mr. GOHMERT. I thank my friend, Mr. Brown. You know, credibility is always an issue. When I was reading some of your testimony I was staggered at some of the allegations because if there is criminal wrongdoing it needs to be rooted out wherever it is.

I am hearing things and I am reading things, and I am trying to get a grasp of your credibility, quite frankly. You said in here that when you came in over seven years ago you had about the exact same number of employees, and you said you have been asking for small increases every year and don't seem to be getting them. You got laughs when you said you get good reception with the Secretary, but something happens when it gets over here.

Well, from the DOI budget documents it indicates in 1999 when you came on there were 238 employees. In 2000 there were 251, an increase of 13; 2001, 253; and in fact now in 2006 there are 261, 23 more than there were when you came in 1999; and for 2008 it looks like there would be 273.

I am wondering. Are you not aware of these additional employees? Do we need an IG to do an IG inspection of the IG? Were you not aware that these employees were there?

Mr. DEVANEY. Sir, I am talking about on board FTEs, the number of people that were on board. I think when I first came on——

Mr. GOHMERT. So these employees are not on board? What do you mean by on board?

Mr. DEVANEY. I am talking about let us go back to 1999 when I came to Interior. I hired up to about 255 or 256, in that area, almost immediately and then probably grew to about 260 that first year. We have gone up, a little up and down, but right now we are about where we were.

Mr. GOHMERT. OK. Do you deny that you have 261 employees right now? Do you deny that?

Mr. DEVANEY. I might not have that many right now, no. I don't think I do have that right now.

Mr. GOHMERT. OK. Thank you. Then you need to get with DOI and do an Inspector General report on their budget documents.

Now, with regard to the mistakes being made you said mistakes were made by both Administrations. Isn't it a fact that the Bush Administration has seen to there being price thresholds in every lease they have negotiated? Isn't that right? Do you need to do another Inspector General report?

Mr. DEVANEY. No. Every one that has been leased after a certain time period does include the price threshold language, yes.

Mr. GOHMERT. That this Bush Administration has negotiated?

Mr. DEVANEY. Yes. Yes.

Mr. GOHMERT. So this cozy relationship with my friend from Massachusetts, this cozy cooperation actually was with Secretary Babbitt's Interior Department. Thank you.

I see my time has expired. There is a lot more to explore here. I yield back for now.

The CHAIRMAN. The Chair will, with the indulgence of the gentleman from Michigan, recognize the gentlelady from the Virgin Islands as she has a plane to catch, so I would like to recognize Ms. Christensen now for five minutes.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman, and thank you, Mr. Kildee, for allowing me to go first.

Good morning to our panelists. I want to thank the Inspector General, Mr. Devaney, and Ms. Nazzaro of GAO for their testimony, especially with regard to the insular areas.

As both of you know, the Subcommittee on Insular Affairs has been reestablished, and I am going to be chairing it. I do appreciate all of the work that the IG and GAO have performed in insular areas and look forward to working with both of you in the future to chart a better course for our U.S. territories of the freely associated states.

Mr. Devaney, going through your testimony and listening to you this morning I really applaud the change that you have made in your office to better improve the workings of the Department and their operations.

Throughout your tenure there have been numerous recommendations made by your office to improve local territorial government accountability of both Federal and local funding. The GAO, on the other hand, in its most recent December report also highlighted problems of accountability in these areas as well.

As I listened to the testimony this morning, I think I have a better understanding of why we are having problems because the Department that has oversight for us is not doing that well either.

Many of our problems involve insular governments being able to account for Federal dollars that we spend as reflected in your reports. Given these and the other problems, I really also think that the Office of Insular Affairs should have enough resources to assist these territories. I don't think that they have been funded to respond, nor have they maximized their efforts.

I know Mr. Devaney knows because we have talked about it, but in the 108th Congress and 109th, due to concerns I had for my constituents and for the future of the Virgin Islands, I introduced a bill to create an independent chief financial officer.

In testimony I was extremely disappointed that the Office of Insular Affairs, in spite of repeated reports from the IG detailing the lack of accountability, they testified against the legislation.

I wanted to ask both of you given the experience what is your reaction to the Office of Insular Affairs testifying against legislation that was meant to create a chief financial officer to balance the books, certify expenditures and account for all Federal and local funds?

You, Ms. Nazzaro, also say that that is something that the office ought to be doing in your statement. Do you think that such a position, something similar to what was created for the District of Columbia, could help the Virgin Islands Government or other insular governments?

Ms. NAZZARO. I am not familiar with the legislation that you talk about or the proposal.

Mrs. CHRISTENSEN. Are you familiar with D.C.?

Ms. NAZZARO. With D.C. and why there would be an objection to this, but we certainly endorse the concept of having a chief financial officer.

The kind of concerns that we have been, you know, finding in the past and the issues that we have raised have been for the greatest

part financial issues. Certainly having somebody like a chief financial officer in charge and being held accountable should certainly be a welcome step forward.

Mrs. CHRISTENSEN. Mr. Devaney?

Mr. DEVANEY. I would concur with that thought. I am equally not familiar with the specifics of your bill or why we would have opposed it, but in general anything that would improve the financial accountability of the insular islands is——

Mrs. CHRISTENSEN. Because your reports go back before the 108th and have continued since the 108th Congress citing the same deficiencies, correct?

Ms. NAZZARO. Correct.

Mr. DEVANEY. Yes.

Mrs. CHRISTENSEN. Mr. Devaney, in putting together your audit reports I would imagine there is a great deal of interaction with local governments, but after the audit have you seen any effort by the Office of Insular Affairs to sit down with the heads of these insular governments and discuss the implementation or work with us to respond to the recommendations of those audits?

Mr. DEVANEY. I have seen some of that. I have seen the current Deputy Assistant Secretary. Mr. Cohen and I have had a number of productive discussions, and I know he has gone out and talked to the island governments about accountability.

He also has been fairly supportive of my efforts to develop a capacity for the island public auditors. In your case it is an IG, but in most of the Pacific islands they are called public auditors.

We have been doing an awful lot of work in terms of training and bringing those auditors to the United States, working with us and sending them back home to hopefully export some of the things we are doing. They have been supportive of issues like that on occasion.

Mrs. CHRISTENSEN. OK. It doesn't seem from your testimony that there has been much improvement, however.

Mr. DEVANEY. There really actually hasn't been much improvement at all, and sometimes I feel like we really don't have to go out and do the audit, particularly one we have done before, because there hasn't been improvement in the ensuing years.

Mrs. CHRISTENSEN. My time has expired. I thank you again for recognizing me and Mr. Kildee for passing to allow me time.

The CHAIRMAN. Thank you.

The Chair recognizes the gentlelady from Washington, Ms. McMorris Rodgers.

Mrs. MCMORRIS RODGERS. Thank you, Mr. Chairman, and I too want to say thank you to both panels for being here today.

I have some questions regarding the Endangered Species Act and some of the inconsistencies in the way it has been implemented, but at this time I think I would prefer to yield my time to our Ranking Member, Mr. Pearce from New Mexico.

Mr. PEARCE. I thank the gentlelady for yielding.

Mr. Devaney, you used the words flagrant violations, and when I read Ms. Carolita Kallaur she was a Clinton appointee during Clinton's Administration, right? Carolita Kallaur was during the Clinton Administration?

Mr. DEVANEY. Yes. Yes.

Mr. PEARCE. OK. Her letter doesn't seem like there is anything to be uncovered here. I think that term got used, uncovered. She simply says in the letter:

"In contrast, because Congress did not mandate the specific element for terms of new leases we did not address it in regulation. Rather, we determined that the specific form of certain elements such as price triggers would be best determined at the time of sale to allow more flexibility on the application form. For notices of sale held in 1998 and 1999, the price trigger language was left out of the notices and the lease documents."

Mr. Chairman, I would request unanimous consent to submit this whole sheaf of letters there that are back and forth.

The CHAIRMAN. Without objection. So ordered.

Mr. PEARCE. In fact, if I could get a staffer to carry this out to Mr. Devaney? This in fact is the letter that did not get included in this document. It seems to be a signal document, that letter.

Mr. Devaney, when it comes right down to the cutting point, the point of impact, you keep using the word mistake. A mistake would mean that there is a policy in place. Can you tell me where, anywhere, that you found that policy written, referred to, hinted at?

I have showed you that the sales, and I am not here to defend the Clinton Administration, but I do not think that there is double dealing on the part of the Clinton Administration. I don't think that there was any apparent criminal activity. I think there was just a conscious decision that the price may never get up to where it was going to get there.

Can you show me where you draw your conclusion, page 5 of your testimony, that a policy was there and a mistake was made because they didn't comply with the policy?

Mr. DEVANEY. The mistake that I have been talking about, the mistake noted in the report and the mistake noted in my testimony since then, is that the one part of MMS felt that the price thresholds were going to be included in the Royalty Relief Act.

Mr. PEARCE. Show me. Where is the documentation of that in this report? Where is the documentation that somebody thought they were going to be included?

Mr. DEVANEY. I believe it is in there, sir.

Mr. PEARCE. Yes. You made the report. Would your staff right behind you not during this time, but during the next time we ask questions, I would like for you to have your staff show me the document where the policy is in place because the whole question between my friends on the other side of the aisle and ourselves is you are saying a mistake was made, which means that there was a policy in place, and I am telling you, sir, that these earmarks, these red deals, are because we have dissected that report, and I don't find where you have referred to a policy.

I do not find one fact, and yet I find continuing things—the notice of rule, the temporary rule, the final rule. Nothing is in there, and yet you say that there is some mistake that kind of slipped through in the black of the night because there is some confusion, and I don't find the confusion. Ms. Kallaur's letter has no confusion. It simply says we made it. I would really like to have that documentation where you say a policy was in place that was ignored.

Mr. DEVANEY. If I could, sir, I really think I never said policy in the report, and I haven't said policy today. What I am talking about is the practice of the Department was to put addendums on these leases that included the price threshold language. In the process of developing the procedures and rules within the Department of the Interior, when the Royalty Relief Act took place part of MMS' management felt like the price thresholds were going to be included in the Royalty Relief Act.

Mr. PEARCE. If I could reclaim my turn, sir. Now you said you never said there was a policy, but this synopsis that comes straight from you and this is early in the document that you dig that up. It says we found that shortly after the inception the Outer Continental Shelf Deepwater Royalty Relief Act of 1995, MMS made the policy decision.

Now you declare this in your statement. Do you document—I want to know how you drew the conclusion that MMS made a policy. Your words, sir, your words, your document, and now you are saying you did not say it. I see the time is exposed, but we can have a shot at this, and if you would get your staff to show me where that policy is, that is a key to the whole discussion here. I do not think that you can show a policy that shows the Clinton Administration to be illegal, to be the criminals that they are being made out here, because you have already said yourself that the Bush Administration included the price thresholds in every single one of their negotiations.

I am not here to defend the administration under Clinton, but I will tell you, sir, I think that you did not do and include everything that should have been included.

Thank you, I yield back.

[The letters submitted for the record by Mr. Pearce follow:]

MARINER ENERGY, INC.

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Gulf of Mexico OCS Region MMS JAN 19 2001 Production and Development

Gulf of Mexico OCS Region MMS JAN 17 2001 Office of the Regional Director

January 12, 2001

BY FED EX NEXT DAY AIR

U. S. Department of the Interior
Minerals Management Service
Gulf of Mexico OCS Region
1201 Elmwood Park Blvd.
New Orleans, LA 70123-2394

Attn: Mr. Chris C. Oynes
Regional Director

Re: **Deep Water Royalty Relief Act Price Triggers**

Gentlemen:

The Deep Water Royalty Relief Act ("the Act") authorized, among other things, royalty suspension volumes for certain deep water leases in the Gulf of Mexico. When applicable, certain price triggers eliminate royalty suspension volumes for the year in which the price of oil or gas exceeds a specified threshold. The Act does not expressly authorize the Minerals Management Service (MMS) to apply the price triggers to "post-Act leases."

Mariner Energy, Inc., was recently informally notified by your office that the MMS intends to collect royalty on some post-Act leases by virtue of a price trigger provision included as an addendum to those leases. This letter is to outline Mariner's position objecting to collection of royalty on these leases and to request a meeting where these issues can be more completely discussed.

Background

In 1995, Congress passed the Outer Continental Shelf Deep Water Royalty Relief Act, codified at 43 U.S.C.A. 1337. Among other things, the Act authorized royalty relief for certain deep water leases in the Gulf of Mexico. Specifically, Congress required the automatic suspension of royalties on all eligible leases purchased in the five years following the date of enactment, so-called "post-Act leases."

The Act also allows qualifying leases in existence on the date of the Act, so-called "pre-Act leases," to apply for royalty relief. If, however, oil or gas prices reach a certain ceiling in a given year, the Act requires the payment of royalties on pre-Act leases. Significantly, Congress did not include price triggers for post-Act leases. The MMS implementing regulations, 30 C.F.R. Part 260, also do not contain price triggers for new leases.

Although not authorized either by statute or agency regulation, the MMS lease form used for the first four post-Act offshore lease sales (Sale 157, Sale 161, Sale 166, and Sale 168) contained

an addendum with price triggers. The MMS removed the price trigger language from lease forms and notices of sale for subsequent sales.

Mariner Energy, Inc., is lessee under several post-Act leases that contain price trigger language. Three of those leases, Garden Banks 179 and 367, and Ewing Banks 966 had natural gas sales in the year 2000.

Discussion

When enacting the Deep Water Royalty Relief Act, Congress expressly conditioned royalty relief for pre-Act leases on oil and gas prices remaining below a certain threshold. Congress placed no such limitation, however, on the automatic minimum royalty suspension volumes given to post-Act leases.

We contend that Congress intentionally chose not to apply price triggers to post-Act leases. Post-Act leases were offered for sale with the promise of minimum royalty suspension volumes to increase leasing activity in the Gulf and, as a result, bonus bids at post-Act sales increased significantly. On the other hand, because pre-Act lessees had already purchased their leases without royalty relief incentives, it was reasonable to impose a suspension of relief thereafter granted by the Act when oil and gas prices are high.

Further, while the Act specifically instructs the Secretary to promulgate implementing regulations, he chose not to include price triggers in the regulations applicable to post-Act leases. The only price triggers are found in 30 C.F.R. § 203.78 which applies to pre-Act leases. By comparison, MMS's recent proposal to extend royalty relief for future leases by administrative means contains express price trigger language.

Finally, the fact that MMS removed the price trigger language from the lease forms and notices of sale after the fourth post-Act sale indicates the agency's recognition that it was not authorized to include the price triggers in post-Act leases.

In summary, it is Mariner's position that price trigger provisions included in post-Act leases are without statutory or regulatory authority and are therefore unenforceable.

Mariner Energy wishes to thank you in advance for your consideration in this matter, and we will be pleased to meet, at your convenience, to more fully discuss the issues.

Regards,

MARINER ENERGY, INC.

Tom E. Young
Vice President – Land

TEY/LJL/jcs

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United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240

FEB 14 2001

Mr. Tom E. Young
Vice President- Land
Mariner Energy, Inc.
580 Westlake Park Boulevard
Suite 1300
Houston, Texas 77079

Dear Mr. Young:

This letter responds to your letter of January 12, 2001, to the Regional Director, Gulf of Mexico Region, on the subject of "Deepwater Royalty Relief Act Price Triggers." Therein, you objected to our intent to collect royalties on certain deepwater leases and requested to meet with us. We will comment on your specific points below. After reading our response, if you should still want to have a meeting, we will be happy to do so. Simply call my office, or that of the Regional Director so we can arrange a site and time.

As you know, the Deep Water Royalty Relief Act (DWRRA) of 1995 provided for suspension of royalties for specified volumes of production for both active deepwater leases issued before passage of the Act and for new leases. As accurately noted in your letter, the Act also specified certain price thresholds that can rescind the royalty suspension volumes for years in which oil or gas prices exceed the thresholds. This past year is the first time the price threshold provisions have been triggered. The average price for natural gas in 2000 is 13.5 percent higher than the threshold. As gas prices were rising dramatically throughout the year, we published on our web site the implication of rising prices on royalty suspension leases. We also spoke to representatives of your company on numerous occasions about this emerging energy situation and its potential effect on suspended royalties. This was to ensure that the effect of higher prices would not be a surprise to your company.

As you know, the Minerals Mangement Service alerts bidders in our proposed OCS lease sale notices about the terms of the deepwater leases offered for sale on which they bid. The Secretary under U.S.C. 1337 and 30 CFR 260 may set and vary the terms and conditions thereof for each OCS lease sale. For your leases in question, the price threshold requirement was noted in the proposed and final Notices of Sale, and more importantly, in the lease documents that you and any joint owner signed. Accordingly, we expect that bidders are aware of the price threshold condition on the royalty incentive before acquiring a deepwater lease and factor the chance of the royalty suspension being unavailable under higher prices when formulating their bonus bid amounts for deepwater leases. Thus, while lease terms may change upon mutual agreement in certain situations, we think that a change now would, among other things, provide a windfall to those who bid on the value of the tracts in the presence of a price threshold. Hence, we cannot re-consider this lease term as a result of the contractual condition now being triggered by rising gas prices.

Despite the price threshold terms in your leases, you now contend that MMS did not have the authority to impose this condition because Congress explicitly specified price threshold language under DWRRA only for pre-Act leases. However, when offering leases with royalty suspensions, the Secretary under the OCS Lands Act (OCSLA), acting through MMS, does have authority to propose various terms and conditions on OCS leases, and hence to apply price threshold conditions for this royalty relief to post-Act deepwater leases as well, as discussed below.

Section 302 of the DWRRA provides a rather elaborate framework for evaluating requests for royalty relief from lessees holding certain deepwater tracts acquired prior to passage of the Act. Within this framework is a provision in Sections 302 (v-vii) for a specific type of price threshold to apply. It stipulated, inter alia, that in any calendar year in which actual oil or gas prices exceeded its associated threshold price (as adjusted for inflation), royalties would be due on the relevant production for that calendar year even if such production were subject to an otherwise-approved suspension in royalties. Moreover, the relevant production in that year would be counted against any remaining royalty suspension volumes.

In contrast, no such elaborate framework was provided in Section 304 of the DWRRA addressing suspension volumes for newly offered deepwater leases. Rather, Section 304 referred back to Section 302 and simply set suspension volumes for leases issued in the1996-2000 period at levels equivalent to those specified for pre-Act leases. For designing the bidding system and specific terms of sale for these deepwater leases, Section 304 requires MMS to use section 8(a)(1)(H) of the OCSLA, as amended by Section 303 of the DWRRA. The amendment in Section 303 not only provides us the general authority to utilize royalty volume suspensions in future OCS sales, but also states that the "**suspensions may vary based on the price of production from the lease.**"

Thus, the DWRRA actually provided MMS with even broader authority to specify or tie the amount of royalty suspension volume to price conditions for new leases. In practice, MMS chose to use the same price threshold for new leases as Congress mandated for active ones. This was partly to ensure administrative efficiencies when leases are unitized. Congress did not mean to omit specific price trigger language for new leases because it didn't want MMS to use them. Instead, Congress provided broader authority for MMS to use or not use price triggers in a form we determined would be appropriate and consistent with the objectives of the Act. This observation is also true for other terms and conditions of sales held during the 1996-2000 period.

You have also stated that certain actions by MMS in promulgating the implementing regulations and lease notices indicate that MMS recognizes that it lacks authority to include price triggers for post-Act leases, but this is not the case. For interim regulations immediately following passage of the Act, MMS addressed price thresholds for active leases because Congress had mandated the specific elements. In contrast, because Congress did not mandate the specific elements for

Mr. Tom E. Young 3

terms of new leases, we did not address it in regulation. Rather, we determined that the specific form of certain elements such as price triggers, would be best determined at the time of sale to allow more flexibility on their application and form.

For Notices of Sales held in 1998 and 1999, the price trigger language was left out of the notices and lease documents. This was within the discretion of MMS and the Secretary. Moreover, the threshold was reintroduced in subsequent sales. Therefore, it is incorrect for you to conclude that the omission of price threshold language from an earlier version of MMS's regulations or certain lease sale documents is germane to the question of MMS's authority to include price triggers with royalty suspension for post-Act leases.

We can understand that lessees are not anxious to have royalties due when price thresholds are actually exceeded. However, the intent of DWRRA, and MMS policies implementing it, were understood similarly by all stakeholders from the outset—i.e., to provide sufficient financial incentives to promote deepwater activity under certain conditions, with oil and gas prices being an explicit consideration. We believe Congress included references to product prices and specific price thresholds in the Act to protect interests of the Treasury for those years when prices rise to levels where the royalty incentive is no longer needed or appropriate, and in instances where MMS's authority to set terms and conditions unilaterally, i.e., for active leases, is less flexible than for new leases.

In general, when oil or gas prices rise significantly relative to historic trends or price expectations, the profit gains to the lessee far outweigh any royalties due the government as a result of the price threshold terms. It is reasonable that the nation, as owner of the mineral resources, should participate in the revenue benefits of the price gain, as it was willing to provide the financial incentive when needed to promote the development of the resource at lower prices.

We appreciate your interest in our program and your willingness to share your concerns with us. But, we see no reason at this time to change our position concerning the application of price threshold terms in post-Act deepwater leases.

Sincerely,

Carolita U. Kallaur

Carolita U. Kallaur
Associate Director for
Offshore Minerals Mangement

The CHAIRMAN. The gentleman from Michigan, Mr. Kildee.

Mr. KILDEE. Thank you.

Mr. HINCHEY. Mr. Chairman, can we have a response?

The CHAIRMAN. Yes. A main response.

Mr. DEVANEY. My staff has just pointed out to me that witnesses said there was a policy but that it was not written down, so if there is a reference to a policy it makes reference to a witness interview that probably is included in that report where a witness said we had a policy and then when the question was asked by our investigators, was it written down, the answer was no.

And in fact the Solicitor and I have had conversations; he has been desperately trying to find a policy and he cannot find one.

You know, there was a practice, as I mentioned earlier, to put addendums onto the leases. As I said there was a policy, but it was

never written down so there was no official written policy of the Department of Interior.

The CHAIRMAN. The gentleman from Michigan, Mr. Kildee?

Mr. KILDEE. Thank you, Mr. Chairman.

Mr. Devaney, in your testimony you said in the last two years alone we have uncovered golf outings, dinners, hunting trips, concert tickets and box seats at sporting events being accepted by DOI officials from prohibited sources.

We have also chronicled exclusive access and special favors provided by DOI employees to select outside entities, all of which are at a minimum a violation of standards of ethical conduct for employees of the Executive Branch. This has been referred to the Justice Department?

Mr. DEVANEY. Yes. It is our practice to refer all of them to the Justice Department.

Mr. KILDEE. And have there been any indictments or convictions yet as a result of these events of taking from prohibited sources?

Mr. DEVANEY. No, sir, there haven't been, but many of these things are still under investigation.

Mr. KILDEE. OK. You mentioned that all that has been done so far then, but they have been referred to the Justice Department, is that they were directed to take ethics training, and they were also scolded.

In the Congress we take these things more seriously for our own Members. We have at least two Members now who are in the Federal penitentiary for having done similar things here. Do you anticipate or do you have any idea what the Justice Department may do to anticipate any indictments coming from these actions which were similar to some of the actions that the Members of Congress were put in the Federal penitentiary for?

Mr. DEVANEY. Well, I can only say, sir, that our practice is to work with U.S. Attorney's Offices and main Justice early on in the investigations so that they are with us the entire investigation as we develop these things.

I mean, I think there are a lot of reasons why matters such as these it might be decided by the Department to take them criminally, and it might be decided by the Department to allow the Department of Interior to take some administrative action.

My real concern is when the Department of Justice decides not to take criminal action and it comes back to the Department of Interior to take corrective administrative action that often times that corrective action is a reprimand or counseling or two hours of ethics training, which in my mind is not enough of an administrative action.

Mr. KILDEE. When we talk about tens of billions of dollars, that is a mighty sum and it may be much more than that.

It seems to me when it comes to tens of billions of dollars—and I know this number and how much one official may be responsible for is not easy to ascertain right now—but with tens of billions of dollars, ethics training is kind of a mild way of dealing with this.

We can't ask them that, of course, but I would hope that some subscribe to the Ten Commandments that say thou shalt not steal. You have tens of billions of dollars, of taxpayers' dollars, and they

are responsible in some way for that. To my mind that is a violation of thou shalt not steal.

I would hope that the Interior Department would really urge the Justice Department to go after these people just as they went after Members of Congress for doing similar things. I think this would send a great message not only to the Interior Department, but everyone in the Executive Branch.

I have been here for 30 years. I have served with six Presidents. None of them have been saints. None of them have been totally sinners. I think that we need to send a message to the Executive Branch that we are not going to tolerate stealing from the taxpayers.

I would hope that the Interior Department and the other branches of government involved in similar matters like this would urge the Justice Department to pursue this in a criminal matter.

I yield back the balance of my time. I would be happy to yield to you.

Mr. MARKEY. If I may, just to get back to Mr. Pearce, we agreed that the Clinton Administration made a mistake. We agreed.

What we are trying to understand is why Johnnie Burton continues to refuse to ask for additional leverage that will make it possible for her to renegotiate these leases or to impose a fee and in fact is saying she does not want legislation to pass——

The CHAIRMAN. Would the gentleman yield?

Mr. MARKEY.—which will give her that ability. This goes right at the heart now of a problem, a mistake identified, tens of billions of dollars at stake and Johnnie Burton and this Department of Interior continuing to say they oppose the legislation which would give them the leverage to recollect tens of billions of dollars that could be used for other purposes.

That is what this is all about. That is the heart of the question. We concede that it was a mistake during the Clinton Administration. What we want to know is what this Administration is going to do to correct the mistake. They are saying we don't want the authority to be able to collect the tens of billions of dollars. That is the heart of the question.

When we get an answer to that from the Bush Administration then we will know that they are serious about this problem.

The CHAIRMAN. The gentleman from Texas, Mr. Gohmert, is recognized.

Mr. GOHMERT. Thank you, Mr. Chairman. I do appreciate your having this hearing. These are good things.

To follow up on my friend from Massachusetts talking about a mistake, you have mentioned a mistake. Mistakes were made by both Administrations. Well, we have to get to the bottom of it. Actually leaving out the price thresholds was only done during the Clinton Administration.

If I put on my old judge hat, if you have a mutual mistake it is a basis for rescission and renegotiating the contract. If you have a matter of fraud, it is a basis for redoing the contract, so I am still troubled.

If it's not a mutual mistake, then you have problems renegotiating, but looking at page 7 of your report it looks like you have

some good leverage here to go forth and find that there may have been fraud.

You have three people listed here. According to John Rodi, R-O-D-I, the supervisor of Gulf of Mexico sales, to me not a low level employee either, but he said that he was directed to remove all royalty suspension language and also to no longer attach the addenda containing the royalty relief restriction. He gave three names there that you put in your report as who may have directed that. He couldn't remember, but it was one of the three.

Now, having been involved in criminal investigations before, man, if you can get something narrowed down to three suspects you have a great case to work. You have it narrowed down to three suspects, and if there was fraud involved I don't care what Administration hired them, what party they may vote for. If there is something worthy of prison, prison ought to happen just like it did with Duke Cunningham. That was worthy of prison.

I want to know why do you keep saying it was a mistake when you have three suspects here who according to this one person in your report says these people directed him to take it out? That is not a mistake. Somebody had a premeditated thought and told him to take it out, leave the addenda out.

I want to know why has that not been investigated so we could pursue the issue of fraud? As my good friend Mr. Kildee pointed out, the Ten Commandments ought to be coming into play. People shouldn't be allowed to steal, and if anybody from any Administration is doing that they ought to be held accountable.

I am just concerned that when you came in, in 1999, maybe some of these folks, maybe because you were coming in, the Clinton Administration—I don't know, but just seeing, you know, basically potential almost criminal activity from Bush, and then we are giving this pass when we have a case here that ought to be made. Would you explain why this has not been pursued?

Mr. DEVANEY. Sir, we did pursue those three people. In one case we interviewed the gentleman. Let us just call them Gentlemen A, B and C.

Mr. GOHMERT. I think that is fair because two of them didn't do it.

Mr. DEVANEY. Gentleman A cooperated with our investigators, gave a statement, took a polygraph, passed.

Gentleman B has been cooperative before, was cooperative this time, gave a written statement. There is a body of evidence outside of just talking to him that suggests he was telling the truth, so that is Gentleman B.

Gentleman C is no longer employed by the Department of Interior, and we attempted to talk to him on two occasions. Quite frankly, he is just not capable of being talked to, so we are left with a very uncomfortable situation of not knowing which of these three people told that first gentleman, Mr. Rodi, to take it out.

Mr. GOHMERT. OK. My time is running out. Have you followed the money? Are there any ties between this cozy cooperation potential between the oil and gas industry and any one of these three? You know that is where you go. Have you looked at that?

Mr. DEVANEY. The investigators looked at that and could not find any evidence of that.

Mr. GOHMERT. How far have they looked into it?

Mr. DEVANEY. Well, they did the normal investigative practice.

Mr. GOHMERT. Do they have the power to subpoena?

Mr. DEVANEY. Absolutely. Bank records.

Mr. GOHMERT. And has any of this been turned over to DOJ to pursue?

Mr. DEVANEY. We talked to DOJ about this case from day one and worked with them the entire way, so in essence my investigators were taking direction from DOJ all during this matter.

Mr. GOHMERT. You said you have 10 agents that are working on the Abramoff matter. My experience is when the FBI comes in they put the lid on everything and it is hard to get anything done.

What are these 10 agents doing? You said yourself a while ago that when DOJ takes an action you have to wait until it comes back to you to go forward. What are those 10 agents doing while the DOJ is doing this Abramoff case?

Mr. DEVANEY. Well, the Abramoff case is being worked by a task force of FBI agents, my agents and IRS agents under the direction of the Department of Justice. That has been the case for three years.

They are working round the clock on that investigation. There have been some results that have become public, and there are more results to come.

Mr. GOHMERT. I would hope so. Thank you.

I yield back.

The CHAIRMAN. The Chair recognizes the gentlelady from California, Ms. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chair.

Sorry I came a little late, but I have a slew of questions. I will dump them on you, and then those that you can't answer I would appreciate an answer in writing if you would.

I am listening to this, and it is hard to believe that this is continuing to happen. Mr. Devaney, you called it mischief. I am sorry. This is not mischief. This is total fraud and abuse of the taxpayers' money.

You say that you have had prosecution. How many? How many more are expected? Is there any expectation of recovery of some of the money from the individuals who may have taken these trips illegally, that may have abused some of the agency's standards?

Do your employees take ethics classes like all of our employees? Do they sign a conflict of interest and report their income and from what areas, their holdings? All of those questions I would like to have answered.

What are you doing to pursue the refund, if you will, the recovery of lost revenues? I totally agree with the gentleman that we need to be able to not just have your investigators involved, but the Department of Justice, the FBI, if that is what is necessary because you are talking about possibly more than $1 billion. You are talking about money that could be well utilized in other areas to do the services that are required by you as steward of the natural resources of this country.

The issue of the scolding of the employees. Do they get a salary decrease because they are not complying with the standards of

ethics that is required of every single Federal employee? Those are just for starters, and then I have some others.

You state on page 2 that you try when you can to focus on high risk or high impact issues that touch upon multiple bureaus. Have you considered whether the Bureau of Indian Affairs, the National Park Service and the Bureau of Reclamation are fully cooperating to protect the public from possible failure of unsafe dams? How safe are the dams under the jurisdiction of these agencies? That is Question 1.

Question 2, page 15. In your statement you refer to an estimated $850 million backlog of maintenance on Bureau of Indian Affairs irrigation projects. Since water supplies are often a key component of claims made by tribes against the U.S. Government, isn't the Secretary placing his trust responsibilities to the tribes at risk if this maintenance backlog is not eliminated?

Question 3. On page 6 of your statement you refer to security risk and protection of our national icons and dams. Specifically with regard to dams, has it been possible to determine whether fully secured facilities can be guaranteed if project water and power users are held responsible for security costs?

I don't expect you to remember all of them, but certainly you can give it a try.

Mr. DEVANEY. Let me talk about dams just a minute. You know, we did an assessment of dams in 2005, and much to my delight it came out very good. The Bureau of Reclamation has provided a consistent level of security for the dams that was very impressive and in sharp contrast to the assessment of the national icons, the monuments on the mall, the Statue of Liberty.

We were very impressed with what BOR had done. We made some minor recommendations. They have since embraced those recommendations, so I think the situation with dams has been very thoughtfully done, and to the extent that security can be provided in this day and age I think it is being provided, particularly to the dams that BOR oversees.

A number of the issues you raise are probably questions that are more appropriate for the Department officials to answer for you rather than an IG, but with respect to the resources deployed in criminal investigations we work with the FBI all the time. Some cases we do jointly. Abramoff would be a good example of that. Some cases we do separately.

They work on cases on Department of Interior officials without us. We work on cases on Department officials without them. It is a matter of coming together. I have a good, solid relationship with the hierarchy of the FBI. We come together. We decide the division of labor, the utility of us working together or not. Often times, almost all the time, we are working with DOJ. Often times DOJ will suggest a division of labor.

All of those concerns that you might have about that I think you should feel comforted that those kinds of discussions are going on and those relationships exist between my office, the FBI and the Department of Justice.

Mrs. NAPOLITANO. OK. I will submit these questions, and hopefully you will get your other individual areas to respond.

I am out of time. Thank you. I would like to have a second round.

The CHAIRMAN. The gentleman from Nevada, Mr. Heller?

Mr. HELLER. Thank you, Mr. Chairman. My questions surround wildfire management, but due to time constraints and the direction of today's hearing I would yield my time to the Ranking Member, Mr. Pearce.

Mr. PEARCE. I thank the gentleman for yielding.

Mr. Devaney, when we last spoke we had kind of interrupted. You were just getting to the point of saying that we had not a written policy, but a policy that was in fact not written down, a policy of innuendo you might say.

Is that going to stand up in court? Do you think that the challenges to that unwritten policy will stand up in court?

Mr. DEVANEY. I am not a lawyer, sir, so I don't really know.

Mr. PEARCE. OK.

Mr. DEVANEY. I mean, I have had discussions with the Solicitor, and——

Mr. PEARCE. That is fair enough. If you are not a lawyer, I won't ask you. I suspect that it probably won't.

You have a quite impressive résumé, and I do appreciate your service. In your years of IG work, how many unwritten policies have you had to interpret like this?

Mr. DEVANEY. We have come across a lot of unwritten policies at the Department of Interior.

Mr. PEARCE. OK. Fair enough. You would say that to be in the hundreds or thousands?

Mr. DEVANEY. No, I wouldn't say hundreds, but perhaps a dozen or so.

Mr. PEARCE. Twelve? Twelve unwritten policies?

First of all, let me flip this chart around. My good colleague and friend from Massachusetts had wondered why the Bush Administration doesn't really want to renegotiate. Once these contracts or once these sales are made under the Clinton Administration, people put money into these. This is probably a $1 billion to $2 billion investment.

As a business, you can live with any cost structure, but you have to know it going in. You make decisions. It is just a mathematical calculation. For instance, people wonder why Exxon is not a major player offshore. They put billions of dollars in a few of these platforms, and they ended up with dry holes. Exxon got burned deep enough that they didn't want to go back.

What we are doing now is we are going to renegotiate these contracts. People signed them in good faith, and I don't think there was a mistake made. I think that Ms. Kallaur's letter was accurate; that we made decisions not to include the price thresholds. I think it is because they believed the price would never go up.

The documents at the time were screaming that we are aflood in oil. In fact, the belief was the price was going to go down to $5. Now, they made a calculation. It was a bad judgment. What you are going to do is renegotiate those billion dollar investments, some of which won't ever pay off. What you are going to do is you are going to cause people to quit putting their money in them because of your testimony.

I really worry about that because if we don't drill that well, if we don't put those billion dollar investments in, what is going to

happen is we are going to start importing more and more oil. We are going to shut those things down.

If that is what this Congress wants to do, that is fine, but I don't think the Clinton mistake was unethical. I do not think there were some shenanigans. I don't think there was the deliberate malfeasance. I think they made a judgment.

Now, you declare it to be a mistake and yet you are having a significant discussion. You can put the slide down. You had a significant discussion with Mr. Gohmert talking about the three individuals. You even knew them, A, B and C, and you even knew the circumstances in referring to the Justice Department.

Now, those are not mistakes. Those are deliberate acts. When you start using the terminology deliberate and that two have cooperated and C hasn't, that he is not capable, you have thought yourself in the bottom of your heart that it was a mistake, but it was instead deliberate, and yet not one time in this report, this great, big report, not one time do you give us that balancing opinion. Instead, your whole testimony is that it was a mistake, it was a mistake, it was a mistake, it was a mistake.

You took sale after sale after sale by the Clinton Administration and never once gave the alternative view that these appear to be deliberate. You instead say it is a mistake, and now it should be corrected. What you are going to do is you are going to cause people to lose money and get burned so bad in the Gulf that we are going to start importing more oil and not less oil, and that, sir, I am not sure we can declare as a positive service to the country.

Thank you. I yield back.

The CHAIRMAN. The gentleman from Arizona, Mr. Grijalva, is recognized.

Mr. GRIJALVA. Thank you, Mr. Chairman, and thank you very much for this hearing. It is compelling, disturbing, but very necessary. I appreciate very much, Mr. Chairman, this committee reengaging in its oversight responsibility.

Let me, if I may. Both IG and GAO have documented instances in which the appraisal process in the Department of Interior failed to meet accepted appraisal standards. Can either of you comment on the quality of the appraisal process within the Department not only for land sales, but exchanges and other transactions as well?

Why does this continue to be a problem, and what impact do nonstandard appraisal practices have on the value the American public receives for sale or exchange of its lands?

Back home in another life when I served as a county commissioner this was a constant problem, the appraisal process. You see it replicated at a much higher level here at the Department of Interior, so if either one of you can comment on that question I would appreciate it very much.

Ms. NAZZARO. To get to your last question, we recently did some work on BLM's land appraisal services, and while we do commend the Department of Interior for creating ASD and consolidating those functions so that it is no longer the program offices that are doing the appraisal review functions and we now have an independent reviewer. Certainly we feel that was a step in the right direction.

However, we do feel that there is a need for stronger compliance with standards, and there are very spelled out appraisal standards that need to be complied with. If you don't have compliance with that, you have no assurance that the lands are being appropriately valued and that the taxpayer then is being well served.

The biggest problem we saw in our most recent work was where you needed to have a technical expertise. Say the property had water on it or was a forested land. You needed to have some understanding of how you value properties with those kind of assets. The appraisal reviewers and the appraisers themselves in these cases did not have that expertise, so it brought into question then the accuracy of the appraisal itself without that expertise.

Mr. DEVANEY. Congressman, I was very pleased when former Secretary Norton put together a group of people to look at appraisals within the Department. It followed a couple of disturbing reports that we issued about land appraisals.

They worked very hard and put together a program where they have an appraisal office not at the Department of Interior, and from what we were seeing at the time was eight different bureaus, eight different appraisals and eight different approaches to appraisals.

This new office purports to try to have one appraisal process and brings a degree of transparency that was not present before, so we hope it works. I welcomed the GAO look at it recently, and I know the Department is looking at their report.

Mr. GRIJALVA. Thank you. The other question has to do with the maintenance backlog with our National Park Service. There was a commitment made in 2000 by the President that we would lower that. The backlog was at $5 billion, and within five years we would eradicate that backlog.

Three years later your GAO report estimated again that it was still at $5 billion. Is GAO able to estimate the current size of the backlog—I know you mentioned between $9.6 and $17.3 billion—that is facing the National Park Service? Are we any closer after seven years to really addressing that issue of retiring that backlog?

Ms. NAZZARO. The numbers that you were citing actually came out of a recent report that our group on physical infrastructure did and giving the range. They were looking primarily at facilities and associated infrastructure, so it did not include things like roads.

Actually for the Park Service itself we have our most recent work was about a year ago, and we did continue to put the $5 billion number in there. We have not looked at backlog maintenance per se as to the accuracy of that number, but that is the number that we continue to estimate for the Park Service.

Mr. GRIJALVA. One quick question if I may for Mr. Devaney. The state of tribal detention is very disturbing. Seventy-nine percent of those facilities are well below the minimum for staffing and infrastructure.

The President's current budget has $16 million for combating methamphetamine and $16 million for staffing of law enforcement personnel and training. Do you feel this request includes adequate funding to satisfy and address the needs in Native American detention facilities?

Mr. DEVANEY. I think it is a huge step forward, and I think it is a welcomed step. They have continued problems there, really serious problems, and staffing is in large part the cause of it.

It is not always the problem of having the money or the staff position. It is sometimes finding people to fill those positions and go to some of the remote areas. It is a difficult proposition, but this is a good step. It is a good thing, and I am eager to see if it helps as it should.

Mr. GRIJALVA. Thank you.

I yield back, Mr. Chair.

The CHAIRMAN. The gentleman from Idaho, Mr. Sali, is recognized.

Mr. SALI. Thank you, Mr. Chairman.

Mr. Devaney, with respect to the rule that was enacted and the five leases that Mr. Pearce talked about, I understood your testimony earlier that all that took place during the Clinton Administration DOI under the Clinton Administration. Is that correct?

Mr. DEVANEY. I believe it is, yes.

Mr. SALI. And with respect to those leases, yes or no, was there any criminal activity on the part of anybody in the Department of Interior with respect to any of those leases or the enactment of that rule?

Mr. DEVANEY. No, based on our investigation.

Mr. SALI. With respect to those leases and the enactment of that rule, was there any violation of policy, written or unwritten, on the part of the folks in the Clinton Administration DOI?

Mr. DEVANEY. To the extent that policy is unwritten, that is not a healthy situation. I have used and will continue to use that a mistake was made. I truly believe a mistake was made.

Mr. SALI. I didn't ask you if a mistake was made. I asked you if there was a violation of policy.

Mr. DEVANEY. A violation of policy in my mind would presume that there was written policy, and there wasn't any so no.

Mr. SALI. OK.

The CHAIRMAN. Would the gentleman from Nevada yield on that question?

Mr. SALI. I would yield.

The CHAIRMAN. Yes?

Mr. SALI. Yes.

The CHAIRMAN. I am sorry. Idaho. I am sorry. I apologize.

You know, I have been quiet during this whole question of whether there was a policy in place or not. That seems to be not the issue here. There was a practice in place, and those leases issued in 1996 and 1997 where a threshold was put in place through an addendum the statute was enforced.

It was in those 1998 and 1999 leases where that practice did not continue and no thresholds were put in place, and once that was discovered in the year 2000 the thresholds were replaced again, reinstituted through an addendum, again enforcing the statute. That happened only after it came to light through various press accounts that the thresholds were not in place on these 1998 and 1999 leases.

Whether there was a policy or not, there was a practice in place, and now I understand there is even a lawsuit in place, that Kerr-

McGee is instituting a lawsuit. Their lawsuit questions the MMS authority to set these price thresholds from the entire period, 1996 to 2000, and depending on the outcome of this litigation preliminary estimates of MMS indicate if Kerr-McGee is successful we lose another $60 billion in lost revenue. It seems to me that the point being made on the Minority side is arguing in favor of the Kerr-McGee lawsuit.

I yield back to the gentleman.

Mr. SALI. Reclaiming my time, Mr. Chairman.

Mr. Devaney, you would agree that the U.S. Government is bound by the law of contract in this country, wouldn't you?

Mr. DEVANEY. In a general sense, yes.

Mr. SALI. Well, it seems to me, based on the documents that are in front of you, that there was a conscious decision to leave out this addendum dealing with these royalty payments.

As opposed to the notion of stealing that was suggested by one of the Members, it appears to me that in an era when we had very low prices for crude oil a bad deal was made. Isn't the United States bound to that bad deal because we have contracts in place in the form of these leases?

Mr. DEVANEY. Sir, I suspect that will be a matter of litigation at some point. I really don't have any basis to——

The CHAIRMAN. Would the gentleman yield?

Mr. Sali. Serious charges have been made here today, and serious charges are made in your report. You have said today to me that you don't think that there was criminal activity involved. There was no violation of any policy.

There seems to be some kind of practice, which was not followed in this case and apparently was consciously not followed. So aren't we just stuck with a bad deal that was made during the Clinton Administration?

Mr. DEVANEY. That may be the case, yes.

Mr. SALI. Thank you.

Mr. DEVANEY. That may be the case.

Mr. SALI. I would yield the balance of my time to the Ranking Member.

Mr. PEARCE. Yes. And in response to what the Chairman says, the Clinton Administration did find out. He says on July 20, 2000, the Clinton Administration reinstituted it. Doesn't it make sense that if they discovered this loophole that was there that they would go back and redo the five sales prior to that if they really discovered the loophole?

It looks more like there was a conscious decision to put price supports in. The price fell. The world got awash in oil. They made a conscious decision on five sales they didn't think the price was ever going to get up to $28, and then when the price started banging back up toward that then in 2000, but never once did the Clinton Administration decide to go back and recalculate. They are still in power. It is not the cronyism with the oil companies that we are alleging against the Bush Administration.

If you could address why if the Clinton Administration discovered it—in the last sale in the whole timeline of sales it is there—how did you reason that in your mind that it was a mistake?

Mr. DEVANEY. When that employee found out about it, and I would not describe him as a senior member of MMS. When he found out about it he brought it to the attention of his supervisor.

I think there was consultation with the Solicitor's Office, and at that time they rendered the opinion or a particular solicitor rendered the opinion—a solicitor/ attorney, not the Solicitor rendered the opinion—that it was too late, that that could not be fixed, those leases that didn't have it, but they then began to put the threshold language back in.

The CHAIRMAN. The gentleman from California is recognized, Mr. Costa.

Mr. COSTA. Thank you very much, Mr. Chairman. I, too, commend you for this hearing. As the Subcommittee Chairman of this subject matter, I hope we will continue to work on this in further detail because I think today is the beginning, but obviously much more work needs to be done.

A couple questions that relate to your testimony, Mr. Devaney. You talked about a smoking gun, but you talked about no evidence of omission of price threshold was determined.

Then in your reference to the questions from the gentleman from Texas about Mr. A, B and C, in your opinion do you believe that there was any or has been any criminal intent?

Mr. DEVANEY. We found no evidence of criminal intent. Even if A, B and C, one of them had told Mr. Rodi to leave it out I still believe that they were under the impression that by leaving it out it would be included in the Royalty Relief Act, so it would have been included.

Even if we were to identify the individual that had actually told——

Mr. COSTA. So you don't believe there was criminal intent?

Mr. DEVANEY. No, I don't.

Mr. COSTA. OK. As it relates to the Chairman referred to as a practice, a practice that was applied and not applied, in effect does this become a de facto policy in your opinion?

Mr. DEVANEY. It was certainly the practice at the time, as stated earlier.

Mr. COSTA. OK. We have established for the point that at the time it was the practice. I think looking back at the past is instructive as it relates to where we are today, but I am also very focused on where we move forward because of the current circumstances.

What do you think is the most significant obstacle in getting Mineral and Management Services back on track as far as the audits, the compliance activities that are concerned?

Mr. DEVANEY. Well, as I said earlier, I think we have to look at the whole issue of where audits are done at Interior. I also mentioned I am not particularly anxious to take that function on, but——

Mr. COSTA. But it seems like it might be a good area for us to begin with the Subcommittee, don't you think?

Mr. DEVANEY. It is an interest, I think. The time has come to reconsider that issue, yes.

Mr. COSTA. And my final question. As we know, steps are currently being taken to remedy the situation with Mineral and

Management Services to include price thresholds in terms of deepwater leases that were issued in 1998 and 1999.

Mineral and Management Services I understand has determined that an independent panel should be convened to review those procedures and processes surrounding the management of the mineral revenue that is estimated I guess in this testimony could be as much as maybe $10 billion. What are your thoughts on this?

Mr. DEVANEY. That any independent body looking at this situation can have something positive to add, and I would welcome their views.

Mr. COSTA. $10 billion is positive, I would guess.

Mr. DEVANEY. Yes.

Mr. COSTA. Well, we will continue to work with you. We appreciate your cooperation.

I have some other questions that I will submit at a later time, Mr. Chairman, and I give back the balance of my time.

The CHAIRMAN. The gentleman from Maryland, Mr. Sarbanes?

Mr. SARBANES. Thank you, Mr. Chairman. Thanks for holding this hearing.

I have not been in Congress more than six weeks now so I am new to this, but there is a theme emerging in all the hearings just about I have participated in so far, and that is a significant lack of accountability at the highest levels.

You know, whether we are talking about $10 million of cash that was sent overseas to Iraq for foreign ministries that is unaccountable for, $10 million in questionable contractor costs in that context, whether we are talking about $10 million in unwarranted royalty relief, my head is exploding with the sheer volume of this and magnitude of it.

Before I came here I spent a lot of time working with healthcare organizations, in particular at times with respect to compliance programs that the Office of Inspector General for HHS requires those institutions to implement.

There are a lot of technical requirements that an organization needs to adhere to, but the bottom line understanding that I came away with is that no compliance program will ever work if you don't have a buy-in right at the top and leadership that sets the tone for the organization at its highest levels. It becomes easier as you move down the chain to look the other way on things that matter and on accountability.

I would just like you to speak with respect to the Department of the Interior based on these reviews that you have done, and you have spoken to this somewhat so I am asking you again to describe where you think the most significant source of breakdown in accountability was. Was it a resource question, was it a competence question, or was it a leadership question in terms of setting the tone?

Mr. DEVANEY. Let me make two distinctions between now and—let me speak to that first.

Now Secretary Kempthorne has signaled in a host of ways his intention to change the culture of Interior and at least try to change the culture of Interior during his tenure as Secretary. He has issued ethics memos to all employees. He has done tapings on ethics that go out to the entire Department.

He has created, most importantly I think, an accountability board to review decisions made at a lower level if there is any controversy as to what the administrative punishment is, so I applaud him for those efforts.

He has taken all of my suggestions in both the audit and the investigation I have proffered so far in the MMS matter to heart and has directed the Department to implement my recommendations, so I couldn't say enough positive things about the direction this problem seems to be going in.

When I have talked about some of the things I have done today, it has been an historical look back over the last two or three years that has not been so good. The Abramoff investigation, for instance, may in fact color some of my view about the culture that was at Interior that would allow someone to come into the Interior and try to influence things as he purportedly did, so I think times are changing for the positive, and that is a bit of good news.

I think people now understand that if somebody takes meals, gratuities, golf that a punishment of attending ethics training for two hours just doesn't cut it. I think there is a recognition of that right now, and I am hopefully optimistic, as I suggested, that this is going to change.

Mr. SARBANES. Does the Department of Interior have any particular vulnerabilities to this kind of a culture of lack of accountability that you would identify?

I mean, are there any ways in which it is sort of uniquely vulnerable to the kinds of accountability issues that we have talked about when you compare it to maybe some other agencies out there? Maybe not uniquely, but things that you would point to as special characteristics that require a particular vigilance and particular accountability measures to be in place.

Mr. DEVANEY. I think so. As I have thought about it, one way to look at it is that outside of money—let us say that that is over at Treasury—everything else that somebody would want is at Interior. Oil, gas, minerals, land, water. All the commodities outside of money are there at Interior.

There is a lot of money at stake, and when there is a lot of money at stake my background suggests to me that bad people will show up eventually, so I think the extra vigilance at the Department of Interior is necessary.

Mr. SARBANES. Thank you.

The CHAIRMAN. The gentleman from New York, Mr. Hinchey.

Mr. HINCHEY. Thank you very much, Mr. Chairman. I appreciate your holding this hearing. I think it has been very interesting and very valuable.

I want to also express my appreciation to both of you for the work that you have done and continue to do. I think it is very important to all of us here in the Congress, and it is certainly important to the American people. I thank you for it.

The door was opened to these no royalty leases back in 1995 when the Congress passed an energy bill which provided that opportunity. It struck me at the time as being very odd that we would encourage the consumption of a finite resource by encouraging people to go get it and not having to pay anything for it to the people who owned it, which were the public of this country.

It seemed to me very bizarre. That was one of the reasons why I voted against that particular bill. That seems to me to have opened the door for these leases that were given out in 1998 and 1999.

When was it that this issue of no royalty leases came to the attention of the Secretary of the Department of the Interior here in Washington? I believe you said earlier in your testimony that the information about this was confined to Denver for a long period of time. Can you give us a little timeframe on that, how it evolved?

Mr. DEVANEY. Well, I think there was a deliberate effort on the part of the lady that was mentioned earlier that is now deceased to prevent the information coming up the chain of command.

We talked to the two directors that were there at the time. Neither one of them heard about this and indicated that had they heard about it they would have brought it to the Secretary's attention.

We found no evidence that either Secretary Babbitt or Secretary Norton heard about this, and my view is that Secretary Kempthorne heard about it when he read it in the New York Times.

Mr. HINCHEY. So no one in the Secretary's office knew anything about it until that article appeared in the New York Times, based upon all the information that you have?

Mr. DEVANEY. Based on what I know, yes. That is true.

Mr. HINCHEY. I thought it was back in 2004 that they got information here in Washington.

Mr. DEVANEY. That would have been at the director of MMS level. The associate director informed at least as an email exchange, and the director, having looked at the emails, agrees that there probably was a brief discussion.

In fairness, by this time this decision made in the Solicitor's Office that nothing could be done about it no matter what had become embedded in the thinking. Therefore, the issue was not taken any higher.

Mr. HINCHEY. So they just assumed that the leases could not be renegotiated or that some other action could have been taken by the Congress to make adjustment in that? They just let it slide and let it continue?

Mr. DEVANEY. I would characterize it as a dependence upon the solicitor's opinion that they were depending on that had for a number of years suggested to them that there was nothing they could do about it.

Mr. HINCHEY. I just want to ask you a couple of questions about some specific people who were involved in this.

It is my understanding that your investigation of the missing price thresholds for those leases back in 1998 and 1999 led your investigators to focus on a man by the name of Chris Oynes. Is that name familiar to you?

Mr. DEVANEY. It is. The focus of our investigation on Mr. Oynes centered around his testimony in front of the House I believe last fall and the testimony of some industry folks that had suggested that at a series of meetings they had brought the price threshold issue up.

Mr. Oynes testified that he didn't recall that, and we took him from the hearing room to a polygraph room and polygraphed him,

and he tested truthfully in that what he said at that hearing, he actually was telling the truth.

Mr. HINCHEY. Telling the truth that he did not remember any of the things that were going on?

Mr. DEVANEY. Right. That is correct.

Mr. HINCHEY. When I read that it sounded to me very much like the Libby case with an awful lot of bad memories going on in people in important positions in this Administration.

There is another man by the name of J. Steven Griles who was a lobbyist for the oil industry, the energy industry generally. Has your investigation focused on his activities?

Mr. DEVANEY. With respect to MMS?

Mr. HINCHEY. Yes.

Mr. DEVANEY. No.

Mr. HINCHEY. No? In what respect then?

Mr. DEVANEY. We concluded an investigation in I believe it was 2004 on a series of ethical issues on Mr. Griles, proffered that report to the Department.

You know, other investigations of him are ongoing, and I don't care to discuss them.

Mr. HINCHEY. OK. But they have to do with the Abramoff situation? Is that right?

Mr. DEVANEY. It is fair to say that.

Mr. HINCHEY. But the focus of your attention has nothing to do with the Minerals Management circumstances and the leases?

Mr. DEVANEY. No.

Mr. HINCHEY. No. OK. Thank you very much.

The CHAIRMAN. The gentleman from Wisconsin, Mr. Kind?

Mr. KIND. Thank you, Mr. Chairman. Mr. Chairman, I want to thank you here today for having a hearing as important as this one is.

You can't help but listen to your testimony, read your testimony, Mr. Devaney, and not sit here and just feel very angry in regards to the culture of unethical conduct that has just permeated DOI now for a number of years with no effective oversight, no effective accountability other than a slap on the wrist and don't do it again.

It is just infuriating, and it should be for the American taxpayer too to understand how business has been conducted over the last few years, especially at DOI. Obviously we have a huge task before us now on the Committee.

Mr. Devaney, I am reading your testimony, and one thing that really jumps out at me is this is the first time that you have been brought back to testify before this very committee since what, 2001, almost six years now?

Mr. DEVANEY. It may be 2000. July of 2000.

Mr. KIND. 2000. Right. A tremendously long time, given what has been going on and the information that has come to public light in recent years too.

If anything, we should be having more hearings like this on a regular basis for updates from both of you as we proceed.

My goodness, the last two years alone you have uncovered golf outings, dinners, hunting trips, concert tickets, box seats at sporting events being accepted by DOI officials from prohibited sources, chronicled exclusive access and special favors provided by DOI

employees to outside entities, all of which at a minimum violates standards of ethical conduct for employees of the Executive Branch, and yet there seems to be very little accountability to this type of activity that has been taking place.

I guess we are going to need some guidance on how we tighten this up and how we can provide more effective oversight, including right here in this committee.

Mr. Devaney, you were just recently testifying in regards to the OCS 1998-1999 leases that, and this is in your words again before the Senate committee, at a minimum it was a shockingly cavalier management approach to an issue with such profound fiscal ramifications, a jaw-dropping example of bureaucratic bungling and a reliance on a surname process which dilutes responsibility and accountability.

I guess my first question is whether it was a mistake, whether it was deliberate, whether it was fraud, have steps been taken now to ensure that this can't happen again in the future?

Mr. DEVANEY. A mistake in answer to part one, and I am reassured by the steps that the Secretary and the Assistant Secretary already have taken to see that the recommendations we are making are being implemented, and I think I couldn't ask for more right now. We will see.

Mr. KIND. Director Nazzaro, let me ask you just quickly. There has been a request I think made on the Senate side for a GAO review of the Royalty In Kind Program.

Ms. NAZZARO. Yes.

Mr. KIND. Do you have any idea how long that review is going to take place before we get something back from your office?

Ms. NAZZARO. Actually I just saw it, but I don't have an exact date for that report. You know, I really can't estimate because while we have a typical length of jobs, I mean, it depends on what the issues are, the complexity.

We always work with the Committees though, what your timetables are as to what you need, you know, and be able to provide that.

Mr. KIND. Well, we will follow up with you.

Ms. NAZZARO. That is what I was going to say. I mean, we will have to get the individual team. Some of it depends on having the right resources available too to provide the right technical expertise.

Mr. KIND. That is fine. Let me just shift the focus a little bit on the National Wildlife Refuge System and that. I co-chaired the recently formed congressional Wildlife Refuge Caucus here, and what I would like to do is if you are not fully up to speed submit some written questions and get a response from you that I can share with the 100 plus colleagues that have joined this refuge caucus.

You may or may not be aware that in 2003 GAO did complete a comprehensive study in regards to oil and gas activities in the Wildlife Refuge System. It had certain findings and recommendations, most notably the Fish and Wildlife Service oversight of oil and gas activities in our refuges were spotty and inadequate.

The Service had failed to determine its authority to permit and regulate oil and gas operations occurring on refuges,

notwithstanding the GAO's belief that Fish and Wildlife had adequate authority.

Training, guidance, financial resources available to Service personnel to oversee and manage oil and gas activities were inadequate at best. The Service should seek additional authority from Congress to apply a consistent and responsible set of controls over these oil and gas activities.

Now, there are more specific questions I want to submit to you, and it would probably be easier, given my limited time, to do it in writing, but could you give us just a little bit of overview in regards to the follow-up of these recommendations, if they are taking place, if changes are being implemented in this regard?

Ms. NAZZARO. We have a standard process similar to what the IG was talking about his process where we do follow up with recommendations, track them to make sure that the agencies are complying with our recommendations, and that is how we measure our success rather than numbers of reports as well.

As to the specifics on those recommendations, where they are right now, I don't have that information, but I do know there was some inconsistency as to whether they really were accepting our recommendations because we were saying they needed additional authority. They said they had enough authority, although their inspections were spotty, so there seemed to be some inconsistencies.

I would say it certainly would be worthy of us to do some follow-up work, and we could respond to you.

Mr. KIND. Given that my time is expiring, I will do that. I will follow up with some written questions and hopefully get a written response from you then that I can share with more of our colleagues.

Ms. NAZZARO. That would be fine.

Mr. KIND. I want to thank you both for being here. I know this isn't the easiest testimony that you have to provide when you come before Congress, but it is incredibly important, and we need to hear this and then have the guts to take effective action to address these challenges.

Thank you, Mr. Chairman, again.

The CHAIRMAN. Thank you.

The gentlelady from California, Ms. Capps?

Ms. CAPPS. Thank you again, Mr. Chairman, for this is quite an interesting orientation for this new Member to this committee to have this hearing today, and I certainly hope that this is the first of many similar kinds with these and other witnesses to begin to provide this kind of oversight.

I want to turn to the implementation of the Healthy Forest Initiatives Hazardous Fuels Reduction Program, and I am going to try to have time to address each of you. My first question or set will be for Ms. Nazzaro.

There are many shortfalls still in this program, and most recently the USDA Office of Inspector General concluded, and I quote, "The Forest Service cannot clearly identify by level of risk to communities from wildfire. It cannot demonstrate to stakeholders its accomplishments in reducing those risks."

Similar findings were reported in a 2006 Inspector General report for DOI's related fuel program stating, and I quote, "Neither

Interior Department bureaus nor the Forest Service has a standard methodology for quantifying risk reduction."

This conclusion echoes past findings by the GAO of Federal efforts as a whole. Now, we all agree that agencies must target their fuel reduction efforts in communities and other high risk areas, but it seems to me that not much has changed since the passage of the Healthy Forest Initiative.

Spending on hazardous fuels reduction continues to go up, but we haven't seen evidence of the change in risk to communities. I wonder, Ms. Nazzaro, if you agree with that?

Ms. NAZZARO. I would agree with that, and I think that gets to the issue that we were raising earlier about the need for this cohesive strategy because it is not just for managing the wildland fire, but to take into account the other missions that the agency has and what tradeoffs would need to be made so, you know, what money needs to be spent on fire suppression, what needs to be spent on vegetation management, restoration rehab.

That is why we are asking that they develop a cohesive strategy—you know, what actions do they need, what objectives, what are their goals—and then some way to hold them accountable for this information and decisions that they make, as well as putting associated funding so that the Congress knows what we are buying.

At this point we keep spending more and more, but we aren't seeing much of a dent.

Ms. CAPPS. Because of the brevity of this I hope that we can continue to probe this topic further, but I wonder how many times GAO has made recommendations to land management agencies? What are the impediments? What are the hurdles?

You talk about this cohesive strategy. Would it be targeting that specific area?

Ms. NAZZARO. The cohesive strategy that we have asked for was originally to address wildland fires, but more recently we have come back now and said that not only do they need to take that into account, but it has to take into account all the other missions that the agency has and figure out, you know, what these tradeoffs are going to be, and so it was specifically addressed to the Department of the Interior, working with the Forest Service.

Ms. CAPPS. OK. Thank you.

Mr. Devaney, your office has recommended that the Department, in coordination with the Forest Service, develop performance measures related to hazardous fuels treatment that are based on the outcomes and not simply on acres treated.

My question has to do with whether or not DOI has moved forward in implementing this recommendation, which seems to me to be a very good one.

Mr. DEVANEY. I had a specific conversation about that recommendation with the Deputy Secretary, and she indicated she agreed with it and was going to move forward on it.

I will check back in with her if you would like me to. I would be glad to let you know.

Ms. CAPPS. I would appreciate knowing the specific ways that this is—to me, I think this is a good recommendation for performance measures rather than just simply acres treated to get at the real outcomes.

The latest estimate I have seen on another related topic for the maintenance backlog in national parks is between $4.5 and $9.7 billion. Is that an accurate estimate of the backlog? Do you have similar figures?

Ms. NAZZARO. The national parks, the last number that we are on record with was $5 billion.

Ms. CAPPS. It is my understanding Park Service had undertaken an analysis to provide a more detailed analysis of the condition of its facilities known as the facility condition index. What is the status of that analysis?

Ms. NAZZARO. We actually have not followed up with, you know, what the current status is. We have no ongoing work there, but I do know that they were trying to put this database in place. That was probably the last time we did work was making a recommendation to that kind of a vehicle or an information system so that they actually know the condition.

What happens time and time again though, it seems like as they start to address a few projects and a few more projects fall onto that list there also wasn't clear definitions as to what constituted a maintenance backlog versus new construction and so they were coming up with definitions to clarify so that you knew what you were talking about when you talk about maintenance backlog versus a new construction of an item.

Say maybe the deteriorating condition got so bad, so now rather than replacing a structure you just needed to develop or build a whole new structure.

Ms. CAPPS. It sounds like there is a considerable amount of work still to be done.

Ms. NAZZARO. Certainly. We have not done anything for a while on that issue.

Ms. CAPPS. Can we in Congress expect to receive this information at any point?

Ms. NAZZARO. As you know, we do our work at your request. We have not been requested at this point. I have no ongoing work looking at any Interior backlog issues.

Mr. DEVANEY. Could I just mention that we are doing an audit right now on the health and safety issues surrounding the maintenance backlog, so we do have a product that is going to be coming. I will make sure you get that. I think it does address the issue of some of the questions you asked.

Ms. CAPPS. Mr. Chairman, I think this information would be very useful for us to get a better understanding of current conditions in national parks and forests.

Thank you.

The CHAIRMAN. I thank the gentlelady.

The gentlelady from South Dakota, Ms. Herseth?

Ms. HERSETH. Thank you, Mr. Chairman. I want to echo the gratitude expressed by Members of the Committee on both sides for today's hearing and the important oversight that we are initiating in the 110th Congress.

The Inspector General and Director Nazzaro's testimonies point to a number of critical oversight opportunities, and I appreciate their willingness to share their work with the Committee.

Of the many topics raised, I am particularly interested in Mr. Devaney's work on law enforcement in Indian country. My district is home to a number of large land-based treaty tribes, three of whom ran out of Low Income Home Energy Assistance Program funds this week because of temperatures 20 below zero.

One family in a rural community on the Rosebud Reservation contacted the tribal government office asking for emergency assistance because they had to start burning clothes to keep children in the home and elders in the home warm.

So when you cite in a report, Mr. Devaney, in 2004 specifically to the BIA's detention program, in my opinion a service provided along with the need for quality healthcare and quality education and resources to meet basic survival needs, when you cite that the program is riddled with problems and in our opinion is a national disgrace with many facilities having conditions comparable to those found in Third World countries, I couldn't agree more.

You go on to state, "In short, our assessment found evidence of a continuing crisis of inaction, indifference and mismanagement throughout the BIA detention program."

I couldn't agree more, which is why this hearing and hopefully further hearings will help us get at some of the problems of that culture of indifference in the BIA as it relates to their responsibilities to meet our obligations as a Federal government to tribal communities, some of which are the poorest in the country, that are in South Dakota, that are in Arizona, that are in New Mexico, that are in North Dakota, throughout the Great Plains and other parts of this country that don't have lucrative gaming operations to meet the basic needs of the people who live in these communities.

It is a Federal government obligation, and I certainly appreciate the work that you did two and a half years ago to uncover and reveal the scope of the problem in law enforcement and detention facilities in particular.

My first question is given what you found in 2004, can you tell me how you would describe the current environment at the BIA as it relates to acting on the 25 recommendations in the report or whether or not they have done anything to move beyond a narrower focus on law enforcement versus a more holistic approach that puts greater emphasis on the connection between law enforcement and detention facilities?

Mr. DEVANEY. Let me take that last point first. I think that that was one of our main criticisms that within the law enforcement program detention facilities was dead last, and it needed to be raised up at least as a co-equal with special agent force and the tribal police officer program as well.

I think it is fair to say that they have made some progress. As I mentioned earlier, I continue to be concerned about their staffing levels at detention facilities. It is very, very difficult to find staff that can be trained and sent to school and then brought back and work in the detention facility when they could go off the reservation and make much more money if they were a detention officer in a local county jail, for instance.

You know, that is one of the main issues. We found that there was a disconnect between the Department of Justice building brand new facilities on reservations where the tribe could not get

anybody to actually man the brand new jail so they couldn't open the brand new jail.

I think some of that has been corrected. I know there have been some high level discussions between DOJ and DOI, but we still have big problems out there. We are still settling lawsuits from some of those earlier problems, people committing suicide at alarming rates, people escaping.

It is slow, incremental progress. I know that they are working very hard. It is not because they don't want to fix it. It is just a huge problem. Money is not the only answer, but it is a big part of it. I think that the President's budget in 2008 does start to address some of those money issues.

Ms. HERSETH. Before my time elapses I just want to comment on your response because I agree that it is not just a funding issue, and I agree that the President's proposed budget is a good step, particularly as methamphetamine distribution when Indian country is used as transport sites because they are so geographically isolated is something that we need to address so as not to exacerbate the other problems and challenges that we are already faced with.

The only exception I will take to your answer, and I appreciate it, is the difficulty of finding people in these staffing levels because I could share with you and plan to an example in South Dakota where the Lower Brule Sioux Tribe and the Crow Creek Sioux Tribe, who are located right across the river from one another, after millions of dollars in improvements to the jail at Crow Creek a new detention facility was built on Lower Brule.

Necessary. It was needed. Their jail would have qualified in one of those that you reviewed that was just crumbling and was not secure, was not safe to staff to inmates, to anyone.

Without consulting, I think that the BIA wants to somehow consolidate and close the jail for staffing reasons, even though I am not satisfied with their responses, and then also has postponed the full operation and opening of the new center at the Lower Brule Sioux Tribe community because they have been so far behind in staffing, and yet there are a number of people on that tribe who have had credentials in the past, training in the past.

And so in many instances it is not just finding people to serve in these areas. It is BIA's lack of responsiveness, lack of action to adequately train and certify individuals to work at either the new facilities or the ones that we have poured millions of dollars into to keep open, but then closed because of the staffing problems.

Thank you, Mr. Chairman, for allowing me to go over my time.

The CHAIRMAN. Thank you.

The Chair will now start a second round of questioning. The gentleman from California, Mr. Miller?

Mr. MILLER. Thank you.

Mr. Devaney, I want to clear up a point here. What was the Department's official response to your 2004 investigation of Mr. Griles and his ties to lobbyists?

Mr. DEVANEY. We proffered a report to the Secretary which outlined 25 potential ethical violations. We also gave that at the same time to the Office of Government Ethics.

They came back and said that with respect to 23 of those 25 potential ethical lapses they were not, in their opinion, ethical problems.

Mr. MILLER. That is the Office of Government Ethics?

Mr. DEVANEY. The Office of Government Ethics.

Mr. MILLER. In the Department of Interior?

Mr. DEVANEY. No.

Mr. MILLER. No? OK.

Mr. DEVANEY. No. The Office of Government Ethics.

Mr. MILLER. The office. OK.

Mr. DEVANEY. And so at the end of the day there were two issues for the Secretary to decide. She and I had a conversation, and that was the end of the discussion. Nothing happened to Mr. Griles.

Mr. MILLER. So nothing happened to Mr. Griles. Had you known at the time of your investigation that Sue Ellen Woodbridge, who served as the chief deputy to Secretary Norton, solicited an ethics advisor to Mr. Griles, had a close personal relationship with Mr. Griles, would that have made a difference?

Mr. DEVANEY. It would have made me more upset. I didn't know.

Mr. MILLER. You did not know. No, I know you did not know. This has come to light now, and this is the same person who we are told I think it is in today's paper or yesterday's has signed off on an agreement with ConocoPhillips at the same time.

She is over now I guess at the Department of Justice doing ethics or was. I guess she is now under investigation by the Department of Justice, but it raises concerns.

You know, I used the term criminal, and it wasn't just a question of whether it was about the offshore leases. My concern is I have been involved with this Department a long time. I have been on the onshore leases and the offshore leases, and I have been in tight sands leases and loose sands leases and all the rest of the things that go on in this Department.

One of the things you see is an incredible complexity of how royalties are calculated and recalculated. It is very interesting because the complexity in itself lends itself to losing whether it is barrels in kind or whether it is reporting on the value of a barrel of gas or a million cubic feet of gas.

There are a lot of different benchmarks that are set, and I suggest that the complexity in fact is working against the interest of the taxpayer. It is interesting that each time the states go out and audit this and each time the Indian tribes go out and audit it they find a lot of money that they are owed, but apparently the Department of Interior can't find the money that it is owed or to change the system or to find in favor of the taxpayers.

With respect to the leases, this two-year period which has been in question is interesting and important, but then we see supposedly in the public record that one of the companies came in and said there is a mistake in our lease or there is something wrong with this lease and brought it to the attention of this fellow, Oynes—Oynes, is it—who is now going to head up this whole program. He says he doesn't remember, and I think you had him in your investigation. That was a credible position.

I wonder where were the other oil companies? Did they come in? I mean, this is like when the court gives you too much change at

the cash register. What did your mother tell you to do? Give it back, right?

So now we have one oil company, and I guess it was Chevron. Is that Chevron? Chevron went in and said the lease is wrong. We have another oil company saying no, I am entitled. I am entitled to my ill-gotten goods.

Mr. DEVANEY. Actually, Congressman, I think the reference to Chevron, two Chevron executives had stated that they had been at a meeting of oil companies and MMS and had mentioned the fact that these thresholds were not in the lease and brought it up in effect.

Mr. Oynes testified that he had no memory of that. We verified through polygraph that he didn't. That is not to say it didn't come up or it did come up, but he just simply did not remember, and he was probably being truthful when he said that.

Mr. MILLER. He may be truthful, but I guess then it goes to his judgment. If somebody in a meeting such as that informed you that a provision that was designed to collect billions of dollars or hundreds of millions or whatever the price of oil is, substantial increased revenues, and the people who that would work against, if these provisions weren't in the lease, come in and tell you they have made a mistake and you just move along, I wonder what else they were discussing in that meeting if it is more important than that?

Now this person is going to head up this program? My colleague from California, Mr. Issa, said this kind of defies both ethical standards and judgment. I mean, I am not asking for your comment. I am just quite stunned here.

Now the idea is that these oil companies are going to argue that they are entitled to hold onto their bargain. I guess that will boil down to a question in litigation. I mean, there is some question of can you sign this contract contrary to the law and whether the contract is valid at all since it is apparently outside the law that requires for these thresholds to be put.

The courts will decide that, but again I am concerned about a continuation. I appreciate that the new Secretary is doing all and you think this direction, and I will take you at your word and I hope so and I know the Secretary and I believe him to be an honorable man, but somehow this culture has to change.

I mean, several of my colleagues have mentioned it also. Where is the accountability? I mean, there is nobody in the Bush Administration that ever lost a job for reasons of ill-doing. It just doesn't happen. Where is the accountability here? I am at a loss to understand how we can do it.

I think you are reporting the largest increase in backlog in recent times. What are we, $17 billion behind the curb on backlog?

Ms. NAZZARO. I believe it was up to that, yes.

Mr. MILLER. Up to that.

Ms. NAZZARO. Yes.

Mr. MILLER. And so then this is the same agency, one of the few that has the ability to collect these resources on behalf of the public for the use of the public resources, and somehow they are just leaking out all over the system.

I mean, I don't know how we expect to meet the mission of the agency in terms of the public use and the care of these resources. How do we cure that backlog?

Ms. NAZZARO. Well, I think some of the issues that were raised today are good ones. You talk about the complexity of the organization, the resources that they have to manage, and I think it all points to the need for additional oversight.

You know, the role we play, the role you play, I think is all very important. The CG sent a memo to Congress just a few weeks ago about areas for near term oversight, and some of those areas that he highlighted were very similar to the things you are bringing up here today.

In fact, three of those areas—the acquisition and contracting, to make sure that contractors are playing appropriate roles and that there is agency oversight; computer security, do they have the information systems, do they have protection capabilities and are they reporting security incidences; certainly the issue that we have been discussing the majority of the hearing today, the fair value collection of oil royalties on Federal lands.

I think these all need additional oversight. You talk about accountability. I mean, one area that we have seen, we were talking just earlier about BIA. BIA has had an acting director for the better part of the last six years. From what I have seen, you know, if you don't have somebody in charge, you don't have accountability so clearly there are some people problems. There are some resource problems at the agency. There is certainly lack of accountability, and there needs to be more oversight.

Mr. MILLER. Well, there does. Mr. Chairman, I want to thank you for this hearing. Again, it kind of I think would shock the taxpayers of this country to understand. I think this is the first time the IG has been here since the year 2000.

I will just tell you that every time we have done an in-depth investigation of these royalty programs in some cases we have found two sets of books. In some cases we have found double pricing. In some cases we have found companies selling resources to themselves off the books at differential prices to change their obligations and liabilities to the taxpayers under the leases

This has gone on and gone on and gone on. There is no system in the U.S. Government, although it is being challenged now by Iraq and Katrina, but there is no system that has been more gained against the taxpayer than this system of royalty payments for the use of public lands almost for any purpose.

Some of it appears to be the failures of the Departments. Others of it I strongly believe is the active, active engagement and effort to keep the fair royalties that the public is entitled to under these leases from going to the public for the leases of their resources, the use of their resources, which we are supposed to do.

So often people ask us in our town hall meetings why don't you run the government like a business? It appears over the last five years we have been running the government for business, and we ought to think about running the government like a business and get the people their due.

I don't know any company that would have this kind of liability and loss of assets and loss of payments and loss of royalties, loss

of lease payments and all the rest of this that wouldn't operate in a different fashion than this group is operating, and I don't know any board of directors, as this committee is, that would stand by over five years and never ask a question in light of this, never ask the compliance officers, if you will, the enforcement officers, if you will, the investigative officers to come before a committee in that entire time.

It is not like we were short on public information. It is just a tragedy. It is a tragedy for the protection of these resources, and it is a tragedy for the taxpayer.

Mr. Chairman, I hope this is one of many oversight hearings that we have in this committee.

The CHAIRMAN. I thank the gentleman.

The gentleman from New Mexico, Mr. Pearce?

Mr. PEARCE. Again, thank you, Mr. Chairman, for the hearing. I do appreciate the testimony from both of our witnesses.

The gentleman from New York asked a fair question a bit ago about why would we have originally written the law. If I could get my staffer to get off the Blackberry and turn that? Again, back at the time that this was going on the price of oil was in the high teens, and there just was no stimulation to come and do these things. These are very extraordinarily expensive.

They are so expensive that again Exxon, the biggest producer in the world, had two percent of the production in the Gulf, and now they are evacuating that because they continue to drill dry holes. They put this thing out there, and frankly as long as stockholders insist on rates of return for their stock the CEOs and the boards of directors are going to say you be very cautious about making that investment.

We passed a law that was to stimulate, and actually the stimulation worked pretty good. There were very few of these units, and now they are coming up and popping up. In the area that my company worked in, my wife and I, we produced 30 and 40 barrels a day from those wells. These things produce hundreds of thousands.

Believe me, I was looking at it from the other side of the equation when you all passed the law up here that stimulated it because I saw those major companies leave my home town, and when they left they took the engineers and the accountants and all the professionals. These small rural towns in America, they depend on these companies. When they evacuate, a lot of the brain capital, a lot of the mental capital is gone.

I was looking at it from the perspective of a guy that was building wagons when the cars were invented and so that is a fair question, but the policy has worked well.

We are in a difficult circumstance. You did your audit in 2003, Mr. Devaney. Did you really delve into this matter of these leases at that point?

Mr. DEVANEY. My audit?

Mr. PEARCE. Did you do an audit in 2003?

Mr. DEVANEY. I think our audit was more recent than that. Our audit was in 2005.

Mr. PEARCE. Well, you did a previous audit.

Mr. DEVANEY. Our previous audit of Royalty In Kind?

Mr. PEARCE. Or of anything. So these issues didn't come up then? If they did, they didn't get leaked to the New York Times? What?

Mr. DEVANEY. No.

Mr. PEARCE. In other words, this conversation is fairly recent.

Mr. DEVANEY. Yes.

Mr. PEARCE. And yet you are not a supporter of the position, so why didn't this conversation come up?

I mean, the New York Times has it now. They had it before we did. How was it that we didn't get into this conversation three or four years ago? How is it that we are now in a new Congress and things are coming up? That is a curiosity to me.

I would like to go to your smoking gun. There is no smoking gun. Now, when I look again at the timeline, and my timeline takes me back to the advanced notice of the proposed rulemaking, 2-23-96, no inclusion of price thresholds. That is not a smoking gun to you that they did not include that?

Mr. DEVANEY. That would have been the time they were putting price thresholds in addendums.

Mr. PEARCE. So no smoking gun that is not in the policy?

Mr. DEVANEY. No.

Mr. PEARCE. OK. Now, in that particular ANPR DOI specifically asked. DOI asked whether price thresholds should apply to the 1996-2000 leases.

Now, why do you think they would ask that question if there is this—what kind of policy was that that we had? This innuendo policy. We have an innuendo policy, one that is not written. Why do you think that DOI would formally ask that question?

Mr. DEVANEY. I have no idea.

Mr. PEARCE. You don't have an idea, but it was not a smoking gun. It didn't ever appear to you it might have been because they really were asking the question? They ask a question that deals directly with the question, and in your testimony at page 5 we see no smoking guns.

Aye-yi-yi. Not only did they put it in the announced ANPR. They put it in the interim rule without it. I am holding the Federal Register, Volume 63. The rules came out with nothing about the price thresholds, and nowhere in here do you see a smoking gun.

Now, you can see there are great disagreements between those of us on the Committee, but I think that we could come to a resolution if you had offered more of the balance, more of the question, more of the heartrending questions. Was this a mistake, or was this a policy decision that was a bad judgment?

You have fueled, my friend, very serious things that are going to get played out over the internet, not to speak of the difficult discussions that have to go on here about how do we sort our way through this very difficult thing that we are in.

No one says it is fair. It is just after you build those doggone $1.5 billion platforms to go and change the rules, is that right? Is that fair? Are we going to start changing the rules when people buy a house with say a public guarantee of their mortgage? Can you go back and change those things?

Once you begin to be cavalier about that we have serious questions about the good faith of the government, and the thing that I think is cavalier is that you never mentioned once in your report.

You declare you didn't see a smoking gun. You didn't put the letters in.

I will yield back.

The CHAIRMAN. Do you wish to respond, Mr. Devaney?

Mr. DEVANEY. Well, I respectfully disagree, and I think we issued a good report. We were issuing a report on how the threshold language was left out and what people did about it when they found it, and that is what we did.

We did our best to find out who instructed who to take them out. We weren't able to do that, and I have characterized the whole thing as a mistake. I have encompassed almost everybody involved in both Administrations by saying that I think that everybody should have paid more attention to this.

I think when a junior solicitor offers a legal opinion and it involves such a financial stake——

Mr. PEARCE. That was a Clinton solicitor or a Bush solicitor?

Mr. DEVANEY. That was not the Solicitor.

Mr. PEARCE. During whose term?

Mr. DEVANEY. A career attorney.

Mr. PEARCE. During whose term?

Mr. DEVANEY. During both Administrations. He is still there today.

Mr. PEARCE. OK. Let us get it clear because right now it appears the whole finger is pointing at the Bush Administration.

Mr. DEVANEY. No, sir. I don't mean to do that. This is a career solicitor who rendered an opinion and then that became the Department's legal opinion.

I believe that at multiple times during this timeline somebody should have said let us get the Solicitor in the room. Let us get somebody from the Department of Justice over here to talk about this issue.

Mr. PEARCE. Is that finding in this book that they should have gone to the Solicitor or the Justice Department? Did you put that finding in the book?

Mr. DEVANEY. I certainly criticized that solicitor. He has testified in Congress and has been criticized. He has been criticized for his role in this saga, yes.

Mr. PEARCE. Because that is a significant thing. If you feel the Solicitor should have, that finding should be jumping off of pages as much as the no smoking gun and the culture of corruption and the things that do jump off the page.

Again, Mr. Chairman, I appreciate it. I yield to the gentleman from California, Mr. Miller.

Mr. MILLER. Just on this point, this isn't about pin the tail on the donkey whether it is going to be Clinton or Bush.

You know, these rigs are always used as a driving force why we have to provide royalty relief or concessions to the oil companies. When we were doing this I opposed this policy and opposed it strenuously and thought we had it defeated a couple times, and then it got way beyond royalty relief. It got into royalty holidays and the rest of that.

I represent a number of different oil companies in my district, and I went to the CEO of one of the big international oil companies and I asked him about this policy. Was this helpful or hurtful? He

said you know, he said the bets we make today and the timelines we have are so big that it really doesn't matter what your policy is. When I make a decision to build this kind of rig or to contract for this kind of rig, it is Katy bar the door.

He said we do business in the most hostile environments in the world, both politically and environmentally. We make those bids 10 years in advance, sometimes even longer. He said what you do or do not do with royalties will make very little difference to us.

He said what has happened in this case, however, is there are some boys who made some bad bets in the Gulf and they are seeking relief. He said you go ahead and do it if you want, but it will have no impact on whether or not people make the decisions to come to the Gulf.

He said don't ever forget where the Gulf of Mexico is. It is under the umbrella of the United States military. It is the safest place in the world to drill. He said it is a hostile environment sometimes, but it is the safest place in the world to drill. It has its advantages. They are there, and they are there in a very big way.

The point he was making is that perhaps what was going on here was not so much about these big billion dollars bets that we like to attribute to the oil people. The fact of the matter is they make these bets, and sometimes you make the wrong bet. Sometimes the environment changes, the economy changes, the price of oil changes, but they have tremendous resilience.

They are to be admired. They do this all over the world. They run into trouble in countries and assets are taken away and diminished and all of the rest of that. They stay in the business.

We keep acting like but for this they won't drill for where they know there is one hell of a lot of oil. It is an interesting theory. It just never turned out to be true.

I thank the gentleman for yielding.

The CHAIRMAN. I thank the gentleman from California. Let me follow up on your testimony, Ms. Nazzaro, in regard to the vast array of responsibilities that come under this committee's jurisdiction, as well as within the Department of Interior, and the opportunities for oversight, the need for oversight I should say, and the opportunities for further revenue collections for the American taxpayers, the owners of these public lands.

Included in that would not possible reclamation fees and/or royalties on the hardrock mining of public lands in the West be a relevant pursuit for additional revenues for the American taxpayer?

Ms. NAZZARO. I think that is going to be the challenge to figure out when we talk about all these problems, particularly where we say Interior needs more resources, is how are we going to fund it and are there opportunities within the Department to collect more revenue.

Hardrock mining is an area where we do not collect royalties right now. There has also been a big change in the rec fee, in the recreation fee program, in the demonstration project. Those monies went toward the backlogged maintenance.

With the new program a lot of that is going to change as to where the money is going. Some of the larger parks may not be getting the same monies they were getting in the past.

I think there are a number of opportunities for revenue collection that, you know, we could certainly pursue with you and your staff later off-line as well.

The CHAIRMAN. I appreciate that, and we certainly would look forward to your continued input and advice wherever we can find additional revenues that the American taxpayers deserve to be receiving from the use of their lands.

Ms. NAZZARO. Thank you.

The CHAIRMAN. The gentleman from Nevada, do you wish to have a second round? Mr. Heller?

Mr. HELLER. Yes. Thank you, Mr. Chairman. I want to yield my time to the Ranking Member.

Mr. PEARCE. Whenever you all finish, I will do a little questioning.

The CHAIRMAN. OK. I am sorry. You are yielding?

Mr. HELLER. Yes.

The CHAIRMAN. OK.

Mr. PEARCE. Thank you, Mr. Chairman. You have been very indulgent. The questions are difficult.

Mr. Devaney, you have been very kind and gracious. I, by the way, found things in the report that I agree with. The exposure in our western lands in the forests is extreme. It is a problem I have been working at. We cannot get the Forest Service to cut trees.

We actually did in one community, and the water table began to rise immediately in spring. It was putting out 200 gallons a minute and in January of last year was putting out almost four million a minute because that water has been percolating down like it should. The West should never have the tree load that it has per acre.

Again based on the report that I have heard today, your testimony in the Senate, your testimony here, I still conclude the following: There was no statute that required the inclusion of price thresholds. There was no regulation that required the inclusion of price thresholds. There was no written policy that required the inclusion of price thresholds. There was, according to your testimony, an innuendo policy, but we have very direct contravening statements. We have statements that say that was not the truth.

There was a deliberate chain of command instead that caused the removal of price thresholds. Those were all done by the Clinton Administration, by their Department of Interior, not involving any lessee at all. The Clinton Administration had months.

When I look at the timetable after that final rule for them to uncover this confusion, I see one month to the first sale, six months to the next sale, 13 months to the next one, 18 months to the next one, 30 months, and then I see the inclusion on a later sale in 2000.

Those don't feel like mistakes. They feel like deliberate omissions, and yet your report does not include one shred of the deliberateness. I can understand that you would come up with a different conclusion. I don't require or even suggest that my conclusions are perfect. I suggest reasonable people and us up here making these decisions need the balance of the discussion.

I find it problematic that you interviewed six people over four hours, and that testimony muddles the facts relative to when

Johnnie Burton may have learned of the Clinton leases, yet in contrast to that four hours you spent only 30 minutes for the two Clinton Administration MMS directors actually responsible for the Clinton leases, never asking them once—not once—what they did to make sure prices thresholds were included in the policy.

You never spoke once to Clinton Secretary Babbitt or Clinton Assistant Secretary Bob Armstrong. I don't see a mistake. I don't see a low level blunder. I do not think the Clinton Administration was that inept. I am not a supporter, never will be, but I don't think they were inept enough to go 30 months without discovering what you describe as the mistake.

I do see what appears to range from a clear decision not to include price thresholds to studied indifference once their absence is pointed out, and that studied indifference you point out yourself that they declared well, maybe it is too late.

I see leases that were given to lessees not subject to negotiation, take it or leave it. The price of oil was at $10. The water was deep. Those billion dollar platforms are a tremendous risk. I see a bad prediction by the Clinton Administration about whether the price of oil would ever reach $28, which is that threshold at which time the royalties would kick in.

I see the majority of this House looking for a way to unwind valid, binding contracts. I saw in the Washington Post that those efforts were akin to what Hugo Chavez in Bolivia would do. Your testimony is playing a key part in those efforts to take actions that even the Washington Post describe in such terrible fashion.

If you agree to an adjustable rate mortgage with your bank because you don't think the interest rates will go up, you don't get to go back and renegotiate for a fixed mortgage because you guessed wrong.

I don't know where we go from here. I think your testimony could have given more of the balance, and I think that your report should have given more of the balance. You are the last check, sir. You are the one that people quote.

You are the one that people are going to read your comments. Nobody is going to read this report. They are going to read your comments, and when you say there is no smoking gun they are going to run political ads, and they are going to go on diatribes based on that.

I don't know exactly what the situation was. I don't know exactly what the cure is, but I think you had an obligation to present a little bit more balanced picture here today.

I appreciate your service. People never, never are thanked. I don't disagree with you as a human being. I don't take fault with you, but you had an obligation in this case to give us a clear understanding of what our decision should include.

I appreciate your work and I appreciate your balanced responses today and I appreciate your kindness in the way that you dealt with very difficult questions, but frankly that is our job to ask those difficult questions, and I just have been trying to do my job in as respectable a way as I can.

Thank you, Mr. Chairman. I appreciate this opportunity.

Mr. HINCHEY. May we hear a response?

Mr. DEVANEY. Congressman, I appreciate your point of view. I still believe we did a very credible investigation. I believe that the investigators that worked this case tried their very best to identify how the threshold language was left out and what happened when people found out about it. I don't suspect we will agree on that, but I appreciate the opportunity to respond to your questions today and the way you asked them.

The CHAIRMAN. Does the gentleman from California wish to be recognized?

Mr. COSTA. Yes. Thank you, Mr. Chairman.

Because of time I will probably submit the balance of my questions, but I would like to shift this discussion a little bit to the GAO and to the recommendations involving the BLM, the report on hardrock mining that you provided testimony on that talks about need to better manage financial assurances to guarantee the coverage of reclamation costs.

Do you believe there are adequate protections based on that report in place to ensure that hardrock mining operations are reclaimed and not abandoned for taxpayers to pay for?

Secondly, what steps do you believe should be implemented for the BLM to implement and accomplish necessary protections?

Ms. NAZZARO. Based on our work, we do not believe that there is adequate financial assurances currently to cover the reclamation costs should someone walk away from one of these operations. That leaves the government vulnerable to pay for those.

Mr. COSTA. I think there are a number of examples already out there.

Ms. NAZZARO. We identified 48 hardrock operations that had ceased and had not been reclaimed by operators.

Mr. COSTA. Do you believe there are more than 48?

Ms. NAZZARO. I really can't say. I mean, based on the work we did this is how many we identified. You know, we could certainly do more work to try to identify how more prevalent this is.

I think that gets to some of the recommendations that we made that they need to have better data to even know what they have out there because in some cases they did not have the right information to even know. I think some of these were new to them.

I can tell you what our specific recommendations were in this case here. We directed BLM to require state office directors to develop action plans for ensuring that the operators have these adequate financial assurances and to improve the reliability and sufficiency of their automated information systems.

Like I said, they didn't even know where there were financial assurances and where there weren't and where there were mines that were mining operations that were not being addressed.

Mr. COSTA. Well, that is obviously a problem. Do you think the Department is taking the steps necessary to ensure that the revenue collections for oil and gas and geothermal leases on Federal lands are occurring in what I think most of us would believe and our taxpayers would want to have in a transparent and responsible manner to ensure the maximum collection?

Ms. NAZZARO. No. That was another report where we had a disagreement from the agency in that we felt that they did need to do more to improve the inspections of these operations. We found

sporadic inspections varying by refuge, some doing a better job than others.

We felt that they needed to have better guidance out there as to what exactly they were supposed to do. We suggested that they seek additional guidance from Congress. They felt they had.

Mr. COSTA. Did you cite specific recommendations on how to improve that transparency and collection effort that might serve as a guide to any congressional action we might consider?

Ms. NAZZARO. We did. We made several recommendations to Fish and Wildlife Service's management of these activities, including collecting better data, improving training, oversight and land acquisition practices and strengthening permitted authority.

We also recommended that the Service seek additional authority, as I was saying, to regulate these private mineral rights, and that was where they said they felt they had adequate authority, but again we found sporadic oversight of those operations.

Mr. COSTA. It sounds like, Mr. Chairman, something that we are going to have to pursue at greater length, and we will attempt to do that with the Subcommittee's efforts.

I will submit the other questions at a later date. Thank you very much.

The CHAIRMAN. The gentleman from Idaho, Mr. Sali?

Mr. SALI. Thank you, Mr. Chairman.

Ms. Nazzaro, you have criticized Interior's program for managing hardrock mining, and I think this is a quote, that "They have not adequately protected Federal resources from the environmental effects of mining."

There was a National Academy of Sciences study on hardrock mining on Federal lands in 1999 concluding that existing framework of laws and regulations for mining on public lands were "effective."

Can you explain why the GAO conclusion is so dramatically different from the National Academy of Science?

Ms. NAZZARO. Well, the reason we felt they were inadequate was because they were not coming back in and reclaiming these mines, so I mean you are disrupting the environment there.

I mean, that is the assumption is that you can go in, have the authority to do these operations, but then you have to come back and reclaim the lands. We found that they were not doing it.

These 48 operations that we talk about were going to cost the government about $136 million to do that since these people basically abdicated their responsibility.

Mr. SALI. But it would be fair to say that the Department thought that the laws were effective; that is why they differed from you and the National Academy of Sciences disagreed with you, and yet somehow you have reached this different conclusion which apparently would be in minority with at least those sources that we have discussed here?

Ms. NAZZARO. Let me see what the specifics were as to their disagreement.

In responding to our draft, Interior said that they appreciated the advice and critical assessment that we had provided. However, they did not acknowledge or address specific deficiencies in the report. They disagreed with our recommendations, stating that

guidance was already issued that ensured that proper management attention was being provided.

If they are saying proper management attention is being done and we are seeing people are walking away from these operations and not reclaiming them and there were no financial assurances in place so the government is being left, you know, with the bill to reclaim these they obviously didn't have adequate policies and procedures in place. Either that, or they just weren't implementing their policies and procedures if they had them in place.

Mr. SALI. OK. You agree with me that on BLM lands less than one-tenth of one percent of the land area is impacted by hardrock mining? You would agree with that statement?

Ms. NAZZARO. I really don't know the extent to which BLM has hardrock mining operations going on, to what extent.

Mr. SALI. You don't know what area it does cover?

Ms. NAZZARO. Andrea, is it less than a percent? We would have to check on that percentage.

Mr. SALI. But you are able to give an estimate of how much it will cost to reclaim that area irrespective of how much land there is?

Ms. NAZZARO. No. For these 48 that we found, you know, where there were problems, but as to what percentage of their BLM lands have hardrock mining I don't have a number in front of me as to what the percentage is.

Mr. SALI. Do you think part of the problem could be, for example, when a plan of operation is submitted for a mining operation that maybe the agency doesn't have either enough manpower or the expertise within the manpower that they do have to properly review the plans and establish the bond amounts that might be required?

Ms. NAZZARO. That really wasn't the focus on this exercise. It was really whether these financial assurances were in place, and when you look at that——

Mr. SALI. Isn't the bond amount the financial assurance?

Ms. NAZZARO. Right, but they just didn't have any. It wasn't that they were in the wrong amount. These people just did not have anything in place.

Mr. SALI. And could that be because either we don't have the right people in place or we don't have enough people in place with the agency? Is that your claim?

Ms. NAZZARO. It is possible. That is certainly possible.

Mr. SALI. You don't know though?

Ms. NAZZARO. I don't know. We did not identify that there were significant resource problems, but we did identify that billions of dollars in hardrock minerals had been extracted and so you think if they are taking billions of dollars of these resources they should be able to do something to reclaim.

Mr. SALI. So you don't know how much land is involved, and you don't know if the agency had the right people involved, but you do know that the amount wasn't correct for the bond for the financial assurances. Is that correct?

Ms. NAZZARO. We knew that there were some instances where they did not have financial assurances so they did not have a bond in place to even reclaim it so somebody could walk away and there was no bond in place to hold them accountable.

Mr. SALI. And would it be possible that no bond would be required in those instances?

Ms. NAZZARO. OK. We did find a statistic in here in our background that said less than one-tenth of one percent of BLM lands are affected by these operations, so it is a small amount, but after 1990 these assurances were required for any operation.

Mr. SALI. All right. Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from New York, Mr. Hinchey? Do you have further questions?

Mr. HINCHEY. Mr. Devaney, we mentioned a little earlier the gentleman who ran the Minerals Management Service for the Gulf of Mexico for 13 years and how he couldn't remember certain significant information.

According to my colleague, Darrell Issa, who did an investigation here, he found it quite amazing that that was the case, and also he found it amazing that he has now been appointed associate director by his former and still now present boss in the agency.

It strikes me that you may not want somebody with that poor a memory to be moving up to the associate director role. What do you think?

Mr. DEVANEY. Congressman, I am rarely, if ever, consulted on promotions within the Department of Interior. I am probably the last person they would ask.

I don't have a view on it. I really don't. The only contact we have had with him has been over this one issue. He appeared to be very truthful about his lack of memory and so I really don't have a view. You know, he has been in the Department a long time, some 30 years, so somebody found him qualified and promoted him. Like I said, they didn't consult me.

Mr. HINCHEY. Well, I would agree that the fact that he has been there for 30 years makes him seem like a very solid person when you compare that with other people who have been back and forth, in and out within the Department and then going to lobbying firms and then coming back to the Department and then going out lobbying again.

I mean, that has been a pattern that has existed for a long time depending upon what kind of Administration and who was in it depended on where they might be at any particular moment.

My colleague, Mr. Miller, raised an issue, and I can't repeat it exactly, but the issue had to do with ethical considerations. Do you remember what he was asking?

Mr. DEVANEY. Not specifically.

Mr. HINCHEY. He was asking about ethical considerations, and you said that someone, and I believe in the Department of Justice, made a determination that there was no problem, that no ethical violations had occurred.

Mr. DEVANEY. Maybe earlier we were talking about the first report on former Secretary Griles and I had stated that we had sent our report to the Department, as well as the Office of Government Ethics. They are the government's experts on government ethics.

Mr. HINCHEY. Is that at DOJ?

Mr. DEVANEY. No, it is not at DOJ. It is a separate agency. Office of Government Ethics is a separate body that opines and issues ethics advisories to the entire government.

We sent it to them, and they came back and said that of the 25 things that we had teed up for consideration they didn't find any problem with 23 of those things, but did find problems with two specific instances, and it was over those two specific instances that I ultimately had a conversation with former Secretary Norton.

Mr. HINCHEY. With regard to the timeframe concerning the revelation of the fact that we had these 1,100 contracts, roughly 1,100 contracts without lease arrangements and how that evolved over time, based upon your testimony and what you have said here tonight most of that information was contained in Denver for a long period of time?

Mr. DEVANEY. That is the primary place where royalties are collected and operated out of, yes.

Mr. HINCHEY. Yes. Right. Do you know when that information began to emerge from Denver up through the Minerals Management Service into Washington?

Mr. DEVANEY. Well, there were only two occasions, one in the year 2000, and at that point once again the solicitor's opinion stood and the matter was not brought up the chain of command, and then in 2004 there is some indication that once again it came up to the director's level, but never made it to the Secretary's level.

Mr. HINCHEY. Have you questioned at the director's level the director and asked him why he never sent it to the Secretary?

Mr. DEVANEY. We talked to her during our investigation, and she stated to us if it did occur, and the emails that we had suggested that a conversation might have occurred, that it was a very brief conversation, and it probably was held in the context of by the way, the Solicitor's Office says we can't do anything about it, so she went on to other things.

Those are the only two times that it came up per se. Neither time did it come up to the Secretary.

Mr. HINCHEY. No, but it was contained from the Secretary by other people.

It seems that the person who revealed this to the New York Times must have had a sense of frustration over the inability of this issue to evolve through the agency and to be resolved in an appropriate way. So at some point somebody stepped forward and revealed this to the New York Times and of course they published the story and then everybody says that they just learned about it then. But obviously there were a lot of other people at fairly high ranks within the agency who were aware of it, but nevertheless did not take any appropriate action.

Mr. DEVANEY. I would love for the New York Times to identify their source so I could go talk to that person but I don't think they will, so I have no reason to believe that it is either a high official or perhaps even an auditor out in Denver or whatever.

Mr. HINCHEY. Can you give us a listing of the way in which the information evolved in Denver and then from Denver up into the agency up into Washington and who was involved with that transition?

Mr. DEVANEY. Well, actually while most of the activity takes place in Denver the actual discovery in 2000 and also the inquiry in 2004 emanated from New Orleans in the royalty collection group down there. There is a small component down in the Gulf as well.

Mr. HINCHEY. Yes.

Mr. DEVANEY. So in 2000 it was an analyst that realized suddenly that he was looking at leases that didn't have the language in it, so he brought it to the attention of his supervisor, and that was the occasion when a decision was made to deal with it within the component of MMS that Mrs. Kallaur was running and not to bring it up the chain of command.

In 2004, the information was brought to the associate director's of Minerals Resources attention here in Washington, and it is he that had a brief conversation with the director of MMS, Johnnie Burton.

Mr. HINCHEY. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Pearce?

Mr. PEARCE. Thank you, Mr. Chairman. Just one comment that the staff gave to me after Mr. Miller was making his comments that the royalty relief would not work any difference. Actually the number of bidders are up by 400 percent. If you get more bidders then the price goes up.

Of all the questions that failed to drive Mr. Devaney over the edge, I am afraid the next one might do that.

Mr. Chairman, will we be given an opportunity to submit questions for the witnesses to answer in writing, and what is the timeframe for submitting those questions?

The CHAIRMAN. The answer is yes. The usual procedure is 10 days.

Mr. PEARCE. OK. Just clarifying that for the record then.

Thank you again, and I thank you both for your testimony. It has been good. Thank you both for your service.

The CHAIRMAN. Thank you, both of you, for not only being with us today, being very patient in answering the questions of all the Committee Members.

I thank the Committee Members on both sides of the aisle for their participation, and, as I opened my line of questioning to both of you, we certainly commend and thank you for your service. It is difficult. We know that. You can only try to be as straightforward as is humanly possible. I certainly believe you both have done that.

The bottom line in this gentleman's opinion is certainly that something is amiss in the administration of this program, and the American taxpayers have been the ones that missed out.

We will continue oversight hearings. It is indeed this Chairman's intention to exercise that responsibility of ours in a very vigorous manner, and we will follow up with more hearings on this issue.

It is also this gentleman's desire that we find out how the problem can be fixed and how we can prevent it from occurring in the future. It is not this gentleman's intention to point fingers in a partisan manner at any Administration. Obviously mistakes were made under both, and they should have been brought forward to the American people's attention at an earlier time.

The solution that we may come up with in this committee within our jurisdiction I hope will be reached in a bipartisan fashion. We have seen a number of committees address this issue in the past and more I am sure will continue to address it, so obviously, as I said, there is a problem. Something is amiss, and we need to

correct it for the American taxpayer. That needs to be done in a bipartisan fashion.

With that I will conclude this hearing and thank the witnesses again for being with us.

[Whereupon, at 1:27 p.m. the Committee was adjourned.]

[Additional material submitted for the record follows:]

Response to questions submitted for the record by The Honorable Earl E. Devaney, Inspector General for the Department of the Interior

Questions from Congressman Pearce

Question A. Royalty Collection Compliance Review Process

In your testimony, you are critical of MMS's royalty revenue compliance process because it prioritizes the largest companies and largest leases. I understand from the MMS that by focusing on the largest companies and leases, the compliance program captures over 70% of the domestic production on federal lands. Please provide the Subcommittee with a comparison of MMS's royalty revenue audit and compliance process with:

1) the audit and compliance review process of the Internal Revenue Service towards taxpayers

2) the investigation and review process of the Securities and Exchange Commission towards public companies it oversees.

Included in that comparison, please compare the percentage of audits or full investigation [sic] conducted by the IRS and SEC, respectively, with the percentage of audits conducted by MMS.

Answer: Our critique was that because MMS Compliance and Asset Management program's performance measures are driven strictly by dollar amount, only big companies and leases are being reviewed (9% of 35,457 leased properties and 20% of 2,880 companies), leaving hundreds of smaller companies and thousands of leases that MMS never looks at. We were also critical that MMS 1) did not distinguish its results from among audits, compliance reviews and RIK analyses; 2) had no mechanism to trigger a full audit from a compliance review, and 3) that MMS' methodology for predicting revenues does not provide a valid figure for calculating its compliance index.

While we have endeavored to obtain public information concerning IRS and SEC audits and investigations, we are unable to make a meaningful comparison of MMS' processes relative to the IRS and SEC. For example, the IRS describes its enforcement efforts utilizing "examinations," "document matching," and "criminal enforcement," while the SEC appears to employ "enforcement," "enforcement assistance," "examinations," and "disclosure reviews."

We are not confident that any of these compliance and enforcement tools can be equated to MMS' audits, compliance reviews and RIK analyses. We include the IRS' "Fiscal Year 2006 Enforcement and Service Results" and the SEC's 2006 Performance and Accountability Report for reference.

Question B. Clinton 1998 and 1999 Oil and Gas Leases

In your statement regarding the 1998 and 1999 Clinton leases you state that there was "significant confusion among MMS operational components and the office of Solicitor as to whether or not the regulations would address price thresholds." The final regulations were signed in September of 1997. That final regulation was not filed in the federal register until January of 1998 and the next lease sale was not held until February of 1998. If this was all the result of "confusion," shouldn't the confusion have been cleared over the course of those 4—5 months?

Answer: Ideally, the omission of price thresholds in the lease documents should have been identified and corrected quickly. Unfortunately, MMS did not have processes in place in 1998 and 1999 for the independent review of the actual lease documents. For example, the attorney with the Office of the Solicitor who was in a position to identify the omission, since he worked on both the regulations and the Notices of Sale, did not review the actual lease documents, but only the Notices of Sale. Thus, the omission—or "confusion"—was not recognized or corrected until an MMS employee was reviewing the lease documents for a wholly unrelated purpose.

Your investigative report regarding the 1998 and 1999 Clinton Lease Report was leaked to the New York Times before it was presented to Congress. Have you begun an internal investigation into the source your New

York Times leaks? If not, why not? If so, how has that employee been reprimanded?

Answer: The New York Times has reported on several issues being investigated by my office. Various articles have contained information that had not been publicly released at the time of publication. In one instance, we had provided limited information to the Department about the investigation, but had also conducted a considerable number of employee interviews. While we generally request that witnesses not discuss their interviews with OIG investigators, we cannot prevent them from doing so. Furthermore, we have interviewed a number of qui tam relators and whistleblowers in these matters who may well have been talking to the press as well as to us.

In regard to the Report of Investigation on the 1998 and 1999 leases, which we released publicly contemporaneous with my testimony before the Senate Energy Committee on January 18, 2007, we had provided copies of the report to the Department and the Senate Energy Committee 2 days prior. I do not know how the New York Times obtained the information that was published in the articles, in either instance. One of the articles referred to "sources" that appear to have been disgruntled MMS employees. The other article was published the morning after we provided the report to the Department and the Senate Energy Committee. This would not be the first time one of our reports was leaked by someone who had come by it properly. Thus, the OIG is not conducting an investigation into either of these incidents.

Question: Concerns have been raised regarding the appointment of Chris Oynes to the position of Associate Director of Minerals Management Service's Offshore Minerals Management Program. I understand that the agency in advance of that appointment contacted you to confirm that you saw no culpability by Mr. Oynes with respect to the Clinton 1998 and 1999 leases. Is that correct?

Answer: As I recall, I was contacted by two senior departmental officials who asked me whether we had developed information in the course of our investigation that would prevent the appointment of Mr. Oynes as the Associate Director of MMS' Offshore Minerals Management Program. Since Mr. Oynes successfully passed a polygraph concerning his memory, as he related it to a House subcommittee in testimony, my response was, "No." I was not asked my opinion as to whether or not such an appointment was wise or appropriate.

[The response to questions submitted for the record by Ms. Nazzaro follows:]

March 28, 2007

The Honorable Nick J. Rahall II
Chairman, Committee on Natural Resources
House of Representatives

Subject: Posthearing Questions: Major Management Challenges at the Department of the Interior

Dear Mr. Chairman:

On February 16, 2007, I testified at the Committee's oversight hearing on "Reports, Audits, and Investigations by the Government Accountability Office and the Office of Inspector General Regarding the Department of the Interior." [1] This letter responds to your February 26, 2007 request, in which members of the Committee asked additional questions about GAO's past reports. To answer these questions, we relied primarily on a number of GAO reports, as well as our body of knowledge in these areas. We prepared this letter during March 2007 in accordance with generally accepted government auditing standards. Because this letter was primarily based on previously issued reports, we did not seek agency comments on a draft of this letter. Our responses to the questions follow.

1. Based on GAO's reports and audits, what are the fiscal costs resulting from mismanagement of programs and the revenue losses associated with the failure to collect fair market value for the use and development of resources under the jurisdiction of the Department of the Interior? What priorities should Congress pursue to address these problems?

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[1] GAO, Department of the Interior: Major Management Challenges, GAO-07-502T (Washington, D.C.: Feb. 16, 2007).

Past GAO reports have identified a number of areas in which the Department of the Interior (Interior) has not collected all revenue authorized. The most significant source of forgone revenue owing to mismanagement is the department's implementation of the Outer Continental Shelf Deep Water Royalty Relief Act enacted in 1995—amounting to at least $1 billion—because of the failure to include price thresholds in leases issued in 1998 and 1999. All other sources of potential lost revenue from Interior programs that we have reported on pale in comparison with this amount. We have also identified revenue that the department could collect should the Congress choose to give it additional authority in certain programs.

Oil and gas revenue. While precise estimates remain elusive at this time, as we testified, our work to date shows that royalty relief under the Outer Continental Shelf Deep Water Royalty Relief Act will likely cost billions of dollars in forgone royalty revenue; at least $1 billion has already been lost.[2] In October 2004, the Minerals Management Service (MMS) estimated that forgone royalties on deep water leases issued under the act from 1996 through 2000 could be as high as $80 billion in total. However, there is much uncertainty in these estimates because of ongoing legal challenges and other factors that make it unclear how many leases will ultimately receive royalty relief and of the inherent complexity in forecasting future royalties. We are currently assessing MMS's estimate in light of changing oil and gas prices, revised estimates of future oil and gas production, and other factors. At the completion of our work we hope to provide a discussion of some of the alternative ways to address the forgone revenue.

Oil and gas permit fees. Should the Congress choose to provide Interior with new legislative authority, additional revenues could be collected to process applications for oil and gas permits. In June 2005, we recommended that the Bureau of Land Management (BLM) use its authority and move forward with its plans to establish a fee structure that would recover its costs for processing applications for oil and gas permits.[3] In response to our recommendation, BLM issued a proposed regulation in July 2005 that included a $1,600 fee for processing oil and gas permits.[4] However, the Energy Policy Act of 2005, which was enacted 2 months after our report was issued, prohibited Interior from initiating the new fee. In its Fiscal Year 2008 budget request, Interior has proposed that the Energy Policy Act be amended to allow the new fee to move forward. Interior estimates that the new fee would generate $21 million in additional revenue for Fiscal Year 2008.

Air tour revenue. In May 2006, we reported that Interior's National Park Service was not collecting all the required fees from companies conducting air tours over three highly visited national park units that are authorized to collect fees.[5] Since it began collecting this fee in 1994, the Park Service has collected about $19 million at the three park units. However, we identified almost $2 million in fees that had not been collected. The Park Service was not collecting all the required fees because of (1) an inability to verify the number of air tours conducted over the three park units and, therefore, to enforce compliance and (2) confusion resulting from differing geographic applicability of two laws governing air tours in or around park units.

We also reported that the Park Service could collect additional revenues if the Congress expanded the authority to charge air tour fees from the current three park units to an additional 83 units with air tours.[6] While the three park units account for about one-half of all the air tour activity, expanding the fee would enable the Park Service to collect additional revenue to help develop and monitor air tour management plans. Depending on the number of additional park units included in an expansion of the air tour fee authority, the Park Service could potentially collect approximately an additional $1 million to $4 million annually.

Grazing revenue. In September 2005, we reported that the grazing fee BLM and the U.S. Department of Agriculture's Forest Service charge, which was $1.43 per animal unit month (AUM) in 2004,[7] is established by formula and is generally much lower than the fees charged by other federal agencies, states, and private ranchers.[8] Other federal agencies, states, and private ranchers generally establish fees to ob-

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[2] GAO, Oil and Gas Royalties: Royalty Relief Will Likely Cost the Government Billions, but the Final Costs Have Yet to Be Determined, GAO-07-369T (Washington, D.C.: Jan. 18, 2007)

[3] GAO, Oil and Gas Development: Increased Permitting Activity Has Lessened BLM's Ability to Meet Its Environmental Protection Responsibilities, GAO-05-418 (Washington, D.C.: June 17, 2005).

[4] 70 Fed. Reg. 41532, 41542 (July 19, 2005).

[5] GAO, National Parks Air Tour Fees: Effective Verification and Enforcement Are Needed to Improve Compliance, GAO-06-468 (Washington, D.C.: May 11, 2006).

[6] GAO-06-468.

[7] An AUM is the amount of forage that a cow and her calf can eat in 1 month.

[8] GAO, Livestock Grazing: Federal Expenditures and Receipts Vary, Depending on the Agency and the Purpose of the Fee Charged, GAO-05-869 (Washington, D.C.: Sept. 30, 2005).

tain the fair market value of the forage and, as a result, charged fees ranging from $0.29 to $112 per AUM in Fiscal Year 2004, depending on the location, range condition, and accompanying in-kind service. The formula used to calculate the BLM and the Forest Service grazing fee incorporates rancher's ability to pay; therefore, the current purpose of the fee is not primarily to capture the fair market value of the forage or to recover the agencies' expenditures. As a result, BLM's and the Forest Service's grazing receipts fell short of their expenditures on grazing in Fiscal Year 2004 by almost $115 million. We reported that if the purpose of the grazing fees was to recover expenditures, the agencies' grazing fees would have been about $7.64 and $12.26 per AUM, respectively. Alternatively, if the purpose of the fees was to gain fair market value, the agencies' fees would vary depending on the market. As I stated in my testimony, were BLM to implement approaches other agencies use to set grazing fees, it could help close the gap between expenditures and receipts, and more closely align its fees with market prices. We recognize, however, that the purpose and the amount of BLM's grazing fee are ultimately for the Congress to decide.

Royalties from hardrock mining. As we reported in June 2005, the General Mining Act of 1872 encouraged development of the West by allowing individuals to stake claims and obtain rights to gold, silver, copper, and other valuable hardrock mineral deposits on land belonging to the United States.[9] The law, however, does not authorize the collection of royalties. Since 1872, thousands of claimants and operators have extracted billions of dollars of hardrock minerals from federal lands without being required to pay royalties on any hardrock minerals extracted. A February 2007 Congressional Budget Office report stated that $35 million in revenue could be generated over a 5-year period should the Congress authorize an 8-percent royalty on the net proceeds from all future production of hardrock minerals from federal lands.[10] The report also notes that if the 8-percent royalty was applied to gross proceeds, it would generate additional revenue and be less costly to administer.

2. As you cited in your 2005 report entitled, "Oil and Gas Development: Increased Permitting Activity Has Lessened BLM's Ability to Meet Its Environmental Protection Responsibilities," BLM staff do not have the necessary resources to perform the required environmental inspections. The Bush Administration's FY 2008 budget proposal will increase the number of Applications for Permits to Drill (APDs) processed by nearly 55 percent from 7,736 to nearly 12,000 in 2008. While it is important that the Bush Administration focus its efforts to meet the Nation's growing demand for energy, it must be mindful of the vast growth and environmental effects that this will have on the "Evolving West." What effect will this continued increase in permit approvals have on the surrounding communities and environment? Is there a "tipping point?" And, if so, at what point do you think the Administration's emphasis on oil and gas development will become excessive?

In June 2005, we reported that the increased permitting activity between 1999 and 2004 had occurred at the expense of environmental mitigation activities owing to a lack of resources available to conduct mitigation activities.[11] The effect of a continued increase in permit approvals on surrounding communities and the environment will depend on (1) the environmental stipulations in the leases, (2) the conditions of approval in the permits, and (3) BLM's level of monitoring and enforcement of the lease stipulations and permit conditions. If BLM is required to process even more permits without receiving any additional resources, it is likely that the agency's ability to perform the necessary environmental mitigation activities would continue to be eroded.

Before the Energy Policy Act was enacted in August 2005, BLM had the authority to assess and charge fees to cover its expenses for processing oil and gas permits. The revenues from such fees would have enabled BLM to supplement its program resources. As I noted in my response to Question 1, we had recommended, and BLM had begun to establish, a fee structure to recover its costs for processing applications for oil and gas permits, but the Energy Policy Act prohibited Interior from initiating the new fee. Nevertheless, Interior has continued to express interest in initiating such a fee and has proposed that the Energy Policy Act be amended to

[9] GAO, Hardrock Mining: BLM Needs to Better Manage Financial Assurances to Guarantee Coverage of Reclamation Costs, GAO-05-377 (Washington, D.C.: June 20, 2005).

[10] Congressional Budget Office, Budget Options (Washington, D.C.: Feb. 2007). The Congressional Budget Office's estimate assumes that the states in which mining takes place would receive 10 percent of the royalty receipts, and that there would be no surge in patenting activity before royalties were imposed; such a surge could boost immediate patenting receipts and diminish future royalties.

[11] GAO-05-418.

allow the fee to move forward. Authorizing such a fee to cover BLM's expenses for processing permits could presumably free bureau staff up to carry out environmental mitigation responsibilities, should the agency choose to use the resources for this purpose.

The extent to which federal lands should be used for oil and gas exploration and development and the environmental effects that will be tolerated are policy decisions that are up to the Congress and the administration to make. Balancing the competing demands for the use of these lands is an ongoing challenge for the Congress and the agencies that manage them.

3a. As you will recall, GAO found that the Fish and Wildlife Service (FWS) had very poor records characterizing the environmental threat of oil and gas activities on refuge lands. To your knowledge, has the Service completed a comprehensive assessment of the cumulative environmental impacts of oil and gas development on refuges?

FWS has taken some steps to identify a possible approach to developing and maintaining data on the effects of oil and gas activities on refuge resources, although it has not identified funding to support this effort. It is not clear whether the agency will conduct a comprehensive assessment of the cumulative environmental impacts of oil and gas development on refuges once it gathers these data.

3b. GAO also found that the Fish and Wildlife Service did not have any inventory of oil and gas infrastructure on refuges and was unable to estimate future reclamation costs. Has the Service completed this inventory and compiled a list and cost estimate for outstanding reclamation needs?

Collecting data on the nature and extent of oil and gas activities on refuge lands is part of the effort described in response to Question 3a. Because the data have not yet been collected under this effort, FWS cannot comprehensively identify needed reclamation or associated costs.

3c. Has the Fish and Wildlife Service developed consistent system-wide policies and permit procedures, including revised fees for oil and gas activities and infrastructure on refuges, and revised the agency's Refuge Manual accordingly? And, do we have any estimates of the amount of revenue the United States could be collecting, but is not, due to the agency's failure to act?

FWS has drafted a handbook for the management of oil and gas activities on wildlife refuges, although it has not yet been made final or public. Therefore, it is not clear what FWS's policies or procedures will be. We have not examined what revenue is available to FWS through fees for oil and gas activities and infrastructure on refuges. It is important to note that FWS only has the authority to retain money paid for damages to refuge lands in Louisiana and Texas. The money is to be used to make damage assessments, mitigate or restore damages, and monitor and study recovery of the resources. As of the August 2003 issuance of our report, fees had only been collected in Louisiana.[12] To address this inconsistency, FWS officials told us they are drafting guidance to clarify how these regions should apply their authority to collect and retain fees. Furthermore, Congress would need to provide FWS with the authority to retain money paid for damages for refuge lands beyond Louisiana and Texas.

3d. GAO reported that the Service has adequate authority to regulate outstanding mineral rights on refuges and recommended that the Service work with the Solicitor's office to determine the Service's existing authority to issue permits and set reasonable conditions. Did the Service ever follow through on this recommendation?

According to FWS officials, the agency has consulted with Interior's Office of the Solicitor, which has concurred with the discussion of FWS's authority in the draft oil and gas handbook mentioned in the response to Question 3c. However, it is not clear what the official FWS position is concerning the agency's authority because the handbook is not yet public.

4a. As 2006 drew to a close approximately 100 lawsuits were filed by Indian tribes against the United States for an accounting of their tribal trust funds because the 109th Congress adjourned without extending the statute of limitations for such claims as it has since 2001. In the past the GAO has encouraged the United States to explore the settlement of these claims before they erupted into litigation. Does the GAO still support the settlement concept? Does the GAO have any opinion whether Congress should re-extend the statute of limitations to avoid litigation?

While we have long recommended consideration of a legislated process for settlement of claims before litigation is filed, we do not have a position on legislated settlement of the existing lawsuits or extension of the statute of limitations for tribal trust fund claims. From 1992 through 1997, we monitored and reported on various

[12] GAO, National Wildlife Refuges: Opportunities to Improve the Management and Oversight of Oil and Gas Activities on Federal Lands, GAO-03-517 (Washington, D.C.: Aug. 28, 2003).

aspects of Interior's planning, execution, and reporting of results for its tribal trust fund account reconciliation project, which was statutorily required beginning in 1987. Between 1992 and 1996, we reported that, although Interior had made a massive attempt to reconcile tribal accounts during its reconciliation project, missing records and systems limitations made full reconciliation impossible. Accordingly, as early as 1992, we recommended to Interior that it consider alternatives to account reconciliation including, if other options were unsuccessful, seeking a legislated settlement process. Since 1997, many tribes have initiated lawsuits with claims related to account balances.

4b. The GAO's recent (December 2006) report on the Office of the Special Trustee (OST) indicates that the OST uses contractors extensively, but reports from Indian Country indicate that the OST has not made much of an effort to make contracting opportunities available to Indian tribes. In light of the overall federal policy of tribal self-determination, do you agree that there should be some effort to use Native American businesses to the greatest extent possible?

We are not in a position to offer an opinion on this issue because our December 2006 report did not examine OST's efforts to make contracting opportunities available to Indian tribes.[13] However, we found that OST's largest contractor in Fiscal Years 2004 and 2005 was Chickasaw Nation Industries, an Indian-owned 8(a) small business. OST used an indefinite delivery, indefinite quantity contract with Chickasaw Nation Industries that allowed OST to award contract task orders quickly because there is no requirement for competition. OST's second largest contractor in Fiscal Years 2004 and 2005 was SEI Investments—which is not an Indian-owned 8(a) small business—for the operation and maintenance of OST's trust fund accounting system, a modified off-the-shelf version of SEI's commercial trust accounting system. More than 150 large financial and investment institutions use SEI's trust management systems.

4c. No one thought that the Office of the Special Trustee would exist in 2007. It was supposed to be a temporary position. Should Congress set a specific date for the termination of that office as a number of Indian tribes have requested?

We believe the requirements in the American Indian Trust Fund Management Reform Act of 1994 are sufficient for establishing a termination date for OST.[14] The act directed OST to develop a comprehensive strategic plan with a timetable for implementing identified trust fund management reforms and a date when OST will be terminated. However, we found that OST had not established a timetable or a date for OST's termination, and we recommended that the Secretary of the Interior direct the Special Trustee to provide the Congress with a timetable for completing trust fund management reforms. In response, Interior stated that it expects to have a timetable by late June 2007 for implementing the remaining trust reforms including a date for the proposed termination or eventual disposition of OST.

The Congress, in its review of Interior's timetable, may disagree with the duration of the trust reforms and choose an alternative completion and termination date. OST plans to complete almost all of its key trust fund management reforms by November 2007. OST told us that after November 2007 it will still need to verify the data in the Bureau of Indian Affair's trust asset and accountability management system for (1) Indian lands with recurring income for which the land and leasing records in the management system matched with the information in the legacy realty system and (2) Indian lands without recurring income.

4d. Over the last few years the Office of the Special Trustee has taken authorities and programs away from the Bureau of Indian Affairs as well as millions of valuable resources. This was never intended by Congress when OST was established. Did your studies show what the Department of the Interior plans to do with all these activities when they finally shut down the Office of the Special Trustee? Did you receive any assurances that the administration will continue these programs or can this build-up of OST be a precursor to terminating these responsibilities?

Regarding the first part of the question, neither the Secretary of the Interior nor the Special Trustee has stated what will be done when the trust reforms are completed. Accordingly, we recommended that the Secretary provide the Congress with a plan for future trust operations, including, if the decision is made to terminate OST, a determination of where these operations will reside.[15] The American Indian Trust Fund Management Reform Act of 1994 states that the Special Trustee, in providing the Congress with a 30-day notice of completion, may recommend the con-

[13] GAO, Indian Issues: The Office of the Special Trustee Has Implemented Several Key Trust Reforms Required by the 1994 Act, but Important Decisions about Its Future Remain, GAO-07-104 (Washington, D.C.: Dec. 8, 2006).

[14] GAO-07-104.

[15] GAO-07-104.

tinuation, or permanent establishment, of OST if the Special Trustee concludes that continuation or permanent establishment is necessary to efficiently discharge the Secretary's trust responsibilities.

Regarding the second part of your question, the Special Trustee for American Indians shares your concern that OST's trust fund management responsibilities must continue into the future whether or not OST itself is terminated. OST has made a significant investment in developing an integrated trust management system to better ensure that ownership of lease and other income is accurately identified and paid into appropriate trust accounts. Taxpayer funds would be wasted if these programs were terminated without another capable organization identified to fulfill the Secretary's trust fund responsibilities.

5. I understand that most of the properties listed in your report regarding financial assurances for hardrock mining were in bankruptcy. In some instances, the discrepancy in the bond amount and the actual amount of money required for reclamation were due to the fact that reclamation conditions were exacerbated as a result of the bankruptcy (insufficient funds to run water pumps, etc.). In other words, the bond would have been adequate had the company remained solvent. Would legislation such as the Good Samaritan legislation introduced in the 109th Congress by Congressman Duncan, H.R. 5404, which provides limited liability to private parties willing to assume reclamation (and contribute money or in kind services), help the federal government in reclaiming these properties?

Having adequate financial assurances to pay reclamation costs for BLM land disturbed by hardrock operations is critical to ensuring that the land is reclaimed if operators fail to complete reclamation as required. Financial assurances must be based on sound reclamation plans and current cost estimates so that BLM can be confident that financial assurances will fully cover reclamation costs. However, in our June 2005 report, we found that BLM did not have a process for ensuring that adequate assurances were in place.[16] As a result, we reported that 48 hardrock operations in seven states had ceased and had not been reclaimed by operators, as required, leaving BLM with about $56.4 million in unfunded reclamation costs. Reclamation costs were not paid by the operators in these cases because some of the operators had outdated reclamation plans or cost estimates, while other operators had no financial assurances at all.

Our work on hardrock mining was completed nearly a year before the Good Samaritan legislation was introduced. Consequently, we did not evaluate the legislation's applicability to the problems that we found with financial assurances for hardrock mining operations. However, the recommendations in our report are intended to help BLM avoid being left with unfunded reclamation costs in the future. Specifically, we recommended that BLM state office directors establish an action plan for ensuring that operators of hardrock operations have required financial assurances and that the financial assurances are based on sound reclamation plans and current cost estimates, so that they are adequate to pay all of the estimated costs of required reclamation if operators fail to complete the reclamation. If properly implemented, this should help BLM reduce or eliminate instances where financial assurances are underestimated or based on unsound reclamation plans. While the agency has taken steps to implement these recommendations, we have not fully evaluated the impact of its actions.

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We are sending copies of this report to the Chairman and Ranking Minority Members with jurisdiction over the Department of the Interior and The Honorable Dirk Kempthorne, Secretary of the Interior. We will make copies available to others upon request, and the report will be available at no charge on the GAO Web site at http://www.gao.gov. If you have any questions, please contact me on (202) 512-3841 or at nazzaror@gao.gov. Contact points for our offices of Congressional Relations and Public Affairs may be found on the last page of this report.

Sincerely yours,

Robin M. Nazzaro
Director, Natural Resources and Environment

[16] GAO-05-377.